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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-101

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-101 Short title.

This code shall be known and may be cited as "administrative code of the city of New York".

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 985-1.0 added chap 929/1937 § 1, renumbered § 1154-1.0 by chap 100/1963 § 1580

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-102

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-102 Legislative intent.

It is the intent of the legislature by the enactment of this chapter to recodify, without substantive change, the administrative code of the city of New York in effect immediately prior to the effective date of this chapter. The enactment of this code shall not be construed as validating, ratifying or conforming any provision hereof which was enacted by any local law of the city of New York, and incorporated within the prior administrative code of the city of New York and recodified in this code which the city was without authority to enact at the time of such enactment of such local law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-1.0 added chap 929/1937 § 1, renumbered and amended § 1151-1.0 by chap 100/1963 § 1567

CASE NOTES FROM FORMER SECTION

¶ 1. The inclusion, in the Table of Repealed Laws annexed to Administrative Code of Laws of 1935, Chapter 246, authorizing City to operate and maintain a foreign trade zone at Staten Island, was held to be inadvertent, in view of fact that purpose of Administrative Code was merely to clarify and restate existing statutes and laws. Administrative Code § 704c-3.0 specifically referred to the continued operation of the zone and the Legislature would not be deemed to have

intended an absurd result such as would result from a construction of § 704c-3.0 as meaningless. Judicial notice will be taken of the haste with which the Administrative Code was enacted and the consequent possibility of error.-American Dock Co. v. City of New York, 174 Misc. 813, 21 N.Y.S. 2d 943 [1940], aff'd, without opinion, to extend appeal from, 261 App. Div. 1063, 26 N.Y.S. 2d 704, aff'd 286 N.Y. 658, 36 N.E. 2d 696.

¶ 2. The codification and restatement of old charter § 230 and Laws of 1893, Chapter 518, in Administrative Code § 117 (7)-1.0 to provide that "the Board of Estimate, in its discretion," should include annually in its budget a sum not exceeding $8,000 for maintenance of the 7th Regiment Armory Building, was held, as respects the change from the mandatory inclusion required by the old law to a discretionary inclusion, to have been written through inadvertence and error. Consequently, this provision did not have the effect of repealing § 230 or the Laws of 1893, Chapter 518 in view of stated purpose of Charter to be to codify and restate existing statutes.-Tobin v. La Guardia, 259 App. Div. 191, 18 N.Y.S. 2d 267 [1940], aff'd without opinion, 283 N.Y. 678, 28 N.E. 2d 403.

¶ 3. Local Law No. 26 of 1937 which amended the Greater New York Charter so as to provide that persons reinstated from a preferred Civil Service list to a position identical or similar to that formerly held should receive the same salary theretofore received was held to have been superseded by § 67 of the Charter which vests the Board of Estimate with power to fix compensation of employees. Section 982-a of the Charter specifically repealed all laws inconsistent with the Charter. The inclusion of such local law in the Administrative Code would not continue the life of such ordinance, inasmuch as the Charter was the later enactment because of the effective date of the pertinent provisions of the Administrative Code was that of the original enactment of the local law, since the Administrative Code was merely a restatement and codification. In case of conflict between the Administrative Code and the Charter, the Charter controlled.-Tormey v. La Guardia, 172 Misc. 1091, 17 N.Y.S. 2d 388 [1940], aff'd without opinion, 259 App. Div. 802, 19 N.Y.S. 2d 1019, aff'd without opinion, 284 N.Y. 607, 29 N.E. 2d 929.

¶ 4. The Administrative Code must be interpreted in the light of its predecessor, the Code of Ordinances. The present code was intended solely to codify and restate existing laws.-In re Tonolo, 120 (11) N.Y.L.J. (7-16-48) 95, Col. 1 M.

¶ 5. The provisions of § B36-34.0 which provide that "all types of solid fuel, other than coke, soft coal, anthracite, buckwheat, rice, . . . must be sold . . . in quantities of one ton or multiples thereof" was interpreted as deleting the comma between the words "anthracite" and "buckwheat" where the old law so provided. The purpose of the new Code was to codify and restate present existing statutes and not to make changes in the law.-People v. Fuels of Queens, Inc., 168 Misc. 912, 6 N.Y.S. 2d 243 [1938], aff'd 170 Misc. 763, 11 N.Y.S. 2d 22 and 281 N.Y. 728, 23 N.E. 2d 547.

¶ 6. The re-enactment of an ordinance which permitted Department heads to pay employees for working on legal holidays did not confer validity upon the ordinance since the Code was merely a restatement of existing law. Thus, inasmuch as the ordinance had never been concurred in by the former Board of Estimate and Apportionment the statute was invalid and petitioners were not entitled to additional compensation for working legal holidays.-Matter of Brooks, 298 N.Y. 714, 83 N.E. 2d 15 [1948].

¶ 7. Code § B40-11.0 which permits Department heads to compensate employees for working on legal holidays is invalid because it conflicts with the budget scheme of the City. The section was not validated by the restatement thereof in the Administrative Code.-Matter of Hagan, 173 Misc. 327, 17 N.Y.S. 2d 438 [1939].

CASE NOTES

¶ 1. The plaintiff was injured after falling from the bleachers, and alleged that the absence of protected guards led to the fall. The court held that violation of § 27-531(a)(8)(d), which deals with protective guards on bleacher seats, is only some evidence of negligence and is not negligence per se. The court made a distinction between a state statutes and municipal ordinances. Generally, violation of a state statute that imposes a specific duty constitutes negligence per se, or may even create absolute liability. By contrast, the violation of a municipal ordinance, such as the Administrative Code,

constitutes only negligence per se. The court cited Adm. Code § 1-102, which provides that the recodification of the Administrative Code by the legislature "shall not be construed as validating, ratifying or conforming any provision of the pre-existing administrative code to state law." Thus, the City has in effect created its own standards, rather than adopting a state standard. Elliott v. City of New York, 95 N.Y.2d 730, 724 N.Y.S.2d 397 (2001).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-103

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-103 Effect of local law.

This chapter shall not operate to deprive the local legislative body of the city of New York of the power to enact local laws in relation to any matter in respect to which such power would otherwise exist, nor shall it limit such power. If this power otherwise exists, any provision of this chapter may be superseded, supplemented or amended by local law in the same manner and to the same extent as such provisions could be superseded, supplemented or amended had this chapter not been enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-7.0 added chap 929/1937 § 1, renumbered § 1151-7.0 chap 100/1963 § 1574

CASE NOTES

¶ 1. The plaintiff was injured after falling from the bleachers, and alleged that the absence of protected guards led to the fall. The court held that violation of § 27-531(a)(8)(d), which deals with protective guards on bleacher seats, is only some evidence of negligence and is not negligence per se. The court made a distinction between a state statutes and municipal ordinances. Generally, violation of a state statute that imposes a specific duty constitutes negligence per se, or may even create absolute liability. By contrast, the violation of a municipal ordinance, such as the Administrative Code,

constitutes only negligence per se. The court cited Adm. Code § 1-103, which in effect gives the local legislature the power to enact its own local laws. Elliott v. City of New York, 95 N.Y.2d 730, 724 N.Y.S.2d 397 (2001).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-104

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-104 Judicial notice.

a. All courts shall take judicial notice of all laws contained in the code, the charter, local laws, ordinances, the health code, resolutions, and of all rules and regulations adopted pursuant to law.

b. The compilations of rules and regulations published pursuant to subdivision f of section eleven hundred five of the charter shall be prima facie evidence in all courts of the authenticity of the provisions contained therein.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-8.0 added chap 929/1937 § 1, amended chap 763/1939, renumbered and amended chap 100/1963 § 1576

CASE NOTES

¶ 1. Judicial notice of rules and regulations of New York City officers and agencies (police department in this case) is mandatory. People v. Patterson, 646 N.Y.S.2d 762 (Sup.Ct. Kings Co. 1996).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-105

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-105 Separability.

If any clause, sentence, paragraph, section or part of the code shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 984-1.0 added chap 929/1937 § 1, renumbered § 1153-1.0 by chap 100/1963 § 1579

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-106

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-106 No failure of applicable statutes.

Any provision of any statute applicable to the city or any part thereof, now or hereafter enacted, imposing functions generally, specifically or by devolution, upon any agency, which is not identified in the city by the designation provided in such statute, shall be deemed to have imposed such functions upon any agency of the city or part thereof, to which has been transferred the functions of the designated agency or which exercises similar functions, or in the absence of such agency, upon the mayor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-5.0 added chap 929/1937 § 1, renumbered § 1151-5.0 and amended chap 100/1963 § 1572

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-107

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-107 Pending actions and proceedings.

No action or proceeding, civil or criminal, pending at the time the code shall take effect, brought by or against the city or any agency or officer thereof, shall be affectabated by the adoption of the code or by anything therein contained. All such actions and proceedings may be continued in full force and effect under the appropriate provisions of the code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-108

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-108 Existing rights and remedies saved.

No existing right or remedy of any kind shall be lost or impaired by reason of this recodification.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-109

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-109 Enumeration of powers not restrictive.

The enumeration of specific powers by this code shall not operate to restrict the meaning of a general grant of power contained in this code or to exclude other powers comprehended in such general grant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-3.0 added chap 929/1937 § 1, renumbered § 1151-3.0 chap 100/1963 § 1570

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-110

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-110 No repeal by implication.

a. It is not intended by this code to repeal by implication any existing provision of law and no law shall be deemed repealed thereby unless expressly provided for herein.

b. No law hereafter enacted shall be construed to repeal any provision of this code by implication, but every such provision shall be deemed to be in full force and effect until specifically repealed or amended.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-6.0 added chap 929/1937 § 1, renumbered § 1151-6.0 chap 100/1963 § 1573

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-111

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-111 Amendment of water supply provisions.

All rights and powers to amend, modify, extend or supersede any provision or provisions of sections 5-376 through 5-399, 5-401 through 5-403, 5-410, 5-418, 5-423, 5-424, 5-426, 5-429, 24-301, 24-347 through 24-352, and 24-354 through 24-365 of this code and any other provision or provisions of this code relating to any lands now or hereafter acquired outside the corporate limits of the city for water supply purposes, including highways, bridges and sewers, are hereby reserved to the legislature of the state of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 982-7.1 added chap 929/1937 § 1, renumbered and amended § 1151-7.1 by chap 100/1963 § 1575

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-112

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-112 Definitions.

Unless expressly otherwise provided, whenever used in the code, the following terms shall mean or include:

1. "Agency". A city, county, borough, or other office, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

2. "Budget". The expense budget unless the context otherwise requires.

3. "Charter". The New York city charter.

4. "City". The city of New York.

5. "County". Any county wholly included within the city of New York.

6. "Employee". Any person whose salary in whole or in part is paid out of the city treasury.

7. "Intercepting sewer". A sewer the principal purpose of which is the interception from other sewers and conveyance of sewage to treatment plants. In case of doubt the board of estimate shall decide whether a sewer is an intercepting sewer.

8. "Law". Any provision of the constitution, enactments of the state legislature, the charter, the administrative code, any local law, or any rule or regulation adopted pursuant to any of the aforementioned.

9. "Maintenance". Includes minor repairs, and in case of doubt the mayor or an officer designated by him shall decide whether a repair is a minor repair.

10. "Person". A natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

11. "Real property". Includes real estate, lands, tenements and hereditaments, corporeal or incorporeal.

12. "Statute". Any enactment of the legislature of the state of New York.

13. "Street". Any public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets.

14. "The code". The administrative code of the city.

15. "The port of New York". Includes all the waters of the North River, the East River and the Harlem River and all the tidal waters embraced within or adjacent to or opposite to the shores of the city.

16. "Three-fourths vote and two-thirds vote". When they apply to the board of estimate, shall mean, respectively, three-fourths and two-thirds of the total number of votes which all the members of the board are entitled to cast.

17. "Wharf property". Wharves, piers, docks and bulkheads and structures thereon and slips and basins, the land beneath any of the foregoing, and all rights, privileges and easements appurtenant thereto and land under water in the port of New York, and such upland or made land adjacent thereto as was vested in the department of docks on January first, nineteen hundred thirty-eight or thereafter was or may be assigned to it or its successor agencies.

18. "Water front property". Property fronting on all the tidal waters in the port and city of New York and extending inshore to the property line of the first adverse owner and shall include such land under water extending outshore to the pierhead line or the property line, whichever extends furthest outshore.

19. "Water front commerce". The activity on water front property which encompasses the receipt of cargo or goods at the wharves, piers, docks or bulkheads from ships and their delivery to points inland or the receipt of such cargo or goods at such wharves, piers, docks or bulkheads from points inland for shipment by ships and shall include the temporary storage of such cargo or goods in the sheds or warehouses on such property pending their delivery or shipment.

20. "Furtherance of navigation". The activity on water front property which involves ship building, ship repairing, boating, dry dock facilities and similar uses.

21. The term "domestic partner" shall mean persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 21 added L.L. 27/1998 § 7, eff. Sept. 5, 1998.

DERIVATION

Formerly § 981-1.0 added chap 929/1937 § 1, renumbered § 1150-1.0 and amended chap 100/1963 § 1566, subds 17-20 added as subd 7 LL 71/1962

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 1-113

Administrative Code of the City of New York

Title 1 General Provisions

CHAPTER 1 RULES OF CONSTRUCTION

§ 1-113 Gender neutral language.

a. Except as otherwise provided in this section, all laws, documents and materials generated by the city shall be drafted in a gender-neutral manner and shall not include gender-biased terminology; including, but not limited to, the term "councilman" and "councilmanic." To the extent consistent with the meaning of this law, masculine pronouns may be used together with feminine pronouns in reference to elected officials, commissioners and similar persons.

b. Notwithstanding the provisions of subdivision a of this section, no law, document, or other material of the city shall be invalidated due to the inclusion of gender-biased terminology.

c. Notwithstanding the provisions of subdivision a of this section, no agency of the city shall be required to dispose of any materials that were produced prior to the enactment of this section and which may include gender-biased terminology.

d. The provisions of subdivision a of this section shall in no way interfere with the ability of any agency of the city to collect gender-specific information, to the extent permitted by law, as necessary to carry out their responsibilities; including, but not limited to, maintaining personnel files, generating medical records, or creating police records.

e. The provisions of subdivision a of this section shall not apply to any law, document, or material that addresses a gender-specific matter; including, but not limited to, pregnancy or maternal health.

HISTORICAL NOTE

Section added L.L. 42/2002 § 1, eff. Feb. 19, 2003.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-101

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 1 POWERS AND RIGHTS OF THE CORPORATION; EMBLEMS AND INSIGNIA

§ 2-101 Name; powers and rights of the corporation; seal.

The city shall be a body politic and corporate in fact and in law with power to contract and to be contracted with, to sue and be sued, to have a common seal and to have perpetual succession.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-102

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 1 POWERS AND RIGHTS OF THE CORPORATION; EMBLEMS AND INSIGNIA

§ 2-102 City seal.

a. Description. The following is hereby adopted as the device of the corporate seal of the city of New York, to-wit:

1. Arms: Upon a shield, saltire wise, the sails of a windmill. Between the sails, in chief a beaver, in base a beaver, and on each flank a flour barrel.

2. Supporters: Dexter, a sailor, his right arm bent, and holding in his right hand a plummet; his left arm bent, his left hand resting on the top of the shield; above his right shoulder a cross-staff. Sinister, an Indian of Manhattan, his right arm bent, his right hand resting on top of the shield, his left hand holding the upper end of a bow, and lower end of which rests on the ground. Shield and supporters resting upon a horizontal laurel branch.

3. Date: Beneath the horizontal laurel branch the date 1625 being the year of the establishment of New Amsterdam.

4. Crest: Upon a hemisphere, an American eagle with wings displayed.

5. Legend: Upon a ribbon encircling the lower half of the design the words "Sigillum Civitatis Novi Eboraci".

6. The whole encircled by a laurel wreath.

b. Design. The following design is hereby adopted as the official and standard design of such corporate seal:

c. Execution of. The city clerk shall cause the design of such seal to be engraved upon metal as the seal of the

city and he shall affix the same, as necessary; and he shall also provide in the same manner for all other officers of the city who are required or authorized to have or use the corporate seal of the city.

d. Use of. Such seal shall be used for all requisite purposes. All representations thereof,

1. Impressed or printed on documents, publications or stationery, issued or used by or in the name of or under the authority of the city, its agencies or of any borough or department thereof,

2. Carved or otherwise represented on buildings or structures owned by the city, or

3. Otherwise officially portrayed,

shall be in exact conformity with the aforesaid standard design without alteration or addition. However, the legend "Sigillum Civitatis Novi Eboraci" may be omitted when the design is used on the city flag or for architectural or ornamental purposes. Defaced and cancelled seals shall remain in the custody of the city clerk. Any representation of the city seal used on any vehicle other than one owned or used by the city, shall subject the owner of such vehicle to a fine of twenty-five dollars or imprisonment for a term not exceeding ten days.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-3.0 added chap 929/1937 § 1

Repealed and added LL 98/1977 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-103

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 1 POWERS AND RIGHTS OF THE CORPORATION; EMBLEMS AND INSIGNIA

§ 2-103 Official city flag.

a. The following design is hereby adopted as the design of the official flag of the city:

1. A flag combining the colors orange, white and blue arranged in perpendicular bars of equal dimensions (the blue being nearest to the flagstaff) with the standard design of the seal of the city in blue upon the middle, or white bar, omitting the legend "Sigillum Civitatis Novi Eboraci," which colors shall be the same as those of the flag of the United Netherlands in use in the year sixteen hundred twenty-five.

b. The old guard of the city of New York is authorized to carry and display the official city flag at all its various functions, reviews, parades and receptions.

c. The American flag shall be displayed on all city-owned or other buildings occupied by any city department or institution of whatever character on all days of the year, excepting Sundays.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-4.0 added chap 929/1937 § 1

Amended LL 3/1975 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-104

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 1 POWERS AND RIGHTS OF THE CORPORATION; EMBLEMS AND INSIGNIA

§ 2-104 Official flag-borough of the Bronx.

a. The following design is hereby adopted as the design of the official flag of the borough of the Bronx. 1. The colors orange, white, and blue as appears on the official city flag, arranged in horizontal bars of equal dimension, the orange being above the white and the blue below, with the following design in the center, encircled within a laurel wreath greater in diameter than the width of the white stripe:

Crest: Upon a hemisphere, an American eagle with wings displayed.

Shield: The sun with shining rays, rising from the sea.

Legend: Upon a ribbon beneath the words "Ne Cede Malis".

b. This flag may be displayed at reviews, parades, receptions and other civic functions.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-4.1 added LL 56/1970 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-105

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 1 POWERS AND RIGHTS OF THE CORPORATION; EMBLEMS AND INSIGNIA

§ 2-105 Official flag; borough of Brooklyn.

a. The following description is hereby adopted as the description of the official flag of the borough of Brooklyn. A white background in the center of which is the design of the seal. Within the seal appears a figure of the goddess of justice in gold holding Roman fasces in her left hand set on a background of light blue. Encircling her figure on a background of dark blue appear the words "Een Draght Mackt Maght" the old Dutch motto for "In unity there is strength" and below the words "borough of Brooklyn." The outside and inside trim of the seal is gold.

b. This flag may be displayed at reviews, parades, receptions and other civic functions.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-4.2 added LL 25/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-106

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 1 POWERS AND RIGHTS OF THE CORPORATION; EMBLEMS AND INSIGNIA

§ 2-106 Daylight saving time; effect thereof on public proceedings.

The standard time throughout the city of New York is that of the seventy-fifth meridian of longitude west from Greenwich, except that at two o'clock ante-meridian of the last Sunday in April of each year such standard time throughout the city shall be advanced one hour, and at two o'clock ante-meridian of the last Sunday in October of each year, such standard time shall, by the retarding of one hour, be returned to the mean astronomical time of the seventy-fifth meridian of longitude west from Greenwich, and all courts, public offices and legal and official proceedings shall be regulated thereby.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-5.0 added chap 929/1937 § 1

Amended LL 25/1955 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-201

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 2 BOUNDARIES OF THE CITY

§ 2-201 The city of New York, territory thereof and extent of jurisdiction and powers.

All that territory within the city being all that territory contained within the boroughs of Manhattan, The Bronx, Brooklyn, Queens and Staten Island as hereafter described, shall be known as "The City of New York"; and the boundaries, jurisdictions and powers of the city are for all purposes of local administration and government hereby declared to be co-extensive with the territory above described.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1-1.0 added chap 929/1937 § 1

Amended LL 2/1975 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-202

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 2 BOUNDARIES OF THE CITY

§ 2-202 Division into boroughs and boundaries thereof.

The city of New York is hereby divided into five boroughs to be designated, respectively: Manhattan, The Bronx, Brooklyn, Queens and Staten Island.

1. The borough of Manhattan shall consist of the territory known as New York county which shall contain all that part of the city and state, including that portion of land commonly known as Marble Hill and included within the county of New York and borough of Manhattan for all purposes pursuant to chapter nine hundred thirty-nine of the laws of nineteen hundred eighty-four and further including the islands called Manhattan Island, Governor's Island, Bedloe's Island, Ellis Island, Franklin D. Roosevelt Island, Randall's Island and Oyster Island, bounded by the following described line: Beginning at the northerly United States bulkhead line of the Harlem river at the junction of the Hudson and Harlem rivers; thence along the northerly and easterly United States bulkhead lines of the Harlem river to the low-water mark on the westerly bank of the Spuyten Duyvil creek as it existed prior to its being filled in; thence along said low-water mark of Spuyten Duyvil creek to the easterly United States bulkhead line of the Harlem river; thence southerly along the easterly United States bulkhead line of the Harlem river to a point where said United States bulkhead line of the Harlem river intersects the northerly United States bulkhead line of the Bronx kills; thence along the northerly line of the United States bulkhead line of the Bronx kills to the intersection of the northerly United States bulkhead line of the East river; thence across the East river to the low-water mark on the shore of Long Island, so as to include Randall's Island and Ward's Island; thence along the low-water mark on the shore of Long Island to the southerly side of Red Hook; thence across the Upper bay to the westerly boundary of the state; thence northerly along such westerly boundary of the state to a point where a perpendicular drawn from the point or place of beginning intersects such westerly boundary of the state; thence easterly along such perpendicular to the point or place of

beginning; including all the islands or parts thereof situated within the aforedescribed bounds.

2. The borough of The Bronx shall consist of the territory known as Bronx county which shall contain all that part of the city and state bounded on the east by the middle of the main channel of Long Island sound; bounded on the south by the following described line: Beginning at a point in the middle of the channel of Long Island sound where it intersects the middle of the channel of the East river easterly of Throgg's neck; thence westerly along the middle of the channel of the East river to a point where such channel crosses a straight line from the Clason point in the borough and county of the Bronx to College point on Long Island; thence southwesterly to the most easterly point of the United States bulkhead line of Rikers Island; thence generally southerly and westerly along said United States bulkhead line of Rikers Island to the most southerly point of said United States bulkhead line; thence westerly still along said United States bulkhead line to

the most southwesterly point of said United States bulkhead line of Rikers Island; thence northwesterly in a straight line to the junction of the northerly United States bulkhead line of the Bronx kills and the northerly United States bulkhead line of the East river; thence bounded on the west by the borough of Manhattan and county of New York and by the westerly boundary of the state, and bounded on the north by the following described line: Beginning at a point in the Hudson river where the westerly boundary of the state crosses the westerly prolongation of a straight line drawn from a point on the easterly bank of the Hudson river at latitude 40° 54' 53.21" north and longitude 73° 54' 38.64" west of Greenwich to a point in the center of the former bed of the Bronx river at latitude 40° 53' 59.23" north and longitude 73° 51' 35.67" west of Greenwich; thence easterly along such line to a point formed by the intersection of such line with the center line of East Two

hundred fortieth street; thence easterly along the center line of such street, a distance of 62.23 feet; thence easterly on a line parallel to the northerly line of McLean avenue as it existed the twenty-sixth day of May, nineteen hundred seventeen, and distant 60 feet southerly therefrom, a distance of 159.46 feet to the aforementioned straight line drawn from a point on the easterly bank of the Hudson river to a point in the center of the former bed of the Bronx river; thence easterly along such line to a point fomed*2 by the intersection of such line with the center line of Webster avenue, distant 618.47 feet from a point in the former bed of the Bronx river whose coordinates are north 43554.440 and west 31924.769 based on the United States Coast and Geodetic system which is used in that part of the borough of The Bronx to the east of and including the Bronx river; thence northeasterly, a distance of 65.6 feet to a point in the westerly prolongation of the

northerly line of East Two hundred thirty-eighth street, as such street existed the twenty-sixth day of May, nineteen hundred seventeen, such point being distant 604.16 feet from the center line of the former bed of the Bronx river; thence easterly along the northerly line of East Two hundred thirty-eighth street and its westerly prolongation as such street then existed, a distance of 604.16 feet to the center line of the former bed of such river; thence along the center line of the former bed of such river as follows: North 38° 56' 26.8" east to a point whose coordinates are north 43614.718 and west 31876.060; north 32° 57' 36.8" east, a distance of 93.010 feet; north 5° 46' 44.8" east, a distance of 31.308 feet; north 38° 37' 49.2" west, a distance of 30.679 feet; north 55° 23' 21.2" west, a distance of 70.043 feet; north 37° 16' 46.2" west, a distance of 37.339 feet; north 23° 36' 36.2" west, a distance of 44.655 feet; north 14° 27'

02.2" west, a distance of 38.418 feet; north 5° 05' 18.8" east, a distance of 37.124 feet; north 25° 45' 43.8" east, a distance of 26.174 feet; south 79° 49' 21.2" east, a distance of 29.157 feet; south 32° 58' 44.2" east, a distance of 40.723 feet; south 84° 54' 41.2" east, a distance of 37.124 feet; north 76° 03' 53.8" east, a distance of 33.207 feet; north 19° 22' 52.8" east, a distance of 71.159 feet; north 9° 58' 04.2" west, a distance of 47.004 feet; north 82° 31' 04.2" west, a distance of 50.004 feet; north 65° 13' 04.2" west, a distance of 75.007 feet; north 49° 31' 04.2" west, a distance of 47.004 feet; north 22° 57' 04.2" west, a distance of 51.005 feet; north 4° 53' 04.2" west, a distance of 61.006 feet; north 19° 17' 04.2" west, a distance of 21.002 feet; north 3° 15' 04.2" west, a distance of 61.006 feet; north 27° 46' 55.8" east, a distance of

22.002 feet; north 51° 19' 55.8" east, a distance of 91.008 feet; south 66° 24' 04.2" east, a distance of 48.004 feet;

south 46° 12' 04.2" east, a distance of 45.004 feet; south 36° 46' 04.2" east, a distance of 123.011 feet; south 62° 06' 04.2" east, a distance of 48.004 feet; south 84° 19' 04.2" east, a distance of 41.004 feet; north 73° 41' 55.8" east, a distance of 80.007 feet; north 57° 45' 55.8" east, a distance of 51.005 feet; north 15° 47' 04.2" west, a distance of 46.004 feet; north 1° 45' 55.8" east, a distance of 50.004 feet; north 26° 46' 55.8" east, a distance of 71.006 feet; north 62° 25' 55.8" east, a distance of 28.002 feet; south 48° 31' 04.2" east, a distance of 44.004 feet; south 67° 22' 04.2" east, a distance of 26.002 feet; north 87° 16' 55.8" east, a distance of 27.002 feet; north 53° 39' 55.8" east, a distance of 47.004 feet; north 26° 30'

55.8" east, a distance of 63.006 feet; north 21° 54' 55.8" east, a distance of 82.007 feet; north 22° 25' 55.8" east, a distance of 99.009 feet; north 9° 22' 55.8" east, a distance of 61.006 feet; north 18° 38' 04.2" west, a distance of 69.006 feet; north 1° 29' 04.2" west, a distance of 60.005 feet; north 13° 50' 04.2" west, a distance of 64.006 feet; north 4° 13' 55.8" east, a distance of 96.009 feet; north 18° 54' 55.8" east, a distance of 100.009 feet; north 13° 48' 04.2" west, a distance of 20.002 feet; north 35° 22' 04.2" west, a distance of 42.004 feet; south 59° 15' 55.8" west, a distance of 32.003 feet; north 69° 12' 04.2" west, a distance of 43.004 feet; north 22° 47' 04.2" west, a distance of 35.003 feet; north 22° 44' 55.8" east, a distance of 168.015 feet; north 79° 21' 55.8" east, a distance of 35.003 feet; south 41° 00' 04.2" east, a distance of

54.005 feet; south 59° 21' 04.2" east, a distance of 91.008 feet; north 87° 42' 55.8" east, a distance of 30.003 feet; north 70° 54' 55.8" east, a distance of 51.005 feet; north 49° 37' 55.8" east, a distance of 64.006 feet; north 59° 57' 55.8" east, a distance of 69.006 feet; north 4° 57' 55.8" east, a distance of 44.624 feet; north 11° 55' 04.2" west, a distance of 34.003 feet; north 68° 26' 04.2" west, a distance of 104.009 feet; south 84° 15' 55.8" west, a distance of 60.005 feet; north 58° 39' 04.2" west a distance of 23.002 feet; north 18° 56' 04.2" west, a distance of 60.005 feet; north 22° 55' 04.2" west, a distance of 110.010 feet; north 22° 20' 55.8" east, a distance of 36.003 feet; north 64° 37' 55.8" east, a distance of 36.003 feet; south 76° 29' 04.2" east, a distance of 72.006 feet; north 86° 36' 55.8" east, a distance of 164.015 feet; north 65°

14' 55.8" east, a distance of 83.007 feet; north 46° 15' 55.8" east, a distance of 120.011 feet; north 17° 47' 55.8" east, a distance of 121.011 feet; north 50° 21' 55.8" east, a distance of 44.004 feet; north 72° 52' 55.8" east, a distance of 68.006 feet; north 87° 30' 55.8" east, a distance of 101.009 feet; north 74° 34' 55.8" east, a distance of 63.006 feet; north 30° 15' 55.8" east, a distance of 101.009 feet; north 19° 08' 55.8" east, a distance of 206.018 feet; north 0° 14' 55.8" east, a distance of 40.004 feet; north 42° 54' 04.2" west, a distance of 54.005 feet; north 82° 41' 04.2" west, a distance of 120.011 feet; south 72° 14' 55.8" west, a distance of 85.008 feet; north 69° 14' 04.2" west, a distance of 63.006 feet; north 37° 10' 04.2" west, a distance of 31.003 feet; north 22° 43' 04.2" west, a distance of 42.004 feet; north 8° 14' 55.8" east, a

distance of 89.008 feet; north 19° 20' 55.8" east, a distance of 101.009 feet; north 32° 44' 55.8" east, a distance of 120.011 feet; north 44° 04' 55.8" east, a distance of 238.021 feet; north 62° 50' 55.8" east, a distance of 104.009 feet; north 27° 34' 55.8" east, a distance of 170.015 feet; north 37° 30' 55.8" east, a distance of 165.015 feet; north 62° 47' 55.8" east, a distance of 47.004 feet; south 55° 08' 04.2" east, a distance of 59.005 feet; south 5° 40' 55.8" west, a distance of 70.006 feet; south 18° 48' 55.8" west, a distance of 42.004 feet; south 36° 22' 04.2" east, a distance of 35.003 feet; south 52° 55' 04.2" east, a distance of 66.006 feet; south 85° 30' 04.2" east, a distance of 41.004 feet; north 62° 16' 55.8" east, a distance of 51.005 feet; north 43° 18' 55.8" east, a distance of 80.007 feet; north 45° 35' 55.8" east, a distance of 59.005 feet;

north 59° 39' 55.8" east, a distance of 88.008 feet; north 11° 30' 59.7" east, a distance of 61.846 feet to a point in the center of the former bed of the Bronx river, whose coordinates are north 47192.352 and west 29738.130; thence along the northerly boundary of the former village of Wakefield, as follows: South 74° 13' 34.2" east, a distance of 100.88 feet; thence south 63° 35' 49.2" east, a distance of 34.801 feet to a monument whose coordinates are north 47149.453 and west 29609.878; thence south 32° 23' 55.8" west, a distance of 1229.627 feet to a monument whose coordinates are north 46111.231 and west 30268.724; thence south 64° 45' 34.2" east, a distance of 480.164 feet; thence south 64° 11' 09.2" east, a distance of 277.635 feet to a monument whose coordinates are north 45785.584 and west

29584.473; thence north 32° 08' 55.8" east, a distance of 425.636 feet to a point whose coordinates are north 46145.956 and west 29357.983;

thence south 57° 51' 04.2" east, a distance of 478.542 feet; thence south 56° 04' 12.0" east, a distance of 80.010 feet; thence south 60° 57' 24.2" east, a distance of 78.355 feet; thence south 63° 54' 24.2" east, a distance of 50.363 feet; thence south 58° 40' 14.2" east, a distance of 51.137 feet; thence south 61° 19' 24.2" east, a distance of 50.689 feet; thence south 59° 59' 24.2" east, a distance of 50.899 feet; thence south 57° 49' 04.2" east, a distance of 51.310 feet; thence south 65° 02" 14.2" east, a distance of 50.253 feet; thence south 65° 02' 55.2" east, a distance of 51.898 feet; thence south 69° 12' 34.2" east, a distance of 505.164 feet; thence south 75° 22' 44.5" east, a distance of 169.308 feet to a monument whose coordinates are north 45417.619 and west 27868.337; thence south 4° 58' 28.8" west, a distance of 148.989 feet; thence south 5° 30' 55.8" west, a

distance of 135.573 feet; thence south 4° 22' 00.6" west, a distance of 64.055 feet; thence south 10° 50' 10" east, a distance of 147.427 feet to a point whose coordinates are north 44923.557 and west 27885.795; thence north 89° 03' 59" east, a distance of 104.018 feet; thence south 88° 11' 30" east, a distance of 63.065 feet; thence south 89° 53' 34" east, a distance of 109.370 feet; thence north 89° 49' 03" east, a distance of 109.219 feet; thence south 89° 55' 50" east, a distance of 62.480 feet; thence south 89° 33' 48" east, a distance of 126.255 feet; thence south 89° 30' 06" east, a distance of 92.894 feet; thence south 89° 03' 12" east, a distance of 62.767 feet; thence south 89° 39' 12" east, a distance of 104.289 feet; thence south 89° 54' 42" east, a distance of 114.569 feet to a point whose coordinates are north 44919.715 and west 26936.931; thence south 16° 07' 28" east, a

distance of 357.033 feet; thence south 6° 12' 48" east, a distance of 443.280 feet to a point whose coordinates are north 44136.052 and west 26789.798; thence deflecting to the left on the arc of a circle whose radius is 800.071 feet with a central angle of 23° 43' 00", a distance of 331.177 feet to a point whose coordinates are north 43823.455 and west 26687.796; thence south 29° 55' 48" east, a distance of 477.929 feet; thence south 31° 11' 18" east, a distance of 176.911 feet to a point whose coordinates are north 43257.923 and west 26357.724; thence deflecting to the right on the arc of a circle whose radius is 360.023 feet with a central angle of 52° 22' 50", a distance of 329.146 feet to a point whose coordinates are north 42941.329 and west 26330.036; thence south 21° 11' 32" west, a distance of 242.925 feet to a point whose coordinates are north 42714.832 and west 26417.853; thence deflecting to the left on the arc of a circle whose radius is

520.046 feet with a central angle of 46° 33' 20", a distance of 422.562 feet to a point whose coordinates are north 42304.071 and west 26402.895; thence south 25° 21' 48" east, a distance of 105.328 feet; thence south 16° 45' 38.3" east to a point formed by the intersection of the prolongation of the westerly side of Mundy lane and the prolongation of the northerly side of Kingsbridge road as such lane and road were laid out the twenty-second day of March, eighteen hundred ninety-two; thence along a line due south until it is intersected by the easterly prolongation of the straight line drawn from a point in the center of the former bed of the Bronx river to a point on the easterly bank of the Hudson river, which has been heretofore described; thence easterly along such line whose course is south 68° 39' 36.4" east, to a point in the center line of the Hutchinson river or creek, whose coordinates are north 39554.098 and west 21685.628; thence along the center line of the

bed of such river or creek as follows: North 44° 46' 14.6" east, a distance of 46.575 feet; north 6° 12' 18.6" east, a distance of 40.51 feet; north 31° 14' 34.4" west, a distance of 77.04 feet; north 70° 15' 50.4" west, a distance of 49.77 feet; south 83° 21' 48.6" west, a distance of 50.03 feet; south 66° 33' 25.6" west, a distance of 52.91 feet; south 85° 37' 45.6" west, a distance of 30.94 feet; north 48° 39' 56.4" west, a distance of 74.50 feet; north 1° 57' 56.4" west, a distance of 69.50 feet; north 19° 50' 03.6" east, a distance of 53.50 feet; north 7° 35' 03.6" east, a distance of 42.0 feet; north 0° 41' 56.4" west, a distance of 20.0 feet; north 27° 59' 56.4" west, a distance of 104.0 feet; north 14° 03' 33.6" east, a distance of 115.39 feet; south 81° 15' 58.4" east, a distance of 79.85 feet; south 68° 30' 52.4" east, a distance of 51.31 feet; south

89° 59' 25.4" east, a distance of 16.24 feet; north 68° 35' 54.6" east, a distance of 58.735 feet to a point whose

coordinates are north 40l05.814 and west 2l722.410, which point is on a straight line drawn from a point in the center line of the former bed of the Bronx river at latitude 40° 53' 59.23" north and longitude 73° 51' 35.67" west of Greenwich to the middle of the channel between Hunters and Glen Islands; thence easterly along such line to the middle of the main channel of Long Island sound; including Hunters Island, Hart Island, City Island, Rikers Island, North Brother's Island and all other Islands situate within the aforedescribed bounds except South Brother's Island.

3. The borough of Brooklyn shall consist of the territory known as Kings county which shall contain all that part of the city and state bounded on the south by the Atlantic ocean; on the west by the following described line: Beginning at a point on the southerly boundary of the state where it is intersected by the center line of the channel in the Lower bay; thence northerly along such center line and the center line of the channel of the Narrows to the westerly boundary of the state; thence along such boundary of the state to the boundary of the borough of Manhattan and county of New York; thence easterly and northerly along the boundary of such borough and county to a point on the center line of the channel in the mouth of Newtown creek where the permanent line of the East river if prolonged would intersect such center line; thence bounded on the north and on the east by the borough and county of Queens to a point on the United States pierhead and bulkhead line of Jamaica bay approved by the secretary of war on the seventeenth day of September, nineteen hundred twenty-five, which point is the point of intersection of such pierhead and bulkhead line with a line drawn from a point in the center of Spring creek (Old Mill creek), which point is south 7355.76 and east 30709.33 from the point in the triangulation system of the city of New York known as "Prospect Water tower" in Kings county and computed by rectilinear coordinates from the meridian through such tower, to a point on a marsh sometimes called Black Bank marsh, east of Pumpkin Patch channel (Big Pol channel), which latter point is south 37° 59' 08" east, a distance of l0,741.32 feet from the point in the center of Spring creek; thence southeasterly along such line to such point on the marsh, sometimes called Black Bank marsh; thence south 2° 18' 25" west, a distance of 8,101.74 feet to a point on Black Wall marsh (Cart Wheel marsh); thence south 32° 28' 50" west, in range with the "Life Saving Station, Rockaway Point", the coordinates of which point are south 37295.962 and east 28476.905 referred to the point above described as the Prospect Water tower, a distance of 8,050.00 feet to a point in the center of Beach channel; thence westerly along the center of Beach channel and Rockaway inlet as such channels are indicated by pierhead lines approved by the secretary of war, to the Atlantic ocean; including all the islands or parts thereof situate within the aforedescribed bounds.

4. The borough of Queens shall consist of the territory known as Queens county which shall contain all that part of the city and state bounded on the north by the borough and county of The Bronx; bounded on the east by the following described line: Beginning at a point where the middle of the channel of Long Island sound intersects the easterly boundary of the former town of Flushing; thence southeasterly and southwesterly along such easterly boundary of the former town of Flushing to a point where it meets the boundary of the former town of Jamaica; thence following the easterly and southerly boundary of the former town of Jamaica to a point on such southerly boundary which is due north of the northwest corner of the former village of Far Rockaway; thence due south to such point; then easterly along the boundary of such village to a point described in the articles of incorporation of such village as a certain large pepperidge tree, whose coordinates,

based on the Tenth Avenue system which is used in the borough of Queens, are south 62552.329 and east 85574.915; thence northeasterly along the boundary of the former village of Far Rockaway to its intersection with a line parallel to the southwesterly line of McNeil boulevard and distant 475 feet westerly therefrom; thence southeasterly parallel to the southwesterly line of McNeil boulevard and distant 475 feet westerly therefrom to its intersection with the northwesterly right-of-way line of the Long Island railroad; thence easterly along the northwesterly right-of-way line of the Long Island railroad to its intersection with a line parallel to the southwesterly line of McNeil boulevard and distant 100 feet therefrom; thence southeasterly along a line parallel to the southwesterly line of McNeil boulevard and distant 100 feet southwesterly therefrom to its intersection with a line parallel to the northwesterly line of Empire avenue and distant 100 feet northwesterly therefrom; thence southwesterly along a

line parallel to the northwesterly line of Empire avenue and distant 100 feet northwesterly therefrom to its intersection with the northerly prolongation of the middle line of the block between McNeil boulevard and Virginia

street; thence southeasterly along the middle line of the block between McNeil boulevard and Virginia street to its intersection with a line parallel to the southwesterly side of McNeil boulevard, as shown on the amended map of Cedar Lawn, and distant 100 feet southwesterly therefrom; thence southeasterly along a line parallel to and distant 100 feet southwesterly from the southwesterly side of McNeil boulevard as it winds and turns as shown on the amended map of Cedar Lawn and on final map number two hundred thirty-three of the borough of Queens, until it intersects a line parallel to and 100 feet westerly from the westerly side of Beach Second street prolonged; thence southerly on a line parallel to the westerly line of Beach Second street and distant 100 feet westerly therefrom to the

northerly side of Seagirt avenue; thence easterly along the northerly side of Seagirt avenue until it intersects the former village boundary at Bannister creek; thence south 10° 21' 10" east, a distance of 291.20 feet; thence south 4° 51' 30" east, a distance of 780 feet to approximately the center line of Far Rockaway bay or inlet as it existed the fifth day of April, nineteen hundred twenty-eight; thence westerly along this approximate center line of Far Rockaway bay or inlet to the Atlantic ocean the following courses and distances: South 85° 22' 25" west, a distance of 1805.50 feet to the easterly boundary of Beach Ninth street (Jarvis lane) prolonged southerly in a straight line; thence south 84° 44' 44" west, a distance of 504.52 feet; thence south 61° 35' 04" west, a distance of 1106.22 feet; thence south 68° 45' 10" west, a distance of 1150.00 feet; thence south 18° 45' 10" west, a distance of 500.00 feet; thence bounded on the south by

the southerly boundary of the state, beginning at a point where the easterly boundary of the borough and county or prolongation thereof intersects such southerly boundary of the state; thence westerly along such line to a point where it intersects the boundary of the borough of Brooklyn and county of Kings or prolongation thereof; thence bounded on the west by the borough of Brooklyn and county of Kings and the borough of Manhattan and county of New York by the following described line: Beginning at a point where the southerly boundary of the state intersects the boundary of the borough of Brooklyn and county of Kings; thence along such boundary of the borough of Brooklyn and county of Kings described heretofore, to a point where such line intersects the United States pierhead and bulkhead line of Jamaica bay approved by the secretary of war on the seventeenth day of September, nineteen hundred twenty-five; thence westerly along the United States pierhead and bulkhead line of Jamaica bay to a point where it

intersects the center line of Spring creek basin; thence northerly along the center line of Spring creek basin to a point where such line is intersected by the prolongation of the center line of One hundred fifty-seventh avenue; thence easterly along such prolongation and along the center line of One hundred fifty-seventh avenue to the center line of Ruby street; thence northerly along the center line of Ruby street to the center line of One hundred fifty-fifth avenue; thence easterly along the center line of One hundred fifty-fifth avenue; to the center line of Sapphire street; thence northerly along the center line of Sapphire street to the center line of Dumont avenue; thence westerly along the center line of Dumont avenue to the center line of Ruby street; thence northerly along the center line of Ruby street to the center line of Liberty avenue; thence westerly along the center line of Liberty avenue to the center line of Drew street; thence northerly along the center line of Drew street to the center

line of Ninety-fifth avenue; thence westerly along the center line of Ninety-fifth avenue to the center line of Eldert's lane; thence northerly along the center line of Eldert's lane to a monument at the intersection of such line and Atlantic avenue whose coordinates, based on the Tenth Avenue system which is used in the borough of Queens, are south 55443.500 and east 44730.878; thence northerly along such lane the following courses and distances: North 37° 51' 25.8" west, a distance of 272.246 feet; thence north 33° 35' 42.8" west, a distance of 463.010 feet; thence north 41° 00' 44.1" west, a distance of 550.184 feet; thence north 40° 46' 42.5" west, a distance of 646.842 feet; thence north 38° 42' 43.9" west, a distance of 936.995 feet to a monument whose coordinates are south 53197.022 and east 42929.252; thence north 37° 46' 54.9" west, a distance of 1500.385 feet to a monument at the juncture of the former towns of Newtown, Jamaica and New Lots

whose coordinates are south 52011.195 and east 42010.030; thence south 47° 41' 47.8" west, a distance of 1467.270 feet to a tower in Cypress Hills cemetery whose coordinates are south 52998.750 and east 40924.850; thence south 26° 34' 08.3" west, a distance of 1696.272 feet to a flagstaff in National (Soldiers') cemetery whose coordinates are south 54515.893 and east 40166.155; thence south 14° 09' 54.4" west, a distance of 1886.082 feet; thence south 29°

03' 31.6" west, a distance of 1206.000 feet to a point in the southeast corner of Ridgewood reservoir; thence south 6° 24' 12.4" west, a distance of 631.417 feet; thence south 23° 15' 26.2" west, a distance of 300.533 feet to a point in Highland boulevard on the southerly prolongation of the easterly line of Robert place; thence northerly, westerly, northerly, westerly and northerly again along the boundary line of Highland park, the following courses and distances: North 55° 27' 12.8" west, a

distance of 390.350 feet to a monument at the intersection of the southerly line of Highland park and the easterly line of Robert place whose coordinates are south 58081.052 and east 38608.229; thence south 21° 04' 32.7" west, a distance of 882.877 feet; thence north 55° 57' 04.9" west, a distance of 232.464 feet; thence south 21° 04' 30.6" west, a distance of 20.017 feet; thence north 55° 57' 04.9" west, a distance of 24.187 feet; thence north 56° 07' 20.9" west, a distance of 511.414 feet to the intersection of the northwesterly line of the former Vermont avenue, now within the present lines of Interborough parkway, as such former northwesterly line existed the eighth day of May, nineteen hundred seventeen, and the northerly prolongation of the westerly line of Highland park; thence southwesterly along such northwesterly line of the former Vermont avenue the following courses and distances: South 2° 15' 44" west, a distance of 37.600 feet; thence south

28° 06' 15.3" west, a distance of 11.675 feet; thence south 0° 42' 46.6" west, a distance of 186.387 feet; thence south 2° 16' 40.2" west, a distance of 368.271 feet; thence south 56° 11' 18.9" east, a distance of 0.068 feet; thence south 2° 15' 12.4" west, a distance of 395.956 feet; thence south 1° 57' 40.2" west, a distance of 172.507 feet; thence deflecting to the left on the arc of a circle whose radius is 281.370 feet with a central angle of 29° 45' 48.7", a distance of 146.476 feet, and thence south 27° 48' 08.5" east, a distance of 9.123 feet; thence proceeding north 60° 52' 34.6" west, a distance of 2441.495 feet to the southerly boundary line of Trinity Roman Catholic cemetery; thence northeasterly and northwesterly along the boundary line of the Trinity Roman Catholic cemetery to the northwesterly boundary line of the cemetery of the Evergreens; thence northeasterly along such line to a point in the southerly

prolongation of the center line of Irving avenue; thence northwesterly along such prolongation and along the center line of Irving avenue to the center line of Eldert street; thence northeasterly along the center line of Eldert street to the center line of Wyckoff avenue; thence northwesterly along the center line of Wyckoff avenue to the center line of Gates avenue; thence northeasterly along the center line of Gates avenue to the center line of Saint Nicholas avenue; thence northwesterly along the center line of Saint Nicholas avenue to the center line of Menahan street; thence northeasterly along the center line of Menahan street to the center line of Cypress avenue; thence northwesterly along the center line of Cypress avenue to the center line of Flushing avenue; thence northeasterly along the center line of Flushing avenue to the center line of Seneca avenue; thence northwesterly along the center line of Seneca avenue to the center line of Onderdonk avenue; thence northwesterly along the center line of

Onderdonk avenue 603.262 feet to a point in Metropolitan avenue; thence deflecting to the right on an angle of 55° 55' 45.3", a distance of 61.998 feet to the northerly line of Metropolitan avenue; thence deflecting to the left on an angle of 22° 52' 33.0", a distance of 54.508 feet to a point in the center line of Newtown creek where it intersects the southerly United States pierhead and bulkhead line approved by the secretary of war on the twenty-first day of January, nineteen hundred twenty; thence northwesterly, northeasterly and northwesterly along the center line of Newtown creek to a point where it is intersected by the easterly prolongation of the United States pierhead and bulkhead line located 105 feet northerly of and parallel with Maspeth avenue; thence northwesterly on a straight line to a point formed by the intersection of the easterly prolongation of the center line of Withers street with a straight line parallel to the westerly United States pierhead and bulkhead line

approved by the secretary of war on the sixteenth day of September, nineteen hundred twenty-nine, which line intersects the easterly prolongation of Anthony street at the center line of Newtown creek; thence northwesterly along such line parallel to the pierhead and bulkhead line, a distance of 1560 feet to a point on the center line of Newtown creek which is intersected by the easterly prolongation of the center line of Anthony street; thence northwesterly, westerly and southwesterly along the center line of Newtown creek to a point in the mouth of such creek where such center line would intersect the permanent line of the East river if prolonged; thence bounded on the west by the

boundary of the borough of Manhattan and county of New York; thence bounded on the north by the boundary of the borough and county of The Bronx; including all the islands or parts thereof situate within the aforedescribed bounds and South Brother's Island.

5. The borough of Staten Island shall consist of the territory known as Richmond county, which shall contain all that part of the city and state, bounded on the north, on the west and on the south by the state boundary line, and bounded on the east by the borough of Brooklyn and county of Kings, including Staten Island, Island of Meadows, Pralls Island, Hoffman Island, Swinburne Island, that part of Shooters Island within the state of New York, and all other islands or parts thereof situate within the aforedescribed bounds.

6. Notwithstanding any provision to the contrary contained in subdivisions two and four of this section, South Brother's Island shall be excluded from the borough of Queens and shall be included within and be a part of the borough of the Bronx.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 2-1.0 added chap 929/1937 § 1

Subd 1 amended chap 484/1940 § 1

Subd 2 portion amended chap 484/1940 § 2

Subd 6 added chap 578/1964 § 1

Subd 1 amended LL 49/1973 § 1

(special provision, actions pending LL 49/1973 § 2)

Open par amended LL 2/1975 § 2

Subd 5 amended LL 2/1975 § 3

(Staten Island/Richmond interchangeable LL 2/1975 § 4)

CASE NOTES FROM FORMER SECTION

¶ 1. Tax levy made by City of New York for 1926 and 1927 upon land constituting part of the Island of Long Beach in a locality known as Atlantic Beach, **held** illegal because the lands were never subject to the jurisdiction of the City of New York inasmuch as they were south of the Outer Beach ocean shore line in the Village of Far Rockaway, as originally established in 1888 upon incorporation of the village. In view of admission that the Outer Beach lands were washed away by a process of erosion rather than by avulsion, subsequent accretions to the Island of Long Beach did not serve to advance the City's boundaries to include such accretions. That the City after placing the property on its tax maps for several previous years finally asserted a right to tax such property, might not be regarded as substantial evidence of a practical construction of the City's boundaries.-Lawkins v. City of N.Y., 272 App. Div. 920, 71 N.Y.S. 2d 112 [1947], aff'd without opinion, 297 N.Y. 747, 77 N.E. 2d 516.

¶ 2. Magistrate's Court for Eighth Brooklyn District **held** to possess jurisdiction over offense committed within a "bathing area" as defined by the Rules and Regulations of the Commissioner of Parks of City of New York, notwithstanding the offense was committed in a boat in the Atlantic Ocean and that the boundary of the Borough of

Brooklyn was described in Administrative Code § 2-1.0 as running "to the Atlantic Ocean", inasmuch as it appeared that the City of New York by condemnation had acquired title to land under the Atlantic Ocean to a point 1,250 feet from the beach and that the alleged violation took place on waters over such land owned by the City.-People v. Reilly, 14 N.Y.S. 2d 589 [1939].

¶ 3. Defendant who took off in airplane from Keyport in New Jersey and proceeded over the Atlantic Ocean to a point one-half mile off the shore of Queens County, near Riis Park, towing an advertising banner, **held** not guilty of violation of Administrative Code § 435-16.0, subd. d, making it unlawful to tow a banner from an aircraft over the limits of the City, since under Administrative Code § 2-1.0, subd. 4, the territory of the City of New York is limited, by reference to the boundary of the State line, to that portion of the Atlantic Ocean which is at the low-water mark.-People v. Coffrin, 126 N.Y.S. 2d 329 [1953].

¶ 4. Bedloe's Island **held** to be within the territorial boundaries of the City and State of New York, and hence proprietor of concession at the Statue of Liberty on the island was liable for the City sales tax on sale of souvenirs and for the City Business Tax on gross receipts.-In re Hill (Joseph), 205 Misc. 441, 129 N.Y.S. 2d 348 [1954].

¶ 5. For purposes of venue in litigation, the Administrative Code makes the area known as Marble Hill part of Manhattan (i.e. New York County). This is true even though the US Post Office deems Marble Hill to be part of the Bronx. Vitaline Montesano v. NYC Housing Auth. 2007 NY Slip Op. 9955, 47 AD3d 215, 848 NYS2d 63, 2007 NY App. Div. Lexis 12754 (App. Div. 1st Dept.).

FOOTNOTES

2

[Footnote 2]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 2-203

Administrative Code of the City of New York

Title 2 City of New York

CHAPTER 2 BOUNDARIES OF THE CITY

§ 2-203 Power to mark boundaries and to make surveys.

The mayor shall have the power to direct the president of any borough to mark any boundary line or lines of the city, as such boundary line or lines is or are determined in and by the code, so as to distinguish and define the boundaries of the city, the boundaries of the boroughs, and any other boundary line or lines determined in and by the code, by such monuments as may be authorized by the mayor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 2-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-101

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-101 Flag of the mayor.

The official flag of the mayor shall be the same in design as the official flag of the city. Upon the middle or white bar, however, and above the design of the seal in a semi-circle, there shall be five blue five-pointed stars, typifying the five boroughs of the city. The dimensions of such flag shall be thirty-three inches by forty-four inches.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 3-1.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-102

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-102 Flags and decorations; city hall park.

All authority to display flags or other decorations on, in or about the public buildings within the city hall park, is vested in the mayor, unless otherwise ordered by the council.

a. A Prisoner of War/Missing in Action POW/(MIA) flag shall be flown over City Hall every day the American flag is flown until such time as all persons listed as missing in action, from any branch of the United States Armed Forces, and all persons from any branch of our armed forces who are prisoners of war, are accounted for by the United States Government.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 68/1990 § 2, eff. Nov. 27, 1990

Subd. a added L.L. 72/1988 § 1

(Note there is no subd b)

DERIVATION

Formerly § 3-2.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-103

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-103 Apprehension and conviction of criminals.

The mayor, whenever he or she shall deem it necessary, may issue a proclamation offering a reward for information which shall lead to the apprehension or apprehension and conviction of any person who may have committed a crime within the city. In such proclamation, the mayor may offer a reward not exceeding five hundred dollars for the apprehension of any such person and not exceeding ten thousand dollars for the apprehension and conviction of any such person, provided, however, that the mayor may offer a reward not exceeding one hundred thousand dollars for the apprehension and conviction of any person found guilty in connection with an act of terrorism involving loss of life or substantial injury to persons or property. Any such reward shall be paid out of the city treasury upon a certificate of the mayor that the service required has been performed. For purposes of this section, "terrorism" means premediatated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.

HISTORICAL NOTE

Section amended L.L. 48/1993 § 1 retroactive to Feb. 26, 1993

DERIVATION

Formerly § 8a-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 2

(formerly § 5(4)-1.0)

Amended LL 7/1979 § 1

Amended LL 66/1985 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-104

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-104 Declaration of emergency.

Whenever the mayor determines that there has been an act of violence or a flagrant and substantial defiance of or resistance to a lawful exercise of public authority, and that, partly on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitutes a threat to public peace or order and to the general welfare of the city or a part or parts thereof, the mayor may declare that a state of emergency exists within the city or any part of parts thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-5.0 added LL 31/1968 § 1

NYC Administrative Code 3-105

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-105 Emergency measures.

1. Whenever the mayor, pursuant to section 3-104, declares that a state of emergency exists, (a) the emergency measures provided in subdivision two of this section shall thereupon be in effect during the period of said emergency and throughout the city and (b) the mayor may order and promulgate all or any of the emergency measures provided in subdivision three of this section, in whole or in part, and with such limitations and conditions as he or she may deem appropriate, and any such emergency measure so ordered and promulgated shall thereupon be in effect during the period of said emergency and in the area or areas for which the emergency has been declared.

2. (a) The sale or other transfer of possession, with or without consideration, offer to sell or so transfer, and the purchase of any ammunition, guns and other firearms of any size or description is prohibited.

(b) The displaying by or in any store or shop of any ammunition, guns and other firearms of any size or description is prohibited.

(c) The possession in a public place of a rifle or shotgun by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of his or her duty, is prohibited.

(d) The possession of any rifle or shotgun in any place, public or private, by a nonresident who has not been issued a permit by the police commissioner, for the purchase and possession of rifles and shotguns, is prohibited.

3. (a) The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services such as fire,

police and hospital services including the transportation of patients thereto, utility emergency repairs and emergency calls by physicians.

(b) The prohibition of the sale of any alcoholic beverage.

(c) The prohibition of the possession on the person in a public place of any portable container containing any alcoholic beverage.

(d) The closing of places of public assemblage with designated exceptions.

(e) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat or airplane and necessary for the propulsion thereof.

(f) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-6.0 added LL 31/1968 § 1

Subd 2 par d amended LL 65/1968 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-106

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-106 Filing and publication.

Any state of emergency or emergency measure declared or ordered and promulgated by virtue of the terms of the code shall, as promptly as practicable, be filed in the office of the city clerk and published in the City Record and shall also be delivered to appropriate news media for publication and radio and television broadcast thereby. If practicable, such state of emergency declaration or emergency measure shall also be publicized by other appropriate means such as by posting and loud-speakers.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-7.0 added LL 31/1968 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-107

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-107 Duration and termination of emergency.

A state of emergency established under the code shall commence upon the declaration thereof by the mayor and shall terminate at the end of a period of five consecutive days thereafter, unless prior to the end of such five day period, the mayor shall either terminate such state of emergency or shall declare an additional state of emergency. Any such additional state of emergency shall commence and terminate as provided in section 3-104 and in this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-8.0 added LL 31/1968 § 1

Amended LL 65/1968 § 2

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-108

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-108 Violations.

Any knowing violation of a provision of any emergency measure established pursuant to this chapter shall be a class B misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than three months, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-9.0 added LL 31/1968 § 1

Amended LL 65/1968 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-109

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-109 Definitions.

For the purposes of this chapter:

1. "Alcoholic beverage" shall mean an alcoholic beverage as that term is defined by section three of the alcoholic beverage control law but shall not include patented medicine.

2. "Rifle" and "shotgun" shall mean a rifle and shotgun as those terms are defined by section 10-301 of the code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-11.0 added LL 31/1968 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-110

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-110 Parking spaces.

a. Notwithstanding any other provision of law, the mayor, within the appropriation provided therefor, shall have the power to establish parking spaces, pursuant to section seventy-two-j of the general municipal law and assign whatever functions are necessary in connection with the construction, operation and maintenance of such parking spaces to appropriate city departments or agencies.

b. Any city department or agency to which functions are assigned by the mayor in connection with the operation and maintenance of such parking space may adopt rules and regulations necessary for the carrying out of such functions. Violation of such rules and regulations shall be triable by a judge of the New York city criminal court and punishable by not more than thirty days imprisonment, a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 8a-4.0 added LL 121/1953 § 1

Renumbered and amended chap 100/1963 § 31 (formerly § 70-10.0)

CASE NOTES FROM FORMER SECTION

¶ 1. The Board of Estimate has power to authorize the Department of Traffic to construct and operate a public parking garage.-Realty Control Corp. v. Wagner, 139 (47) N.Y.L.J. (3-10-58) 7, Col. 6 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-111

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-111 [Drug Enforcement and Drug Abuse Task Force.]

a. Composition. (1) The mayor shall appoint a drug enforcement and drug abuse task force which shall be chaired by the criminal justice coordinator and shall consist of, but not be limited to, representatives of the police department; human resources administration; department of health and mental hygiene; department of correction; department of housing preservation and development; department of finance; department of probation; and the criminal justice coordinator.

(2) The Substance Abuse Task Force shall request that the following agencies or officers send their own representatives to serve on this task force: Health and Hospitals Corporation; Board of Education; the New York County, Kings County, Queens County, Richmond County and Bronx County District Attorney's offices; and the Special Narcotics Prosecutor.

b. Report. The Drug Enforcement and Drug Abuse Task Force shall submit an informal quarterly report of its ongoing coordination activities and a formal annual report in September of each year to the Mayor and the Council. Such report shall include any findings and recommendations of the task force.

HISTORICAL NOTE

Section added LL 58/1986 § 2

Subd. a par (1) amended L.L. 22/2002 § 10, eff. July 29, 2002 and deemed in effect as of July 1,

2002.

NOTE

Provision of legislative intent in L.L. 58/86

Section one. Legislative findings. In 1978, after the State assumed direct responsibility for contract management, supervision and evaluation of all community-based drug-abuse programs, the City of New York dismantled its Addiction Services Agency. Subsequently, drug and substance abuse programs became decentralized with many city agencies providing a plethora of overlapping substance abuse services. Moreover, despite the existence of several substance abuse services, the number of drug addicts within the city has increased by 50% since 1978 to 675,000.

The recent influx of "crack" has heightened the need for controlling substance abuse. Drugs are destroying city communities, limiting the access of public facilities by city residents, reducing the city's housing stock and generally reducing the level of the quality of life. As the city is forced to devote more and more resources to the war against drug use and provide greater services to drug addicts, the need for coordination from a central body becomes evident.

A task force, headed by the Criminal Justice Coordinator will ensure that city agencies no longer provide a duplication of services and that financial resources are no longer unnecessarily drained. For these reasons, the Council hereby declares that a permanent task force be established to foster great cooperation between the various city agencies in the battle against drug use and in providing drug abuse services.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-111

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 1 MAYOR

§ 3-111 Safety program. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 59/1996 § 30, eff. Aug. 8, 1996

Section added LL 60/1987 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-201

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-201 Councilmanic flag.

The official flag of the council shall be the same in design as the official flag of the city, except that upon the middle or white bar there shall be below the design of the seal, in a straight line, the word "Council"; the dimensions of such flag shall be the same as the standard size of flags used for state and parade occasions.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 22-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-202

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-202 Council districts.

a. The city is hereby divided into thirty-five council districts for the election of council members other than the public advocate, the boundaries of which are hereby established and described as follows:

1. FIRST DISTRICT

That part of the Borough of Staten Island bounded by a line described as follows:

BEGINNING at a point in waters of Arthur Kill between border lines of New Jersey, and Richmond County, at Goethals Bridge, proceeding southeast, to Railroad cut, then proceeding east, to Gulf Avenue, to Staten Island Expressway, to Bengal Avenue, to Fahy Avenue, to Arlene Street, to Lander Avenue, to Richmond Avenue, to Victory Boulevard, to Willowbrook Road, to Watchogue Road, to Victory Boulevard, to Manor Road, to Ocean Terrace, to Todt Hill Road, to Richmond Road, proceeding northerly, to Cromwell Avenue, to Hylan Boulevard, to Old Town Road, to Staten Island Rapid Transit Line, proceeding north on Staten Island Rapid Transit Line, to West Fingerboard Road, to Steuben Street, to Hylan Boulevard, to Hickory Avenue, to McClean Avenue, to Lily Pond Avenue, extended to waters of the Atlantic Ocean; thence southerly and westerly through waters of the Atlantic Ocean, Raritan Bay, to the waters of Arthur Kill, along the intersection New Jersey-New York Line, proceeding northerly and including Island of Meadows, and Pralls Island, to the point or place of beginning.

2. SECOND DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the East River at East Twentieth Street extended, to East Twentieth Street, to First Avenue, to East Fourteenth Street, to Fourth Avenue, to East Eighth Street, to Broadway, to West Houston Street, to West Houston Street extended in the waters of the Hudson River, thence southerly, easterly, and northerly, along the East River, to the point or place of beginning; this District is intended to include that part of the City of New York known as Governor's Island, Ellis Island and Liberty Island, (Bedloe's Island).

3. THIRD DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the Hudson River, at West Houston Street extended, to West Houston Street, to Broadway, to East Eighth Street, to Fourth Avenue, to East Fourteenth Street, to First Avenue, to East Twentieth Street, to East Twentieth Street extended in the waters of the East River, north to East Thirty-ninth Street extended in the waters of the East River, west on East Thirty-ninth Street and its easterly prolongation to Second Avenue, to East Sixtieth Street, to Fifth Avenue, to Central Park South, to Avenue of the Americas, to West Fifty-fifth Street, to Seventh Avenue, to West Forty-eighth Street, to Eighth Avenue, to West Twenty-ninth Street, to Tenth Avenue, to West Thirty-sixth Street, to West Thirty-sixth Street extended to the waters of the Hudson River, thence southerly to the point or place of beginning.

4. FOURTH DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the Hudson River at the Manhattan borough line and West Ninety-ninth Street extended, to West Ninety-ninth Street, to Broadway, to West Ninety-eighth Street, to Amsterdam Avenue, to West One Hundredth Street, to Central Park West, to Central Park South, to Avenue of the Americas, to West Fifty-fifth Street, to Seventh Avenue, to West Forty-eighth Street, to Eighth Avenue, to West Twenty-ninth Street, to Tenth Avenue, to West Thirty-sixth Street, extended into the waters of the Hudson River to the Manhattan borough line, thence northerly along said borough line to the point or place of beginning.

5. FIFTH DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the Hudson River at the Manhattan borough line and West One Hundred Thirteenth Street extended, to West One Hundred Thirteenth Street, to Amsterdam Avenue, to Cathedral Parkway--Central Park North, to Fifth Avenue, to West One Hundred Twentieth Street, to Mount Morris Park West, to West One Hundred Twenty-fourth Street, to Fifth Avenue, to East One Hundred Thirty-second Street, extended into the waters of the Harlem River to the Manhattan borough line, thence northerly along said borough line to West One Hundred Sixty-fifth Street extended, to the Harlem River Drive, to Saint Nicholas Place, to West One Hundred Fifty-first Street, to Saint Nicholas Avenue, to West One Hundred Fifty-second Street, to Amsterdam Avenue, to West One Hundred Fifty-first Street, to Broadway, to West One Hundred Fiftieth Street, extended into the waters of the Hudson River to the Manhattan borough line, thence southerly along said borough line to the point or place of beginning.

6. SIXTH DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the Hudson River at the Manhattan borough line at West One Hundred Fiftieth Street extended, to West One Hundred Fiftieth Street, to Broadway, to West One Hundred Fifty-first Street, to Amsterdam Avenue, to West One Hundred Fifty-second Street, to Saint Nicholas Avenue, to West One Hundred Fifty-first Street, to Saint Nicholas Place, to the Harlem River Drive, to West One Hundred Sixty-fifth Street extended, into the waters of the Harlem River to the Manhattan borough line, thence northerly, westerly and southerly along said borough line to the point or place of beginning.

7. SEVENTH DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the East River at the easterly prolongation of East Thirty-ninth Street extended to Franklin D. Roosevelt Drive along said East Thirty-ninth Street, to Second Avenue, to Sixtieth Street, to Fifth Avenue, to Central Park South, to Central Park West, to West Eighty-sixth Street, proceeding easterly through Central Park, to East Eighty-fourth Street, to Madison Avenue, to East Eighty-sixth Street, to Park Avenue, to East Ninety-first Street, to Lexington Avenue, to East Ninety-second Street, to First Avenue, to East Ninety-sixth Street extended into the waters of the East River, thence running southerly to the point or place of beginning; this district is intended to include that part of the City of New York known as Franklin D. Roosevelt Island.

8. EIGHTH DISTRICT

That part of the Borough of Manhattan bounded by a line described as follows:

BEGINNING at a point in the waters of the East River at the Manhattan borough line and East Ninety-sixth Street extended, to East Ninety-sixth Street, to First Avenue, to East Ninety-second Street, to Lexington Avenue, to East Ninety-first Street, to Park Avenue, to East Eighty-sixth Street, to Madison Avenue, to East Eighty-fourth Street, thence through Central Park to Central Park West at West Eighty-sixth Street, to West One Hundredth Street, to Amsterdam Avenue, to West Ninety-eighth Street, to Broadway, to West Ninety-ninth Street, extended into the waters of the Hudson River to the Manhattan borough line, thence northerly along said borough line to West One Hundred Thirteenth Street extended, to West One Hundred Thirteenth Street, to Amsterdam Avenue, to Cathedral Parkway-Central Park North, to Fifth Avenue, to East One Hundred Twentieth Street, to Mount Morris Park West, to West One Hundred Twenty-fourth Street, to Fifth Avenue, to East One Hundred Thirty-second Street, extended into the waters of the Harlem River to the Manhattan borough line, thence southerly along said borough line to the point or place of beginning. This district is intended to include that part of the City of New York known as Randall's Island and Ward's Island; this district is further intended to include that part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point in the Harlem River at the Macombs Dam Bridge, extended along the Macombs Dam Bridge, to Jerome Avenue, to East One Hundred Sixty-fifth Street, to Gerard Avenue, to East One Hundred Sixty-fourth Street, to Grand Concourse, to East One Hundred Fifty-third Street, to Morris Avenue, to Third Avenue, to Major Deegan Expressway, to Bruckner Boulevard, to Leggett Avenue, to Truxton Street, to Spofford Avenue, to Halleck Street, to Ryawa Avenue, to Manida Street, extended into the waters of the East River to the Bronx borough line, thence westerly and northerly along said borough line to the point or place of beginning. This District is intended to include that part of the City of New York known as North Brother Island and South Brother Island.

9. NINTH DISTRICT

That part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point at the intersection of the Bronx borough line and West Kingsbridge Road, to Major Deegan Expressway, to West Two Hundred Thirtieth Street, to Kingsbridge Terrace, to West Two Hundred Twenty-ninth Street, to Sedgwick Avenue, to Fordham Road, to University Avenue, to Burnside Avenue, to Jerome

Avenue, to East One Hundred Sixty-eighth Street, to Grand Concourse, to East One Hundred Seventy-second Street, to Teller Avenue, to East One Hundred Seventieth Street, to East One Hundred Seventy-first Street, to Third Avenue, to Saint Paul's Place, to Crotona Park South, to Crotona Avenue, to Prospect Avenue, to East One Hundred Sixty-fifth Street, to Union Avenue, to East One Hundred Sixty-first Street, to Third Avenue, to East One Hundred Fifty-ninth Street, to Courtlandt Avenue, to East One Hundred Fifty-sixth Street, to Melrose Avenue, to Third Avenue, to Morris Avenue, to East One Hundred Fifty-third Street, to Grand Concourse, to East One Hundred Sixty-fourth Street, to Gerard Avenue, to East One Hundred Sixty-fifth Street, to Jerome Avenue, extended into the waters of the Harlem River to the Bronx borough line, thence northerly along said borough line to the point or place of beginning.

10. TENTH DISTRICT

The part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point where the Bronx-Westchester County line intersects the Hutchinson River Parkway, thence southerly along the Hutchinson River Parkway, to the Hutchinson River, thence easterly in the waters of said River, to the Harlem River Division Penn Central Railroad tracks, thence southerly along said Railroad tracks, to Hunter Avenue, to Hutchinson River Parkway, to the New England Thruway, to Conner Street, to Provost Avenue, to Light Street, to Harper Avenue, to Garrett Place, to Pratt Avenue, to East Two Hundred Thirty-third Street, to Monticello Avenue, to Strang Avenue, to Myrdok Avenue, to Edenwald Avenue, to Wylder Avenue, to Pitman Avenue, to Barnes Avenue, to East Two Hundred Thirty-third Street, to White Plains Road, to East Two Hundred Thirtieth Street, to Carpenter Avenue, to East Two Hundred Twenty-ninth Street, to Bronx Boulevard, to East Gun Hill Road, to the Harlem Division Penn Central Railroad tracks, to East Two Hundred Eleventh Street, to Perry Avenue, to East Two Hundred Fifth Street, to Bainbridge Avenue, to East Mosholu Parkway South, to Briggs Avenue, to Bedford Park Boulevard, to Grand Concourse, to East One Hundred Ninety-eighth Street, to Jerome Avenue, to Kingsbridge Road, to University Avenue, to West One Hundred Ninetieth Street, to Webb Avenue, to Sedgwick Avenue, to West Two Hundred Twenty-ninth Street, to Kingsbridge Terrace, to West Two Hundred Thirtieth Street, to Major Deegan Expressway, to West Kingsbridge Road, to the Bronx borough line, thence westerly, northerly and easterly along said borough line to the point or place of beginning.

11. ELEVENTH DISTRICT

That part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point in the waters of the East River at the intersection of the Bronx-Queens County line and Olmstead Avenue extended, thence northerly through the waters of Pugsley's Creek, to Lacombe Avenue, to Olmstead Avenue, to Lafayette Avenue, to Pugsley Avenue, to Cross Bronx Expressway, to East One Hundred Seventy-seventh Street, to DeVoe Avenue, to East Tremont Avenue, to Bronx Street, to East One Hundred Eightieth Street, to Boston Road, to Bronx Park South, to Vyse Avenue, to Cross Bronx Expressway, to Sheridan Expressway, to East One Hundred Sixty-fifth Street, to Westchester Avenue, to East One Hundred Sixty-fifth Street, to Union Avenue, to East One Hundred Sixty-first Street, to Third Avenue, to East One Hundred Fifty-ninth Street, to Courtlandt Avenue, to East One Hundred Fifty-sixth Street, to Melrose Avenue, to Third Avenue, to Major Deegan Expressway, to Bruckner Boulevard, to Leggett Avenue, to Truxton Street, to Spofford Avenue, to Halleck Street, to Ryawa Avenue, to Manida Street, extended into the waters of the East River to the Bronx borough line, thence easterly and northerly along said borough line to the point or place of beginning; this District is intended to include that part of the City of New York known as Riker's Island.

12. TWELFTH DISTRICT

That part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point in the waters of the East River at the intersection of the Bronx-Queens County line and Olmstead Avenue extended, thence northerly through the waters of Pugsley's Creek, to Lacombe Avenue, to Olmstead

Avenue, to Lafayette Avenue, to Pugsley Avenue, to Cross Bronx Expressway, to East One Hundred Seventy-seventh Street, to Devoe Avenue, to East Tremont Avenue, to Bronx Street, to East One Hundred Eightieth Street, to Boston Road, to Bronx Park South, to Southern Boulevard, to Fordham Road, to Pelham Parkway, to Burr Avenue, to Bruckner Expressway, to Middletown Road, to Stadium Avenue, to Watt Avenue, extended to the waters of Long Island Sound, thence northerly and easterly to the Bronx borough line, thence southerly and westerly along said borough line to the point or place of beginning; this District is intended to include that part of the City of New York known as City Island and Hart Island.

13. THIRTEENTH DISTRICT

That part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point at the intersection of Sedgwick Avenue and Fordham Road, thence easterly along Fordham Road, to University Avenue, to West Burnside Avenue, to Jerome Avenue, to East One Hundred Sixty-eighth Street, to Grand Concourse, to East One Hundred Seventy-second Street, to Teller Avenue, to East One Hundred Seventieth Street, to East One Hundred Seventy-first Street, to Third Avenue, to Saint Paul's Place, to Crotona Park South, to Crotona Avenue, to Prospect Avenue, to East One Hundred Sixty-fifth Street, to Westchester Avenue, to East One Hundred Sixty-fifth Street, to Sheridan Expressway, to Cross Bronx Expressway, to Vyse Avenue, to Bronx Park South, to East One Hundred Eighty-second Street, to Quarry Road, to East One Hundred Eighty-first Street, to Third Avenue, to East One Hundred Eighty-second Street, to Park Avenue, to Fordham Road, to Webster Avenue, to East One Hundred Ninety-eighth Street, to Jerome Avenue, to Kingsbridge Road, to University Avenue, to West One Hundred Ninetieth Street, to Webb Avenue, to Sedgwick Avenue, to the point or place of beginning.

14. FOURTEENTH DISTRICT

That part of the Borough of the Bronx bounded by a line described as follows:

BEGINNING at a point where the Bronx-Westchester County line intersects the Hutchinson River Parkway, thence southerly along the Hutchinson River Parkway, to the Hutchinson River, thence easterly in the waters of said River, to the Harlem River Division Penn Central Railroad tracks, thence southerly along said Railroad tracks, to Hunter Avenue, to Hutchinson River Parkway, to the New England Thruway, to Conner Street, to Provost Avenue, to Light Street, to Harper Avenue, to Garrett Place, to Pratt Avenue, to East Two Hundred Thirty-third Street, to Monticello Avenue, to Strang Avenue, to Murdock Avenue, to Edenwald Avenue, to Wilder Avenue, to Pitman Avenue, to Barnes Avenue, to East Two Hundred Thirty-third Street, to White Plains Road, to East Two Hundred Thirtieth Street, to Carpenter Avenue, to East Two Hundred Twenty-ninth Street, to Bronx Boulevard, to East Gun Hill Road, to the Harlem Division Penn Central Railroad tracks, to East Two Hundred Eleventh Street, to Perry Avenue, to East Two Hundred Fifth Street, to Bainbridge Avenue, to East Mosholu Parkway South, to Briggs Avenue, to Bedford Park Boulevard, to Grand Concourse, to East One Hundred Ninety-eighth Street, to Webster Avenue, to Fordham Road, to Park Avenue, to East One Hundred Eighty-second Street, to Third Avenue, to East One Hundred Eighty-first Street, to Quarry Road, to East One Hundred Eighty-second Street, to Southern Boulevard, to Fordham Road, to Pelham Parkway, to Burr Avenue, to Bruckner Expressway, to Middletown Road, to Stadium Avenue, to Watt Avenue, extended to the waters of Long Island Sound, thence northerly to the Bronx-Westchester County line, thence westerly along said County line to the point or place of beginning.

15. FIFTEENTH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point in the waters of the Atlantic Ocean, proceeding easterly along the Brooklyn-Queens borough line, into Rockaway Inlet, thence, easterly and northerly along the border of the Brooklyn-Queens borough line, through Spring Creek following the Brooklyn-Queens borough line, to One Hundred Fifty-fifth Avenue, proceeding north on Sapphire Street, to Dumont Avenue, to Ruby Street, to Liberty Avenue, to Drew Street, to

Ninety-fifth Avenue, to Eldert Lane, extended to the Brooklyn-Queens borough line, following said Brooklyn-Queens borough line, westerly to Sunnyside Park, north to Robert Place, to Robert Street, to Hendricks Street, to Vermont Avenue, following the Brooklyn-Queens borough line through the Cemetery of the Evergreens, to Irving Avenue, to Eldert Street, to Wycoff Avenue, to Gates Avenue, to Nicholas Avenue, to Menahan Street, to Cypress Avenue, to Stanhope Street, to Grandview Avenue, to Gates Avenue, to Forest Avenue, to Putman Avenue, to Woodward Avenue, to Catalpa Avenue, to Fresh Pond Road, to Myrtle Avenue, to Central Avenue, to Sixty-sixth Street, to Myrtle Avenue, to Eighty-eighth Street, to Eighty-third Drive, to Eighty-ninth Street, to Myrtle Avenue, to Woodhaven Boulevard, to Jamaica Avenue, to Eighty-seventh Street, to Atlantic Avenue, to Ninety-second Street, to Ninety-seventh Avenue, to Eighty-eighth Street, to Rockaway Boulevard, to Cross Bay Boulevard, to North Conduit Avenue, to Cohancy Street, proceeding southerly, to South Conduit Avenue, to Nassau Expressway, to One Hundred Fiftieth Street, running thence easterly and southerly along the northerly and easterly and southerly borders of the John F. Kennedy International Airport, thence following the Queens-Nassau County borderline to the Atlantic Ocean, thence westerly, including that part of the City of New York known as the Rockaways to the point or place of beginning.

16. SIXTEENTH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point where the Queens-Nassau County boundary line intersects Twenty-fourth Avenue, extended into the waters of Little Neck Bay, to the Cross Island Parkway, thence southerly, to Thirty-seventh Avenue, thence easterly across Little Neck Bay along Thirty-seventh Avenue, to Two Hundred Thirty-third Street, to Bay Street, to Two Hundred Thirty-fourth Street, thence westerly across Little Neck Bay, to Forty-first Avenue, to Two Hundred Fifteenth Street, to Northern Boulevard, to Clearview Expressway, to Forty-fifth Road, to Francis Lewis Boulevard, to Forty-fifth Avenue, to One Hundred Ninety-second Street, to Forty-seventh Avenue, to Auburndale Lane, to Meadow Road, to Fresh Meadow Lane, to Long Island Expressway, to Bell Boulevard, to Sixty-seventh Avenue, to Two Hundred Ninth Street, to Richland Avenue, to Hollis Court Boulevard, to Union Turnpike, to Utopia Parkway, southerly, to Home Lawn Street, to One Hundred Seventieth Street, to Jamaica Avenue, to Hollis Avenue, to Ninety-ninth Avenue, to Francis Lewis Boulevard, to Jamaica Avenue, to Two Hundred Eleventh Street, to Hollis Avenue, to Two Hundred Thirteenth Street, to Witthoff Street, to Two Hundred Twelfth Street, to One Hundred Fifteenth Avenue, to Two Hundred Twenty-fourth Street, to One Hundred Fifteenth Road, to Two Hundred Thirtieth Street, to One Hundred Fifteenth Avenue, to Cross Island Parkway, to Queens-Nassau County boundary line, thence proceeding northerly and easterly to the point or place of beginning.

17. SEVENTEENTH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point where Jamaica Avenue intersects Sutphin Boulevard, thence along Jamaica Avenue, to Hollis Avenue, to Ninety-ninth Avenue, to Francis Lewis Boulevard, to Jamaica Avenue, to Two Hundred Eleventh Street, to Hollis Avenue, to Two Hundred Thirteenth Street, to Witthoff Street, to Two Hundred Twelfth Street, to One Hundred Fifteenth Avenue, to Two Hundred Twenty-fourth Street, to One Hundred Fifteenth Road, to Two Hundred Thirtieth Street, to One Hundred Fifteenth Avenue, to the Cross Island Parkway, to the Queens-Nassau County boundary line, proceeding southerly along said line to the point where Quigley Boulevard intersects Rockaway Boulevard, thence proceeding northerly and westerly along the John F. Kennedy International Airport, to One Hundred Fiftieth Street, to North Conduit Avenue, to Van Wyck Expressway, to Rockaway Boulevard, to One Hundred Sixteenth Avenue, to Sutphin Boulevard, to the point or place of beginning.

18. EIGHTEENTH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point where Jamaica Avenue, intersects Sutphin Boulevard, proceeding easterly along Jamaica

Avenue, to One Hundred Seventieth Street, to Hillside Avenue, to Home Lawn Street, to Union Turnpike easterly, to Hollis Court Boulevard, to Richland Avenue, to Two Hundred Tenth Street, to Sixty-seventh Avenue, to Bell Boulevard, to Long Island Expressway westerly to Fresh Meadow Lane, to Booth Memorial Avenue, to One Hundred Sixty-fourth Street, to Oak Avenue, to Parsons Boulevard, to Kalmia Avenue, to One Hundred Fifty-sixth Street, to Forty-sixth Avenue, to Parsons Boulevard, to Forty-fifth Avenue, to Kissena Boulevard, to Elder Avenue, to Main Street, to Peck Avenue, to Elder Avenue, to One Hundred Thirty-third Street, to Booth Memorial Avenue, to College Point Boulevard, to Park Drive East, to the end of Park Drive East, thence easterly along the northern boundary of Grand Central Parkway, to Main Street, to Manton Street, to One Hundred Thirty-fourth Street, to Interborough Parkway, to Park Lane, to Park Lane South, to Metropolitan Avenue, to Van Wyck Expressway, to Altantic Avenue, to One Hundred Twenty-seventh Street, to One Hundred Third Avenue, to One Hundred Thirty-first Street, to One Hundred Ninth Avenue, to One Hundred Twenty-fourth Street, to Rockaway Boulevard, westerly, to One Hundred Twenty-third Street, to One Hundred Thirty-third Avenue, to One Hundred Fourteenth Street, to North Conduit Avenue, to Hawtree Avenue southerly, to Cohancy Street, to Nassau Expressway, to One Hundred Fiftieth Street, to North Conduit Avenue, to Van Wyck Expressway, to Rockaway Boulevard, to One Hundred Sixteenth Avenue, to Sutphin Boulevard, to the point or place of beginning.

19. NINETEENTH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point where the Queens-Nassau County boundary line intersects Twenty-fourth Avenue, extended into the waters of Little Neck Bay, to Cross Island Parkway, thence southerly, to Thirty-seventh Avenue, thence easterly across Little Neck Bay, along Thirty-seventh Avenue, to Two Hundred Thirty-third Street, to Bay Street, to Two Hundred Thirty-fourth Street, thence westerly across Little Neck Bay, to Forty-first Avenue, to Two Hundred Fifteenth Street, to Northern Boulevard, to Clearview Expressway, to Forty-fifth Road, to Francis Lewis Boulevard, to Forty-fifth Avenue, to One Hundred Ninety-second Street, to Forty-seventh Avenue, to Auburndale Lane, to Meadow Road, to Fresh Meadow Lane, to Booth Memorial Avenue, to One Hundred Sixty-fourth Street, to Oak Avenue, to Parsons Boulevard, to Kalmia Avenue, to One Hundred Fifty-sixth Street, to Forty-sixth Avenue, to Parsons Boulevard, to Forty-fifth Avenue, to Kissena Boulevard, to Elder Avenue, to Main Street, to Peck Avenue, to Elder Avenue, to One Hundred Thirty-third Street, to Booth Memorial Road, to College Point Boulevard, to Long Island Expressway, to the southwest corner of Flushing Meadow Park, proceeding north around said park, to Forty-fifth Avenue, to One Hundred Second Street, to Roosevelt Avenue, to Ninety-ninth Street, to Thirty-fifth Avenue, to Ninety-seventh Street, to Northern Boulevard, to College Point Boulevard, to Whitestone Expressway, to Fourteenth Avenue, to Parsons Boulevard, to Thirteenth Avenue, to One Hundred Forty-seventh Street, to Fourteenth Avenue, to One Hundred Forty-eighth Street, to Fifteenth Avenue, to Francis Lewis Boulevard, to Cross Island Parkway, to One Hundred Fifty-fourth Street, to Twelfth Avenue, to One Hundred Fifty-seventh Street, to Powells Cove Boulevard, to One Hundred Fifty-eighth Street, to Riverside Drive, to One Hundred Sixty-first Street, extended into the East River, thence proceeding easterly and southerly to the point or place of beginning.

20. TWENTIETH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point where the waters of the East River intersects Thirty-third Road, to Vernon Boulevard, to Thirty-fourth Avenue, to Northern Boulevard, to Forty-ninth Street, to Broadway, to Forty-eighth Street, to Thirty-first Avenue, to Brooklyn-Queens Expressway, to Thirtieth Avenue, to Seventy-first Street, to Northern Boulevard, to College Point Boulevard, to Whitestone Expressway, to Fourteenth Avenue, to Parsons Boulevard, to Thirteenth Avenue, to One Hundred Forty-seventh Street, to Fourteenth Avenue, to One Hundred Forty-ninth Street, to Fifteenth Avenue, to Francis Lewis Boulevard, to Cross Island Parkway, to One Hundred Fifty-fourth Street, to Twelfth Avenue, to One Hundred Fifty-seventh Street, to Powells Cove Boulevard, to One Hundred Fifty-eighth Street, to Riverside Drive, to One Hundred Sixty-first Street, extended into the East River, proceeding westerly, along the Bronx-Queens

County border, to the point or place of beginning.

21. TWENTY-FIRST DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point where the waters of the East River intersects Thirty-third Road, to Vernon Boulevard, to Thirty-fourth Avenue, to Northern Boulevard, to Forty-ninth Street, to Broadway, to Forty-eighth Street, to Thirty-first Avenue, to Brooklyn-Queens Expressway, to Thirtieth Avenue, southerly to Seventy-first Street, to Thirty-fifth Avenue, to Leverich Street, to Thirty-seventh Avenue, to Eightieth Street, to Forty-first Avenue, to Baxter Avenue, to Woodside Avenue, to Seventy-ninth Street, to Forty-fifth Avenue, to Broadway, to Maurice Avenue, to Queens Boulevard, to Goldsmith Street, to Van Horn Street, to Fifty-sixth Avenue, to Haspel Street, to Fifty-seventh Avenue, to Long Island Expressway, to Eighty-fourth Street, to Caldwell Avenue, to Eightieth Street, to Sixty-second Avenue, to Juniper Boulevard North, to Seventy-fifth Street, to Eliot Avenue, proceeding southerly around Juniper Valley Park, to Juniper Boulevard South, to Seventy-seventh Street, to Furmanville Avenue, to Seventy-ninth Street, to Metropolitan Avenue, to Sixty-ninth Street, to Sixty-third Avenue, to Mount Olivet Crescent, to Sixty-second Avenue, to Sixty-fourth Street, to Metropolitan Avenue, to Sixtieth Street, to Sixtieth Road, to Rust Street, along Bushwick Junction Railroad, to Flushing Avenue, to Fifty-fifth Street, to Arnold Avenue, to Rene Court, to Grandview Avenue, to Stanhope Street, to Cypress Avenue, northerly and westerly along the Kings-Queens border, to the waters of the East River Channel, proceeding northerly to the point or place of beginning.

22. TWENTY-SECOND DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at the intersection of Metropolitan Avenue and Jamaica Avenue, proceeding along Metropolitan Avenue, to Park Lane South, to Park Lane, to Interborough Parkway, to One Hundred Thirty-fourth Street, to Eighty-third Avenue, to Manton Street, to Main Street, to Grand Central Parkway, along said Parkway, to Union Turnpike, proceeding westerly to Park Drive East, to Long Island Expressway, proceeding westerly on said Expressway, to Ninety-seventh Place, to Sixty-second Drive, to Ninety-seventh Street, to Sixty-third Road, to Queens Boulevard, to Sixty-third Avenue, to Woodhaven Boulevard, to Sixty-seventh Avenue, to Fitchett Street, to Sixty-sixth Road, to Alderton Street, to Dieterle Crescent, to Thornton Place, to Fleet Street, to Selfridge Street, to Metropolitan Avenue, to Woodhaven Boulevard, to Union Turnpike, to Pedestrian Way, thence southerly to Myrtle Avenue, to Woodhaven Boulevard, to Jamaica Avenue, to Eighty-seventh Street, to Atlantic Avenue, to Ninety-second Street, to Ninety-seventh Avenue, to Eighty-eighth Street, to Rockaway Boulevard, to Cross Bay Boulevard, to North Conduit Avenue, to One Hundred Fourteenth Street, to One Hundred Thirty-third Avenue, to One Hundred Twenty-third Street, to Rockaway Boulevard, to One Hundred Twenty-fourth Street, to One Hundred Ninth Avenue, to One Hundred Thirty-first Street, to One Hundred Third Avenue, to One Hundred Twenty-seventh Street, to Atlantic Avenue, to Van Wyck Expressway, to Jamaica Avenue, to the point or place of beginning.

23. TWENTY-THIRD DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn-Queens borough line at Sheridan Avenue extended, to Flatlands Avenue, to East One Hundred Third Street, to Glenwood Road, to East One Hundred Fifth Street, to Farragut Road, to East One Hundred Eighth Street, to Stanley Avenue, to Louisiana Avenue, to Dewitt Avenue, to Van Sinderen Avenue, to Linden Boulevard, to Rockaway Avenue, to Ditmas Avenue, to Rockaway Parkway, to Avenue D, to Foster Avenue, to Ralph Avenue, to the Long Island Railroad tracks, to East Fifty-sixth Street extended, to East Fifty-sixth Street, to Avenue D, to Kings Highway, to Foster Avenue, to Utica Avenue, to Glenwood Road, to Flatbush Avenue, to Avenue H, to East Thirty-fourth Street, to Avenue K, to East Thirty-fifth Street, to Avenue M, to East Thirty-sixth Street, to Flatlands Avenue, to East Thirty-seventh Street, to Quentin Road, to Nostrand Avenue, to Gerritsen Avenue, to

Batchelder Street, to Avenue V, to Bragg Street, to Avenue X, to Batchelder Street, to Avenue Z, to Nostrand Avenue, to Emmons Avenue, to East Twenty-seventh Street, to Sheepshead Bay, thence easterly along Sheepshead Bay to Knapp Street extended, thence southerly to the Brooklyn borough line, thence easterly and northerly along said borough line to the point or place of beginning.

24. TWENTY-FOURTH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn-Queens borough line at Sheridan Avenue extended, to Flatlands Avenue, to East One Hundred Third Street, to Glenwood Road, to East One Hundred Fifth Street, to Farragut Road, to East One Hundred Eighth Street, to Stanley Avenue, to Louisiana Avenue, to Dewitt Avenue, to Van Sinderen Avenue, to Linden Boulevard, to Rockaway Avenue, to Ditmas Avenue, to Rockaway Parkway, to Avenue D, to Foster Avenue, to Ralph Avenue, to the Long Island Railroad tracks, to East Fifty-sixth Street extended, to East Fifty-sixth Street, to Avenue D, to East Fifty-fourth Street, to Church Avenue, to East Fifty-fifth Street, to Clarkson Avenue, to Remsen Avenue, to Lenox Road, to East Ninety-sixth Street, to Kings Highway, to East Ninety-eighth Street, to Livonia Avenue, to Saratoga Avenue, to Dumont Avenue, to Rockaway Avenue, to East New York Avenue, to Hopkinson Avenue, to Fulton Street, to Saratoga Avenue, to Broadway, to Jamaica Avenue, to Pennsylvania Avenue, to Liberty Avenue, to Autumn Avenue, to McKinley Avenue, to the Brooklyn-Queens borough line at Drew Street, thence southerly along said borough line to the point or place of beginning.

25. TWENTY-FIFTH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the intersection of Ocean Parkway and Avenue H, thence along Avenue H to East Eighth Street, to Avenue I, to East Twelfth Street, to Avenue H, to East Seventeenth Street, to Avenue I, to East Twenty-seventh Street to the Long Island Railroad tracks, to Nostrand Avenue, to Avenue H, to Flatbush Avenue, to Glenwood Road, to Utica Avenue, to Foster Avenue, to Kings Highway, to East Fifty-fourth Street, to Church Avenue, to East Fifty-fifth Street, to Linden Boulevard, to East Forty-ninth Street, to Clarkson Avenue, to Flatbush Avenue, to Parkside Avenue, to Parade Place, to Caton Avenue, to Coney Island Avenue, to Church Avenue, to East Fourth Street, to Ditmas Avenue, to East Eighth Street, to Eighteenth Avenue, to Ocean Parkway, to Avenue H, to the point or place of beginning.

26. TWENTY-SIXTH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the intersection of Broadway and Saratoga Avenue, to Fulton Street, to Hopkinson Avenue, to East New York Avenue, to Rockaway Avenue, to Dumont Avenue, to Saratoga Avenue, to Livonia Avenue, to East Ninety-eighth Street, to Kings Highway, to East Ninety-sixth Street, to Lenox Avenue, to Remsen Avenue, to Clarkson Avenue, to East Fifty-fifth Street, to Linden Boulevard, to East Forty-ninth Street, to Clarkson Avenue, to Flatbush Avenue, to Parkside Avenue, to Ocean Avenue, to Lincoln Road, to Flatbush Avenue, to Washington Avenue, to Lefferts Avenue, to Schenectady Avenue, to Eastern Parkway, to Kingston Avenue, to Pacific Street, to Brooklyn Avenue, to Fulton Street, to Tompkins Avenue, to Jefferson Avenue, to Throop Avenue, to Park Avenue, to Broadway, to the point or place of beginning.

27. TWENTY-SEVENTH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the intersection of Eldert Lane and Ninety-fifth Avenue at the Brooklyn-Queens

borough line to Drew Street, to McKinley Avenue, to Autumn Avenue, to Liberty Avenue, to Pennsylvania Avenue, to Jamaica Avenue, to Broadway, to Park Avenue, to Throop Avenue, to Myrtle Avenue, to Bedford Avenue, to Lynch Street, to Broadway, to Berry Street, to Metropolitan Avenue, to Roebling Street, to North Fifth Street, to Havemeyer Street, to Metropolitan Avenue, to Union Avenue, to Powers Street, to Lorimer Street, to Maujer Street, to Leonard Street, to Grand Street, to Morgan Avenue, to Johnson Avenue, to Stewart Avenue, to Flushing Avenue, to Wyckoff Avenue, to Stockholm Street, to the Brooklyn-Queens borough line, thence southerly, easterly, and southerly along said borough line to the point or place of beginning.

28. TWENTY-EIGHTH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the intersection of Lincoln Road and Ocean Avenue, to Flatbush Avenue, to Grand Army Plaza, around the eastern boundary of said Plaza to Vanderbilt Avenue, to Sterling Place, to Flatbush Avenue, to Myrtle Avenue, to Vanderbilt Avenue, to Brooklyn-Queens Expressway, to Flushing Avenue, to Bedford Avenue, to Myrtle Avenue, to Throop Avenue, to Jefferson Avenue, to Tompkins Avenue, to Fulton Street, to Brooklyn Avenue, to Pacific Street, to Kingston Avenue, to Eastern Parkway, to Schenectady Avenue, to Lefferts Avenue, to Washington Avenue, to Flatbush Avenue, to Lincoln Road, to the point or place of beginning.

29. TWENTY-NINTH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn borough line in the waters of Buttermilk Channel at Hamilton Avenue extended, to Hamilton Avenue-Ferry Place, to Van Brunt Street, to DeGraw Street, to Court Street, to Douglas Court, to Douglas Street, to Gowanus Canal, to Carroll Street, to Fourth Avenue, to Fifth Street, to Eighth Avenue, to Union Street, to Grand Army Plaza, around the eastern boundary of said Plaza, to Vanderbilt Avenue, to Sterling Place, to Flatbush Avenue, to Myrtle Avenue, to Vanderbilt Avenue, to Brooklyn-Queens Expressway, to Flushing Avenue, to Bedford Avenue, to Lynch Street, to Broadway, to Berry Street, to Metropolitan Avenue, to Roebling Street, to North Fifth Street, to Havemeyer Street, to Metropolitan Avenue, to Union Avenue, to Powers Street, to Lorimer Street, to Maujer Street, to Leonard Street, to Grand Street, to Morgan Avenue, to Johnson Avenue, to Stewart Avenue, to Flushing Avenue, to Wyckoff Avenue, to Stockholm Street, to Brooklyn-Queens borough line, thence northerly westerly, and southerly along the Brooklyn borough line to the point or place of beginning.

30. THIRTIETH DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn borough line in the waters of Buttermilk Channel at Hamilton Avenue extended, to Hamilton Avenue-Ferry Place, to Van Brunt Street, to DeGraw Street, to Court Street, to Douglas Court, to Douglas Street, to Gowanus Canal, to Carroll Street, to Fourth Avenue, to Fifth Street, to Eighth Avenue, to Union Street, to Grand Army Plaza, to Flatbush Avenue, to Ocean Avenue, to Parkside Avenue, to Parade Place, to Caton Avenue, to Coney Island Avenue, to Church Avenue, to Dahill Road, to Sixteenth Avenue, to Forty-sixth Street, to Thirteenth Avenue, to Fifty-fifth Street, to Third Avenue, to Fifty-fourth Street, to Second Avenue, to Fifty-seventh Street, extended into the waters of the Upper Bay to the Brooklyn borough line, thence northerly along said borough line to the point or place of beginning.

31. THIRTY-FIRST DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn borough line in the waters of the Upper Bay at Fifty-seventh Street

extended, to Fifty-seventh Street, to Second Avenue, to Fifty-fourth Street, to Third Avenue, to Fifty-fifth Street, to New Utrecht Avenue, to Sixty-seventh Street, to Eighteenth Avenue, to Sixty-sixth Street, to Nineteenth Avenue, to Seventy-seventh Street, to Twentieth Avenue, to Benson Avenue, to Eighteenth Avenue, to Cropsey Avenue, to Bay Nineteenth Street, to Shore Parkway, to Bay Eighth Street, to Cropsey Avenue, to Fourteenth Avenue, to Poly Place, to Battery Avenue, thence northerly and westerly along the border of the United States Government reservation known as Fort Hamilton, to Gowanus Expressway, to Fort Hamilton Parkway, to One Hundred First Street, to Fourth Avenue, extended into the waters of the Narrows to Brooklyn borough line, thence northerly along said borough line to the point or place of beginning.

32. THIRTY-SECOND DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the intersection of Church Avenue and Dahill Road, to East Fourth Street, to Ditmas Avenue, to East Eighth Street, to Eighteenth Avenue, to Ocean Parkway, to Avenue H, to East Eighth Street, to Avenue I, to East Twelfth Street, to Avenue H, to East Seventeenth Street, to Avenue I, to East Twenty-seventh Street, to the Long Island Railroad tracks, to Nostrand Avenue, to Avenue H, to East Thirty-fourth Street, to Avenue K, to East Thirty-fifth Street, to Avenue M, to East Thirty-sixth Street, to Flatlands Avenue, to East Thirty-seventh Street, to Quentin Road, to Nostrand Avenue, to Gerritsen Avenue, to Batchelder Street, to Avenue U, to East Twenty-ninth Street, to Avenue T, to East Sixteenth Street, to Avenue S, to East Fifteenth Street, to Avenue R, to East Twelfth Street, to Quentin Road, to West Twelfth Street, to Kings Highway, to Bay Parkway, to Seventy-seventh Street, to Nineteenth Avenue, to Sixty-sixth Street, to Eighteenth Avenue, to Sixty-seventh Street, to New Utrecht Avenue, to Thirteenth Avenue, to Forty-sixth Street, to Sixteenth Avenue, to Dahill Road, to the point or place of beginning.

33. THIRTY-THIRD DISTRICT

That part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn borough line in the waters of Lower New York Bay at Twenty-sixth Avenue extended, to Twenty-sixth Avenue, to Harway Avenue, to Stillwell Avenue, to Avenue U, to West Ninth Street, to Avenue T, to West Twelfth Street, to Quentin Road, to East Twelfth Street, to Avenue R, to East Fifteenth Street, to Avenue S, to East Sixteenth Street, to Avenue T, to East Twenty-ninth Street, to Avenue U, to Batchelder Street, to Avenue V, to Bragg Street, to Avenue X, to Batchelder Street, to Avenue Z, to Nostrand Avenue, to Emmons Avenue, to East Twenty-seventh Street, to Sheepshead Bay, thence easterly along Sheepshead Bay to Knapp Street extended, thence southerly to the Brooklyn borough line, thence westerly and northerly along said borough line to the point or place of beginning.

34. THIRTY-FOURTH DISTRICT

That part of the Borough of Queens bounded by a line described as follows:

BEGINNING at a point at the intersection of Northern Boulevard and Seventy-first Street, proceeding easterly to Ninety-seventh Street, to Thirty-fifth Avenue, to Ninety-ninth Street, to Roosevelt Avenue, to One Hundred Second Street, to Forty-fifth Avenue, to One Hundred Eleventh Street, (along outer line of Flushing-Corona Park), to Long Island Expressway, thence westerly, to Ninety-seventh Place, to Sixty-second Drive, to Ninety-seventh Street, to Sixty-third Road, to Queens Boulevard, to Sixty-third Avenue, to Woodhaven Boulevard, to Sixty-seventh Avenue, to Fitchett Street, to Sixty-sixth Road, to Alderton Street, to Dieterle Crescent, to Thornton Place, to Fleet Street, to Selfridge Street, to Metropolitan Avenue, to Woodhaven Boulevard, to Union Turnpike, to Pedestrian Way, thence south and southeast, along the line of Forest Park, to Myrtle Avenue, to Eighty-ninth Street, to Eighty-third Drive, to Eighty-eighth Street, to Myrtle Avenue, to Sixty-sixth Street, to Central Avenue, to Sixty-first Street, to Fresh Pond Road, to Catalpa Avenue to Woodward Avenue, to Putnam Avenue, to Forest Avenue, to Gates Avenue, to Grandview Avenue, to Rene Court, to Metropolitan Avenue, to Arnold Avenue, to Fifty-fifth Street, to Flushing Avenue, to Rust

Street, to Andrews Street, to Forest Avenue, to Metropolitan Avenue, thence easterly, to Sixty-fourth Street, to Sixty-second Avenue, to Mount Olivet Crescent, to Sixty-third Avenue, to Sixty-ninth Street, to Metropolitan Avenue, to Seventy-ninth Street, to Furmanville Avenue, to Seventy-seventh Street, to Juniper Boulevard South, thence westerly to Sixty-second Drive, thence northerly and easterly around Juniper Valley Park along Juniper Boulevard North, to Sixty-second Avenue, to Eightieth Street, to Caldwell Avenue, to Eighty-fourth Street, to Long Island Expressway, to Long Island Railroad Cut, to Fifty-seventh Avenue, crossing the Long Island Railroad Cut, to Fifty-sixth Street, to Van Horn Street, to Grand Avenue, to Goldsmith Street, to Queens Boulevard, to Maurice Avenue, to Broadway to Forty-fifth Avenue, to Seventy-ninth Street, to Woodside Avenue, to Baxter Avenue, to Forty-first Avenue, to Eightieth Street, to Thirty-seventh Avenue, to Leverich Street, to Thirty-fifth Avenue, to Northern Boulevard, to the point or place of beginning.

35. THIRTY-FIFTH DISTRICT

That part of the Borough of Staten Island bounded by a line described as follows:

BEGINNING at a point in waters of Arthur Kill between border lines of New Jersey, and Richmond County, at Goethals Bridge, proceeding southeast, to Railroad cut, then proceeding east, to Gulf Avenue, to Staten Island Expressway, to Bengal Avenue, to Fahy Avenue, to Arlene Street, to Lander Avenue, to Richmond Avenue, to Victory Boulevard, to Willowbrook Road, to Watchogue Road, to Victory Boulevard, to Manor Road, to Ocean Terrace, to Todt Hill Road, to Richmond Road, proceeding northerly, to Cromwell Avenue, to Hylan Boulevard, to Old Town Road, to Staten Island Rapid Transit Line, proceeding north on Staten Island Rapid Transit Line, to West Fingerboard Road, to Steuben Street, to Hylan Boulevard, to Hickory Avenue, to McClean Avenue, to Lily Pond Avenue, extended to waters of Atlantic Ocean; thence northerly and westerly through the Narrows, through the Kill Van Kull Waters, including the entire part of the City of New York known as Snooter's Island, to the waters of the Arthur Kill, to the point or place of beginning; this district is further intended to include that part of the Borough of Brooklyn bounded by a line described as follows:

BEGINNING at a point at the Brooklyn borough line in the waters of Gravesend Bay at Twenty-sixth Avenue, extended to Harway Avenue, to Stillwell Avenue, to Avenue U, to West Ninth Street, to Avenue T, to West Twelfth Street, to Kings Highway, to Bay Parkway, to Seventy-seventh Street, to Twentieth Avenue, to Benson Avenue, to Eighteenth Avenue, to Cropsey Avenue, to Bay Nineteenth Street, to Shore Parkway, to Shore Road extension, to Bay Eighth Street, to Cropsey Avenue, to Fourteenth Avenue, to Poly Place, to Battery Avenue, thence northerly and westerly along the border of the United States Government reservation known as Fort Hamilton, to Gowanus Expressway, to Fort Hamilton Parkway, to One Hundred First Street, to Fourth Avenue, extended in the waters of The Narrows, at the Brooklyn borough line, thence projected into the waters of the Lower Bay, on the north side of and parallel to the Verrazano Narrows Bridge thence southerly and easterly to the point or place of beginning.

b. If any numbered paragraph of subdivision a of this section or any clause, sentence or part of any such numbered paragraph shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate any other numbered paragraph of subdivision a of this section, but shall be confined in its operation to the numbered paragraph which was directly involved in the controversy or of which a clause, sentence, or part was directly involved in such controversy.

c. The provisions of this section shall apply to the nomination and election of council members at the primary and general election in the year nineteen hundred eighty-one and thereafter and elections by the voters for the filling of vacancies in the offices of the council members so elected arising otherwise than by expiration of the term, for the balance thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a open par amended L.L. 68/1993 § 18, eff. Jan. 1, 1994

DERIVATION Formerly Title ZE added LL 47/1981 § 1 Amended LL 23/1982 § 1 Formerly Title ZC added LL 52/1973 Formerly Title ZB added LL 4/1973 Formerly Title ZA § ZA51-1.0 added LL 7/1969 Formerly Title Z § Z51-1.0 added LL 55/1965

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NYC Administrative Code 3-203

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-203 Public advocate; member of all committees.

The public advocate, ex-officio, shall be a member of all the committees thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Section amended L.L. 68/1993 § 19, eff. Jan. 1, 1994

DERIVATION

Formerly § 23-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 13

(formerly § 29-1.0)

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NYC Administrative Code 3-204

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-204 Salaries; additional compensation for officers of council.

The mayor, pursuant to the provisions of section one hundred twenty-three of the charter, may fix any additional remuneration to be paid to the vice-chairman of the council, the leader of the dominant minority party, the chairperson of the finance committee, the chairperson of the general welfare committee, and during a vacancy in the office of mayor or the office of public advocate, the person designated to act as leader of the majority party, over and above the salaries paid to them as council members.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Section amended L.L. 68/1993 § 20, eff. Jan. 1, 1994

DERIVATION

Formerly § 25-1.0 added chap 929/1937 § 1

Amended LL 34/1947 § 1

Amended LL 39/1951 § 1

Amended LL 7/1954 § 1

Amended chap 100/1963 § 12

Amended LL 54/1977 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-204.1

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-204.1 Transfer and disposal of surplus old desks and chairs, councilmanic chambers.

a. The commissioner of citywide administrative services in the case of the disposal of surplus old desks and chairs no longer needed for use of the city council in the councilmanic chambers shall transfer such chairs and desks to the control and custody of the city clerk, clerk of the council.

b. The city clerk, clerk of the council, shall have the power, upon request, to transfer and deliver one such desk and/or chair in the following order of priority: (1) museum of the city of New York; (2) metropolitan museum of art; (3) New York historical society; (4) present member of the council; (5) former member of the council. Such museum, member of the council or former member of the council shall file its or his or her written request with the city clerk, clerk of the council, accompanied with the sum of ten dollars per desk or chair, which sums shall be deposited with the commissioner of finance, except that the aforesaid museums and historical society shall not be required to pay anything.

c. The provisions of this section shall be effective notwithstanding the provisions of any general or special law or provision or regulation relating to the disposal of personal property and any such statute or part or parts thereof, relating to such disposal of surplus material, insofar as they are inconsistent with the provisions of this section, are hereby superseded.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 59/1996 § 31, eff. Aug. 8, 1996

DERIVATION

Formerly § C51-9.0 added LL 9/1964 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-204.2

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-204.2 Transfer of councilmanic chairs at termination of office.

(a) The city clerk, clerk of the council shall have the power at the request of any member of the council who shall hereafter resign or whose term of office shall hereafter terminate, or a surviving spouse or domestic partner of such member, to sell and transfer to such member or to such surviving spouse or domestic partner the chair last occupied by such member in the councilmanic chamber for the fair market value as determined by the commissioner of citywide administrative services, depositing any monies received from such sale with the commissioner of finance; provided however, that a written request therefore accompanied by the payment herein provided be submitted to the city clerk, clerk of the council within sixty days after any such resignation or termination of term of office. The commissioner of citywide administrative services shall upon notice from the city clerk, clerk of the council make prompt replacement of such chair so transferred or sold.

(b) The provisions of this section shall apply solely to members of the council who have been elected at a general election.

(c) The provision of this section shall be effective notwithstanding the provisions of any general or special law or provision or regulation relating to the disposal of personal property and any such statute, or part, or parts thereof are hereby superseded.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended L.L. 4/2002 § 1, eff. Apr. 30, 2002.

Subd. (a) amended L.L. 27/1998 § 8, eff. Sept. 5, 1998.

Subd. (a) amended L.L. 59/1996 § 32, eff. Aug. 8, 1996

DERIVATION

Formerly § C51-9.1 added LL 81/1969 § 1

(Laid out as 51-9.1)

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NYC Administrative Code 3-204.3

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-204.3 Workers' compensation for city council employees.

a. As used in this section, the term "city council employees" shall include all duly sworn members of the city council as well as all salaried employees who comprise the staff of the city council on a full-time or part-time basis.

b. Pursuant to the authorization contained in group nineteen of subdivision one of section three of the state workers' compensation law, the coverage of the workers' compensation law is extended to cover all city council employees.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 26-1.0 added LL 33/1985 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-204.4

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-204.4 Representation; council members.

Council Members shall be represented by the corporation counsel and indemnified by the city pursuant to Section 50-k of the General Municipal Law, subject to the conditions contained therein, for actions undertaken in the performance of their constituent responsibilities.

HISTORICAL NOTE

Section added LL 39/1988 § 1

Administrative Code of the City of New York

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NYC Administrative Code 3-205

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-205 City clerk; employees; bonds.

Each of the following officers or employees in the office of the city clerk shall execute a bond to the city, conditioned for the faithful performance of the duties of his or her office, with one or more sureties, to be approved by the comptroller, in the penal sum as follows: city clerk, twenty thousand dollars; city clerk's cashier, and assistant cashier, three thousand dollars each; deputy city clerk, borough of Brooklyn, five thousand dollars; deputy city clerks, boroughs of the Bronx, Queens, and Staten Island, one thousand dollars each.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 32a-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 15 (formerly § 31a-1.0)

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NYC Administrative Code 3-206

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-206 City clerk; proceedings of council.

Immediately after the adjournment of each meeting of the council, the city clerk shall prepare a brief extract, omitting technical and formal details, of all resolutions and local laws introduced or passed, all recommendations of committees, all final proceedings and full copies of all messages from the mayor and all reports of city agencies. The city clerk shall forthwith transmit the same for publication in the City Record to the director thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 32a-2.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 16 (formerly § 31a-2.0)

Administrative Code of the City of New York

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NYC Administrative Code 3-207

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-207 City clerk; fees.

The city clerk shall collect the following fees:

1. For a copy of any book, account, record or paper other than a marriage record filed in the city clerk's office, one dollar for each photocopy;

2. For a certification of any book, account, record, or paper other than a marriage record filed in the city clerk's office, fifty cents and five cents in addition for each folio in excess of five;

3. For each bond filed in the city clerk's office, twenty-five cents;

4. For filing of all other papers, required by law to be filed in the city clerk's office nine dollars;

5. For a certificate of appointment of a commissioner of deeds, fifty cents;

6. For a certified extract from any marriage record file in the city clerk's office, ten dollars;

7. For any certifications furnished by the city clerk, one dollar for each such certification;

8. For certification of marriage status to be used by applicant in foreign jurisdictions fifteen dollars;

9. In any instance where the personal hand signature of the city clerk or his or her first deputy is requested, ten dollars;

10. For filing an application for correcting a marriage record, pursuant to section twenty of the domestic relations law, forty dollars, which shall include a photostatic copy of the existing marriage record and the issuance of a new amended certificate. Such fee shall not be returned in the event of the application is rejected for insufficiency or other pertinent reason. Upon denial of such application, ten dollars shall be refunded;

11. For solemnization of marriage pursuant to section eleven-a of the domestic relations law, twenty-five dollars;

12. For issuance of a certificate of marriage registration pursuant to section fourteen-a of the domestic relations law, ten dollars.

13. For issuance of a second or subsequent certificate of marriage registration or a photograph, microphotograph or photocopy of the original marriage license pursuant to section fourteen-a of the domestic relations law, ten dollars.

14. For persons registering to perform marriage ceremonies with the clerk of the city of New York pursuant to section 11-b of the domestic relations law, fifteen dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. 4, 5, 6, 8, 9 amended L.L. 46/2003 § 2, eff. July 1, 2003.

Subd. 10 amended L.L. 46/2003 § 2, eff. July 1, 2003.

Subd. 10 amended L.L. 60/1991 § 1, eff. July 17, 1991

Subd. 11 amended L.L. 50/1990 § 1, eff. Sept. 8, 1990

Subd. 12 amended L.L. 46/2003 § 2, eff. July 1, 2003.

Subd. 12 amended L.L. 43/1992 § 1, eff. July 17, 1992

Subd. 13 added L.L. 43/1992 § 2, eff. July 17, 1992

Subd. 14 added L.L. 46/2003 § 2, eff. July 1, 2003.

DERIVATION

Formerly § 32a-3.0 added chap 929/1937 § 1

Amended LL 55/1962 § 1

Renumbered chap 100/1963 § 17 (formerly § 31a-3.0)

Amended LL 23/1970 § 1 (amended as § 31a-3.0)

Subs 11, 12 added LL 9/1975 § 1

Sub 12 amended LL 27/1981 § 1

Sub 12 amended LL 27/1983 § 1

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NYC Administrative Code 3-208

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-208 Local laws; public hearings; publication of notice.

The notice prescribed in subdivision five of section twenty of the municipal home rule law shall be published in the City Record and in such daily newspaper or newspapers, published in the city of New York, as shall be selected by the mayor for that purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 38b-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 18

Amended LL 52/1968 § 1

CASE NOTES

¶ 1. The notice provisions of this section require publication in the City Record and another paper designated by

the Mayor. While technical compliance with the publication provisions is not essential to the validity of a municipal statute, the noncompliance contained in the instant case goes beyond that because the publication in the City Record was incorrect, it was not corrected in a timely fashion by the City and only certain special interest groups were notified at the last moment of the incorrect publication in the City Record. Thus the notice provisions of the statute were frustrated and the municipal enactment must be and hereby is invalidated.-41 Kew Gardens Rd Assoc. v. Tyburski, 124 AD2d 553 [1986].

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NYC Administrative Code 3-209

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-209 [Young adult voter registration.]

a. Short title. This section shall be known and may be cited as the "Young Adult Voter Registration Act."

b. Registration of voters. Each public or private high school within the city shall make available during the school year to seniors such materials as may be published by the board of elections relating to voter registration and, where appropriate, shall provide applications for registration and enrollment, and may assist in the execution of such applications.

c. Registration of graduating seniors. The department of education of the city of New York shall provide a postage paid board of elections of the city of New York voter registration form to each graduating student who receives a high school diploma, including but not limited to a Regents, local, general equivalency or Individualized Education Program diploma. The department shall deliver such voter registration form to each graduating student at the same time and in the same manner as it delivers diplomas to each such student.

d. Forms to be available at school. The department of education of the city of New York shall ensure that postage paid board of elections voter registration forms are available in the main or central office of each high school under the jurisdiction of the department for students who wish to obtain one. The department shall also ensure that each such high school provides adequate notice to its students of the availability of such forms in its main or central office.

e. Sufficient quantity of forms. The department shall request from the board of elections of the city of New York a sufficient quantity of voter registration forms to meet the requirements of this subdivision.

HISTORICAL NOTE

Section repealed and added L.L. 34/2004 § 2, eff. Aug. 11, 2004. [See Note 1]

NOTE

1. Provisions of L.L. 34/2004:

Section 1. Legislative findings. The Council of the city of New York affirms that voting is a central tenet of democracy. The vitality of the democratic process depends on voter participation in elections. Yet, far too few New Yorkers vote in local, state or national elections, and voter participation has been declining. The Council finds that affirmative steps are necessary to encourage and increase voter participation in all elections.

The Council further finds that this decline and lack of participation is due, in part, to the fact that voters find it difficult to register to vote. Although both city and state laws provide mechanisms for distributing voter registration forms by city and state agencies as part of agency-based voter registration programs, the New York City Department of Education does not participate in such programs. The Council finds that the Department of Education is uniquely positioned in the City to enhance the participation of young people in the democratic process by distributing voter registration forms to potential young voters.

. . . . . .

§ 5. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect.

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NYC Administrative Code 3-210

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-210 Registration of voters. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 34/2004 § 3, eff. Aug. 11, 2004.

Section added chap 907/1985 § 1

DERIVATION

Formerly § E51-12.1 added LL 73/1981 § 1

Administrative Code of the City of New York

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NYC Administrative Code 3-210

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 1 [COUNCIL DISTRICTS; POWERS AND DUTIES]

§ 3-210 Fingerprinting.

a. Employees. The council shall require that any applicant or appointee for future employment by the council be fingerprinted as part of the application process. Such fingerprints and physical descriptive data are to be provided for the purpose of securing criminal history records from the state division of criminal justice services. The applicant shall pay a processing fee as required by the state division of criminal justice services. Notwithstanding the foregoing, the council need not require applicants or appointees under this subdivison to be fingerprinted if criminal history records concerning such applicants or appointees are not made available by the state division of criminal justice services.

b. Other Persons. The council may require that any candidate for direct appointment, designation, nomination, recommendation and advice and consent by the council as required by state legislation, the charter or administrative code be fingerprinted as part of the background investigation. Such fingerprints are to be provided for the purposes of securing criminal history records from the state division of criminal justice services. The applicant may pay a processing fee as required by the state division of criminal justice services. Notwithstanding the foregoing, the council need not require candidates under this subdivision to be fingerprinted if criminal history records concerning such candidates are not made available by the state division of criminal justice services.

HISTORICAL NOTE

Section renumbered (former § 3-210.1) L.L. 34/2004 § 4, eff. Aug. 11, 2004.

Section added L.L. 118/1989 § 1

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NYC Administrative Code 3-211

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-211 Definitions.

Whenever used in this subchapter, the following words and phrases shall be construed as defined in this section:

(a) The term "lobbyist" shall mean every person or organization retained, employed or designated by any client to engage in lobbying. The term "lobbyist" shall not include any officer or employee of the city of New York, the State of New York, any political subdivision of the State, or any public corporation, agency or commission, or the United States when discharging his or her official duties.

(b) The term "client" shall mean every person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client.

(c) (1) The term "lobbying" or "lobbying activities" shall mean any attempt to influence:

(i) the passage or defeat of any local law or resolution by the city council,

(ii) the approval or disapproval of any local law or resolution by the mayor,

(iii) any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect thee solicitation, award or administration of a grant, loan, or

agreement involving the disbursement of public monies,

(iv) any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation,

(v) any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent,

(vi) the adoption, amendment or rejection by an agency of any rule having the force and effect of law,

(vii) the outcome of any rate making proceeding before an agency, or

(viii) any determination of a board or commission.

(2) The definition of the term "lobbying" or "lobbying activities" shall not apply to any determination in an adjudicatory proceeding.

(3) The following persons and organizations shall be deemed not to be engaged in "lobbying activities":

(i) persons engaged in advising clients, rendering opinions and drafting, in relation to proposed legislation, resolutions, rules, rates, or other proposed legislative, executive or administrative action, where such persons do not themselves engage in an attempt to influence such action;

(ii) newspapers and other periodicals and radio and television stations, and owners and employees thereof, provided that their activities are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements;

(iii) persons who participate as witnesses, attorneys or other representatives in public rule making or rate making proceedings of an agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation;

(iv) persons who appear before an agency in an adjudicatory proceeding;

(v) persons who prepare or submit a response to a request for information or comments by the city council or one of its committees, the mayor, or other elected city official or an agency;

(vi) (A) contractors or prospective contractors who communicate with or appear before city contracting officers or employees in the regular course of procurement planning, contract development, the contractor selection process, the administration of a contract, or the audit of a contract, when such communications or appearances are made by such contractors or prospective contractors personally, or through;

1. such officers and employees of the contractors or prospective contractor who are charged with the performance of functions relating to contracts:

2. subcontractors or prospective subcontractors who are or will be engaged in the delivery of goods, services or construction pursuant to the contract of such officers and employees of the subcontractor or prospective subcontractor who are charged with the performance of functions relating to contracts; or

3. persons who provide technical or professional services, as defined in clause (B) of this subparagraph, on behalf of such contractor, prospective contractor, subcontractor or prospective subcontractor.

(B) For the purposes of clause (A) of this subparagraph:

1. "technical services" shall be limited to advice and analysis directly applying any engineering, scientific, or other similar technical discipline;

2. "professional services" shall be limited to advice and analysis directly applying any legal, accounting or other similar professional discipline in connection with the following elements of the procurement process only: dispute resolution, vendor protests, responsiveness and responsibility determinations, determinations of prequalification, suspensions, debarments, objections to registration pursuant to section 328 of the charter, contract interpretation, negotiation of contract terms after the award of a contract, defaults, the termination of contracts and audit of contracts. Any person who provides professional services pursuant to this subparagraph in connection with elements of the procurement process not specified above in this item, whether prior to, in connection with or after the award of a contract, shall be deemed to be engaged in lobbying activities, unless such person is deemed not to be engaged in lobbying activities under another provision of this paragraph; and

3. "city contracting officers or employees" shall not include elected officials or deputies of elected officials or any person not duly authorized to enter into and administer contracts and make determinations with respect thereto; and

(vii) persons or organizations who advertise the availability of goods or services with fliers, leaflets or other advertising circulars.

(d) The term "organization" shall include any corporation, company, foundation, association, labor organization, firm, partnership, society, or joint stock company.

(e) The term "compensation" shall mean any salary, fee, gift, payment, subscription, loan, advance or any other thing of value paid, owed, given or promised by the client to the lobbyist for the purpose of lobbying.

(f) The term "expenditure" shall mean any expenses incurred by or reimbursed to the lobbyist for lobbying.

(g) The term "public servant" shall mean a public servant as defined in subdivision nineteen of section two thousand six hundred one of the charter.

(h) The term "fundraising activities" shall mean solicitation or collection of contributions for a candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council, or for the political committee of any such candidate by a lobbyist, or the solicitation or collection of contributions for any public servant who is a candidate for nomination for election, or election, to any elective office, or for the political committee of any such candidate by a lobbyist. For purposes of this subchapter, the term "contribution" shall have the meaning set forth in subdivision eight of section 3-702 of the administrative code, and the term "political committee" shall have the meaning set forth in subdivision eleven of such section. The term "lobbyist" shall mean a lobbyist as defined in subdivision (a) of this section and the spouse or domestic partner and unemancipated children of the lobbyist, and if the lobbyist is an organization, the term "lobbyist" shall mean only that division of the organization that engages in lobbying activities and any officer or employee of such lobbyist who engages in lobbying activities of the organization or is employed in an organization's division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees.

(i) The term "political consulting activities" shall mean the activities of a lobbyist who for compensation by or on behalf of the candidate or elected official, as applicable, (i) participates in the campaign of any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council by providing political advice, or (ii) participates in the campaign of any public servant who is a candidate for nomination for election, or election, to any elective office by providing political advice, or (iii) provides political advice to the mayor, public advocate, comptroller, borough president or member of the city council.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

Subd. c amended L.L. 67/1993 § 1, eff. July 29, 1993

Subd. (g) added L.L. 15/2006 § 1, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (h) added L.L. 15/2006 § 1, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (i) added L.L. 15/2006 § 1, eff. Dec. 10, 2006. [See § 3-212 Note 1]

DERIVATION

Formerly § N51-1.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-212

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-212 Powers and duties of the city clerk.

(a) In addition to any other powers and duties specified by law, the city clerk shall have the power and duty to administer and enforce all the provisions of this subchapter, subpoena witnesses and records, issue advisory opinions to those under its jurisdiction, conduct any investigation and audits necessary to carry out the provisions of this subchapter, prepare uniform forms for the statements and reports required by this subchapter and promulgate such rules as he or she deems necessary for the proper administration of this subchapter.

(b) In addition to any audits required to enforce the provisions of this subchapter, the city clerk shall conduct random audits of the statements and reports required to be filed by lobbyists and clients pursuant to this subchapter. The city clerk shall select statements and reports for random audit in a manner pursuant to which the identity of any particular lobbyist or client whose statements or reports are selected for audit is unknown to the city clerk. In conducting such random audits, the city clerk shall require the production of such witnesses and records as may have been relevant to the preparation of the statements or reports audited.

(c) The city clerk shall prepare and post on the internet an annual report relating to the administration and enforcement of the provisions of this subchapter. Such report shall contain information regarding (i) the number of complaints received from the public and the disposition of such complaints; (ii) the number and amount of civil penalties imposed pursuant to subdivisions (a), (b), (c) and (d) of section 3-223 of this subchapter; (iii) the number and duration of orders issued pursuant to subdivision (a) of section 3-223 of this subchapter; (iv) the number of random

audits conducted by the clerk and outcomes thereof; (v) compliance programs developed and implemented for lobbyists and clients; and (vi) such other information and analysis as the city clerk deems appropriate. Such report shall be posted on the internet no later than March first of each year and shall contain information relating to the preceding calendar year.

(d) The city clerk shall, as soon as practicable after the issuance of an order pursuant to subdivision (a) of section 3-223 of this subchapter or imposition of a civil penalty pursuant to subdivision (a), (b), (c) or (d) of section 3-223 of this subchapter, post on the internet information identifying the lobbyist or client who committed the violation that resulted in the issuance of such order or imposition of such penalty, the provision of law violated, the duration of such order or the amount of such penalty.

(e) Twenty-four months after the effective date of the section of the local law that added this subdivision, the mayor and the city council shall jointly appoint a commission to review and evaluate the activities and performance of the city clerk in implementing the provisions of this subchapter. Within six months of such appointment the commission shall report to the mayor and city council on its review and evaluation which report shall include any administrative and legislative recommendations on strengthening the administration and enforcement of this subchapter, as well as whether the commission would recommend raising the dollar threshold for the filing of a statement of registration. The commission shall be comprised of five members and the mayor and the city council shall jointly designate a chair from among the members.

HISTORICAL NOTE

Section amended L.L. 15/2006 § 2, eff. Dec. 10, 2006. [See Note 1]

Section amended L.L. 67/1993 § 2, eff. July 29, 1993

Section added L.L. 14/1986 § 1

DERIVATION

Formerly § N51-2.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

NOTE

1. Provisions of L.L. 15/2006:

§ 16. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 17. This local law shall take effect on the one hundred eightieth day after its enactment, provided, however, that section eleven of this local law shall take effect one year after the enactment of this local law, and provided, further, that any reports required to be filed for calendar year 2006 pursuant to subchapter 2 of chapter 2 of title 3 of the administrative code of the city of New York, including reports required to be filed by January 15, 2007, shall be filed with the city clerk either in person or by mail, and provided, further, that any statement of registration filed for calendar year 2007, shall be filed by electronic transmission in a standard format as required by the City Clerk, and provided, further, that upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date. [§ 17 amended L.L. 57/2006 § 1, eff. Dec. 18, 2006 and retroactive and deemed in full force and effect on and

after Dec. 10, 2006.]

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-213

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-213 Statement of registration.

(a) (1) Every lobbyist shall annually file with the city clerk, on forms prescribed by the city clerk, a statement of registration for each calendar year; provided, however, that the filing of such statement of registration shall not be required of any lobbyist who in any year does not expend, incur or receive an amount in excess of two thousand dollars of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section 3-216 of this subchapter, for the purposes of lobbying.

(2) Such filing shall be completed on or before January first by those persons who have been retained, employed or designated as lobbyists on or before December fifteenth of the previous calendar year who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars. For those lobbyists retained, employed or designated after December fifteenth, and for those lobbyists who, subsequent to their retainer, employment or designation, reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(b) Such statements of registration shall be kept in electronic form in the office of the city clerk and shall be available for public inspection.

(c) Such statement of registration shall contain:

(1) the name, home and business addresses and business telephone number of the lobbyist and the name and home and business addresses of the spouse or domestic partner of the lobbyist, and if the lobbyist is an organization the name, home and business addresses and business telephone number of any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization and the name and home and business addresses of the spouse or domestic partner of such officers or employees, provided that, notwithstanding any provision of this subchapter to the contrary, the home address of the lobbyist, including, if the lobbyist is an organization, the home address of any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization, and the names and home and business addresses of spouses and domestic partners of such lobbyists, officers and employees, whether contained in an original or amended statement of registration, shall not be made available to the public, but may be accessed by the campaign finance board for the sole purpose of determining whether a campaign contribution is matchable pursuant to section 3-702 of the New York City campaign finance act; provided, however, that notwithstanding any other provision of law, in making information on campaign contributions publicly available, the campaign finance board shall not disclose that any specific contributor is the spouse, domestic partner or unemancipated child of such a lobbyist, officer or employee;

(2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) if such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, a copy of such shall also be attached and if such retainer or employment is oral, a statement of the substance thereof;

(4) a written authorization from the client by whom the lobbyist is authorized to lobby, unless such lobbyist has filed a written agreement of retainer or employment pursuant to paragraph three of this subdivision;

(5) a description of the subject or subjects on which the lobbyist is lobbying or expects to lobby, including information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist is lobbying or expects to lobby;

(6) the name of the person or agency before which the lobbyist is lobbying or expects to lobby;

(7) if the lobbyist has a financial interest in the client, direct or indirect, information as to the extent of such interest and the date on which it was acquired; and

(d) Whenever there is a change in the information filed by the lobbyist in the original statement of registration, an amended statement shall be submitted to the city clerk on forms prescribed by the city clerk within ten days after such change occurs, except as provided in paragraph two of this subdivision; however, this shall not require the lobbyist to amend the entire registration form.

(2) Whenever a contribution, as defined in subdivision eight of section 3-702 of the New York City campaign finance act, is made by the unemancipated child of a lobbyist or by the unemancipated child of the spouse or domestic partner of a lobbyist or, if the lobbyist is an organization, by the unemancipated child of any officer or employee of such lobbyist who engages in lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization or by the unemancipated child of the spouse or domestic partner of any such officer or employee, in the calendar year for which a statement of registration is filed, the lobbyist shall file an amended statement of registration within forty-eight hours of the making of such contribution. Such amended statement of registration shall contain the name and the home address of such unemancipated child and the home and business addresses of the unemancipated child's parent, if such parent's home and business addresses were reported pursuant to paragraph one of subdivision (c) of this section. Such amendment shall not require the lobbyist to amend the entire registration form. If such contribution was made in the calendar year for which a statement of registration is filed, but before the filing of such statement of registration, then the original statement of registration shall contain the name and the home address of

such unemancipated child and the home and business addresses of the unemancipated child's parent, if such parent's home and business addresses were reported pursuant to paragraph one of subdivision (c) of this section. Notwithstanding any provision of this chapter to the contrary, the names and addresses of unemancipated children shall not be made available to the public, but may be accessed by the campaign finance board for the sole purpose of determining whether a campaign contribution is matchable pursuant to such section 3-702; provided, however, that notwithstanding any other provision of law, in making information on campaign contributions publicly available, the campaign finance board shall not disclose that any specific contributor is the spouse, domestic partner or unemancipated child of such a lobbyist, officer or employee. For purposes of this paragraph, the term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of such lobbyist or spouse or domestic partner of such lobbyist or, if such lobbyist is an organization, living in the household of such officer or employee or spouse or domestic partner of such officer or employee.

(e) Each statement of registration filed annually by each lobbyist shall be accompanied by a registration fee of one hundred fifty dollars. An additional fee may be imposed not to exceed fifty dollars for each client in excess of one identified on such statement.

(f) In the event of the retention, employment or designation of an organization wherein more than one member of the organization will be engaging in lobbying activities on behalf of a client, one statement of registration shall be filed by the organization with a listing of all such persons.

(g) Repealed.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

Subd. (b) amended L.L. 15/2006 § 3, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (c) par (1) amended L.L. 23/2007 § 2, eff. May 1, 2007 and

retroactive to and deemed to have been in full force and effect on and

after Dec. 10, 2006. [See Note 1]

Subd. (c) par (1) amended L.L. 15/2006 § 4, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (c) par (5) amended L.L. 15/2006 § 5, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (d) amended L.L. 23/2007 § 3, eff. May 1, 2007 and retroactive to

and deemed to have been in full force and effect on and after Dec. 10,

2006. [See Note 1]

Subd. (e) amended L.L. 46/2003 § 1, eff. July 1, 2003.

Subd. (g) repealed L.L. 23/2007 § 4, eff. May 1, 2007 and retroactive to

and deemed to have been in full force and effect on and after Dec. 10,

2006. [See Note 1]

DERIVATION

Formerly § N51-3.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

NOTE

1. Provisions of L.L. 23/2007:

Section 1. Statement of Legislative Findings and Intent. The Council hereby Finds and Declares that this law would make necessary improvements in the implementation of the City's Lobbying Law as recently amended by Local Law 15 of 2006, which is designed to increase the disclosure of lobbyist activities, including political consulting and fundraising.

First, the lobbyist should not be required to include the name and home address of his or her unemancipated child in his or her annual statement of registration, unless and until a campaign contribution is made in the unemancipated child's name. If such a contribution is made by the unemancipated child of a lobbyist, it is necessary for the lobbyist to report this information in his or her annual statement of registration, in order to assist the Campaign Finance Board (the "CFB") in identifying non-matchable campaign contributions under Local Law 17 of 2006. Second, the lobbyist's registration statement should contain his or her business and home addresses and business telephone number, and the home and business addresses of his or her spouse or domestic partner, as well as the name and home address of his or her unemancipated child if a campaign contribution is made in the unemancipated child's name, again to assist the CFB in identifying non-matchable campaign contributions. Third, there is good reason to keep confidential the home address of the lobbyist, the home addresses of officers and employees in the organization's division that engages in any lobbying activities ("lobbying division"), and the names and home and business addresses of their spouses or domestic partners and unemancipated children, especially in the case of lobbyists who, for example, represent family planning clinics or battered women's shelters, and who could reasonably expect that they, or officers or employees in the lobbying division, or their spouses or domestic partners and unemancipated children could be placed at risk if their home addresses, or the names and addresses of their spouses or domestic partners and unemancipated children, were made public. Fourth, there is good reason to protect the privacy of spouses, domestic partners and unemancipated children of lobbyists and officers or employees in the lobbying division by prohibiting the campaign finance board from disclosing that any particular campaign contributor is the spouse, domestic partner or unemancipated child of a lobbyist. Fifth, since the New York Temporary State Commission on Lobbying ("Temporary Commission") would be phased out of existence if the Public Employees Ethics Reform Act of 2007 is enacted, the Lobbying Law's references to the Temporary Commission now include references to its possible successor organization.

Accordingly, this law would amend the City's Lobbying Law to: (i) require the lobbyist to disclose the name and home address of his or her unemancipated child within 48 hours after a campaign contribution is made in the unemancipated child's name; (ii) require the lobbyist to disclose his or her home and business addresses and business telephone number, and the home and business addresses of his or her spouse or domestic partner; (iii) require the Clerk to keep all home addresses and the business address of the lobbyist's spouse or domestic partner confidential and not subject to public inspection; (iv) prohibit the campaign finance board from disclosing that any particular campaign contributor is the spouse, domestic partner or unemancipated child of a lobbyist or of an officer or employee in the lobbying division; and (v) include appropriate references to the possible successor to the Temporary Commission.

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-214

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-214 Monthly registration docket.

It shall be the duty of the city clerk to compile a monthly docket of statements of registration containing all information required by section 3-213 of this subchapter. Each such monthly docket shall contain all statements of registration filed during such month and all amendments to previously filed statements of registration. Copies shall be made available for public inspection.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

DERIVATION

Formerly § N51-4.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-215

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-215 Termination of retainer, employment or designation.

Upon the termination of a lobbyist's retainer, employment or designation, such lobbyist and the client on whose behalf such service has been rendered shall both give written notice to the city clerk within thirty days after the lobbyist ceases the activity that required such lobbyist to file a statement of registration; however, such lobbyist shall nevertheless comply with the reporting requirements of section 3-216.1 of this subchapter and the reporting requirements for the last periodic reporting period up to the date such activity has ceased as required by this subchapter and both such parties shall each file the annual report required by section 3-217 of this subchapter. The city clerk shall enter notice of such termination in the appropriate monthly registration docket required by section 3-214 of this subchapter.

HISTORICAL NOTE

Section amended L.L. 15/2006 § 6, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Section added L.L. 14/86 § 1

DERIVATION

Formerly § N51-5.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-216

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-216 Periodic reports.

(a) (1) any lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter who in any lobbying year expends, receives or incurs combined reportable compensation and expenses in an amount in excess of two thousand dollars, as provided in paragraph five of subdivision (b) of this section, for the purpose of lobbying, shall file with the city clerk a first periodic written report, on forms prescribed by the city clerk, which to the extent practicable shall be identical in form to the periodic reporting forms used by the New York Temporary State Commission on Lobbying, or any successor thereto, by the fifteenth day next succeeding the end of the reporting period on which the cumulative total for such lobbying year equaled such sum. Such reporting periods shall be the period from January first to March thirty-first, April first to May thirty-first, June first to September thirtieth, and October first to December thirty-first, or such other dates as the city clerk shall designate by rule to conform the periodic reporting periods with the periodic reporting periods of the New York Temporary State Commission on Lobbying, or any successor thereto.

(2) Any lobbyist making a report pursuant to paragraph one of this subdivision shall thereafter file with the city clerk, on forms prescribed by the city clerk, a periodic report for each reporting period that such person expends, receives or incurs combined reportable compensation and expenses in an amount in excess of five hundred dollars for the purposes of lobbying during such reporting period. Such report shall be filed not later than the fifteenth day next succeeding the end of such reporting period and shall include the amounts so expended, received or incurred during such reporting period and the cumulative total during the lobbying year.

(b) Such periodic report shall contain:

(1) the name, address and telephone number of the lobbyist;

(2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated;

(3) a description of the subject or subjects on which the lobbyist has lobbied, including information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist has lobbied;

(5) (i) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying.

(ii) expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(iii) for the purpose of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist;

(B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars shall be paid by check or substantiated by receipts.

(c) Notwithstanding any inconsistent provision of this section, where a lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter is not required to file a periodic report pursuant to subdivision (a) or (b) of this section because he or she has not expended, received or incurred compensation and expenses as therein specified, he or she shall file a periodic report stating that he or she has not expended, received or incurred such compensation and expenses by the fifteenth day next succeeding the end of the reporting period.

(d) (1) All such periodic reports shall be subject to review by the city clerk.

(2) Such periodic reports shall be kept in electronic form in the office of the city clerk and shall be available for public inspection.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

Subd. (a) amended L.L. 23/2007 § 5, eff. May 1, 2007 and retroactive to

and deemed to have been in full force and effect on and after Dec. 10,

2006. [See § 3-213 Note 1]

Subd. (a) par (1) amended L.L. 15/2006 § 7, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (b) par (3) amended L.L. 15/2006 § 8, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (b) par (5) subpar (ii) amended L.L. 67/1993 § 3, eff. July 29, 1993

Subd. (d) amended L.L. 67/1993 § 4, eff. July 29, 1993

Subd. (d) par (2) amended L.L. 15/2006 § 9, eff. Dec. 10, 2006. [See § 3-212 Note 1]

DERIVATION

Formerly § N51-6.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

CASE NOTES

¶ 1. Registered lobbyists must electronically file quarterly reports on their lobbying activities with the City Clerk. The reports must contain the lobbyist's name, address and telephone number; the name, address and telephone number of the client; the subject on which the lobbyist has lobbied; and a summary of the compensation the lobbyist has received for the reporting period and year to date. Respondent lobbyist was charged a late fee of $25 per day for not timely filing required periodic reports. Office of the City Clerk v. Lipsky, OATH Index No. 155/08 (Aug. 1, 2007), modified on penalty, Acting City Clerk's Decision (Oct. 29, 2007) (City Clerk imposes penalty of $4750 in late fees only (no civil penalty)).

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-216.1

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-216.1 Fundraising and political consulting reports.

(a) Any lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter who in any calendar year to which the statement of registration relates, or in the six months preceding such calendar year, engages in fundraising or political consulting activities shall file with the city clerk, on forms prescribed by the city clerk, a fundraising and/or political consulting report. Such report shall be filed in accordance with the schedule applicable to the filing of periodic reports, provided that the first fundraising and/or political consulting report filed in any calendar year shall include information on fundraising and/or political consulting activities that occurred in any period beginning six months preceding the calendar year to which the statement of registration relates through the end of the reporting period for which the report is filed, to the extent such information has not been reported in a fundraising and/or political consulting report filed in the preceding calendar year. Each subsequent fundraising and/or political consulting report filed in or with respect to the calendar year to which the statement of registration relates shall include information on fundraising and/or political consulting activities that occurred since the end of the reporting period for which the previous report was filed through the end of the reporting period for which the current report is filed. Such activities shall be reported whether they are conducted directly by the lobbyist, or through any other entity of which such lobbyist is a principal. Such fundraising and/or political consulting reports shall be filed not later than the fifteenth day next succeeding the end of such reporting period.

(b) Such fundraising and/or political consulting report shall contain:

(1) the name, address and telephone number of the lobbyist and the individuals employed by the lobbyist engaged in such fundraising and/or political consulting activities;

(2) the name, address and telephone number of the candidate, public servant, or elected official to whom or on whose behalf the lobbyist provided fundraising and/or political consulting services;

(3) (i) the compensation paid or owed to the lobbyist for such fundraising and/or political consulting activities;

(ii) a list of all persons or entities with whom the lobbyist contracted for the purpose of providing fundraising and/or political consulting services;

(4) in the case of fundraising activities, the total dollar amount raised for each candidate for which such activities were performed.

(c) All such fundraising and/or political consulting reports shall be subject to review by the city clerk.

(d) Such fundraising and/or political consulting reports shall be kept in electronic form in the office of the city clerk and shall be available for public inspection.

HISTORICAL NOTE

Section added L.L. 15/2006 § 10, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (a) amended L.L. 23/2007 § 6, eff. May 1, 2007 and retroactive to

and deemed to have been in full force and effect on and after Dec. 10,

2006. [See § 3-213 Note 1]

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-217

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-217 Annual reports.

(a) Annual reports shall be filed by:

(1) every lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter;

(2) any client retaining, employing or designating a lobbyist or lobbyists, if during the year such client expended, received or incurred an amount in excess of two thousand dollars of combined reportable compensation or expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying.

(b) Such report pursuant to paragraph one of subdivision (a) of this section shall be filed with the city clerk, on forms prescribed by the city clerk, by the fifteenth day of January next following the year for which such report is made and shall contain on an annual cumulative basis all the information required in periodic reports by section 3-216 of this subchapter and all the information required in fundraising and/or political consulting reports by section 3-216.1 of this subchapter;

(c) Such report pursuant to paragraph two of subdivision (a) of this section shall be filed with the city clerk on forms prescribed by the city clerk by the fifteenth day of January next following the year for which such report is made and shall contain:

(1) the name, address and telephone number of the client;

(2) the name, address and telephone number of each lobbyist retained, employed or designated by such client;

(3) a description of the subject or subjects on which each lobbyist retained, employed or designated by such client has lobbied, including information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which each lobbyist retained, employed or designated by such client has lobbied;

(4) the person or agency before which such lobbyist has lobbied;

(5) (i) the compensation paid or owed to each such lobbyist, and any other expenses paid or incurred by such client for the purpose of lobbying.

(ii) any expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expenses are more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(iii) for the purposes of this paragraph, expenses shall not include:

(A) personal sustenance, lodging and travel disbursements of such lobbyist and client;

(B) expenses, not in excess of five hundred dollars, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate.

(v) expenses of more than fifty dollars must be paid by check or substantiated by receipts.

(d) (1) All such annual reports shall be subject to review by the city clerk.

(2) Such annual reports shall be kept in electronic form in the office of the city clerk and shall be available for public inspection.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

Subd. (b) amended L.L. 23/2007 § 7, eff. June 13, 2007. [See § 3-213 Note 1]

Subd. (b) amended L.L. 15/2006 § 11, eff. Dec. 10, 2007. [See § 3-212 Note 1]

Subd. (b) amended L.L. 67/1993 § 5, eff. July 29, 1993

Subd. (c) open par amended L.L. 23/2007 § 8, eff. May 1, 2007 and retroactive to and deemed to have been in full force and effect on and after Dec. 10, 2006. [See § 3-213 Note 1]

Subd. (c) amended L.L. 67/1993 § 5, eff. July 29, 1993

Subd. (c) pars (3), (4) amended L.L. 15/2006 § 12, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Subd. (d) amended L.L. 67/1993 § 5, eff. July 29, 1993

Subd. (d) par (2) amended L.L. 15/2006 § 13, eff. Dec. 10, 2006. [See § 3-212 Note 1]

DERIVATION

Formerly § N51-7.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-218

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-218 Contingent retainer.

No client shall retain or employ any lobbyist for compensation, the rate or amount of which compensation in whole or part is contingent or dependent upon legislative, executive or administrative action where efforts by a lobbyist to influence such action are subject to the jurisdiction of the city clerk, and no person shall accept such a retainer or employment.

HISTORICAL NOTE

Section amended L.L 67/1993 § 6, eff. July 29, 1993

Section added L.L. 14/1986 § 1

DERIVATION

Formerly § N51-8.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

Administrative Code of the City of New York

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NYC Administrative Code 3-219

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-219 Obligations of lobbyists.

Any person who is required to file a statement of registration under this subchapter has the following obligations:

a. To abstain from doing any act, with the express purpose and intent of placing a member of the city council, the mayor or any officer or employee charged by law with making a decision on a matter pending or proposed, under personal obligation to him or her or to his or her employer.

b. Never to knowingly deceive or attempt to deceive a member of the city council, the mayor or any officer or employee charged by law with making a decision on a local law, resolution or matter pending or proposed, as to any material fact pertinent to any pending or proposed local law, resolution or matter.

c. Never to cause or influence the introduction of any local law or resolution at the city council for the purpose of thereafter being employed to secure its granting, denial, confirmation, rejection, passage or defeat.

d. To abstain from any attempt to create a fictitious appearance of public favor or disfavor of any proposed local law or resolution before the city council or to cause any communication to be sent to a member of the city council, or the mayor, or any officer or employee charged by law with making a decision on a matter pending or proposed, in the name of any fictitious person or in the name of any real person, except with the consent of such real person.

e. Not to represent, either directly or indirectly through word of mouth or otherwise, that he or she can control or obtain the vote or action of the mayor, any member of the city council, or any employee or officer of the city charged by law with making a decision on a matter pending or proposed, or the approval or disapproval of an local law or resolution by the mayor of the city of New York.

f. Not to represent or solicit representation of, an interest adverse to such person's employer nor to represent employers whose interests are known to such person to be adverse.

g. To retain all books, papers and documents necessary to substantiate the financial reports required to be made under this subchapter for a period of five years.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

Subds. a, b, c, d, e amended L.L. 67/1993 § 7, eff. July 29, 1993

DERIVATION

Formerly § N51-10.0 added LL 79/1972 § 1

Amended LL 86/1973 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-220 Retention of records.

Every person to whom this subchapter is applicable shall keep for at least five years a detailed and exact account of:

(1) all compensation of any amount or value whatsoever;

(2) the name and address of every person paying or promising to pay compensation of fifty dollars or more and the date thereof;

(3) all expenditures made by or on behalf of the client; and

(4) the name and address of every person to whom any item of expenditure exceeding fifty dollars is made, the date thereof and receipted bill for said expenditure.

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-221

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-221 Filing of statements and reports.

Any statement or report required by this subchapter shall be filed by electronic transmission in a standard format as required by the city clerk. Statements, reports, dockets and any other information required to be kept on file in the office of the city clerk for public inspection pursuant to this subchapter shall be kept in a computerized database and shall be posted on the internet as soon as practicable.

HISTORICAL NOTE

Section amended L.L. 15/2006 § 14, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Section amended L.L. 67/1993 § 8, eff. July 29, 1993

Section added L.L. 14/1986 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-222 Certification.

All statements and reports required under this subchapter shall contain the following declaration: "I certify that all statements made on this statement are true and correct to the best of my knowledge and belief and I understand that the wilful making of any false statement of material fact herein will subject me to the provisions of law relevant to the making and filing of false instruments and will render such statement null and void."

HISTORICAL NOTE

Section added L.L. 14/1986 § 1

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-223

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 2 REGULATION OF LOBBYING*3

§ 3-223 Penalties.

(a) Except as provided for in subdivision (b) of this section, any person or organization who knowingly and wilfully violates any provision of this subchapter shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars, to be assessed by the city clerk, or an order to cease all lobbying activities subject to the jurisdiction of the city clerk for a period of time as determined by said clerk not to exceed sixty days, or both such civil penalty and order.

(b) Any person or organization who violates a cease and desist order of the city clerk issued under subdivision a of this section or enters into a contingency agreement or accepts or pays any contingency fees as proscribed in section 3-218 of this subchapter, shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars, to be assessed by the city clerk.

(c) The city clerk shall designate by rule penalties for late filing of any statement or report required by this subchapter, which shall conform with the schedule established by the New York Temporary State Commission on Lobbying, or any successor thereto, for such charges. Following a failure to make and file any such statement or report, the city clerk shall notify the person or organization of such fact by certified mail that such filing must be made within fourteen business days of the date of mailing of such notice. The failure to file any statement or report within such time shall constitute a class A misdemeanor. In addition to such criminal and late penalties, said person or organization shall

be subject to a civil penalty, in an amount not to exceed twenty thousand dollars, to be assessed by the city clerk. For the purposes of this subdivision, the chief administrative officer of any organization required to file a statement or report shall be the person responsible for making and filing such statement or report unless some other person prior to the due date thereof has been duly designated to make and file such statement or report.

(d) Any person or organization who violates any provision of this subchapter not punishable under subdivisions (a), (b) or (c) of this section shall be subject to a civil penalty, in an amount not to exceed twenty thousand dollars, to be assessed by the city clerk.

(e) Any civil penalty to be assessed under subdivision (d) of this section, or any order issued under subdivision (a) of this section, may only be imposed or issued after written notice of violation and the expiration of fourteen business days from the date of mailing of such notice. If such violation is cured within such fourteen-day period, then such civil penalty or order shall not be imposed or issued.

(f) The amount of any assessment made or duration of order issued pursuant to this section shall be determined only after a hearing at which the party shall be entitled to appear and be heard. Any assessment imposed under this section may be recovered in an action brought by the corporation counsel.

(g) The city clerk shall be charged with the duty of reviewing all statements and reports required under this subchapter for violations, and it shall be his duty, if he deems such to be willful, to report such determination to the department of investigation. Where the city clerk receives a report or otherwise suspects that a criminal violation of law, other than a violation of this subchapter, has been or may have been committed, the city clerk shall report any information relating thereto to the department of investigation.

(h) The department of investigation shall provide assistance to the city clerk for the purpose of training personnel who are responsible for the administration and enforcement of the provisions of this subchapter. The city clerk shall develop compliance programs for lobbyists and clients.

HISTORICAL NOTE

Section amended L.L. 15/2006 § 15, eff. Dec. 10, 2006. [See § 3-212 Note 1]

Section amended L.L. 67/1993 § 9, eff. July 29, 1993

Section added L.L. 14/1986 § 1

Subd. (c) amended L.L. 23/2007 § 9, eff. May 1, 2007 and retroactive to

and deemed to have been in full force and effect on and after Dec. 10,

2006. [See § 3-213 Note 1]

CASE NOTES

¶ 1. When a client of a lobbyist fails to timely file its annual report, the City Clerk is required to notify the client, by certified mail, that compliance must be made within 14 business days of the mailing of the notice to cure or the client may face a civil penalty up to $20,000. The 14 day grace period runs from the date of the mailing of the Notice to Cure, not the date of the original filing deadline. Under this section, Notice to Cure must be sent by certified mail. Initial warning letter, sent by regular mail, could not be considered to be a Notice to Cure. In any event, client could not be assessed civil penalty where he filed within 14 days of warning letter. Office of the City Clerk v. Bayrock Group, LLC, OATH Index No. 432/08 (Oct. 22, 2007).

¶ 2. Unlike civil penalty, late fees are automatic and begin to accrue once lobbyist or client misses filing deadline.

Late fees of $420 assessed against client of lobbyist who filed annual report 42 days after the filing deadline. Office of the City Clerk v. Bayrock Group, LLC, OATH Index No. 432/08 (Oct. 22, 2007).

¶ 3. Civil penalty of $3500 and $6350 in late fees recommended where lobbyist's client filed annual report 254 days after the deadline. Initial warning letter, sent by regular mail, could not be considered to be a Notice to Cure. Two subsequent letters were properly sent by certified mail, yet the client failed to file within the cure period. Office of the City Clerk v. Allied Waste Industries, OATH Index No. 503/08 (Oct. 29, 2007).

¶ 4. Civil penalty of $4500 recommended where lobbyist's client had not filed annual report as of the date of the hearing, 255 days after the deadline. Office of the City Clerk v. New York Outdoor Operators, LLP, OATH Index No. 504/08 (Oct. 29, 2007).

FOOTNOTES

3

[Footnote 3]: * Subchapter 2 repealed and added LL 14/1986 § 1. Former Subchapter 2 added LL 79/1972, amended LL 79/1972, amended LL 86/1973.

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NYC Administrative Code 3-224

Administrative Code of the City of New York

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 PROHIBITION OF GIFTS BY LOBBYISTS*12

§ 3-224 Definitions.

Whenever used in this subchapter, the term "public servant" shall mean a public servant as defined in subdivision nineteen of section two thousand six hundred one of the charter.

HISTORICAL NOTE

Section added L.L. 16/2006 § 1, eff. Dec. 10, 2006. [See Subchapter 3 footnote]

FOOTNOTES

12

[Footnote 12]: * There are 2 subchapters three. Subchapter 3 added L.L. 16/2006 § 1, eff. Dec. 10, 2006. Note further provisions of L.L. 16/2006:

§ 3. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective

and the application of any such provision to other persons or situations shall not be affected.

§ 4. This local law shall take effect on the one hundred eightieth day after it shall have become a law [Dec. 10, 2006] provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.

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NYC Administrative Code 3-225

Administrative Code of the City of New York

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 PROHIBITION OF GIFTS BY LOBBYISTS*12

§ 3-225 Prohibition of gifts.

No person required to be listed on a statement of registration pursuant to section 3-213(c)(1) of subchapter 2 of this chapter shall offer or give a gift to any public servant.

HISTORICAL NOTE

Section added L.L. 16/2006 § 1, eff. Dec. 10, 2006. [See Subchapter 3 footnote]

FOOTNOTES

12

[Footnote 12]: * There are 2 subchapters three. Subchapter 3 added L.L. 16/2006 § 1, eff. Dec. 10, 2006. Note further provisions of L.L. 16/2006:

§ 3. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective

and the application of any such provision to other persons or situations shall not be affected.

§ 4. This local law shall take effect on the one hundred eightieth day after it shall have become a law [Dec. 10, 2006] provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.

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CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 PROHIBITION OF GIFTS BY LOBBYISTS*12

§ 3-226 Enforcement.

Complaints alleging violations of this subchapter shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest pursuant to chapters sixty-eight and thirty-four of the charter.

HISTORICAL NOTE

Section added L.L. 16/2006 § 1, eff. Dec. 10, 2006. [See Subchapter 3 footnote]

FOOTNOTES

12

[Footnote 12]: * There are 2 subchapters three. Subchapter 3 added L.L. 16/2006 § 1, eff. Dec. 10, 2006. Note further provisions of L.L. 16/2006:

§ 3. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the

remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 4. This local law shall take effect on the one hundred eightieth day after it shall have become a law [Dec. 10, 2006] provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.

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NYC Administrative Code 3-227

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 PROHIBITION OF GIFTS BY LOBBYISTS*12

§ 3-227 Penalties.

Any person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates any provision of this subchapter shall be subject to a civil penalty, which for the first offense shall be not less than two thousand five hundred dollars and not more than five thousand dollars, for the second offense not less than five thousand dollars and not more than fifteen thousand dollars, and for the third and subsequent offenses not less than fifteen thousand dollars and not more than thirty thousand dollars. In addition to such civil penalties, for the second and subsequent offenses a person required to be listed on the statement of registration pursuant to section 3-213(c)(1) that knowingly and willfully violates the provisions of this subchapter shall also be guilty of a class A misdemeanor.

HISTORICAL NOTE

Section added L.L. 16/2006 § 1, eff. Dec. 10, 2006. [See Subchapter 3 footnote]

FOOTNOTES

12

[Footnote 12]: * There are 2 subchapters three. Subchapter 3 added L.L. 16/2006 § 1, eff. Dec. 10, 2006. Note further provisions of L.L. 16/2006:

§ 3. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 4. This local law shall take effect on the one hundred eightieth day after it shall have become a law [Dec. 10, 2006] provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.

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NYC Administrative Code 3-228

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 PROHIBITION OF GIFTS BY LOBBYISTS*12

§ 3-228 Rulemaking.

The conflicts of interest board, in consultation with the clerk, shall adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts and exceptions including de minimis gifts, such as pens and mugs, gifts that public servants may accept as gifts to the city and gifts from family members and close personal friends on family or social occasions, and to the extent practicable, such rules shall be promulgated in a manner consistent with the rules and advisory opinions of such board governing the receipt of valuable gifts by public servants.

HISTORICAL NOTE

Section added L.L. 16/2006 § 1, eff. Dec. 10, 2006. [See Subchapter 3 footnote]

FOOTNOTES

12

[Footnote 12]: * There are 2 subchapters three. Subchapter 3 added L.L. 16/2006 § 1, eff. Dec. 10, 2006.

Note further provisions of L.L. 16/2006:

§ 3. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 4. This local law shall take effect on the one hundred eightieth day after it shall have become a law [Dec. 10, 2006] provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.

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NYC Administrative Code 3-240

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 DOMESTIC PARTNERSHIPS*8

§ 3-240 [Definitions.]*9

As used in this section, the following terms shall have the following meanings:

a. "Domestic partners" shall mean persons who have a registered domestic partnership, which shall include any partnership registered pursuant to this chapter, any partnership registered in accordance with executive order number 123, dated August 7, 1989, and any partnership registered in accordance with executive order number 48, dated January 7, 1993, and persons who are members of a marriage that is not recognized by the state of New York, domestic partnership, or civil union, lawfully entered into in another jurisdiction. Nothing in this code shall affect a partnership that has been registered pursuant to either such executive order and has not been terminated in accordance with such executive orders or this chapter.

b. "Registry of domestic partnerships" shall mean the registry maintained by the city clerk pursuant to this chapter, and shall include all domestic partnerships registered by the city clerk pursuant to executive order number 48, dated January 7, 1993, and all domestic partnerships registered with the former department of personnel pursuant to executive order number 123, dated August 7, 1989. Within ten days of the effective date of the local law that added this definition, the department of citywide administrative services shall transfer to the city clerk the records of domestic partnerships registered with the former department of personnel.

c. "Affidavit of domestic partnership" shall mean an affidavit prepared by the office of the city clerk in

accordance with rules adopted by the city clerk.

HISTORICAL NOTE

Section added L.L. 27/1998 § 2, eff. Sept. 5, 1998.

Subd. a amended L.L. 24/2002 § 2, eff. Aug. 27, 2002. [See Note after §3-245]

CASE NOTES

¶ 1. A court held that the City's domestic partnership law (which provides health benefits for domestic partners of City employees) did not impermissibly legislate in the area of marriage. There was no conflict between the city law and state laws, the court said. It was particularly significant that the state law also allow health benefits to domestic partners of state employees. Slattery v. City of New York, 266 A.D.2d 24, 697 N.Y.S.2d 603 (1st Dept. 1999), appeal dismissed 94 N.Y.2d 897, 706 N.Y.S.2d 699 (2000), leave to appeal dismissed, 95 N.Y.2d 823, 712 N.Y.S.2d 907 (2000).

FOOTNOTES

8

[Footnote 8]: * There are 2 subchapters three. Subchapter 3 added L.L. 27/1998 § 2, eff. Sept. 5, 1998. Note provisions of L.L. 27/1998 § 1:

Section 1. Declaration of legislative intent and findings. Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

The Council hereby finds that the provisions of those executive orders (Executive Order No. 48, dated January 7, 1993 and Executive Order No. 49, dated January 7, 1993) should now be enacted into local law and that, consistent with the intent of such orders and subject to any applicable federal or state law, the various provisions applicable to spouses in the charter and administrative code of the City of New York, as specified herein, should now be extended to domestic partners. The Council further notes that concurrent with the enactment of this legislation, agencies will be amending their rules and completing a review of agency policies and practices to effectuate that intent regarding domestic partners.

9

[Footnote 9]: * Section heading supplied by editor.

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NYC Administrative Code 3-241

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 DOMESTIC PARTNERSHIPS*8

§ 3-241 Domestic partnership registration.

a. A domestic partnership may be registered by two people who meet all of the following conditions:

1. Either: (a) both persons are residents of the city of New York or (b) at least one partner is employed by the city of New York on the date of registration;

2. Both persons are eighteen years of age or older;

3. Neither of the persons is married;

4. Neither of the persons is a party to another domestic partnership, or has been a party to another domestic partnership within the six months immediately prior to registration;

5. The persons are not related to each other by blood in a manner that would bar their marriage in the state of New York;

6. The persons have a close and committed personal relationship, live together and have been living together on a continuous basis.

b. In order to register, persons shall execute an affidavit of domestic partnership and submit it to the city clerk,

who shall maintain a registry of domestic partnerships. Both parties to the partnership shall be present when the affidavit is submitted.

c. Except when one of the parties is confined to a prison, in a hospital or other health care facility, or is unable to travel to the office of the city clerk because of a disability, the affidavits shall be submitted to the city clerk at the office of the city clerk. The city clerk may adopt such rules as are necessary to implement the domestic partnership registration program. Such rules shall include provisions necessary to provide for the registration of domestic partners when one of the partners is in prison or unable to travel, which shall be equivalent to the rules applicable to persons in such circumstances who apply for a marriage license.

HISTORICAL NOTE

Section added L.L. 27/1998 § 2, eff. Sept. 5, 1998.

FOOTNOTES

8

[Footnote 8]: * There are 2 subchapters three. Subchapter 3 added L.L. 27/1998 § 2, eff. Sept. 5, 1998. Note provisions of L.L. 27/1998 § 1:

Section 1. Declaration of legislative intent and findings. Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

The Council hereby finds that the provisions of those executive orders (Executive Order No. 48, dated January 7, 1993 and Executive Order No. 49, dated January 7, 1993) should now be enacted into local law and that, consistent with the intent of such orders and subject to any applicable federal or state law, the various provisions applicable to spouses in the charter and administrative code of the City of New York, as specified herein, should now be extended to domestic partners. The Council further notes that concurrent with the enactment of this legislation, agencies will be amending their rules and completing a review of agency policies and practices to effectuate that intent regarding domestic partners.

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NYC Administrative Code 3-242

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 DOMESTIC PARTNERSHIPS*8

§ 3-242 Termination of domestic partnership.

a. If either party or both parties to a registered domestic partnership determines that the partnership has terminated, one of the partners shall file a termination statement with the city clerk. The person filing the termination statement shall declare that the domestic partnership is terminated and, if the termination statement has not been signed by both domestic partners, that the other domestic partner has been notified of such termination by registered mail, return receipt requested.

b. A domestic partnership shall terminate whenever one of the parties to the partnership marries.

HISTORICAL NOTE

Section added L.L. 27/1998 § 2, eff. Sept. 5, 1998.

FOOTNOTES

8

[Footnote 8]: * There are 2 subchapters three. Subchapter 3 added L.L. 27/1998 § 2, eff. Sept. 5, 1998.

Note provisions of L.L. 27/1998 § 1:

Section 1. Declaration of legislative intent and findings. Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

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Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 DOMESTIC PARTNERSHIPS*8

§ 3-243 Confidentiality of domestic partnership information.

The city clerk shall establish procedures to ensure the confidentiality of information in the registry of domestic partnerships.

a. In the ordinary course of business, such records shall be released only:

1. To the parties to the domestic partnership;

2. To individuals presenting written authorization from one of the parties to the domestic partnership;

3. To attorneys in cases where such records are required as evidence in a legal proceeding.

b. The following restrictions shall not apply to records that are at least fifty years old, or to records where both parties to the domestic partnership are deceased:

1. Where a party to the domestic partnership sends a third party to obtain their domestic partnership record without a letter of authorization, the third party may make the request and pay any applicable fee if the third party consents to having the record mailed directly to the party to the domestic partnership. The record shall not be released directly to the unauthorized third party.

2. If a person requires information concerning the prior history of domestic partnerships of a person who is that person's domestic partner or spouse or prospective domestic partner or spouse, the office of the City Clerk shall, upon receiving adequate assurance that such person's interest is as described in this paragraph, payment of the appropriate fee, and the furnishing of an approximate date of the registration of the partnership and sufficient information to search under at least one party's name, confirm only the fact of a prior domestic partnership by a "yes" or "no" answer.

c. Nothing herein shall be construed to prohibit the publication of statistics pertaining to domestic partnerships which have been registered by the city clerk, provided that appropriate measures are taken to prevent identification of persons registered.

HISTORICAL NOTE

Section added L.L. 27/1998 § 2, eff. Sept. 5, 1998.

FOOTNOTES

8

[Footnote 8]: * There are 2 subchapters three. Subchapter 3 added L.L. 27/1998 § 2, eff. Sept. 5, 1998. Note provisions of L.L. 27/1998 § 1:

Section 1. Declaration of legislative intent and findings. Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

The Council hereby finds that the provisions of those executive orders (Executive Order No. 48, dated January 7, 1993 and Executive Order No. 49, dated January 7, 1993) should now be enacted into local law and that, consistent with the intent of such orders and subject to any applicable federal or state law, the various provisions applicable to spouses in the charter and administrative code of the City of New York, as specified herein, should now be extended to domestic partners. The Council further notes that concurrent with the enactment of this legislation, agencies will be amending their rules and completing a review of agency policies and practices to effectuate that intent regarding domestic partners.

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NYC Administrative Code 3-244

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 DOMESTIC PARTNERSHIPS*8

§ 3-244 Certificate of domestic partnership registration.

a. Issuance of certificate of domestic partnership registration. The city clerk shall issue a certificate of domestic partnership registration to persons who have registered pursuant to this subchapter. Such a certificate shall constitute notice of a registered domestic partnership when persons apply for rights or benefits available to domestic partners, including but not limited to:

1. Bereavement leave and child care leave of absence for city employees;

2. Visitation in city correctional and juvenile detention facilities;

3. Visitation in facilities operated by the New York City health and hospitals corporation;

4. Eligibility to qualify as a family member to be added by the New York City housing authority to an existing tenancy as a permanent resident;

5. Eligibility to qualify as a family member entitled to succeed to the tenancy or occupancy rights of a tenant or cooperator in buildings supervised by or under the jurisdiction of the department of housing preservation and development;

6. Health benefits provided by the city to city employees and retirees and eligible members of their families,

pursuant to stipulation or collective bargaining;

7. Such other rights or benefits as may be established pursuant to applicable law.

b. Access to city benefits and services.

1. To the extent permitted by state and federal law, any benefit or service directly provided by the city of New York to persons based on spousal relationship shall be available to persons who are domestic partners pursuant to section 3-244 of the administrative code or in a relationship recognized as a domestic partnership pursuant to section 3-245 of the administrative code. For any person applying for such benefits or services, a certificate of domestic partnership registration or its equivalent as recognized pursuant to section 3-245 of the administrative code constitutes sufficient proof of domestic partnership.

2. Within 90 days of the effective date of the local law that added this subdivision, the administration shall furnish a report to the council that sets forth any benefit or service provided directly by the city that is available to persons based on spousal relationship and is not available to domestic partners on the same basis, and the reasons for why such benefits or services are not provided to such persons.

HISTORICAL NOTE

Section amended L.L. 11/2007 § 1, eff. Apr. 27, 2007. [See Note 1]

Section added L.L. 27/1998 § 2, eff. Sept. 5, 1998.

NOTE

1. Provisions of L.L. 11/2007:

§ 2. If any subdivision, sentence, clause, phrase or other portion of the local law that added this subdivision is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this subdivision, which remaining portions shall remain in full force and effect.

CASE NOTES

¶ 1. The domestic partnership law gives a domestic partner the same rights as a family member to succeed to a tenancy. However, the statute does not compel a landlord to add a domestic partner's name to the lease while the named tenant still resides at the premises. In other words, even though the landlord would be obligated to add a spouse's name to a lease upon request, a domestic partner is not entitled to the same right. Zagrosik v. New York State Div. of Housing and Community Renewal, 817 N.Y.S.2d 486 (Sup.Ct. New York Co. 2006).

FOOTNOTES

8

[Footnote 8]: * There are 2 subchapters three. Subchapter 3 added L.L. 27/1998 § 2, eff. Sept. 5, 1998. Note provisions of L.L. 27/1998 § 1:

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have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

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NYC Administrative Code 3-245

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 2 CITY COUNCIL AND CITY CLERK

SUBCHAPTER 3 DOMESTIC PARTNERSHIPS*8

§ 3-245 Recognition of marriages not recognized by the state of New York, domestic partnerships, and civil unions of other jurisdictions.

a. Members of a marriage that is not recognized by the state of New York, a domestic partnership, or a civil union, lawfully entered into in another jurisdiction, shall be entitled to all the rights and benefits available to domestic partners registered pursuant to this subchapter. A certificate of such domestic partnership, civil union or marriage issued by another jurisdiction shall constitute sufficient proof of entitlement to such rights and benefits.

b. "Members of a marriage that is not recognized by the state of New York" for purposes of this section and of section 3-240(a) of this title does not include a marriage prohibited by section 5 or section 6 of the New York State Domestic Relations Law.

HISTORICAL NOTE

Section added L.L. 24/2002 § 3, eff. Aug. 27, 2002. [See Note]

NOTE

Provisions of L.L. 24/2002:

Section 1. Declaration of legislative intent and findings. Same sex couples have faced many obstacles to full

legal recognition of their relationships. The Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996) defines marriage for purposes of federal law as the union of a man and woman and empowers states to deny recognition to same sex marriages entered into in other jurisdictions. Unlike the majority of states nationwide, New York State has not enacted legislation denying recognition to same sex marriages. However, the Domestic Relations Law, which governs marriage, does not explicitly recognize same sex marriage or authorize issuance of marriage licenses to same sex couples. In practice in New York State, same sex couples have not been able to obtain marriage licenses and, as a result, have not been able to legally marry.

In 1998, the Council passed the New York City Domestic Partnership Law, which codified prior Mayoral Executive Orders establishing rights and entitlements for City residents who register their domestic partnerships with the City Clerk. The Council now intends to extend New York City's commitment to recognizing rights of same sex partners by revising the definition of "domestic partners" in the administrative code to include persons who have lawfully registered domestic partnerships or entered civil unions or marriages not explicitly recognized by New York State in other jurisdictions, ensuring that such couples enjoy all rights and benefits currently available to domestic partners registered under New York City law.

FOOTNOTES

8

[Footnote 8]: * There are 2 subchapters three. Subchapter 3 added L.L. 27/1998 § 2, eff. Sept. 5, 1998. Note provisions of L.L. 27/1998 § 1:

Section 1. Declaration of legislative intent and findings. Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

The Council hereby finds that the provisions of those executive orders (Executive Order No. 48, dated January 7, 1993 and Executive Order No. 49, dated January 7, 1993) should now be enacted into local law and that, consistent with the intent of such orders and subject to any applicable federal or state law, the various provisions applicable to spouses in the charter and administrative code of the City of New York, as specified herein, should now be extended to domestic partners. The Council further notes that concurrent with the enactment of this legislation, agencies will be amending their rules and completing a review of agency policies and practices to effectuate that intent regarding domestic partners.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-301

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-301 Bond of comptroller.

Before entering upon the duties of his or her office the comptroller shall give a bond to the city, conditioned upon the faithful performance of the duties of the comptroller's office, in the penal sum of two hundred thousand dollars, with a surety company or two or more sufficient sureties to justify in double the amount under oath before a judge of the supreme court, on notice to the corporation counsel, whereupon the same shall be immediately filed with the city clerk by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 91-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-302

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-302 Bonds of deputy comptrollers.

Each deputy comptroller shall execute a bond to the city, conditioned for the faithful performance of the duties of his or her office, with one or more sureties, to be approved by the comptroller, in the penal sum of ten thousand dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 94-1.0 added chap 929/1937 § 1

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NYC Administrative Code 3-303

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-303 Bureaus in office of comptroller.

There shall be four bureaus in the office of the comptroller:

1. A bureau of accountancy, the chief officer of which shall be called chief accountant. The bureau shall include a central accounting division, and shall determine the form of the accounts in the department of finance and other agencies, and shall also direct the accounting procedure therein in accordance with the requirements of the charter.

2. A bureau of audit, the chief officer of which shall be called chief auditor of accounts. Such bureau shall audit, revise and settle all accounts in which the city is concerned as debtor or creditor except accounts in relation to excise or nonproperty taxes. Such bureau shall keep an account of each such claim for and against the city, and of the sums allowed upon each, and certify the same to the comptroller, with the reasons for the allowance.

3. A bureau of law and adjustment, the head of which shall be known as chief of the bureau of law and adjustment. Such bureau shall investigate and report to the comptroller for adjustment all awards made in any proceeding, and all disputed claims for or against the city, except proceedings and disputed claims in relation to excise or nonproperty taxes. It shall also investigate complaints alleging violation of the labor law and report thereon to the comptroller.

4. A bureau of municipal investigation and statistics, the chief officer of which shall be called the supervising statistician and examiner. Such bureau shall determine the scope of and the form in which statistical information shall be compiled and furnished under section 3-312 of the code, and shall compile and collate all such facts and statistics and make report to the comptroller concerning the same at least once annually and oftener, if required by the

comptroller, which reports shall be published in the City Record. Such bureau shall be the custodian of and shall conveniently locate for reference all records of the city. Books or records, however, shall not be removed from the custody of any other agency while such book or record is of use to such agency in the performance of official duty. All books, records and reports in the custody of such bureau, and all reports made by such bureau to the comptroller, except reports upon investigations of criminal acts, or reports upon investigations to aid in the defense of actions at law brought against the city, before such acts or actions have been reviewed by the courts, shall be accessible to the public under proper regulations for the protection of the same from loss or defacement, and certified copies thereof shall be furnished to applicants upon the payment of fees, as provided by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93-1.0 added chap 929/1937 § 1

Subds 2, 3 amended LL 42/1965 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Provision of § 93d-1.0 that a claim "settled and adjusted by the comptroller" shall not be paid unless an auditor of accounts certifies that the charges are just and reasonable does not give the comptroller authority to settle and adjust claims without a prior audit of the claims by his office.-White Plains v. City of N.Y., 63 App. Div. 2d 396, 407 N.Y.S. 2d 517 [1978].

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NYC Administrative Code 3-304

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-304 Other duties of bureaus.

All of such bureaus shall perform such other duties as the comptroller shall from time to time direct.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93-2.0 added chap 929/1937 § 1

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NYC Administrative Code 3-305

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-305 Comptroller; custodian of evidences of debt, contracts.

The comptroller shall keep and file in the comptroller's office all evidence of debts, contracts, bonds of indemnity and official bonds except as otherwise provided by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93a-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-306

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-306 Report as to outstanding contracts.

The comptroller may report to the mayor, the board of estimate and the council, from time to time, a statement of all contracts made by the city, or directed or authorized by the city and not performed or completed or upon which any moneys remain unpaid; with the amount of money remaining unpaid on each such contract.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93a-2.0 added chap 929/1937 § 1

Amended LL 98/1952 § 1

Amended chap 100/1963 § 134

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-306.1

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-306.1 Property of city outside the city limits; payment of taxes.

a. The assessing officers of any town, village, city or school district, other than the city of New York, in which is situated real property owned by the city and liable to taxation, shall give written notice to the comptroller of the city of New York, at least two weeks prior to the date fixed for hearing objections to assessments made by them, of the valuation of such property assessed against the city, in the assessment-list then to be reviewed, and of the amount of any increase of valuation proposed to be assessed against the city for or on account of said property above the last assessed valuation thereof, and the time and place at which complaints in relation thereto will be heard.

b. It shall be the duty of the several school tax collectors in each school district, and the officers authorized to collect taxes, including road and highway taxes in each town in this state in which lands are owned by the city of New York, within five days after the receipt by such collector of any and every tax or assessment-roll of his or her town or district, to prepare and deliver to the county treasurer of the county in which such town or district, or the greater part thereof, is situated, a statement showing the assessment against such city appearing on such roll, and the taxes against such city.

c. Each county treasurer receiving such statement shall immediately thereafter notify the comptroller of such city of the amount of taxes so levied and assessed, and within thirty days after the receipt of such notice from such county treasurer, such city may pay the amount of such tax or taxes together with such fees now authorized by law to such county treasurer, who is hereby authorized and directed to receive such amount and to give proper receipts therefor.

d. In case such city shall fail to pay such tax or taxes within such thirty days, it shall be the duty of such county

treasurer to notify the collector of the school district or town or highway district in which such tax or taxes have been assessed, of such failure to pay such tax, and upon receipt of such notice, it shall be the duty of such collector to collect such unpaid tax in the manner now provided by law, together with five percent fees thereon.

e. The several amounts of tax received by any county treasurer in the state under the provisions of this subchapter of and from such city, shall by such county treasurer be placed to the credit of the school district or town or highway district for or on account of which the same was levied or assessed, and on demand paid over to the collector of taxes for such town or school district or highway district or other proper officer, together with any fees for collection authorized by law and received therewith.

f. Nothing in this section contained shall be construed to hinder, prevent or prohibit such city from paying such taxes directly to the collectors or other officers authorized to receive the same, as now provided by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93b-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-307

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-307 Forms for paying money.

The comptroller shall prescribe the manner in which all salaries shall be drawn, and the mode by which all creditors, officers and employees of the city shall be paid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-1.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where order in tax certiorari proceeding directed that "there shall be audited and allowed . . . and paid to" the relator the fund prescribed therein, "together with the interest . . . from the dates of payment," service of a certified copy of that order upon the comptroller, and service of a copy thereof, with notice of entry, together with a letter of transmittal by relator's attorney upon the department of finance, were sufficient to start interest running on the refund.-State (Ottley Estate Corp.) v. Lilly, 302 N.Y. 278, 97 N.E. 2d 903 [1951], reversing 274 App. Div. 619, 86 N.Y.S. 2d 433.

¶ 2. Motion for order directing City Comptroller to pay to relator's attorneys their share of a tax refund, or in the alternative that the entire refund be paid to the Comptroller even though relator had failed to comply with requirements

of the Comptroller's office promulgated in accordance with Tax Law § 296 and Admin. Code § 93c-1.0, was denied, since until relator complied with requirements of the Comptroller for repayment of the fund there could be no enforceable attorney's lien. That the Court order directed payment to relator was of no importance, as in certiorari proceedings only the issue of validity of the assessment is litigated and not the issue of who is entitled to a tax refund.-In re Mack (Miller), 123 (63) N.Y.L.J. (4-3-50) 1163, Col. 7 M.

¶ 3. Under Admin. Code § 93c-1.0, compliance was mandatory with request of the Comptroller's office that a formal assignment of the claim be executed by the party entitled to the tax refund in addition to the consent executed by it that the refund be made to a certain third party (264 App. Div. 552).-Smyth v. Chambers, 124 (62) N.Y.L.J. (9-28-50) 621, Col. 2 T.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-308

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-308 Payment of salaries.

a. Wages and salaries may be paid upon payrolls, upon which each person named thereon shall separately receipt for the amount paid to such person, and the comptroller is hereby authorized and empowered, in his or her discretion, to direct and require that wages and salaries shall not be paid except upon such receipt being individually signed by such person.

b. The comptroller is hereby authorized in his or her discretion, to direct and require, as an alternative to the procedure provided in subdivision a hereof, that wages and salaries within any department or agency of the city or any part or unit thereof may be paid upon payrolls by checks corresponding to such payrolls without any receipt upon such payroll by the person receiving such check.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-2.0 added chap 929/1937 § 1

Amended LL 117/1954 § 1

Subd a amended LL 65/1973 § 1

Subd b amended LL 65/1973 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Failure of certain clerks to justices of the Municipal Court to sign their payrolls under protest, precluded recovery by them of the full amount of their salaries, which had been illegally reduced.-Rushford v. LaGuardia, 280 N.Y. 217 [1939], aff'g 255 App. Div. 597, 8 N.Y.S. 2d 498 [1938] which modified 169 Misc. 581, 7 N.Y.S. 2d 467 [1937].

¶ 2. The failure of employees to sign their paychecks under protest constituted an accord and satisfaction.-DiGiacomo v. City of N.Y., 148 (4) N.Y.L.J. (7-6-62) 5, Col. 6 T.

¶ 3. Petitioners, having failed to indicate upon payrolls of the Fire Department that the amounts paid to them as salaries were received "under protest," might not presently complain (Admin. Code § 93c-2.0; 278 N.Y. 19; 279 N.Y. 649).-Connors v. LaGuardia, 104 (123) N.Y.L.J. (11-27-40) 1732, Col. 3 F.

¶ 4. Commencement of proceeding to compel payment of accrued and future increments of salary by virtue of Civil Service Law §§ 40 and 41, was in itself constructive protest of payrolls thereafter submitted, and no further protest was necessary under Admin. Code § 93c-2.0. However, recovery of increments for the period prior to institution of the proceeding was barred by failure to sign the payrolls under protest.-Powers v. LaGuardia, 181 Misc. 624, 43 N.Y.S. 2d 341 [1943], modified 267 App. Div. 807, 46 N.Y.S. 2d 95 [1944] aff'd 292 N.Y. 695, 56 N.E. 2d 112 [1944].

¶ 5. Justice who accepted his salary payments without noting any protest on the payroll sheets, might not recover for such period the difference between the higher rate of pay to which he was entitled and the amount actually paid to him.-Benvenga v. LaGuardia, 182 Misc. 507, 48 N.Y.S. 2d 117 [1944], aff'd 268 App. Div. 566, 52 N.Y.S. 2d 767 [1944] aff'd 294 N.Y. 526, 63 N.E. 2d 88 [1945].

¶ 6. That petitioner, an employee in the Department of Finance, who allegedly became entitled to benefits under Admin. Code § B40-6.0, had followed instructions of the deputy comptroller and had filed a general letter of protest instead of signing payrolls under protest, was insufficient to give rise to an estoppel or waiver against the City by reason of the deputy comptroller's instructions. The Court was without power to cure the employee's failure to comply with a basic statutory prerequisite by permitting him to sign the payrolls under protest nunc pro tunc.-Burke v. McGoldrick, 110 (36) N.Y.L.J. (8-12-43) 299, Col. 5 F.

¶ 7. By failing to note a formal "protest" when he signed various city payrolls, a cement mason employed by the City was deemed to have waived his right to recover for the period in question the prevailing rate of wages for cement masons.-McKibbin v. City of N.Y., 182 Misc. 671, 51 N.Y.S. 2d 50 [1944], aff'd 269 App. Div. 696, 53 N.Y.S. 2d 474 [1945], 295 N.Y. 592, 64 N.E. 2d 288 [1945].

¶ 8. Failure of petitioner to sign the payroll under protest for a certain two-week period barred him from receiving for that period the difference between the salary paid and the amount which he should have been paid under the applicable statute.-In re Donohoe (O'Dwyer), 116 (127) N.Y.L.J. (12-12-46), 1717, Col. 1 F.

¶ 9. Member of uniformed force of Fire Department who had failed to sign the payroll under protest, **held** barred as a matter of law from recovering difference between salary paid him and that to which he was allegedly entitled for a certain period, notwithstanding his contention that he was coerced into signing the payrolls without protest.-Gendel v. City of N.Y., 297 N.Y. 933, 79 N.E. 2d 820 [1948].

¶ 10. Employee's failure to sign payroll under protest resulted in his forfeiture of any right to collect the difference between the rate actually paid and that authorized by the budget (Admin. Code § 93c-2.0).-Toscano v. McGoldrick, 300 N.Y. 156, 89 N.E. 2d 873 [1949].

¶ 11. Employee of the N.Y.C. Board of Transportation who failed to sign the payroll under protest during any portion of the period involved as required by Admin. Code § 93c-2.0, **held** barred from maintaining a proceeding under C.P.A. Art. 78 for order directing respondents to pay him certain back pay allegedly due him by reason of his retroactive seniority.-In re Strauss (Reid), 197 Misc. 346, 95 N.Y.S. 2d 269 [1950].

¶ 12. In action by employees against City to recover alleged compensation due, defense pleading failure of some of petitioners to note their protest upon the payroll, could not be presently determined in absence of any showing as to method employed in making up the payroll, the payroll periods employed or the time specified in such payroll, so as to enable the Court to determine whether opportunity was afforded to petitioners to note their protests.-McGinnis v. O'Dwyer, 120 (72) N.Y.L.J. (10-13-48) 765, Col. 4 F.

¶ 13. Failure of employees, suing City to recover alleged compensation due, to note their protest upon the payroll for services rendered during the period in question, barred a recovery of the additional compensation claimed.-In re McGinnis (O'Dwyer), 121 (20) N.Y.L.J. (1-28-49) 351, Col. 2 F.

¶ 14. Although petitioner, upon reinstatement some twelve years after she had been retired on account of ordinary disability, should have been paid the same salary she received at the time of her severance from the service, nevertheless from the time of her reinstatement in June 1940 to June 1948 she had accepted a smaller salary and signed the payrolls therefor without protest, and such failure to sign the payrolls under protest pursuant to Admin. Code § 93c-2.0 precluded her from recovering the difference between the salary received and what she should have received.-Hallinan v. O'Dwyer, 123 (69) N.Y.L.J. (4-11-50) 1262, Col. 5 T.

¶ 15. Right to recover a differential in salary will be barred by a failure to note a protest.-Abramson v. City of N.Y., 278 App. Div. 382, 105 N.Y.S. 2d 203 [1951], reversing 92 N.Y.S. 2d 763 [1950].

¶ 16. City employees who during a portion of the period in question accepted and receipted for their pay without noting a protest on the payrolls, were barred from claiming additional salary for the period covered by payrolls not protested.-Anderson v. City of N.Y., 281 App. Div. 539, 120 N.Y.S. 2d 860 [1953], aff'd 306 N.Y. 803, 118 N.E. 2d 819 [1954].

¶ 17. City magistrate's receipt, without protest, of the salary paid to him was a complete bar to his action to recover the difference between the salary differential allegedly due under Military Law § 245 and the amount actually paid him as such differential while in military service, on ground that his agreement to accept the smaller sum had been induced by fraud and duress. No written protest as to the amount paid was noted upon the payroll receipts.-Pisciotta v. City of N.Y., 275 App. Div. 966, 90 N.Y.S. 2d 706 [1949], aff'd without opinion, 300 N.Y. 662, 91 N.E. 2d 323 [1950], reargument denied but remittitur amended, 300 N.Y. 755, 92 N.E. 2d 460 [1950].

¶ 18. The Federal Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. Appendix § 501 et seq. did not supersede or suspend the provisions of Admin. Code § 93c-2.0.-Pisciotta v. City of N.Y., 300 N.Y. 755, 92 N.E. 2d 460 [1950].

¶ 19. Plaintiff, suing under Military Law § 245 to recover the difference between his military compensation and the pay which attached to his position of bus operator during period of his military service, **held** precluded from attacking sufficiency of the payments received by him by his failure to note his protest on the vouchers.-Lupo v. Board of Transp., 200 Misc. 403, 105 N.Y.S. 2d 623 [1951].

¶ 20. The plaintiff was appointed as a junior epidemiologist in 1940 and served in that capacity until 1943. In 1943 the Municipal Civil Service Commission directed that plaintiff be considered a permanent employee of the City with the title of medical consultant continuously from 1938. In affirming a judgment in favor of plaintiff for the difference between the salary of medical consultant and the salary he had received as junior epidemiologist the Court rejected the City's contention that the plaintiff was barred from a recovery because he failed to protest the salary payments made to him.-Crowley v. City of N.Y., 299 N.Y. 657, 87 N.E. 2d 56, aff'g 274 App. Div. 1049, 86 N.Y.S. 2d 461 [1949].

¶ 21. Failure of petitioners to sign the City payroll or warrants under "protest" was a complete bar to recovery by them of sums claimed as military pay differentials under Military Law § 245.-Russo v. Bingham, 126 (26) N.Y.L.J. (8-7-51) 210, Col. 5 M.

¶ 22. City employee who failed to sign the City payrolls for the period in suit under protest, **held** barred from recovering unpaid increments of salary and cost of living bonus for the period during which time he was on military leave and serving in the armed forces.-Brennan v. City of N.Y., 201 Misc. 157, 113 N.Y.S. 2d 8 (1951), aff'd 201 Misc. 162, 110 N.Y. Supp. 2d 196 [1952].

¶ 23. The City employee who during his military service had received from the City the difference between his salary and his military pay pursuant to Military Law § 245, subd. 1, without benefit of the annual increments provided by Admin. Code § B40-6.0 or the cost-of-living bonuses, had failed to note any written protest on the City's payrolls as required by Admin. Code § 93c-2.0, **held** not to preclude recovery by him of such increments and bonuses.-Stanton v. City of N.Y., 129 (123) N.Y.L.J. (6-25-53) 2121, Col. 6 T.

¶ 24. Failure of petitioner to sign "under protest" the payrolls as well as checks issued thereon for the period in question, prevented his recovery for any further claim for wages and salary during the period of his active military duty. Neither the State Soldiers' and Sailors' Civil Relief Act, nor its Federal counterpart, relieved petitioner of necessity of signing under protest as prescribed by Admin. Code § 93c-2.0.-Leidman v. Bingham, 306 N.Y. 663 [1953], reversing 281 App. Div. 822, 119 N.Y.S. 2d 537 [1953].

¶ 25. Admin. Code § 93c-2.0 abrogates, as respects salary claims of persons whose salaries are payable by the City of New York, the common-law rule that a public employee whose salary is fixed by law does not waive his claim to the full salary of his position by serving in the position and accepting a lesser salary.-Nelson v. Board of Higher Education of City of N.Y., 263 App. Div. 144, 31 N.Y.S. 2d 825 [1941], aff'd without opinion, 288 N.Y. 649, 43 N.E. 2d 744 [1942].

¶ 26. Admin. Code § 93c-2.0 was therefore inapplicable to the associate librarian at the College of the City of New York, as the statute, being in derogation of the common law, was to be strictly construed, and as so construed it could be interpreted to relate only to a person who would have a claim against the City for salary due from the City.-Id.

¶ 27. Court stenographers compensated directly or indirectly by the City or County were entitled to additional compensation under chapter 492 of the laws of 1961. However, this section was applicable and stenographers who did not sign their paychecks "under protest" were not entitled to any arrears. The section did not limit or condition rights granted by the State and was not violative of section 12 of Art. IX of the Constitution.-Matter of Stitch, 18 App. Div. 2d 454, 240 N.Y.S. 2d 107 [1963], aff'd 14 N.Y. 2d 530, 197 N.E. 2d 781, 248 N.Y.S. 2d 393 [1964].

¶ 28. Petitioners who were employed by the custodian under the "indirect system" of the Board of Education without regard to competitive civil service lists, and who were subject to summary dismissal by him, and the amount of whose compensation was fixed by the custodian, and who were not members of any retirement system, were employees of the custodian rather than of the Board of Education, and hence might not recover the refund in question, particularly since they had not signed the payrolls of either the city or the janitor custodian (Admin. Code § 93c-2.0; 280 N.Y. 227), and no budgetary provision had been made for payment of the refunds (N.Y. City Charter §§ 129, 131).-In re Brady (Tead), 102 (132) N.Y.L.J. (12-8-39) 2033, Col. 1 M.

¶ 29. Custodian-engineers employed by the Board of Education under the so-called "modified indirect" system of custodian operation, were entitled to recover the salary fixed by the statute and lost no rights by failing to enter a protest on the payrolls prior to institution of the present action for such statutory salary.-Tryne v. Moss, 124 (99) N.Y.L.J. (11-22-50) 1285, Col. 5 T.

¶ 30. It is not too clear that Admin. Code § 93c-2.0 applies to an employee of the Board of Transportation.-Leidman v. Bingham, 127 (58) N.Y.L.J. (3-25-52) 1183, Col. 6 F.

¶ 31. Admin. Code § 93c-2.0 and Labor Law § 220 may be read together in harmony, and no violation of constitutional provisions is involved even though the waiver of provisions of § 93c-2.0 for failure to sign payroll under protest be applied to workmen, laborers and mechanics.-McKibben v. City of N.Y., 182 Misc. 671, 51 N.Y.S. 2d 50 [1944], aff'd 269 App. Div. 696, 53 N.Y.S. 2d 474 and 295 N.Y. 592.

¶ 32. Although municipal employees are within purview of Constitution, Art. I, 17, relating to employment of workmen in the performance of public work, that provision does not impair the efficacy of Admin. Code § 93c-2.0.-McKibbin v. City of N.Y., 269 App. Div. 696, 53 N.Y.S. 2d 474 [1945], 295 N.Y. 592, 64 N.E. 2d 288 [1945].

¶ 33. Omission of workmen employed by City to protest in writing in respect of sums due for periods of employment for which payments tendered in full had been received, did not affect the equity of their claims based on payments made below the prevailing rate in accordance with requirements of Labor Law § 220. To require them to assert the omission by way of defense would be tantamount to compelling the use of § 93c-2.0 as a sword rather than a shield. Also, Labor Law § 220, subd. 8a, as added in 1947, dispenses with payroll protests as to claims under § 220, and such amendment is retroactive.-Evandan Realty Corp. v. Patterson, 192 Misc. 850, 78 N.Y.S. 2d 114 [1948], aff'd 276 App. Div. 751, 92 N.Y.S. 2d 504 [1949].

¶ 34. Employee who sought to recover a balance of his salary for services rendered in an amount as fixed by law, was not required to prosecute his claim against the City by a proceeding under C.P.A. Art. 78, but might bring an action against the City.-Rasmussen v. City of New York, 88 N.Y.S. 2d 103 [1948].

¶ 35. The City Treasurer may not require an employee to execute a general release in favor of the City as a condition to delivery of his pay check.-Houlihan v. Sarafite, 135 (16) N.Y.L.J. (1-27-56) 7, Col. 1 F.

¶ 36. Recovery of additional compensation provided by L. 1961, ch. 492 and L. 1962, ch. 640 to "each state officer or employee" of judiciary is limited to those employed by the Supreme Court and to payroll periods for which those entitled to recover had filed proper protests. Employees of the Surrogate's Courts, former County Courts and Court of General Sessions of the County of New York could not be included as these are local courts. Rein v. Wagner, 25 App. Div. 2d 356, 269 N.Y.S. 2d 578 [1966], aff'd 18 N.Y. 2d 989, 278 N.Y.S. 2d 223 [1966].

¶ 37. Employees of the Board of Education were not barred from recovering a salary equal to that paid to their fellow employees when they signed their checks under protest as this section is inapplicable to employees of the Board of Education of the City of N.Y.-Grant v. Bd. of Education of City of New York, 162 (57) N.Y.L.J. (9-19-69) 15, Col. 8 M.

¶ 38. Where Deputy Assistant Corporation Counsel was appointed City Register but during the eight months that he held position received the lower salary of a Deputy Assistant Corporation Counsel he was not precluded from being awarded the difference in salary by his failure to endorse his paychecks "under protest" as required by this section since he was seeking to recover the salary for an entirely different position from that for which the checks were issued.-Handel v. City of N.Y., 64 Misc. 2d 182, 314 N.Y.S. 2d 500 [1970], aff'd 66 Misc. 2d 1100, 324 N.Y.S. 2d 418 [1971].

¶ 39. Where a number of payroll checks of plaintiff, a city employee, did not reflect increase due him because defendant erroneously had treated plaintiff who was then on terminal leave as having already been retired plaintiff was entitled to recover the amount due although the checks were not protested where he had a right to assume that failure of these pay checks to reflect the increases was due to the mechanics and bookkeeping involved and when he protested the moment he heard he would not be included in the salary class to which he belonged.-Brooks v. City of N.Y., 68 Misc. 2d 866, 328 N.Y.S. 2d 356 [1972].

¶ 40. Where plaintiffs who held civil service title of Senior Dentist failed to note "under protest" on salary checks recovery of their claims covered by the payroll period was barred and noting of protest on some of the checks was not sufficient to allow recovery for other checks not signed under protest.-Dubin v. City of N.Y., 176 (6) N.Y.L.J. (7-9-75)

12, Col. 8 T.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-309

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-309 Audit and payment of county charges and expenses.

All county charges and expenses and salaries of county officers in the counties of the city and each of them shall be audited by the comptroller and paid out of the fund or appropriation applicable thereto, and the audit of the comptroller in respect to such charges and expenses shall extend to the reasonableness thereof and shall, in all respects, be as full and complete as the audit of city charges and expenses.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-4.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-310

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-310 Comptroller; monthly reports from agencies.

The head of each agency shall furnish monthly to the comptroller a statement of the unencumbered and unexpended balances, contract or other liabilities, of appropriations and other authorizations for his or her agency, in such form as prescribed by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-5.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-311

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-311 Accounts of city collector and his or her deputies to be examined.

Whenever the city collector or any deputy collector shall cease to hold office, and within one year thereafter, it shall be the duty of the comptroller to examine the accounts of such city collector or deputy, and if found correct, to cause a certificate to that effect to be filed with the bond of such officer. Such certificate so filed shall be a full discharge and satisfaction of the conditions of such bond and the lien or liens thereby created. If at any time during the city collector's continuance in office the city collector or a deputy collector shall execute and file with the comptroller a new bond in the same form and penalty, and for the same period, and approved as provided in section 11-115 of the code, it shall be the duty of the comptroller forthwith to cause a certificate to that effect to be filed with the bond or bonds previously filed by such officer. Such certificate so filed shall be the full discharge and satisfaction of the condition of such prior bond or bonds and of the lien or liens thereby created. The comptroller may settle and adjust all claims in favor of or against the city, the surety or the principal in such bond, arising out of the execution of such bonds and in his or her discretion may release from the lien created by such bonds any piece or parcel of land affected thereby.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-6.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-312

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-312 Statistical records to be compiled by city officials.

Every official or employee of the city, or of the counties included within the city, and every board or commission charged by law or by due authority with the custody of property of the city or the counties thereof, or with the direction of work done, or services performed, by or on behalf of the city or the counties therein, or the disbursement or receipt of moneys from the city or counties therein, and every person, official, board, commission or corporation receiving or disbursing moneys from the city or counties therein for public purposes, at such times, under such conditions, and in the manner directed to do so by the comptroller, shall furnish reports of facts relating to any or all of the property of the city, or the counties therein, or of such work or such services, or of the receipt or disbursement of moneys from the city or counties therein. Such officials and employees shall compile and maintain in their respective offices such system of statistical record as the comptroller may require appertaining to all matters referred to in this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-7.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-313

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-313 Monthly report of unexpended balances of appropriations.

The comptroller shall furnish to each head of an agency, monthly, a statement of the unexpended balances of the appropriation for his or her agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93f-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 147 (formerly § 93g-1.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-314

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-314 Records; copies when in evidence.

A copy of any paper, record, book, document or map, filed in the office of the comptroller, or the minutes, records or proceedings, or any portion thereof, of any board or commission of which the comptroller is or may become a member, when certified by the comptroller, a deputy comptroller or any assistant deputy comptroller, to be a correct copy of the original, shall be admissible in evidence in any trial, investigation, hearing or proceeding in any court, or before any commissioner, board or tribunal, with the same force and effect as the original. Whenever a subpoena is served upon the comptroller or any member of a board or commission of which the comptroller is a member, or upon any officer or employee of the office of the comptroller, or upon any officer or employee of such board or commission, requiring the production upon any trial or hearing of an original paper, document, book, map, record, minutes or proceedings, the comptroller in his or her discretion, may furnish a copy certified as herein provided, unless such subpoena be accompanied by an order of the court or other tribunal before which the trial or hearing is had requiring the production of such original.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B5-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-316

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-316 Three following sections; how construed.

The three following sections shall not be construed to affect the powers of any commission acting under any laws of this state.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C5-1.0 added chap 522/1980 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-317

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-317 Awards for grading of streets; definition of terms.

When used in this section and the two following sections, unless otherwise expressly stated:

1. The term "owner" shall mean only such parties or persons whose property abuts the street, the grade of which has been established or changed.

2. The term "lessee" shall mean only such parties or persons whose lease does not expire in less than three years from the date of completion and acceptance of the grading by the appropriate city agency.

3. The term "comptroller" shall mean the comptroller of the city of New York.

4. The term "special grade" shall mean only the following case: When a street has been graded to a grade which in the opinion of the board of estimate, has been occasioned by an improvement other than the normal and usual street improvement, the board of estimate, in its discretion, may issue a certificate to that effect, within sixty days after the grading shall have been completed and accepted by the appropriate city agency in charge of the work. Such certificate shall be transmitted to the comptroller, together with a plan and profile of the portion of the street affected by such special grade. Upon such plan and profile there shall be shown the level which, in the opinion of the board of estimate, constitutes a normal grade for the street, and the special grade to which the street has been graded. The comptroller, upon receipt of such certificate together with the accompanying plan and profile, shall be authorized and empowered to determine the damage to each owner and lessee thereof.

5. The term "street" includes street, avenue, road, alley, land, highway, boulevard, concourse, parkway,

driveway, culvert, sidewalk, cross-walk, boardwalk and viaduct, and every class of public road, square and place, except marginal streets.

6. The term "real property" includes all lands and improvements, lands under water, water front property, the water of any lake, pond or stream, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C5-2.0 added chap 522/1980 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-318

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-318 Award of damages to land and improvements by reason of grading of streets; measure of damages; presentation of claims.

a. There shall be no liability for originally establishing a grade or for changing an established grade, except as provided in this section:

1. When an owner has built upon or otherwise improved his or her property prior to the original establishment of a grade by lawful authority, such owner and the lessee thereof shall be entitled to damages only to such buildings and improvements for the grading of the street in accordance with such established grade.

2. When an owner has built upon or otherwise improved his or her property in conformity with the grade of any street or avenue established by lawful authority nd such grade is changed after such buildings or improvements have been erected, such owner and the lessee thereof shall be entitled to damages only to such buildings and improvements for the change of grade.

3. When a street has been graded to a special grade as set forth in this section, the comptroller shall be empowered to determine the damages sustained by each owner or lessee of the land fronting the portion of the street affected by the special grade. The damages shall be for the departure of the grade of the street from the normal grade as shown on the plan and profile submitted by the board of estimate to the comptroller.

b. No award shall be made unless a claim in writing shall have been filed with the comptroller within ninety days after the grading shall have been completed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C5-3.0 added chap 522/1980 § 2

CASE NOTES

¶ 1. To be entitled to damages under this section, a party must establish, inter alia, that there were damages to buildings and improvements which resulted from a change in grade.-Coastal Oil New York v. City of New York, 640 N.Y.S. 2d 208 (App. Div. 2nd Dept. 1996).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-319

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-319 Power of the comptroller to issue subpoenas and administer oaths, to compel witnesses to testify.

For the purpose of settling or adjusting claims for damages under section 3-318, the comptroller may issue subpoenas and administer oaths to witnesses. The comptroller may issue a subpoena requiring such witness to appear at such time and place as the comptroller may designate in the subpoena.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C5-4.0 added chap 522/1980 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-320

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 3 COMPTROLLER

§ 3-320 Action to recover damages.

a. No action shall be commenced to recover damages under section 3-318 until at least thirty days have elapsed since the demands, claim or claims, upon which such action is founded, were presented to the comptroller for adjustment and the comptroller has neglected or refused to make an adjustment or payment thereof. An allegation to that effect shall be made in a complaint or other pleadings in such an action. An action under section 3-318 shall be commenced within one year and ninety days after the grading shall have been completed.

b. Whenever any such award or compensation shall be paid to any person not entitled thereto, it shall be lawful for the person to whom such award or compensation should have been paid to sue for and recover such award or compensation with interest and costs as so much money had and received to his or her use by the person or persons to whom the same shall have been so paid. In the following cases it shall be lawful for the city to pay an award to the commissioner of finance, to be secured, disposed of and invested as the supreme court shall direct when

1. the owners, parties or persons entitled thereto are

(a) under a legal disability, or

(b) absent from the city or

2. the owners, parties or persons entitled thereto

(a) cannot be found after diligent search, or

(b) are involved in a dispute as to their title to receive such awards.

Such payment shall be as valid and effectual in all respects as if made to the owner or other person entitled thereto.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C5-5.0 added chap 522/1980 § 2

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-401

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-401 Awards to spouses of killed firefighters, police officers and transit police officers.

The mayor is authorized and empowered to make an award to the spouse or domestic partner of a member of the uniformed force of the police department, fire department or uniformed transit police force, maintained by the New York city transit authority, killed while engaged in the discharge of duty. Such award shall equal the annual salary of such member at the time of death, but in no case less than the full salary payable to a first grade police officer, firefighter or transit police officer at the date of death of such employee.

In case there shall be no spouse or domestic partner surviving such member, the award shall be made to the minor child or children surviving such member. In case there shall be no spouse or domestic partner nor child nor children so surviving the award may be made to the dependent mother, father, or other dependents of such member. Such award shall be made in one payment as soon after the death of such member as may be possible and shall be in addition to any pension, award or other allowances authorized by law.

Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member otherwise covered by this section shall be deemed to have been killed while engaged in the discharge of duty upon which his or her membership is based, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this paragraph while serving on such active military duty.

HISTORICAL NOTE

Section amended L.L. 27/1998 § 9, eff. Sept. 5, 1998.

Section added chap 907/1985 § 1

Closing par added chap 105/2005 § 26, eff. June 14, 2005.

DERIVATION

Formerly § 67-1.0 added chap 929/1937 § 1

Amended LL 57/1955

Renumbered chap 100/1963 § 26 (formerly § 70-2.0)

Amended LL 60/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-402

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-402 Awards to surviving spouses and domestic partners of members of the uniformed correctional and sanitation forces.

The mayor is hereby authorized and empowered to make an award to the surviving spouse or domestic partner of a member of the uniformed correctional force or the uniformed sanitation force, employed by the department of correction in any prison or jail under control of the city, or any county within the city, or employed by the department of sanitation, who has been or hereafter shall be killed while engaged in the discharge of duty. Such award shall be fixed in the discretion of the mayor. In case there be no surviving spouse or domestic partner surviving the decedent, such award shall be made to the minor child or children surviving the decedent. Such award shall be paid in one payment as soon after the death of such member of the uniformed correctional or sanitation force as may be possible and shall be in addition to any pension, award or other allowance authorized by law.

Notwithstanding any other provision of law to the contrary, and solely for the purposes of this section, a member otherwise covered by this section shall be deemed to have been killed while engaged in the discharge of duty upon which his or her membership is based, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this paragraph while serving on such active military duty.

HISTORICAL NOTE

Section amended L.L. 27/1998 § 9, eff. Sept. 5, 1998.

Section amended L.L. 2/1997 § 1, eff. Jan. 7, 1997.

Section added chap 907/1985 § 1

Closing par added chap 105/2005 § 27, eff. June 14, 2005.

DERIVATION

Formerly § 67-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 27

(formerly § 70-3.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-403

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-403 Awards to survivors of certain civilian members of the police department.

a. Awards to spouses and domestic partners of school crossing guards. The mayor is hereby authorized and empowered to make an award to the spouse or domestic partner of a school crossing guard, appointed as such by the police commissioner pursuant to the provisions of section 14-118 of this code, who has been or hereafter shall be killed while engaged in the discharge of duty. Such award shall equal the annual compensation earnable by a school crossing guard as provided for in the budget for the fiscal year in which death occurs. In case there is no spouse or domestic partner surviving the decedent, such award shall be made to the minor child or children surviving such decedent. Such award shall be paid in one payment as soon after the death of such school crossing guard as may be possible and shall be in addition to any pension, award, or other allowance authorized by law.

Notwithstanding any other provision of law to the contrary, and solely for the purposes of this subdivision, a member otherwise covered by this subdivision shall be deemed to have been killed while engaged in the discharge of duty upon which his or her membership is based, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on such active duty on or after the effective date of the chapter of the laws of two thousand five which added this paragraph while serving on such active military duty.

b. Awards to spouses and domestic partners of prevailing rate employees. The mayor is hereby authorized and empowered to make an award to the spouse or domestic partner of a prevailing rate employee, appointed as such by the police commissioner, who has been killed while engaged in the discharge of duty on or after October first, nineteen hundred and ninety-eight and before August first, nineteen hundred and ninety-nine. Such award shall equal the annual

compensation earnable by a person holding such prevailing rate title as provided for in the budget for the fiscal year in which death occurs. In case there is no spouse or domestic partner surviving the decedent, such award shall be made to the minor child or children surviving such decedent. Such award shall be paid in one payment as soon after the death of such prevailing rate employee as may be possible and shall be in addition to any pension, award, or other allowance authorized by law.

HISTORICAL NOTE

Section amended L.L. 46/1999 § 1, eff. Sept. 27, 1999.

Section amended L.L. 27/1998 § 9, eff. Sept. 5, 1998.

Section added chap 907/1985 § 1

Subd. a closing par added chap 105/2005 § 28, eff. June 14, 2005.

DERIVATION

Formerly § 67-3.0 added LL 23/1958 § 1

(special provision LL 23/1958 § 2)

Renumbered chap 100/1963 § 28

(formerly § 70-3.1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-404

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-404 Awards to spouses and domestic partners of officers or employees of the city.

The mayor is hereby empowered to make an award to the spouse or domestic partner of any officer or employee of the city who was heretofore or shall hereafter be killed while engaged in the discharge of duty and who, at the time of death, was not or shall not have been a member of a retirement system or pension fund maintained by the city or supported in whole or in part by city funds. Such award shall equal the annual compensation earnable by such officer or employee as provided by law or in the budget for the fiscal year in which death occurs.

In case there shall be no spouse or domestic partner surviving the decedent, the award shall be made to the minor child or children of such decedent. In case there shall be no spouse, domestic partner, or child or children so surviving, the award shall be made to the dependent mother, father, or other dependents of such decedent. Such award shall be paid in one payment as soon after the death of such officer or employee as may be possible.

HISTORICAL NOTE

Section amended L.L. 27/1998 § 9, eff. Sept. 5, 1998.

Section added chap 907/1985 § 1

DERIVATION

Formerly § 67-3.1 added LL 50/1963 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-405

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-405 Awards for death or injuries received by persons other than peace officers while attempting to prevent the commission of a crime, preserve the peace or prevent public disturbances.

Direct action on the part of private citizens in preventing crimes against the person or property of others, preserving the peace or preventing public disturbances, benefits the entire public. The mayor is hereby authorized and empowered to make an award for the death of or injury to any person or persons, other than police officers or peace officers, which has been or shall hereafter be caused in attempting to prevent the commission of a crime against the person or property of another, preserve the peace or prevent public disturbances. Such award shall be fixed in the discretion of the mayor as a matter of grace and not as a matter of right, and shall, in the case of personal injuries, be based upon the medical expenses and loss of earnings incurred by such person injured while attempting to prevent the commission of a crime, preserve the peace or prevent public disturbances. In the case of the death of such person, such award shall be made to the surviving spouse or domestic partner, child or other dependent of such person; and the award may be in a single payment, or may be made in periodic payments under provisions similar to those set forth in section 13-244 of this code, which periodic payments may be in an amount not to exceed the amounts payable pursuant to such section as a pension to the surviving spouse or domestic partner, child or other dependent, as the case may be, of a deceased first-grade police officer. Petitions for an award hereunder must be presented to the mayor within six months after the happening of the occurrence which resulted in such injury or death. Before the mayor shall make such payment, he or she shall require the claimant to execute and deliver an assignment to the city, in such form as shall be approved by the corporation counsel, of an amount equal to the payments made or to be made by the city, payable out of the proceeds of any recovery, whether by judgment, settlement or otherwise, against the city or any person or any public or private corporation alleged to have been responsible for said death or injuries.

HISTORICAL NOTE

Section amended L.L. 27/1998 § 9, eff. Sept. 5, 1998.

Section added chap 907/1985 § 1

DERIVATION

Formerly § 67-3.2 added LL 103/1965 § 1

Amended LL 2/1966 § 1

Amended LL 7/1975 § 1

Amended chap 843/1980 § 230

CASE NOTES FROM FORMER SECTION

¶ 1. Determination of Board of Estimate that husband, a supermarket employee who was shot and killed in the course of a robbery while he and a fellow employee were returning from a bank with money belonging to the employer when he refused to turn over money in his possession, was a victim rather than a "good samaritan" and thus not entitled to an award under this section, was not an abuse of discretion.-Bienstock v. Beame, 93 Misc. 2d 527 [1978].

¶ 2. Claim of petitioner was time barred when petition was not presented to the Board of Estimate within six months after the happening of the occurrence.-Matter of Suchodoldky (Goldin), 182 (68) N.Y.L.J. (10-5-79) 4, Col. 3 B.

¶ 3. Because Good Samaritan Law does not provide for award to persons whose job it is to protect life and property and who are injured in the performance of their duties, widow of Federal Protective Service Officer at the United States Mission to the United Nations was not entitled to benefits when her husband suffered a fatal heart attack while helping a N.Y.C. police officer subdue an individual who was attempting to unlawfully enter the Mission.-Id.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-406

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-406 Leases for public purposes.

All applications to lease any real property for the purposes of the city or any of the counties therein, including the premises required in accordance with law for armories and drill rooms and places of deposit for the safekeeping of arms, uniforms, equipment, accoutrements and camp equipage of the national guard, must be presented to and passed upon by the board of estimate. The board, upon the report of the commissioner of general services, and upon such further inquiry as such board, in its discretion, may make, may authorize a lease of such premises as shall be specified in its resolution, at the rent therein set forth for a period not exceeding twenty-one years. Such lease may contain a provision for renewals thereof at the option of the city. Such lease, however, shall not be authorized except at a fair and reasonable rent, and unless the board is satisfied, and shall so express, that it would be for the interest of the city that a lease of the premises for the purposes specified should be made. If the city, prior to the making of the lease, shall have entered upon the possession of the property, the lease may be made to commence as of the date when the occupation commenced.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 67(1)-1.0 added chap 929/1937 § 1

Amended LL 12/1940 § 1

Amended LL 51/1957 § 1

Amended chap 309/1959 § 4

Renumbered chap 100/1963 § 227

(formerly § 384-3.0)

Amended chap 688/1963 § 1

CASE NOTES

¶ 1. At issue is the fair market value for use and occupancy of land and a building on Grand Concourse, Bronx. Leased by the City University of New York the premises was being used by the City Board of Education following termination of a 10-year lease and during a holdover period. Option to renew contained in the lease provides best evidence of fair market value. Board of Estimate resolution authorizing the Board of Education leasing without statutorily finding the proposed rent "fair and reasonable," pursuant to § 3-406 was defective.-2641 Concourse Co. v. CUNY, 137 Misc. 2d 802 [1987].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-407

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 4 BOARD OF ESTIMATE

§ 3-407 Transfer of streets.

The board of estimate may transfer the jurisdiction and control of any street from one agency to another agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 67(2)-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 22

(formerly § 69-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-501

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-501 Receipts to be recorded and accounted for.

Each borough president shall enter the names of all persons from whom he or she may receive money for the city, on trust account or otherwise, with the amounts received, on what account, and when paid, in books to be provided for that purpose and kept in the borough president's office, open at all convenient times to public inspection. The borough president shall render a verified account thereof, item by item, to the comptroller, on Thursday of each week, and shall thereupon pay over the amount so received to the director of finance, from whom he or she shall receive duplicate vouchers therefor, one of which the borough president shall file in the office of the comptroller on the same day.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 44

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-502

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-502 Permits.

In all cases where provision is made by law that the consent of a borough president shall be obtained to authorize any act to be done, he or she may grant a permit therefor, subject to the restrictions of all laws in relation thereto. Upon granting any such permit, the borough president may exact such cash deposit or bond, or both, as he or she may deem necessary to safeguard the interests of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-503

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-503 President of borough to furnish information.

The president of any borough shall furnish the council and the board of estimate with such surveys, diagrams or other information as may enable them to discharge their duties relative to street and park improvements.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82-3.0 added chap 929/1937 § 1

Amended chap 100/1963 § 45

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-504

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-504 Borough president; right of entry.

The president of any borough may enter in the day time upon any lands, tenements, hereditaments and waters which he or she shall deem necessary to be surveyed, used or converted, for the purpose of laying out, surveying and monumenting parks, streets, bridges, tunnels and approaches to bridges and tunnels or marking any boundary line or lines.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82-4.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-505

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-505 Street numbers.

a. Requirements. The owner, agent, lessee or other person in charge of any building in the city upon a street to which street numbers of buildings have been assigned by the president of the borough in which such building is situated, shall cause the proper street number or numbers of such buildings to be displayed in such manner that the street number or numbers may at all times be plainly legible from the sidewalk in front of such building. The term "front" as used in this section shall be construed to mean that side of the building which faces the street on which the number or numbers of such building, or premises on which such building is situated, have been allotted. The number or numbers shall be displayed on such side of such building or premises. Each borough president shall have the power to establish and enforce rules and regulations relating to the size, form, visibility and location of street numbers in accordance with the requirements of this section.

b. Violations. If the owner, lessee, agent or other person in charge of any building in the city upon a street to which street numbers of buildings have been assigned by the president of the borough in which such building is situated shall fail to display the proper street number of such building, as provided in the foregoing subdivision, the president of the borough in which such building is situated shall forthwith serve such person or persons with a copy of this section, and if after thirty days' notice the owner, lessee, agent or other person in charge of such building shall fail or neglect to comply with the provisions thereof, he or she shall be subject to a penalty of twenty-five dollars, which shall be sued for and collected in the name of the city. Any person who shall continue any such offense shall pay an additional sum of five dollars for each day such offense shall continue.

HISTORICAL NOTE

Subd. b amended L.L. 18/1997 § 1, eff. Apr. 1, 1997

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82(3)-1.0 added chap 929/1937 § 1

Amended LL 140/1940 § 1

Number and section heading amended LL 50/1942 § 5

Renumbered chap 100/1963 § 86

(formerly § 82d7-7.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-506

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-506 Borough presidents to adjust numbering.

In all cases where a street shall have been numbered or renumbered, the borough president having jurisdiction shall thereafter adjust and renumber such street as the same may be required from time to time. In numbering and renumbering houses, the borough president shall leave sufficient numbers on each block, so that, under any circumstances, there would be but one block where a change would be required, in case of renumbering at any subsequent time.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82(3)-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 87

(formerly § 82d7-8.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Manhattan borough president had authority under this section to change the address of "88 Pine Street" to "Wall Street Plaza" even though the changed designation did not involve a street number since his authority extends to

changes in building designation whether they be by street number or otherwise.-Matter of Irving Trust Co. v. President of Borough of Manhattan of City of N.Y., 47 N.Y. 2d 818, 392 N.E. 2d 559, 418 N.Y.S. 2d 572 [1979].

CASE NOTES

¶ 1. The borough president has the authority to make determinations concerning designations of street addresses. The statutes governing the numbering and renumbering of street addresses do not require that internal street numbering for each block must be in sequential or continuous ordering. Thus, the court declined to set aside the assignment of an out-of-sequence address to a building. Lincoln Plaza Tenants Corp. v. Dinkins, 171 A.D.2d 577, 567 N.Y.S.2d 447 (1st Dept. 1991).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-507

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-507 Numbers in certain sections in the borough of Manhattan.

Whenever any street north of Ninth street, inclusive, in the borough of Manhattan, shall be directed to be numbered or renumbered, the president of such borough shall cause the numbers to commence at Fifth avenue, numbering east and west, beginning with number one, on the west side of Fifth avenue; number one hundred, on the west side of Sixth avenue; number two hundred on the west side of Seventh avenue, and so on, east and west of Fifth avenue, through the whole series of streets north of Ninth street, and including Ninth street. Such streets shall hereafter be called and known as East Ninth and West Ninth street, and so on, the dividing line to be Fifth avenue.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82(3)-3.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 88

(formerly § 82d7-9.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-508

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-508 Excavations or embankments near landmarks.

It shall be unlawful for any person to make any excavation or embankment, or to lay or move any pavement or flagging, within three feet of any monument or bolt, which has been set by proper authority, or designated on any official map as a landmark to denote street lines within the city, unless a permit therefor has been obtained from the president of the borough in which such monument or bolt is situated. Applications for such permits shall be in writing, and shall set forth the nature of the work proposed, and the location of all monuments or other landmarks affected thereby. The borough president shall thereupon cause one of the city surveyors or an engineer in the borough president's office to take such measurements and field notes as may be necessary to restore such monuments or bolts to their correct position after the completion of the contemplated work, and, when such measurements and field notes have been taken, the required permit shall be issued.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82(3)-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 103

(formerly § 82d7-23.0 title and subd a)

CASE NOTES FROM FORMER SECTION

¶ 1. Under the provisions of this section, the City is vested with continuing and exclusive control of sidewalks within a radius of three feet of landmarks. Hence, the City was a special user and had a duty to repair a hole or break in cement adjacent to a monument and thus, the abutting owners did not have any duty to repair such hole or break. Consequently, only the City and not the abutting owners was liable for damages where the plaintiff sustained injuries when she fell over a City surveyor's monument in the driveway portion of a sidewalk.-Weiser v. City of N.Y., 5 App. Div. 2d 702, 169 N.Y.S. 2d 609 [1957], aff'd 7 N.Y. 2d 811, 196 N.Y.S. 2d 693, 164 N.E. 2d 714 [1959].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-509

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-509 Removal or covering up of landmarks.

It shall be unlawful for any person to remove or cover up a monument or bolt for designating any street, without giving three days' notice in writing of his or her intention so to do to the commissioner of transportation and to the president of the borough in which the monument or bolt is situated. Upon receiving such a notice, the borough president shall cause one of the city surveyors, or an engineer in the borough president's office to take the necessary measures to raise or lower such monument or bolt to the proper grade of the street, and, when necessary, to cause such alteration to be noted on records to be kept in the borough president's office for that purpose. Whenever a borough president shall ascertain that any monument or bolt has been removed, without such notice, he or she shall forthwith cause the same to be placed in its proper position, and shall note the same on the records in the manner hereinbefore stated. The expenses attending such replacement shall be paid by the comptroller, on the certificate of the borough president causing the work to be done.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82(3)-5.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 104

(formerly § 82d7-24.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-510

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 5 BOROUGH PRESIDENTS

§ 3-510 Violations.

Any person who shall make any excavation or embankment, or lay or take up any pavement or flagging within three feet of any monument, bolt or other landmark, without having first obtained a permit to perform such work, or who shall in any way remove or deface any monument, bolt or other landmark, shall be punished for each offense by a fine of fifty dollars, imprisonment for not more than thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 82(3)-6.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 105

(formerly § 82d7-25.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-601

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 6 ADVISORY COMMISSION FOR THE REVIEW OF COMPENSATION LEVELS OF ELECTED OFFICIALS

§ 3-601 Quadrennial advisory commission for the review of compensation levels of elected officials.

a. Between the first and fifteenth day of January, nineteen hundred eighty-seven, and during the same period every fourth year thereafter, the mayor shall appoint three persons for the review of compensation levels of elected officials. The members of the commission shall be private citizens generally recognized for their knowledge and experience in management and compensation matters. The mayor shall appoint one of the members to be chairperson of the commission.

b. The commission shall study the compensation levels for the mayor, the public advocate, the comptroller, the borough presidents, the council members and the district attorneys of the five counties within the city and shall recommend changes in those compensation levels, if warranted. In making its recommendations the commission shall take into consideration the duties and responsibilities of each position, the current salary of the position and the length of time since the last change, any change in the cost of living, compression of salary levels for other officers and employees of the city, and salaries and salary trends for positions with analogous duties and responsibilities both within government and in the private sector.

c. The commission shall submit a report to the mayor on or before the March fifteenth following its appointment containing its recommendations for changes in compensation levels for any elected position set forth in subdivision b or its recommendation that no changes are warranted.

d. The mayor shall submit the report of the commission along with his or her recommendation for approval, disapproval or modification to the council not later than thirty days after receipt of the report of the commission.

e. The council in its discretion shall consider the recommendations of the commission and of the mayor for changes in the compensation levels of any such elected position, if any, and approve a local law changing the compensation of the mayor, the public advocate, the comptroller, the borough presidents, the council members, and the district attorneys of the five counties within the city.

f. The members of the commission shall serve without compensation except that each member shall be allowed his or her actual and necessary expenses, to be audited in the same manner as other city charges.

g. The commission may hire or contract for necessary staff and technical assistance and may require city agencies to provide such assistance.

h. The commission shall have a budget as provided for by the mayor.

i. The commission may hold public hearings and may consult with compensation experts from the public and private sectors.

HISTORICAL NOTE

Section added L.L. 77/1986 § 2

Subds. b, e amended L.L 68/1993 § 21, eff. Jan. 1, 1994

NOTE

Provision of L.L. 77/86 adding legislative intent

Section one. Declaration of legislative findings and intent. The council finds that public service should not be limited to the wealthy or those with limited personal obligations; that elected officials should receive salaries sufficient to maintain a standard of living reasonably consistent with the status of the office and the city they represent; that salary levels of elected officials should be high enough to avoid limiting subordinate salaries to levels that prevent the city from attracting and retaining competent dedicated managerial and executive personnel; that to maintain salary levels consistent with these standards and to avoid the salary compression which precludes reasonable salaries for key subordinates throughout city government, it is necessary and in the public interest to provide for the periodic examination of the salaries of elected officials; that such examination should be conducted by an advisory commission composed of disinterested private citizens chosen for their expertise in these matters and that such commission should be empowered to recommend changes in compensation levels of elected officials where such changes are warranted.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-701

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-701 Short title.

This chapter shall be known as the "New York City campaign finance act."

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

CASE NOTES

¶ 1. NYC Campaign Finance Bd. v. Ortiz, 38 A.D.3d 75, 826 N.Y.S.2d 244 (1st Dept. 2006), provides an extensive discussion of the workings of the NYC Campaign Finance Act. The Act provides matching funds to candidates running for nomination or election to different public offices. In order to qualify for these matching funds, participating candidates must comply with certain requirements, including: 1) restrictions on the sources and amounts of campaign contributions, 2) limitations on the types and total amount of campaign expenditures, 3) filing of receipt and expenditure reports, 4) responding to Board requests for documentation and other information, and 5) submission to audits by the Board to verify compliance. If the Board determines that a portion of the funding was used for improper purposes, it may seek repayment and issue penalties up to $10,000 for any violation of the Act or the implementing of rules promulgated by the Board.

There is a loophole to the Act's enforcement when the Board brings an action to recover public matching funds and civil penalties from the candidates themselves, their campaign committees and the committees' treasurers. Candidates and treasurers are personally liable for any assessed civil penalties § 3-711(l). However, the question here is

whether § 3-710(2)(b) exempts them from personal liability for repayment of any public funds that have been used for purposes other than qualified campaign expenditures. This would limit liability to the committee alone. Liability is limited in the case of a payment in excess of the aggregate amount to which the candidate was eligible under § 3-710(2)(a). The Board later found that these matching funds were not documented and therefore, disqualified campaign expenditures. Pursuant to § 3-710(2)(b), individual defendants are not personally liable for repayment of public funds that have been determined by the Board to not have been used for qualified campaign expenditures. (Loophole). The court advised the City Counsel to address this. Additionally, under § 3-710.5, before the Board makes a determination and assesses penalties against a participating candidate, his or her personal committee, or principal treasurer for a violation of campaign finance rules, the parties are entitled to written notice. The Board's argument that a warning letter demanding payment and threatening that the candidates' names (not their participating committees), would be posted on the Board's web site, do not fulfill the city's notice requirements. Such postings are not authorized under § 3-710 and § 3-711. Section 3-708(6) provides that the Board shall publicize the names of candidates for nomination or election; the consequences associated with violations of the act are mentioned here. This, in the court's view, should have been brought to the candidates attention on the website before the election for which the public matching funds were provided rather than a year or two after the election, whether or not the delinquent candidate was elected. Admin. Code § 3-711 (Penalties) imposes personal liability upon participating candidates and their primary committees' treasurers and other agents for penalties assessed by the Board for a "violation" or "infraction" (less serious failure to comply with the law) by the committee. Admin. Code § 3-710 (Examinations and audits; repayments) clearly provides under 2(b) that if the board determines that any portion of the payment made to a principal committee of a participating candidate from the fund was used for purposes other than qualified campaign expenses, it shall notify the committee of the amount disqualified and that committee is obligated to pay the board an amount equal to the disqualifying amount.

The Board argued that the legislative history of the Campaign Finance Act supports their position that funding is provided to "the candidate." Admin. Code § 3-704(1) provides, in part "Public funds provided under this chapter may be used only for expenditures by a principal committee to further the participating candidate's nomination for election." Section 3-705 (Optional public financing), provides, in part-Each participating candidate for nomination for election or election in a covered election may obtain payment to his or her principal committee from public funds for qualified campaign expenditures. Therefore, the court reasoned, that regardless of the legislative intent or other considerations, public financing of participating candidates' campaigns is to be done through each candidate's principal committee. The Act clearly requires that any public matching funds provided to a participating candidate are to be paid to, and accounted for, by the principal committee designated by the candidate under § 3-703(i)(e). This is the only authorized committee designated to receive a candidate's political contributions.

The Board's "common sense" interpretation of the act cannot be supported. The Board failed to amend § 3-710(2)(a)(b), to incorporate their advisory opinion which interpreted the Campaign Finance Act, and indicating that the loophole should be eliminated to include the participating candidate (but not the committee treasurer) and the campaign's principal committee, shall repay any amount deemed to be in excess of the spending limits allotted under the Act. However, the City Counsel, when they adopted Local Law No. 58 of 2004, adopted many other amendments to the Campaign Finance Act proposed by the Board. The fact that they did not close up this loophole signified to the court that this was intentional (see McKinney's Statutes § 74). The Board's argument that this inaction by the City Counsel would be inconceivable is belied by the Council's decision not to adopt the additional language when the Board specifically asked it to do so.

The Board also mentions its rule 52 RCNY § 1-02 defining a "participant" to give support to its beliefs that participating candidates and committee treasurers are "participants," are on notice that they are personally liable for both penalties and repayment of public funds unused or misspent. However, nowhere in § 3-710 or § 3-711 is the word "participant" used. "Participating candidate" and "principal committee" are defined in § 3-702(l) and (2). Fundamental principles follow the statutory interpretation when there is a conflict between a statute and admin. rule.

The NYC Campaign Finance Act was within the province of the City council, which has the power to determine its provisions. This court does not have the power to add requirements or responsibilities that it believes would be more

beneficial. Thus, the lower court mistakenly granted the Board's request to impose additional penalties against their defendants for their refusal to repay the matching funds and for asserting defenses considered to be frivolous. The case should have been remanded to the Board to make their own determination instead of taking on this responsibility themselves.

¶ 2. See Espada 2001 v. New York City Campaign Finance Board, 59 A.D.3d 57, 870 N.Y.S.2d 293 (1st Dept. 2008), reported under 3-711, note 4.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-702

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-702 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

1. The term "participating candidate" shall mean any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council who files a written certification pursuant to section 3-703 of this chapter.

2. The term "principal committee" shall mean the authorized committee designated by a candidate pursuant to paragraph (e) of subdivision 1 of section 3-703 or paragraph (a) of subdivision one of section 3-718 of this chapter.

3. The term "matchable contribution" shall mean (i) a contribution, (ii) contributions or (iii) a portion of a contribution or contributions, not greater than the applicable contribution limitation set forth in paragraph (f) of subdivision one of section 3-703 for all covered elections held in the same calendar year, made by a natural person resident in the city of New York to a participating candidate which has been reported in full to the campaign finance board in accordance with subdivision six of section 3-703 by the candidate's principal committee and has been contributed on or before December thirty-first in the year of such election that may be matched by public funds in accordance with the provisions of this chapter. Any contribution, contributions, or a portion of a contribution determined to be invalid for matching funds by the board may not be treated as a matchable contribution for any purpose. A loan may not be treated as a matchable contribution. The following contributions are not matchable:

(a) in-kind contributions of property, goods, or services;

(b) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value;

(c) contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or similar drawing for valuable prizes;

(d) money order contributions from any one contributor that are, in the aggregate, greater than $100;

(e) contributions from individuals under the age of eighteen years;

(f) contributions from individual vendors to whom the participating candidate or his or her principal committee makes an expenditure, in furtherance of the nomination for election or election covered by the candidate's certification, unless such expenditure is reimbursing an advance;

(g) contributions from lobbyists or other persons required to be included in a statement of registration filed pursuant to section 3-213(c)(1) or section 3-213(d). The board shall rely on the database maintained by the city clerk pursuant to section 3-221 or such other information known to the board to determine whether a contribution is not matchable based on the contributor's status as a lobbyist or person required to be included in a statement of registration filed pursuant to section 3-213; and

(h) contributions from contributors subject to the limitations of subdivision one-a of section 3-703 of this chapter.

4. The term "qualified campaign expenditure" shall mean an expenditure for which public funds may be used.

5. The term "fund" shall mean the New York city election campaign finance fund.

6. The term "threshold for eligibility" shall mean the total amount of matchable contributions that a participating candidate and his or her principal committee must receive in order for such candidate to qualify for optional public financing pursuant to this chapter.

7. The term "authorized committee" shall mean a political committee which has been authorized by one or more candidates to aid or take part in the elections of such candidate or candidates and which has filed a statement that such candidate or candidates have authorized such political committee pursuant to section 14-112 of the election law.

8. The term "contribution" shall mean: (a) any gift, subscription, advance, or deposit of money or any thing of value, made in connection with the nomination for election, or election, of any candidate; (b) any funds received by a political committee from another political committee to the extent such funds do not constitute a transfer; (c) any payment, by any person other than a candidate or a political committee authorized by the candidate, made in connection with the nomination for election, or election, of any candidate, including but not limited to compensation for the personal services of any individual which are rendered in connection with a candidate's election or nomination without charge; provided however, that none of the foregoing shall be deemed a contribution if it is made, taken or performed by a person or a political committee independent of the candidate or his or her agents or political committees authorized by such candidate pursuant to section 14-112 of the New York state election law. For purposes of this subdivision, the term "independent of the candidate or his or her agents or political committees authorized by such candidate pursuant to section 14-112 of the New York state election law" shall mean that the candidate or his or her agents or political committees so authorized by such candidate did not authorize, request, suggest, foster or cooperate in any such activity; and provided further, that the term "contribution" shall not include:

(i) the value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee,

(ii) the use of real or personal property and the cost of invitations, food and beverages voluntarily provided by

an individual to a candidate or political committee on the individual's residential premises for candidate-related activities to the extent such services do not exceed five hundred dollars in value, and

(iii) the travel expenses of any individual who on his or her own behalf volunteers his or her personal services to any candidate or political committee to the extent such expenses are unreimbursed and do not exceed five hundred dollars in value.

A loan made to a participating candidate or his or her principal committee, or a non-participating candidate or his or her authorized committees other than in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the first covered election in which such candidate is governed by this chapter following the date of the loan, a contribution by the lender. A loan made to a participating candidate or his or her principal committee, or a non-participating candidate or his or her authorized committees in the regular course of the lender's business shall be deemed, to the extent not repaid by the date of the first covered election in which the candidate is governed by this chapter following the date of the loan, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collateralizing or otherwise providing security for the loan.

9. The term "transfer" shall mean any exchange of funds or any thing of value between political committees authorized by the same candidate pursuant to section 14-112 of the election law and taking part solely in his or her campaign.

10. The term "covered election" shall mean any primary, run-off primary, special, run-off special or general election for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council.

11. The term "political committee" shall mean any corporation aiding or promoting and any committee, political club or combination of one or more persons operating or cooperating to aid or to promote the success or defeat of a political party or principle, or to aid or take part in the election or defeat of a candidate for public office or to aid or take in the election or defeat of a candidate for nomination at a primary election or convention, including all proceedings prior to such primary election, or of a candidate for any party position voted for at a primary election, or to aid or defeat the nomination by petition of an independent candidate for public office; but nothing in this chapter shall apply to any committee or organization for the discussion or advancement of political questions or principles without connection with any vote. "Political committee" shall include any party committee or constituted committee, as such committees are defined in article fourteen of the election law.

12. The term "intermediary" shall mean an individual, corporation, partnership, political committee, employee organization or other entity which, (i) other than in the regular course of business as a postal, delivery or messenger service, delivers any contribution from another person or entity to a candidate or other authorized committee; or (ii) solicits contributions to a candidate or other authorized committee where such solicitation is known to such candidate or his or her authorized committee. For purposes of clause (ii) of this subdivision only persons clearly identified as the solicitor of a contribution to the candidate or his or her authorized committee shall be presumed to be known to such candidate or his or her authorized committee. "Intermediary" shall not include spouses, domestic partners, parents, children or siblings of the person making such contribution, or any fundraising agent, as such term is defined in the rules of the board or any hosts of a campaign sponsored fundraising event paid for in whole or in part by the campaign. Where there are multiple individual hosts for a non-campaign sponsored event, the hosts shall designate one such host as the intermediary.

13. The term "limited participating candidate" shall mean a candidate who meets the requirements of paragraph (a) of subdivision one of section 3-718 of this chapter.

14. The term "non-participating candidate" shall mean any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council who does not file a

written certification pursuant to section 3-703 or meet the requirements of paragraph (a) of subdivision one of section 3-718 of this chapter, or who has, or the authorized committees of such candidate have, made expenditures in furtherance of the nomination for election or election to an office covered by this chapter.

15. The term "labor organization" shall mean any organization including any local, state, district council, joint council or national organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. For purposes of this section a labor organization shall also include any political committee it has established pursuant to state or federal law.

16. The term "lobbyist" shall mean a lobbyist as defined in subdivision (a) of section 3-211 of this title and the spouse or domestic partner and unemancipated children of the lobbyist, and if the lobbyist is an organization, the term "lobbyist" shall mean only that division of the organization that engages in lobbying activities and any officer or employee of such lobbyist who engages in lobbying activities of the organization or is employed in an organization's division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees.

17. The term "lobbying" or "lobbying activities" shall mean lobbying and lobbying activities as defined in section 3-211 of this title.

18. a. The term "business dealings with the city" shall mean (i) any contract (other than an emergency contract or a contract procured through publicly-advertised competitive sealed bidding) which is for the procurement of goods, services or construction that is entered into or in effect with the city of New York or any agency or entity affiliated with the city of New York and is valued at or above the dollar value defined in subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code, or, with respect to a contract for construction, at or above five hundred thousand dollars, or an emergency contract awarded pursuant to section 315 of the charter, and shall include any contract for the underwriting of the debt of the city of New York or any agency or entity affiliated with the city of New York and the retention of any bond counsel, disclosure counsel or underwriter's counsel in connection therewith; or (ii) any acquisition or disposition of real property (other than a public auction or competitive sealed bid transaction or the acquisition of property pursuant to the department of environmental protection watershed land acquisition program) with the city of New York or any agency or entity affiliated with the city of New York; or (iii) any application for approval sought from the city of New York pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to the provisions of section 197-c of the charter, and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter; provided, however, that for purposes of this clause, with respect to section 195 an applicant shall include the lessor of an office building or office space, and with respect to section 197-c an applicant shall include a designated developer or sponsor of a project for which a city agency or local development corporation is the applicant and provided, further, however, that owner-occupants of one, two and three family homes shall not be considered applicants pursuant to this clause; or (iv) any concession (other than a concession awarded through publicly-advertised competitive sealed bid) or any franchise from the city of New York or any agency or entity affiliated with the city of New York which has an estimated annual value at or above the dollar value defined in subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code; or (v) any grant that is valued at or above the dollar value defined in subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code, received from the city of New York or any agency or entity affiliated with the city of New York; or (vi) any economic development agreement entered into or in effect with the city of New York or any agency or entity affiliated with the city of New York; or (vii) any contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants. In addition, for purposes of this chapter a lobbyist as defined in section 3-211 of this title shall be deemed to be engaged in business dealings with the city of New York during all periods covered by a registration statement. For purposes of clauses (i), (iv) and (v) of this subdivision, all contracts, concessions, franchises and grants that are five thousand dollars or less in value shall be excluded from any calculation as to whether a contract, concession, franchise or grant is a business dealing with the city. For purposes of clauses (ii)

and (iii) of this subdivision, the department of city planning, in consultation with the board, may promulgate rules to require the submission by applicants to the city of information necessary to implement the requirements of subdivisions 1-a and 1-b of section 3-703 of this chapter as they relate to clauses (ii) and (iii) of paragraph (a) of this subdivision for purposes of inclusion in the doing business database established pursuant to subdivision 20 of this section. For purposes of this subdivision, "agency or entity affiliated with the city of New York" shall mean the city school district of the city of New York and any public authority, public benefit corporation or not for profit corporation, the majority of whose board members are officials of the city of New York or are appointed by such officials. The department of housing preservation and development shall promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing shall and shall not constitute business dealings with the city of New York for purposes of this subdivision. The department shall consider the significance of the affordable housing program and the degree of discretion by city officials in determining which actions, transactions and agreements shall and shall not constitute such business dealings. Notwithstanding any provision of this subdivision, a housing assistance payment contract between a landlord and the department of housing preservation and development or the New York city housing authority relating to the provision of rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, 42 USC 1437 et., seq., shall not constitute business dealings with the city of New York for the purposes of this subdivision.

b. Business dealings with the city as defined in this subdivision shall be as follows: for purposes of clause (i) of paragraph (a) of this subdivision, bids or proposals on contracts for the procurement of goods, services, or construction shall only constitute business dealings with the city of New York for the period from the later of the submission of the bid or proposal or the date of the public advertisement for the contract opportunity until twelve months after the date of such submission or advertisement, and contracts for the procurement of goods, services or construction shall only constitute business dealings with the city of New York during the term of such contract (or in the case of purchase contracts for goods, from the date of such purchase) and for twelve months thereafter, provided, however that where such contract award is made from a line item appropriation and/or discretionary funds made by an elected official other than the mayor or the comptroller, such contract shall only constitute business dealings with the city from the date of adoption of the budget in which the appropriation of such contract is included until twelve months after the end of the term of such contract; for purposes of clause (ii) of paragraph a of this subdivision, leases in which the city of New York is the proposed lessee shall only constitute business dealings with the city from the date the application for acquisition is filed pursuant to section 195 or the date of the certification of such application pursuant to section 197-c to a period of one year after the commencement of the lease term or after the commencement of any renewal and, where the city or any city affiliated entity is disposing of any real property interest, shall only constitute business dealings with the city from the date of the submission of a proposal and during the term of any agreement and one year after; for purposes of clause (iii) of paragraph (a) of this subdivision, applications for approval sought from the city of New York pursuant to the provisions of sections 197-c or 201 of the charter, except for applications for leases as described in clause (ii), shall only constitute business dealings with the city from the date of the certification of such application to the date that is one hundred twenty days after the date of filing by the council with the mayor of its action pursuant to subdivision e of section 197-d of the charter or, in the case of a decision of the city planning commission for which the council takes no action pursuant to paragraph (3) of subdivision (b) of section 197-d of the charter, the date which is twenty days following the filing of such decision with the council pursuant to subdivision a of section 197-d of the charter, provided, however, that in the case of a disapproval of a council action by the mayor pursuant to subdivision e of section 197-d of the charter, such date shall be one hundred twenty days after expiration of the ten day period for council override pursuant to such section; for purposes of clause (iv) of paragraph (a) of this subdivision, bids or proposals for franchises and concessions shall only constitute business dealings with the city of New York for the period from the submission of the bid or proposal until twelve months after the date of such submission, concessions shall only constitute business dealings with the city of New York during the term of such concession and for twelve months after the end of such term, and franchises shall only constitute business dealings with the city of New York for the period of one year after the commencement of the term of the franchise or after the commencement of any renewal; for purposes of clause (v) of paragraph (a) of this subdivision, grants shall constitute business dealings with the city of New York for one year after the grant is made; for purposes of clause (vi) of paragraph (a) of this subdivision, economic development agreements shall constitute business dealings with the city from the submission of an application for such

agreement and during the term of such agreement and for one year after the end of such term; and for purposes of clause (vii) of paragraph (a) of this subdivision, contracts for the investment of pension funds, including the investments in a private equity firm and contracts with investment related consultants shall constitute business dealings with the city from the time of presentation of investment opportunity or the submission of a proposal, whichever is earlier, and during the term of such contract and for twelve months after the end of such term.

c. Notwithstanding anything in this subdivision, a person, as defined by subdivision 20 of section 3-702, who has submitted bids or proposals on contracts for the procurement of goods, services or construction or who has submitted bids or proposals for franchises or concessions that are no longer being considered for an award or a person who for any other reason believes he or she should not be on the database may apply to the city chief procurement officer or other person designated by the mayor for removal from the doing business database and shall be removed from the database upon a determination that said person should not be included in the database. The city chief procurement officer may promulgate rules for a process by which a person, as defined by subdivision 20 of section 3-702, may apply to the city chief procurement officer for a waiver from inclusion in the doing business database as defined by such subdivision in instances in which such person is providing essential goods, services or construction such as those necessary for security or other essential government operations. Such rules shall provide that the city chief procurement officer shall transmit to the board a copy of any application for a waiver and any such waiver may not be granted prior to the expiration of ten days from the date such application is received by the board. Such rules shall also provide that any such waiver may be granted only after substantial efforts have been made by the city chief procurement officer to obtain the information required by this law. Such rules shall also provide that the city chief procurement officer may grant the waiver only upon a finding that it is in the best interests of the city, which finding shall only be made upon a determination that (i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption and (ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the purchasing agency's mission. Such rules may also provide that a waiver may be granted when a person is doing business with the city by virtue of the city's exercise of its powers of eminent domain. Any grant of a waiver shall be posted on the city's and the board's website in locations that are accessible by the public.

d. A person, as defined by subdivision 20 of section 3-702, shall be considered to have business dealings with the city as of the date the person's name is entered in the doing business database, as such date is indicated in such database, or the date the person began doing business with the city, as such date is indicated in such database, whichever is earlier, except that the date on which the person is considered doing business with the city shall not be earlier than thirty days before the date the person's name is entered into such database.

19. The term "economic development agreement" means any contract or agreement in which financial incentives including, but not limited to, tax incentives, payments in lieu of taxes and financing are offered in return for the development, attraction or retention of business; provided, however that no financial incentives which are given to a person who qualifies for such incentive by operation of law shall be deemed to be pursuant to an economic development agreement for purposes of this chapter.

20. The term "doing business database" means a computerized database accessible to the board that contains the names of persons who have business dealings with the city; provided, however that for purposes of this chapter the doing business database shall not be required to contain the names of any person whose business dealings with the city are solely of a type for which the board has not certified that such database includes the names of those persons engaged in such type of business dealings with the city. Such database shall be developed, maintained and updated by the office of the mayor in a manner so as to ensure its reasonable accuracy and completeness; provided, however, that in no event shall such database be updated less frequently than once a month. Such computerized database shall contain a function to enable members of the public to determine if a given person is in the database because such person has business dealings with the city. For purposes of this definition, the term "person" shall include an entity that has business dealings with the city, any chief executive officer, chief financial officer and/or chief operating officer of such entity or persons serving in an equivalent capacity, any person employed in a senior managerial capacity regarding such entity, or

any person with an interest in such entity which exceeds ten percent of the entity provided, however, that "entity" for purposes of this definition shall not include a neighborhood, community or similar association consisting of local residents or homeowners organized on a non-profit basis where such association is the applicant pursuant to subsection (3) of subdivision (a) of section 197-c of the charter or pursuant to section 201 of the charter or is a parent company or an affiliated company of an entity. For purposes of this subdivision, the phrase "senior managerial capacity" shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals.

21. a. For purposes of campaigns that accept public funds pursuant to section 3-705 of this chapter, the terms "expenditure" and "campaign expenditure" shall include all payments and liabilities in furtherance of a political campaign for covered office, including, but not limited to, all qualified campaign expenditures and expenditures subject to or exempt from the expenditure limitations of this chapter. There shall be a rebuttable presumption that the following expenditures are in furtherance of a political campaign for elective office; provided, however, that the presumptions contained in this subdivision shall not apply to an expenditure to a person or entity associated with the candidate; and provided further that in rebutting any such presumption the campaign finance board may consider factors including the timing of the expenditure and whether the campaign had an unusually high amount of spending on a particular type of expenditure. For purposes of this subdivision a person or entity associated with a candidate shall include the candidate's spouse, domestic partner, child, parent, or sibling or a person or entity with whom or with which the candidate has a business or other financial relationship:

1. Contributions to charitable organizations designated as 501(c)(3) organizations pursuant to the internal revenue code;

2. Contributions to candidates and political committees subject to the provisions of section 3-705(8);

3. Community events including, but not limited to, events hosted by civic and neighborhood associations; provided, however, that this presumption shall not apply to sporting events, concerts, theater or other entertainment events which shall be subject to the provisions of paragraph b;

4. Ballot proposal advocacy where there are indicia that the expenditure relates to the candidate;

5. Travel related solely and exclusively to a political campaign for a covered office or the holding of public office; provided, however, that any travel not related solely and exclusively to a political campaign or the holding of public office shall be subject to the provisions of paragraph b; 6. Legal defense of a non-criminal matter arising out of a political campaign;

7. Computer hardware, software and other office technology purchased more than two weeks before the date of a primary election, in the case of a candidate who is opposed in the primary election, or two weeks before the date of a general election, in the case of a candidate who was not opposed in a primary election;

8. A post-election event for staff, volunteers and/or supporters held within thirty days of the election;

9. Payment of non-criminal penalties or fines arising out of a political campaign;

10. Costs incurred in demonstrating eligibility for the ballot or public funds payments or defending against a claim that public funds must be repaid; and

11. Food and beverages provided to campaign workers and volunteers.

b. Campaign funds shall not be converted by any person to a personal use which is unrelated to a political campaign. Expenditures not in furtherance of a political campaign for elective office include the following: 1.

Expenditures to defray the normal living expenses of the candidate, immediate family of the candidate or any other individual except for the provision of such expenses for professional staff as part of a compensation package;

2. Any residential or household items, supplies or expenditures;

3. Clothing, haircuts and other personal grooming;

4. Funeral, cremation or burial expenses including any expenses related to a death within a candidate's or officeholder's family;

5. Automobile purchases;

6. Tuition payments and childcare costs;

7. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization unless part of a specific fundraising event that takes place on the organization's premises;

8. Admission to a sporting event, theater, concert or other entertainment event not part of a specific campaign activity;

9. Expenditures for non-campaign related travel, food, drink or entertainment; if a candidate uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign activities, the incremental expenses that result from the personal activities shall be considered for personal use unless the candidate benefiting from the use reimburses the campaign account within thirty days for the full amount of the incremental expenses; and

10. Gifts, except for brochures, buttons, signs and other campaign materials and token gifts valued at not more than fifty dollars that are for the purpose of expressing gratitude, condolences or congratulations.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Subd. 1 amended L.L. 68/1993 § 22, eff. Jan. 1, 1994

Subd. 1 amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 2 amended L.L. 58/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 2 amended L.L. 12/2003 § 2, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2, amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 3 amended L.L. 34/2007 § 1, eff. July 3, 2007 as per § 37 of such L.L. [See Note 2]

Subd. 3 amended L.L. 17/2006 § 1, eff. June 13, 2006. [See Note 1]

Subd. 3 amended L.L. 58/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 3 amended L.L. 12/2003 § 2, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 3 amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 3 par (g) amended L.L. 23/2007 § 10, eff. May 1, 2007 and retroactive to and deemed to have been in full force and effect on and after Dec. 10, 2006. [See § 3-213 Note 1]

Subd. 6 amended L.L. 12/2003 § 2, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 6, amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 8 amended L.L. 60/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 8 amended L.L. 12/2003 § 2, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 8 amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 10 amended L.L. 12/2003 § 2, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 10 amended L.L. 68/1993 § 22, eff. Jan. 1, 1994

Subd. 10 amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 11 amended L.L. 69/1990 § 2, eff. Nov. 27, 1990

Subd. 12 amended L.L. 34/2007 § 16, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See Note 2]

Subd. 12 amended L.L. 58/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 12 amended L.L. 27/1998 § 10, eff. Sept. 5, 1998.

Subd. 13 separately added L.L. 58/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 14 separately added L.L. 59/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 2, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 15 added L.L. 105/2005 § 1, eff. Dec. 19, 2005.

Subd. 16 added L.L. 17/2006 § 1, eff. June 13, 2006. [See Note 1]

Subd. 17 added L.L. 17/2006 § 1, eff. June 13, 2006. [See Note 1]

Subd. 18 amended L.L. 67/2007 § 1, eff. Dec. 31, 2007.

Subd. 18 added L.L. 34/2007 § 1, eff. July 3, 2007 as per § 37 of such L.L. [See Note 2]

Subd. 19 added L.L. 34/2007 § 1, eff. July 3, 2007 as per § 37 of such L.L. [See Note 2]

Subd. 20 amended L.L. 67/2007 § 1, eff. Dec. 31, 2007.

Subd. 20 added L.L. 34/2007 § 1, eff. July 3, 2007 as per § 37 of such L.L. [See Note 2]

Subd. 21 so designated and amended (former Subd. 19) L.L. 67/2007 § 8, eff. Dec. 31, 2007.

Subd. 21 added (as Subd. 19) L.L. 34/2007 § 17, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply only to elections held on or after Jan. 1, 2008. [See Note 2]

NOTE

1. Provisions of L.L. 17/2006:

§ 2. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 3. This local law shall take effect immediately [June 13, 2006] and shall be applicable to all public funds claims for elections held on or after the effective date, regardless of whether the claim for public funds was submitted prior to the effective date.

2. Provisions of L.L. 34/2007, as amended by L.L. 67/2007 §§ 25, 26:

§ 36. Each city agency with which any person who has business dealings with the city conducts such business shall provide appropriate assistance in developing the doing business data base and shall take such steps as necessary to collect such information as required pursuant to this local law. Each city agency with which any person who has business dealings with the city conducts such business shall, at the board's request, provide appropriate assistance to the board in publicizing this local law and the rules of the board in connection with contributions of persons who have business dealings with the city; provided, however, that the rules shall not be applied to persons in categories of doing business activities before such categories are certified by the campaign finance board in accordance with section thirty-seven of this local law.

§ 37. Sections one, two, eight, eleven, twelve and forty of this local law shall take effect immediately provided that the implementation of such sections shall take effect as follows: (i) the provisions of such sections concerning the holding of contracts for the procurement of goods, services or construction shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity and persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity of an entity with a city contract pursuant to clause (i) of paragraph (a) of subdivision 18 of section 3-702 of

the code as added by section one of this local law; (ii) the provisions of this local law concerning any bid or proposal for a contract for the procurement of goods, services or construction, and the provisions regarding persons employed in a senior managerial capacity with respect to any entity with a city contract pursuant to clause (i) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, and persons with an interest in an entity which exceeds ten percent of the entity that has submitted a bid or proposal seeking such a contract, and persons employed in a senior

managerial capacity of any entity holding such a contract or that has submitted a bid or proposal seeking such a contract; (iii) the provisions of this local law concerning acquisition or disposition of real property, any application for approval sought pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to section 197-c of the charter and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and

persons employed in a senior managerial capacity of an entity with an acquisition or disposition of real property or an application for approval sought pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to section 197-c of the charter and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter pursuant to clauses (ii) and (iii) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (iv) the provisions of this local law concerning franchises and concessions shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or

persons serving in an equivalent capacity and persons with an interest in an entity which exceeds ten percent of the entity with a city franchise or concession pursuant to clause (iv) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (v) the provisions of this local law concerning any bid or proposal for a franchise or concession, and the provisions regarding persons employed in a senior managerial capacity with respect to any entity with a city franchise or concession pursuant to clause (iv) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law, shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that such database identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an

equivalent capacity, and persons with an interest in an entity which exceeds ten percent of the entity that has submitted a bid or proposal seeking such a franchise or concession, and persons employed in a senior managerial capacity with respect to any entity holding such a franchise or concession or that has submitted a bid or a proposal for such a franchise or concession; (vi) the provisions of this local law concerning a recipient of a grant shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity with respect to any entity that is a recipient of a

grant pursuant to clause (v) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one

of this local law; (vii) the provisions of this local law concerning a party to an economic development agreement shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity with respect to any entity that is an applicant for or a party to an economic development agreement pursuant to clause (vi) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (viii) the provisions of this local

law concerning a contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity with respect to any entity that is an applicant for or a party to a contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants pursuant to clause (vii) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local

law; and (ix) the provisions of this local law concerning lobbyists shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies lobbyists; and shall be applicable to all receipts, expenditures, and public funds claims after such effective dates for elections held after such effective dates; provided that, upon enactment of this local law, the campaign finance board shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date. Notwithstanding any provision of law to the contrary, the campaign finance board and the department of information technology and telecommunication may certify any component of the doing business database enumerated in clauses (i) through (ix) of this section as complete when it has determined that each

component identifies such persons with reasonable completeness and accuracy. Notwithstanding any provision of law to the contrary, immediately upon certification of each component of the doing business database pursuant to this section, the department of information technology and telecommunications shall provide to the mayor and the council an analysis of the steps taken to compile the component of the database certified and the campaign finance board shall provide to the mayor and the council an analysis of the steps taken to ensure and test for reasonable completeness and accuracy. Such report shall also demonstrate the process by which the department of information technology and telecommunications and the campaign finance board shall update the doing business database and ensure that names of persons no longer doing business with the city are removed. The deadline for certification of this section in relation to clauses (i), (iv), and (ix) shall be six months from the effective date of this local law;

the deadline for certification of this section in relation to clauses (ii), (v), (vi), (vii) and (viii) shall be one year from the effective date of this local law; and the deadline for certification of this section in relation to clause (iii) shall be sixteen months from the effective date of this local law; provided, however, that any component of the doing business database that has not been certified on or before December 1, 2008 may not be certified until on or after November 30, 2009.

§ 38. With its 2009 post-election report, the campaign finance board shall submit a report to the council on the status of the doing business database. Such report shall contain the status of each of the components enumerated in clauses (i) through (ix) of section thirty-seven of this local law and whether each such component has been certified, for those components that have not been certified, if any, what the status is of the development of such component of the database and the expected timeline for such component's certification. The campaign finance board shall provide the council and the mayor with recommendations, if any, for exempting certain types of transactions, applications or

agreements from the definition of business dealings with the city as defined in section one of this local law. If such proposals are submitted by the board, and such proposals are accepted by the council, or if the council fails to take action on such proposals within sixty days, such proposals shall take effect. Rejection of such proposals by resolution, or action by the council on amendments to the definition of business dealings with the city different from those contained in such proposals shall constitute action on such proposals.

§ 39. The mayor, the council and the campaign finance board shall form a task force to study the feasibility of including spouses, domestic partners, and unemancipated children in the restrictions on contributions from persons doing business with the city.

§ 40. Sections three through seven, nine, ten, thirteen through thirty-six and thirty-nine of this local law shall take effect on January 1, 2008; provided, however that such sections shall apply only to elections held on or after such effective date.

CASE NOTES

¶ 1. Candidates who move funds among multiple committees may reduce their repayment obligations under Admin. Code § 3-710. Such transfers are permitted under Admin. Code § 3-702. Eisland v. New York City Campaign Finance Board, 31 A.D.3d 259, 818 N.Y.S.2d 501 (1st Dept. 2006).

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-703

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-703 Eligibility and other requirements.

1. To be eligible for optional public financing under this chapter, a candidate for nomination for election or election must: (a) meet all the requirements of law to have his or her name on the ballot;

(b) be a candidate for mayor, public advocate, comptroller, borough president or member of the city council in a primary, special, or general election and meet the threshold for eligibility set forth in subdivision two of this section;

(c) choose to participate in the public funding provisions of this chapter, by filing a written certification in such form as may be prescribed by the campaign finance board, which sets forth his or her acceptance of and agreement to comply with the terms and conditions for the provision of such funds. The deadline for filing such certification for a primary and general election shall be:

(i) the tenth day of June in the year of the covered election, or such other later date as the board shall provide, provided, however, that any candidate who files such written certification prior to such date shall be permitted to rescind such certification in writing on or before such date;

(ii) the thirtieth day after a special election is held to fill a vacancy for the office sought by the candidate;

whichever is later. The deadline for filing such certification for a special election to fill a vacancy shall be on the seventh day after the proclamation of such special election. A certification may be filed on or before the seventh day after the occurrence of an extraordinary circumstance in an election, as declared by the campaign finance board, following the receipt and review of a petition submitted by a candidate in such election. For purposes of this paragraph,

an "extraordinary circumstance" shall include the death of a candidate in the election, the resignation or removal of the person holding the office sought, and the submission to the board of a written declaration by an officeholder that terminates his or her campaign for reelection;

(d) obtain and furnish to the campaign finance board and his or her principal committee or authorized committees must obtain and furnish to the board any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such board, provided, however, that the board shall accept such required documentation through an electronically scanned transmission;

(e) notify the board in the candidate's written certification as to: (i) the existence of each authorized committee authorized by such candidate that has not been terminated, (ii) whether any such committee also has been authorized by any other candidate, and (iii) if the candidate has authorized more than one authorized committee, which authorized committee has been designated by the candidate as the candidate's principal committee for the election(s) covered by the candidate's certification; provided, that such principal committee (i) shall be the only committee authorized by such candidate to aid or otherwise take part in the election(s) covered by the candidate's certification, (ii) shall not be an authorized committee of any other candidate, and (iii) shall not have been authorized or otherwise active for any election prior to the election(s) covered by the candidate's certification. The use of an entity other than the designated principal committee to aid or otherwise take part in the election(s) covered by the candidate's certification shall be a violation of this section and shall trigger the application to such entity of all provisions of this chapter governing principal committees;

(f) not accept and his or her principal committee, or authorized committees must not accept, either directly or by transfer, any contribution or contributions from any one individual, partnership, political committee, labor organization or other entity for all covered elections held in the same calendar year in which he or she is a participating candidate or a non-participating candidate which in the aggregate: (i) for the office of mayor, public advocate or comptroller shall exceed four thousand five hundred dollars, or (ii) for borough president, shall exceed three thousand five hundred dollars, or (iii) for member of the city council, shall exceed two thousand five hundred dollars; provided that a participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees may accept additional contributions which do not exceed one half the amount of the applicable limitation for any run-off primary election, additional day for voting held pursuant to section 3-108 of the New York state election law, special election to fill a vacancy, run-off special election to fill a vacancy, delayed or otherwise postponed election, or election held pursuant to court order which is a covered election and in which the candidate seeks nomination for election or election; and provided further that for the purposes of this paragraph, contributions made by different labor organizations shall not be aggregated or treated as contributions from a single contributor for purposes of the contribution limit that is set forth in this paragraph if those labor organizations make contributions from different accounts, maintain separate accounts with different signatories, do not share a majority of members of their governing boards, and do not share a majority of the officers of their governing boards; and provided further that if state law prescribes a contribution limitation of a lesser amount, this paragraph shall not be deemed to authorize acceptance of a contribution in excess of such lesser amount. The maximum contributions set forth in this paragraph shall be adjusted in accordance with subdivision seven of this section;

(g) maintain and his or her principal committee or authorized committees must maintain such records of receipts and expenditures for a covered election as required by the board;

(h) not make expenditures from or use his or her personal funds or property or the personal funds or property jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her nomination for election or election except as a contribution to his or her principal committee in an amount that does not exceed three times the maximum contribution amount applicable pursuant to paragraph (f) of this subdivision. Such candidate shall not make expenditures from or use other personal funds or property of his or her spouse, domestic partner or unemancipated children in connection with his or her nomination for election or election; provided that this

paragraph shall not be construed to limit contributions by persons other than the candidate;

(i) not make and his or her principal committee must not make expenditures which in the aggregate exceed the applicable expenditure limitations set forth in section 3-706;

(j) meet the threshold for eligibility set forth in subdivision two of this section;

(k) not accept and his or her principal committee must not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for such loan from any political committee for all covered elections held in the same calendar year in which he or she is a participating candidate, except as is otherwise provided for contributions by political committees pursuant to section 3-707 of this chapter; and

(l) not accept and his or her principal committee or authorized committees must not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for such loan from any corporation, limited liability company, limited liability partnership or partnership, other than a corporation, limited liability company, limited liability partnership or partnership that is a political committee as defined in subdivision eleven of section 3-702 of this chapter, for all covered elections held in the same calendar year in which he or she is a participating or non-participating candidate, provided, however, that where a contribution is from a contributor whose name is followed by a professional designation including but not limited to "M.D." , "Esq." and "C.P.A." the board shall not treat such contribution as coming from a corporation, limited liability company, limited liability partnership or partnership in the absence of further indicia that such contribution is from such an entity;

(m) fulfill the requirements of section 12-110 of the administrative code of the city of New York, including payment of any penalties as determined by the conflicts of interest board.

(i) The conflicts of interest board shall provide a participating candidate with a receipt indicating proof of compliance with section 12-110 of the administrative code of the city of New York in such form as the conflicts of interest board shall determine. Such receipt as provided by the conflicts of interest board shall indicate the time and date of filing of the financial disclosure report.

(ii) A participating candidate shall provide the campaign finance board with the receipt provided by the conflicts of interest board pursuant to subparagraph (i) of this paragraph, in such form and manner as the campaign finance board shall require, by the last business day of July in the year of the covered election, or such other later date as the campaign finance board shall provide by rule, except that in a special election to fill a vacancy the deadline for filing such receipt shall be established by campaign finance board rule.

(iii) A participating candidate who fails to adhere to the requirements of subparagraph (ii) of this paragraph may thereafter satisfy the requirements of this paragraph by submitting a receipt in accordance with subparagraph (i) of this paragraph at such times and in such manner as provided by campaign finance board rule. The campaign finance board shall thereafter allow the participating candidate to make a claim for public funds upon satisfying the requirements of this paragraph and all other applicable law, rules and regulations; provided, however that a receipt that is not filed timely pursuant to subparagraph (ii) of this paragraph may result in a delay of any payment of public funds by the board; and

(n) satisfy any claim made by the board for the payment of civil penalties or repayment of public funds that remains outstanding against such candidate or his or her principal committee or an authorized committee of such candidate from a prior covered election, if (i) the candidate had written notice of such potential claim and ineligibility to receive public funds prior to filing a written certification for the current covered election pursuant to paragraph (c) of this subdivision, or (ii) in the event no such timely notice has been given pursuant to subparagraph (i), the candidate has been given an opportunity to present to the board reasons he or she should be eligible to receive public funds.

(o) agree that expenditures by his or her principal committee for the purpose of advocating a vote for or against

a proposal on the ballot in an election that is also a covered election shall be subject to the contribution and expenditure limitations applicable in such covered election.

1-a. Notwithstanding any inconsistent provision of this section, a participating candidate or his or her principal committee may not accept, either directly or by transfer, any contribution or contributions for a covered election in which he or she is a participating candidate from a natural person who has business dealings with the city, as that term is defined in subdivision eighteen of section 3-702 of this chapter, if the aggregate of such contributions to such candidate from such person for all covered elections in the same calendar year exceeds: (i) for the office of mayor, public advocate or comptroller four hundred dollars; (ii) for borough president three hundred twenty dollars; and (iii) for member of the city council two hundred fifty dollars; provided that a participating candidate or his or her principal committee may accept additional contributions which do not exceed one half the amount of the applicable limitation for any run-off primary election, additional day for voting held pursuant to section 3-108 of the New York state election law, special election to fill a vacancy, run-off special election to fill a vacancy, delayed or otherwise postponed election, or election held pursuant to court order which is a covered election and in which the candidate seeks nomination for election or election. Any contribution made pursuant to this section shall not be a matchable contribution. For purposes of this subdivision, "person" shall include any chief executive officer, chief financial officer and/or chief operating officer of an entity which has business dealings with the city, any person employed in a senior managerial capacity regarding such an entity, or any person with an interest in such an entity which exceeds ten percent of the entity. For purposes of this subdivision, the phrase "senior managerial capacity" shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals. Notwithstanding any provision of this subdivision, the limitations on contributions contained herein shall not apply to any contribution made by a natural person who has business dealings with the city to a participating candidate or his or her principal committee where such participating candidate is the contributor, or where such participating candidate is the contributor's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

1-b. Individuals and organizations having business dealings with the city of New York. a. Each participating candidate and his or her principal committee shall inquire of every individual or entity making, a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in subdivision 1-a of section 3-703, through a question, in a form prescribed by the campaign finance board, as to whether such individual, corporation, partnership, political committee, employee organization or other entity has business dealings with the city, as that term is defined in this chapter, and, if so, the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings. Such form shall contain in prominent typeface and in a prominent location the statement "If a contributor has business dealings with the City as defined in the campaign finance act, such contributor may contribute only up to two hundred fifty dollars for city council, three hundred twenty dollars for borough president and four hundred dollars for mayor, comptroller or public advocate." Upon receipt of the response to such inquiry (including any failure to respond), the principal committee shall keep a copy in its records and shall report each contribution to the board on the next applicable filing deadline in accordance with the board's disclosure schedule. The board shall check each contribution against the doing business database and shall notify the principal committee within twenty days of the reporting of such contribution if a contribution exceeding the doing business contribution limitation set forth in subdivision 1-a of section 3-703 is subject to such limitations of this subchapter or if a contribution is not matchable pursuant to such subdivision. Notwithstanding any provision in this subdivision, in the six weeks preceding the covered election the board shall provide such notification to the principal or authorized committee within three business days of the reporting of such contribution to the board in accordance with applicable reporting deadlines. If the board fails to notify the principal committee that a contribution is in excess of the limitations set forth in subdivision 1-a of section 3-703 of this chapter in accordance with this subdivision, any such contribution shall be deemed valid for purposes of such limitation, provided, however, that no such contribution shall be matchable. Such principal committee shall have twenty days from the date of any such notification to return the amount of any contribution in excess of the limitations set forth in subdivision 1-a of section 3-703 to the contributor. No

violation shall issue and no penalty shall be imposed where such excess amount is postmarked or delivered within twenty days of such notification by the board and the board shall not designate a candidate as having accepted a contribution in excess of such limitations where such excess has been returned in accordance with the time limitations set forth herein. Failure to return such excess amount in accordance with the provisions herein shall not result in the board withholding public funds for which the participating candidate's principal committee is otherwise eligible pursuant to section 3-705 of this chapter; provided, however, that the board may deduct an amount equal to the total unreturned contributions in excess of the limitations set forth in subdivision 1-a of section 3-703 of this chapter from such payment of public funds. For purposes of this section, "individual" shall include any chief executive officer, chief financial officer, and/or chief operating officer of an entity or persons serving in an equivalent capacity, any person in a senior managerial capacity regarding an entity, or any person with an interest in an entity, which exceeds ten percent of the entity. For purposes of this subdivision, the phrase "senior managerial capacity" shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements, and applications for land use approvals. Notwithstanding any other provision of this section, no participating candidate shall be liable for any fine or penalty for the failure of any contributor to respond to any such request or for any erroneous response.

2. (a) The threshold for eligibility for public funding for participating candidates in a primary or general election, or special election to fill a vacancy, shall be in the case of:

(i) mayor, not less than two hundred fifty thousand dollars in matchable contributions comprised of sums up to one hundred seventy-five dollars per contributor including at least one thousand matchable contributions of ten dollars or more;

(ii) public advocate and comptroller, not less than one hundred twenty-five thousand dollars in matchable contributions comprised of sums of up to one hundred seventy-five dollars per contributor including at least five hundred matchable contributions of ten dollars or more;

(iii) borough president, an amount equal to the number of persons living in such borough as determined by the last census multiplied by two cents in matchable contributions comprised of sums of up to one hundred seventy-five dollars per contributor including at least one hundred matchable contributions of ten dollars or more from residents of the borough, or ten thousand dollars comprised of sums of up to one hundred seventy-five dollars per contributor, whichever is greater.

(iv) member of the city council, not less than five thousand dollars in matchable contributions comprised of sums of up to one hundred seventy-five dollars per contributor including at least seventy-five matchable contributions of ten dollars or more from residents of the district in which the seat is to be filled.

(b) Any participating candidate meeting the threshold for eligibility in a primary election for one of the foregoing offices shall be deemed to have met the threshold for eligibility for such office in any other election, other than a special election to fill a vacancy, held in the same calendar year.

3. In order to be eligible to receive public funds in a primary election a participating candidate must agree that in the event he or she is a candidate for such office in any other election held in the same calendar year, other than a special election to fill a vacancy, that he or she will be bound in each such other election by the eligibility requirements and all other provisions of this chapter.

4. Candidates who are contested in a primary election for nomination for election to office and who do not file a written certification pursuant to paragraph (c) of subdivision one of this section shall not be eligible for public funds for any election to such office held in the same calendar year other than a special election to fill a vacancy.

5. Participating candidates who are seeking nomination or election exclusively as write-in candidates, who are

unopposed in a covered election, or who are opposed in a covered election only by candidates seeking nomination or election exclusively as write-in candidates, shall not be eligible to receive public funds for such election.

6. (a) Each participating or limited participating candidate and his or her principal committee, and each non-participating candidate and his or her authorized committees shall report to the board every contribution, loan, guarantee, or other security for such loan received by the candidate and such committee, the full name, residential address, occupation, employer, and business address of each contributor, lender, guarantor, or provider of security and of each person or entity which is the intermediary for such contribution, loan, guarantee, or other security for such loan, and every expenditure made by the candidate and such committee, including expenditures not subject to section 3-706. Disclosure reports shall be submitted at such times and in such form as the board shall require and shall be clearly legible.

(b) Notwithstanding paragraph (a) above:

(i) an intermediary need not be reported for any contribution to a participating or limited participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees that was collected from a contributor in connection with a party or other candidate-related event held at the residence of the person delivering the contribution, unless the expenses of such events at such residence for such candidate exceed five hundred dollars for a covered election or the aggregate contributions received from that contributor at such events exceed five hundred dollars;

(ii) contributions aggregating not more than ninety-nine dollars from any one contributor for all covered elections held in a single calendar year or for a special election need not be separately itemized in disclosure reports submitted to the board on behalf of a participating, or limited participating or non-participating candidate and his or her principal committee or authorized committees, provided, however, that contributions which are not itemized shall not be matchable;

(iii) the treasurer of the principal committee need not collect or disclose the occupation, employer, and business address of any contributor making contributions aggregating not more than ninety-nine dollars for all covered elections held in a single calendar year or for a special election; provided, however, such occupation, employer, and business address shall be disclosed if such contributors are employees of a participating or limited participating candidate or the spouse or domestic partner of such candidate or an entity in which such candidate, spouse or domestic partner has an ownership interest of ten percent or more or a management position, including, but not limited to, being an officer, director or trustee; and

(iv) disclosure reports, other than reports required to be filed every six months in accordance with the schedule specified by the New York state board of elections, need not be submitted on behalf of a participating or limited participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees if the cumulative amount of contributions and loans accepted by such candidate and committee following the period covered in the last disclosure report submitted to the campaign finance board on behalf of such candidate is less than two thousand dollars or such higher amount as may be determined by the campaign finance board, provided, however, that disclosure reports shall be submitted on behalf of a participating or limited participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees if that candidate and his or her committee have made expenditures in excess of forty-five percent of the expenditure limitation applicable to participating and limited participating candidates under section 3-706. The campaign finance board shall make available to the public a copy of disclosure reports within two business days after they are accepted by the board.

6-a. Any rules promulgated by the board to require that disclosure reports submitted pursuant to this chapter be submitted in an electronic format shall provide exemptions for small campaigns, as defined by board rules, and for other campaigns that demonstrate that submission in an electronic format would pose a substantial hardship.

7. Not later than the first day of March in the year two thousand eighteen and every fourth year thereafter the campaign finance board shall (i) determine the percentage difference between the average over a calendar year of the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics for the twelve months preceding the beginning of such calendar year and the average over the calendar year two thousand fifteen of such consumer price index; (ii) adjust each maximum contribution applicable pursuant to paragraph (f) of subdivision one of this section by the amount of such percentage difference to the nearest fifty dollars; and (iii) publish such adjusted maximum contribution in the City Record. Such adjusted maximum contribution shall be in effect for any election held before the next such adjustment.

8. If a participating or limited participating candidate and his or her principal committee or a non-participating candidate and his or her authorized committees demonstrate to the board that a political committee has not accepted contributions, loans, or other receipts or made expenditures or transfers in a covered election, and represent that such committee will not accept contributions, loans, or other receipts or make expenditures or transfers in a covered election, the participating or limited participating candidate and his or her principal committee or non-participating candidate and his or her authorized committees may submit to the board legible copies of financial disclosure reports, required to be filed with the city or state board of elections, for such committees in lieu of the disclosure report form designated by the board for purposes of subdivision six of this section.

9. No political committee authorized by a participating, or limited participating or non-participating candidate for a covered election may be authorized to aid or take part in the elections of more than one candidate.

10. All receipts accepted by a participating or limited participating candidate and his or her principal committee shall be deposited in an account of the principal committee. All receipts accepted by a non-participating candidate and his or her authorized committees shall be deposited in an account of the authorized committees. The treasurer of the principal committee or authorized committee shall be responsible for making such deposits. All deposits shall be made within ten business days of receipt; provided, however, that deposits of contributions made in the form of checks received by a participating, or limited participating or non-participating candidate and his or her committees for the office of city council more than one year before the first covered election for which such candidate is seeking nomination or election may be made within twenty business days of receipt. Each disclosure report filed pursuant to subdivision six of this section shall include the date of receipt of each contribution accepted.

11. Regardless whether a participating candidate demonstrates eligibility for optional public financing under this chapter, a participating candidate and his or her principal committee are nonetheless required to abide by the requirements of paragraphs (d), (e), (f), (g), (h), (i), (k) and (l) of subdivision one of this section.

12. (a) Each participating candidate or limited participating candidate for nomination for election, or election, or the principal committee of such candidate, shall submit, in a contemporaneous manner, the disclosure reports required pursuant to this chapter, filed in accordance with the schedule specified by the state board of elections for the filing of campaign receipt and expenditure statements, and such other disclosure reports as the rules of the board may require, in order for any contributions received during the periods covered by such reports and prior to the last date upon which such candidate may file a certification pursuant to paragraph (c) of subdivision one of this section to qualify as matchable contributions.

(b) The board shall review each disclosure report timely submitted by a candidate prior to the last date upon which such candidate may file a certification pursuant to paragraph (c) of subdivision one of this section, or subdivision one of section 3-718, and issue to the candidate a review before the next disclosure report is due. Such review shall inform the candidate of relevant questions the board has concerning the candidate's: (i) compliance with requirements of this chapter and of the rules issued by the board; and (ii) qualification for receiving public funds pursuant to this chapter. In the course of this review, the board shall give candidates an opportunity to respond to and correct potential violations, before the deadline for filing a certification pursuant to paragraph (c) of subdivision one of this section, or subdivision one of section 3-718, and give candidates an opportunity to address questions the board has concerning their

matchable contribution claims or other issues concerning eligibility for receiving public funds pursuant to this chapter; provided, however, this paragraph shall not apply to the last required disclosure report before the deadline for filing a certification pursuant to paragraph (c) of subdivision one of this section or subdivision one of section 3-718. Nothing in this paragraph shall preclude the board from subsequently reviewing such disclosure reports and taking any action otherwise authorized under this chapter.

13. Candidates who file a certification pursuant to subdivision one of this section shall not be eligible to file a certification pursuant to section 3-718, and candidates who file a certification pursuant to section 3-718 shall not be eligible to file a certification pursuant to subdivision one of this section.

14. (a) Transfers that a principal committee receives from a political committee (other than another principal committee) at any time during an election cycle shall:

(i) be attributed to previous contributions in accordance with the duly promulgated rules of the campaign finance board applicable to such transfer or use;

(ii) exclude an amount equal to the total of:

(A) such previous contributions, or portions thereof, that violate the limitations, restrictions, or prohibitions of the charter and this chapter applicable in the covered election for which the principal committee is designated; and

(B) such previous contributions, or portions thereof, for which the principal committee has not obtained and submitted to the board, prior to receipt of the transfer, evidence of the contributor's intent to designate the contribution for such covered election, and any other record, as determined by the rules of the board; and

(iii) not be matchable.

(b) Each transfer, the contributions to which the transfer is attributed, and all expenditures made in connection with such contributions shall be reported to the board in the next disclosure report due pursuant to this section 3-703 after the transfer is received. These expenditures shall, at a minimum, include all expenditures made by the political committee making the transfer during the election cycle of the covered election. The board shall issue instructions defining the circumstances in which such disclosure reports shall also include additional expenditures made by other political committees authorized by the participating candidate that originally received such contributions and additional expenditures made prior to such election cycle. Such expenditures shall be applied to the expenditure limit applicable under 3-706.

(c) Participating candidates shall have the burden of demonstrating that expenditures reported pursuant to paragraph (b) of this subdivision are not subject to the expenditure limit applicable under section 3-706 and are not a basis for reducing public funds payments pursuant to subdivision eight of section 3-705 of this chapter.

(d) Nothing in this subdivision is intended to modify or supersede any federal law that prohibits or otherwise restricts the use of campaign or donated funds by political committees, candidates or federal officeholders.

15. Participating candidates, their campaign managers, treasurers or persons with significant managerial control over a campaign shall be required to attend a training provided by the campaign finance board concerning compliance with the requirements of the campaign finance program and use of the campaign finance program software.

HISTORICAL NOTE

Section amended L.L. 69/1990 § 3, eff. Nov. 27, 1990

Section added L.L. 8/1988 § 2

Subd. 1 par (b) amended L.L. 48/1998 § 1, eff. Oct. 22, 1998.

Subd. 1 par (b) amended L.L. 68/1993 § 23, eff. Jan. 1, 1994

Subd. 1 par (c) amended L.L. 12/2003 § 3, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (c), amended L.L. 48/1998 § 1, eff. Oct. 22, 1998.

Subd. 1 par (c) amended L.L. 4/1989 § 1

Subd. 1 par (c) subpar (i) amended L.L. 67/2007 § 3, eff. Dec. 31, 2007.

Subd. 1 par (c) subpar (i) amended L.L. 34/2007 § 3, eff. Jan. 1, 2008
as per § 41 of such L.L. and apply to elections held on or after such
Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 1 par (d) amended L.L. 34/2007 § 5, eff. Jan. 1, 2008 as per § 40
of such L.L. and shall apply only to elections held on or after Jan. 1,
2008. [See § 3-702 Note 2]

Subd. 1 par (d) amended L.L. 59/2004 § 3, eff. Dec. 15, 2004. [See Note 4]

Subd. 1 par (e) amended L.L. 12/2003 § 3, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (f) amended L.L. 105/2005 § 2, eff. Dec. 19, 2005 and shall not have any effect on
any adjustments made prior to the effective date of this law pursuant to subdivision 7 of
§ 3-703 of the administrative code.

Subd. 1 par (f) separately amended L.L. 58/2004 § 3, eff. Dec. 15, 2004. [See Note 3 which makes
special provisions regarding L.L. 58/2004 § 3] and L.L. 60/2004 § 3, eff. Dec. 15, 2004. [See
Note 5 which makes special provisions regarding L.L. 60/2004 § 3]

Subd. 1 par (f) amended L.L. 12/2003 § 3, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (f) amended L.L. 21/2001 § 2, eff. Jan. 1, 1999. [See Note 1]

Subd. 1 par (f) amended L.L. 48/1998 § 1, eff. Oct. 22, 1998.

Subd. 1 par (f) amended L.L. 68/1993 § 23, eff. Jan. 1, 1994

Subd. 1 par (g) amended L.L. 59/2004 § 3, eff. Dec. 15, 2004. [See Note 4]

Subd. 1 par (h) amended L.L. 48/1998 § 1, eff. Oct. 22, 1998.

Subd. 1 par (h) amended L.L. 27/1998 § 11, eff. Sept. 5, 1998

Subd. 1 par (i) amended L.L. 12/2003 § 3, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (i) amended L.L. 48/1998 § 1, eff. Oct. 22, 1998.

Subd. 1 par (j) amended L.L. 21/2001 § 2, eff. Jan. 1, 1999.

Subd. 1 par (j) amended L.L. 48/1998 § 1, eff. Oct. 22, 1998.

Subd. 1 par (k) amended L.L. 12/2003 § 3, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (k) amended L.L. 21/2001 § 2, eff. Jan. 1, 1999.

Subd. 1 par (k) added L.L. 48/1998 § 2, eff. Oct. 22, 1998.

Subd. 1 par (l) amended L.L. 67/2007 § 9, eff. Dec. 31, 2007.

Subd. 1 par (l) amended L.L. 34/2007 § 18, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 1 par (l) separately amended L.L. 58/2004 § 3, eff. Dec. 15, 2004. [See Note 3 which makes special provisions regarding L.L. 58/2004 § 3] and L.L. 60/2004 § 3, eff. Dec. 15, 2004. [See Note 5 which makes special provisions regarding L.L. 60/2004 § 3]

Subd. 1 par (l) amended L.L. 12/2003 § 3, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (l) so designated and amended L.L. 21/2001 § 2, eff. Jan. 1, 1999. Formerly Subd. 1-a added L.L. 48/1998 § 3, eff. Oct. 22, 1998. [See Note 1]

Subd. 1 par (m) amended L.L. 58/2004 § 3, eff. Dec. 15, 2004. [See Note 3 which makes special provisions regarding L.L. 58/2004 § 3]

Subd. 1 par (m) added L.L. 43/2003 § 2, eff. Jan. 1, 2004 and shall apply to reports of annual disclosure filed for the calendar year 2003 except as otherwise provided herein.

Subd. 2 amended L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 1 par (m) added L.L. 43/2003 § 2, eff. Jan. 1, 2004 and shall apply to reports of annual disclosure filed for the calendar year 2003 except as otherwise provided herein.

Subd. 1 par (n) added L.L. 58/2004 § 3, eff. Dec. 15, 2004. [See Note 3 which makes special provisions regarding L.L. 58/2004 § 3]

Subd. 1 par (o) added L.L. 34/2007 § 19, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1,

2008. [See § 3-702 Note 2]

Subd. 1-a amended L.L. 67/2007 § 2, eff. Dec. 31, 2007.

Subd. 1-a added L.L. 34/2007 § 2, eff. July 3, 2007 as per § 37 of such L.L. [See § 3-702 Note 2]

Subd. 1-b amended L.L. 67/2007 § 2, eff. Dec. 31, 2007.

Subd. 1-b added L.L. 34/2007 § 2, eff. July 3, 2007 as per § 37 of such L.L. [See § 3-702 Note 2]

Subd. 2 amended L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 2 amended L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 2 par (a) amended L.L. 67/2007 § 24, eff. Dec. 31, 2007.

Subd. 2 par (a) amended L.L. 48/1998 § 4, eff. Oct. 22, 1998.

Subd. 3 amended L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 4 amended L.L. 48/1998 § 4, eff. Oct. 22, 1998.

Subd. 5 amended L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 6 separately amended L.L. 58/2004 § 4, eff. Dec. 15, 2004 [See Note 3] and L.L. 59/2004 § 4, eff. Dec. 15, 2004. [See Note 4]

Subd. 6 amended L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 6-a added L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 7 amended L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 8 separately amended L.L. 58/2004 § 4, eff. Dec. 15, 2004 [See Note 3] and L.L. 59/2004 § 4, eff. Dec. 15, 2004. [See Note 4]

Subd. 8 amended L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 9 separately amended L.L. 58/2004 § 4, eff. Dec. 15, 2004 [See Note 3] and L.L. 59/2004 § 4, eff. Dec. 15, 2004 [See Note 4] and L.L. 60/2004 § 4, eff. Dec. 15, 2004. [See Note 5]

Subd. 10 separately amended L.L. 58/2004 § 4, eff. Dec. 15, 2004 [See Note 3] and L.L. 59/2004 § 4, eff. Dec. 15, 2004 [See Note 4] and L.L. 60/2004 § 4, eff. Dec. 15, 2004. [See Note 5]

Subd. 10 amended L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 11 amended L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 11 amended L.L. 12/2003 § 4, eff. Feb. 18, 2003. [See Note 2]

Subd. 11 amended L.L. 21/2001 § 3, eff. Jan. 1, 1999.

Subd. 11 amended L.L. 48/1998 § 5, eff. Oct. 22, 1998.

Subd. 12 amended L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 12 amended L.L. 12/2003 § 4, eff. Dec. 31, 2003. [See Note 2]

Subd. 12 added L.L. 37/1994 § 1, eff. Aug. 17, 1994

Subd. 13 added L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 14 added L.L. 58/2004 § 4, eff. Dec. 15, 2004. [See Note 3]

Subd. 15 added L.L. 34/2007 § 6, eff. Jan. 1, 2008 as per § 40 of such

L.L. and shall apply only to elections held on or after Jan. 1, 2008.

[See § 3-702 Note 2]

NOTE

1. Provisions of L.L. 21/2001 § 1:

Section 1. Declaration of Legislative Intent and Findings.

In October 1998, the Council enacted Local Law 48, which, among other provisions, provided that participating candidates in the City's campaign finance program who do not accept corporate contributions receive payment for qualified campaign expenditures of four dollars for every one dollar of matchable contributions. For candidates choosing to take corporate contributions, Local Law 48 provided that they would receive the previous matching rate of one-to-one. Subsequent to the Council passing Local Law 48, amendments to the Charter were approved by the voters through a referendum in the November 1998 election. These amendments included a ban on corporate contributions for all participating candidates, thereby making all participating candidates eligible for matching public funds at a rate of four-to-one pursuant to the unamended provisions of Local Law 48. **See** Charter §1052(a)(12). Accordingly, during the 1999 election cycle, the Campaign Finance Board distributed matching public funds to participating candidates at a rate of four-to-one. Understandably, participating candidates and prospective participating candidates have anticipated four-to-one matching funds, relying on the unamended provisions of Local Law 48, pronouncements made by the Campaign Finance Board (**See, e.g.** Advisory Opinion No. 1998-2), and the Board's distribution of funds during the 1999 elections.

Recently, however, and notwithstanding Local Law 48 and the Campaign Finance Board's pronouncements and participating candidates' reliance thereon, the Director of Management and Budget and the Commissioner of Finance filed a complaint in Supreme Court, New York County, against the Campaign Finance Board **(City of New York v. New York City Campaign Finance Board),** claiming that the four-to-one provisions of Local Law 48 were invalidated by the Charter prohibition on corporate contributions adopted by the voters in the 1998 referendum. Failing to understand that the ban on corporate contributions continued to trigger the four-to-one provisions of Local Law 48 for all participating candidates, the complaint alleges that participating candidates are only entitled to a one-to-one match of public funds.

The Council, therefore, enacts this legislation to allay any confusion created by the above lawsuit, as well as by an opinion of the New York City Corporation Counsel's Office, dated December 29, 1998, which concluded that the

1998 Charter amendments required that the matching rate reverts back to the rate that existed prior to the enactment of Local Law 48. The Council finds plaintiffs' position in **City of New York v. New York City Campaign Finance Board** and Corporation Counsel's opinion to be contrary to the clear meaning of the Campaign Finance Act. By generating an atmosphere of confusion, prospective participating candidates in the upcoming election cycle may not have full confidence that they can predict the level of funds available for their campaigns or that they will have the requisite financing to even attempt campaigning for elected office. Any confusion and unpredictability created by the lawsuit and by Corporation Counsel's opinion undermines the integrity of the Campaign Finance Act. Furthermore, Corporation Counsel's opinion runs contrary to Advisory Opinion No. 1998-2 of the Campaign Finance Board, dated October 23, 1998, which held that "the Charter amendment would trigger the 4:1 matching rate for all participating candidates. . . . Indeed it would be illogical to conclude that the Charter proposal to mandate the burden of a corporate ban would also effectively withdraw financial incentives and off-sets the Council has devised for promoting Program participation."

The Council enacts these technical amendments to §3-703 ("Eligibility and other requirements"), 3-705 ("Optional public financing") and 3-706 ("Expenditure limitations; additional financing and limits") in order to reaffirm the existing legal requirements of Local Law 48 providing matching funds at a rate of four-to-one, thereby maintaining the integrity of the campaign finance program. The four-to-one matching rate set forth in Local Law 48 provides a greater level of matching funds for small contributors, enhances the opportunity for candidates who do not have access to large contributors, and increases the role of New York City residents' contributions and public matching funds on the total financing of candidates. The four-to-one matching rate also assures that candidates who give up the opportunity to accept corporate contributions by joining the campaign finance program will receive financial support sufficient to generate and sustain a robust campaign. In addition, these technical amendments reaffirm that participating candidates campaigning against a candidate who is not a participant in the campaign finance program receive a five-to-one match. The four-to-one and five-to-one rates compensate for the lost funds that participating candidates may have raised from corporate contributions had they not joined the Campaign Finance Program. Such compensation furthers a salient goal of the Campaign Finance Act, which is to encourage participation in a fair and comprehensive program of campaign finance reform.

2. Provisions of L.L. 12/2003:

Section 1. Declaration of Legislative Intent and Findings.

The New York City Campaign Finance Act was adopted by the New York City Council in 1988. The Act, through its administration by the Campaign Finance Board, has succeeded in enhancing competition for elective municipal offices, limiting campaign contributions and expenditures to reasonable levels, and vastly increasing public information about the sources and uses of campaign funds. New York City's campaign finance program has been a model for the nation and a first-rate example of successful campaign finance reform in action.

After greater than a decade of experience, the Council seeks to reaffirm the fundamental goals of the Campaign Finance Act and to strengthen this landmark law through changes that are intended to encourage a continued high level of participation in the voluntary program and to protect public funds from fraud and unnecessary expenditures.

. . . . . .

§ 15. Sections 3 and 7 of this local law shall not have any effect on any adjustments made prior to the effective date of this law pursuant to subdivision 7 of section 3-703 or paragraph (e) of subdivision 1 of section 3-706 of the administrative code. § 16. Notwithstanding any provision of this local law to the contrary, an authorized committee, as such term is defined in section 3-702 of the administrative code, authorized by a participating candidate to aid or take part in a covered election scheduled to be held before January first, two thousand and four, that was in existence as of December first, two thousand and two, may continue in existence as such candidate's principal committee, as such term is defined in this local law, notwithstanding that such committee had been authorized or

otherwise active for any prior election. § 17. This local law shall become effective immediately, except the amendments to subdivision 12 of section 3-703 contained in section 4 of this local law, which shall become effective December thirty-first, two thousand and three.

3. Provisions of L.L. 58/2004:

Section 1. Declaration of Legislative Intent and Findings.

The New York City Campaign Finance Act, adopted by the New York City Council in 1988, has succeeded in enhancing competition for elective municipal offices, limiting campaign contributions and expenditures to reasonable levels, and vastly increasing public information about the sources and uses of campaign funds.

The Council finds that amendments to the New York City Campaign Finance Act, section 3-801 of the administrative code of the City of New York, and the charter of the City of New York, will further the goals of this landmark legislation.

This local law will alter the formula for paying public funds to participating candidates facing high spending non-participating candidates, thus further reducing disparities between participating and non-participating candidates. Additionally, this local law includes new provisions aimed at reducing expenditures of public funds in non-competitive races.

Further, the Council seeks to permit those candidates for municipal office who fund their campaigns entirely through the use of their personal funds to participate in the Campaign Finance Program to a limited degree, without extending the public financing provisions to these candidates. In doing so, the Council seeks to strengthen the City's campaign finance program by enabling self-funded candidates to participate in the program by limiting their expenditures, in return for which the bonus provisions of the law will not be triggered for participating candidates, thus reducing Program costs.

Further, the Council finds that matching individual vendor contributions with public funds may lead to abuses in the Program or the perception of abuses in the Program. Accordingly, the Council intends to disallow the matching of individual vendor contributions, but not contributions made from individuals working for a campaign or working for vendor companies.

Further, the Council intends to extend the prohibition on public servants sending mass mailings before an election from thirty to ninety days. Within such ninety-day period, public servants may send one such mass mailing following the adoption of the city budget to inform constituents of the details of such budget and other government matters.

Finally, the local law will improve key elements of the Debate Program. Since its inception in 1997, the Debate Program has provided voters with valuable public exposure to candidates for citywide office. The Council now seeks to amend the Debate Program based on its experience with two sets of debates - 1997 and 2001. These Debate Program changes will improve the functioning of debates, ease the process of selecting debate sponsors, and enhance the value of the Debate Program for City voters.

. . . . . .

§ 20. Severability. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected. § 21. Sections 3 and 6 of this local law shall not have any effect on any adjustments made prior to the effective date of this law pursuant to subdivision 7 of section 3-703 or paragraph (e) of subdivision 1

of section 3-706 of the administrative code. § 22. This local law shall become effective immediately except amendments made to subdivisions two and five of section six of this local law, which shall become effective on January 1, 2006.

4. Provisions of L.L. 59/2004:

Section 1. Declaration of Legislative Intent and Findings.

The New York City Campaign Finance Act, adopted by the New York City Council in 1988, has succeeded in enhancing competition for elective municipal offices, limiting campaign contributions and expenditures to reasonable levels, and vastly increasing public information about the sources and uses of campaign funds.

The Council finds that amendments to the New York City Campaign Finance Act and the charter of the City of New York, will further the goals of this landmark legislation. By imposing many of the same disclosure and audit provisions of the Campaign Finance Act to those candidates for municipal office who elect not to participate in the Campaign Finance Program, without extending to such candidates the public financing provisions or the provisions limiting expenditures, the Council seeks to further strengthen the reform program that has been recognized as a national model.

Further, the Council finds that the Campaign Finance Board publishes on the Web a searchable database of campaign finance information reported by candidates participating in the City's campaign finance reform program. This unique and detailed public resource enables the voting public to review and compare contributions and expenditures for opposing candidates, and to draw their own conclusions about the significance of this information in the exercise of the voting franchise.

As presently constituted, the Web database does not include the campaign finance transactions of candidates who choose not to participate in the City's reform program. This absence of comprable public disclosure deprives the voting public of relevant comparative information and creates increased administrative burdens for the Campaign Finance Board in making the administrative determinations required by the Campaign Finance Act. In addition, the Council finds that the Board of Elections does not monitor the completeness and accuracy of the campaign finance disclosure reports submitted on behalf of non-participating candidates in the same detailed manner that the Campaign Finance Board does with public disclosure reports filed on behalf of participating candidates.

The Council finds and declares that:

1. Uniform disclosure of comparable information serves the interest of the voting public and promotes fair competition among opposing candidates. This public information function is comparable to the voters guide published pursuant to §1053 of the New York City Charter, which covers all candidates for City office regardless of their participation in the voluntary system of campaign finance reform.

2. Detailed public campaign finance disclosure helps safeguard against the risk that large campaign contributions will gain undue influence over government decision-making and sheds light on campaign spending practices. As is true of the personal financial disclosure required of all candidates for City office pursuant to §12-110 of the Administrative Code, detailed and comparable public disclosure of campaign finance transactions must be a fundamental obligation of all candidates seeking City office.

3. Disclosure to the Campaign Finance Board will enhance the existing Web database and facilitate determinations the board is required to make pursuant to the New York City Campaign Finance Act.

4. Equal protection requires an enforcement regime that treats all competing candidates in the same manner. For that reason, this local law extends auditing and penalties under the New York City Campaign Finance Act to ensure that public disclosure on behalf of all candidates seeking public office of the City of New York is complete, timely, and

accurate.

By providing detailed financial information about all candidates, these amendments will permit greater public scrutiny of campaign finances for all candidates running for certain offices in New York City.

. . . . . .

§ 15. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected. § 16. This local law shall become effective immediately and shall be applicable to all receipts and expenditures for elections held after the effective date, regardless whether the receipt or expenditure occurred prior to the effective date.

5. Provisions of L.L. 60/2004:

Section 1. Declaration of Legislative Intent and Findings.

The New York City Campaign Finance Act, adopted by the New York City Council in 1988, has succeeded in enhancing competition for elective municipal offices, limiting campaign contributions and expenditures to reasonable levels, and vastly increasing public information about the sources and uses of campaign funds.

The Council finds that amendments to the New York City Campaign Finance Act and the charter of the City of New York, will further the goals of this landmark legislation. By imposing the same contribution provisions of the Campaign Finance Act to those candidates for municipal office who elect not to participate in the Campaign Finance Program, without extending to such candidates the public financing provisions or the provisions limiting expenditures, the Council seeks to further strengthen the reform program that has been recognized as a national model. By ending the disparity in contribution limits faced by participating candidates opposed by non-participating candidates, these amendments further reduce the opportunity for wealthy special interests to exercise or appear to exercise undue influence over local elected officials in New York City.

This local law will also extend the existing ban on contributions from corporations to non-participating candidates, thus eliminating further disparities between participating and non-participating candidates and promoting a governmental interest in emphasizing contributions from individuals.

. . . . . .

§ 15. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected. § 16. Section 3 of this local law shall not have any effect on any adjustments made prior to the effective date of this law pursuant to subdivision 7 of section 3-703 of the administrative code.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-704

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-704 Qualified campaign expenditures.

1. Public funds provided under the provisions of this chapter may be used only for expenditures by a principal committee to further the participating candidate's nomination for election or election, either in a special election to fill a vacancy, or during the calendar year in which the primary or general election in which the candidate is seeking nomination for election or election is held.

2. Such public funds may not be used for:

(a) an expenditure in violation of any law;

(b) payments made to the candidate or a spouse, domestic partner, child, grandchild, parent, grandparent, brother or sister of the candidate or spouse or domestic partner of such child, grandchild, parent, grandparent, brother or sister, or to a business entity in which the candidate or any such person has a ten percent or greater ownership interest;

(c) payments in excess of the fair market value of services, materials, facilities or other things of value received in exchange;

(d) (i) any expenditure made after the candidate has been finally disqualified or had his or her petitions finally declared invalid by the New York city board of elections or a court of competent jurisdiction, except that such expenditures may be made:

(A) as otherwise permitted pursuant to subdivision seven of section 3-709 of this chapter, or

(B) for a different covered election, other than a special election to fill a vacancy, held later in the same calendar year in which the candidate seeks election for the same office; provided, however, that public funds originally received for a special election to fill a vacancy may not be retained for expenditure in any other election; (ii) any expenditure made after the only remaining opponent of the candidate has been finally disqualified or had his or her petitions finally declared invalid by the New York city board of elections or a court of competent jurisdiction, except that such expenditures may be made for a different covered election, other than a special election to fill a vacancy, held later in the same calendar year in which the candidate seeks election for the same office; provided, however, that public funds originally received for a special election to fill a vacancy may not be retained for expenditure in any other election;

(e) payments in cash;

(f) any contribution, transfer, or loan made to another candidate or political committee;

(g) gifts, except brochures, buttons, signs and other printed campaign material;

(h) any expenditure to challenge or defend the validity of petitions of designation or nomination, or of certificates of nomination, acceptance, authorization, declination, or substitution, and expenses related to the canvassing of election results, made pursuant to subdivision four of section 3-706;

(i) an expenditure made primarily for the purpose of expressly advocating a vote for or against a ballot proposal, other than expenditures made also to further the participating candidate's nomination for election or election;

(j) payment of any penalty or fine imposed pursuant to federal, state or local law; or

(k) payments made through advances, except in the case of individual purchases in excess of two hundred fifty dollars.

HISTORICAL NOTE

Section amended L.L. 69/1990 § 3, eff. Nov. 27, 1990

Section added L.L. 8/1988 § 2

Subd. 1 amended L.L. 12/2003 § 5, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 1 amended L.L. 48/1998 § 6, eff. Oct. 22, 1998.

Subd. 2 par (b) amended L.L. 27/1998 § 12, eff. Sept. 5, 1998.

Subd. 2 par (d) amended L.L. 48/1998 § 6, eff. Oct. 22, 1998.

Subd. 2 par (f) amended L.L. 48/1998 § 6, eff. Oct. 22, 1998.

Subd. 2 par (g) amended L.L. 34/2007 § 20, eff. Jan. 1, 2008 as per § 40

of such L.L. and shall apply only to elections held on or after Jan. 1,

2008. [See § 3-702 Note 2]

Subd. 2 par (g) amended L.L. 4/1989 §2

Subd. 2 par (h) amended L.L. 34/2007 § 20, eff. Jan. 1, 2008 as per § 40

of such L.L. and shall apply only to elections held on or after Jan. 1,

2008. [See § 3-702 Note 2]

Subd. 2 par (h) amended L.L. 12/2003 § 5, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2 par (h) amended L.L. 48/1998 § 6, eff. Oct. 22, 1998.

Subd. 2 par (h) amended L.L. 4/1989 §2

Subd. 2 par (i) added L.L. 4/1989 § 2

Subd. 2 par (i) added L.L. 34/2007 § 20, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 2 par (j) amended L.L. 67/2007 § 10, eff. Dec. 31, 2007.

Subd. 2 par (j) added L.L. 34/2007 § 20, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 2 par (k) added L.L. 34/2007 § 20, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-705

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-705 Optional public financing.

Each participating candidate for nomination for election or election in a covered election may obtain payment to his or her principal committee from public funds for qualified campaign expenditures, in accordance with the provisions of this chapter, and subject to appropriation.

1. No such public funds shall be paid to a principal committee unless the board determines that the participating candidate has met the eligibility requirements of this chapter. Payment shall not exceed the amounts specified in this chapter, and shall be made only in accordance with the provisions of this chapter. Such payment may be made only to the participating candidate's principal committee. No public funds shall be used except as reimbursement or payment for qualified campaign expenditures actually and lawfully incurred or to repay loans used to pay qualified campaign expenditures.

2. (a) If the threshold for eligibility is met, the participating candidate's principal committee shall receive payment for qualified campaign expenditures of six dollars for each one dollar of matchable contributions, up to one thousand fifty dollars in public funds per contributor (or up to five hundred twenty-two dollars in public funds per contributor in the case of a special election), obtained and reported to the campaign finance board in accordance with the provisions of this chapter.

(b) Except as otherwise provided in subdivision three of section 3-706, in no case shall the principal committee of a participating candidate receive public funds pursuant to paragraph (a) above in excess of an amount equal to fifty-five percent of the expenditure limitation provided in subdivision one of section 3-706 for the office for which such candidate seeks nomination for election or election.

(c) No funds shall be provided pursuant to this subdivision with respect to any covered election specified in subdivision five of this section.

3. A participating candidate seeking or obtaining nomination for election by more than one party shall be deemed one candidate, and shall not receive additional public funds or be authorized to accept contributions in excess of the maximum contribution applicable pursuant to paragraph (f) of subdivision one of section 3-703 or make additional expenditures by reason of such candidate seeking or obtaining nomination for election by more than one party. Subdivision five of section 3-703 shall not be applicable to such a candidate who is opposed for the nomination of at least one party in a primary election. The elimination of the expenditure limitations and qualification for additional matching funds provided in subdivision three of section 3-706 shall not be applicable to such a candidate who is opposed for the nomination of at least one party solely by participating candidates.

4. The campaign finance board shall make possible payment within four business days after receipt of reports of matchable contributions, or as soon thereafter as is practicable, but not earlier than the earliest dates for making such payments as provided in subdivisions five and six of section 3-709; provided, however, that the board shall withhold up to five percent of all public funds payments to participating candidates until the final pre-election payment for any given election. The board shall schedule a minimum of three payment dates within the thirty days prior to a covered election. For purposes of such payment dates, the board shall provide each candidate with a written determination specifying the basis for any non-payment. The board shall provide candidates with a process by which they may immediately upon receipt of such determination petition the board for reconsideration of any such non-payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the board denies such petition then it shall immediately notify the candidate of his or her right to bring a special proceeding pursuant to article 78 of the civil practice law and rules.

5. (a) Notwithstanding any other provision of this chapter, a participating candidate in a run-off primary election held pursuant to section 6-162 of the New York state election law or a run-off special election to fill a vacancy shall obtain prompt payment for qualified campaign expenditures in an amount equal to twenty-five cents for each one dollar of public funds paid pursuant to this chapter to the candidate's principal committee for the preceding election.

(b) The board shall promulgate rules to provide for the prompt issuance of additional public funds to eligible participating candidates for qualified campaign expenditures in the case of an additional day for voting held pursuant to section 3-108 of the New York state election law, an election held pursuant to court order, or a delayed or otherwise postponed election.

(c) Except as provided for by this subdivision and any rules promulgated hereby, no public funds shall be provided to any candidate for any run-off primary election, run-off special election to fill a vacancy, additional day for voting, election held pursuant to court order, or delayed or otherwise postponed election.

6. Notwithstanding any other provision of this chapter to the contrary, to protect the public fund from disproportionately large payments when the number of voters eligible to vote in a primary election is small, the board shall adopt rules setting a reduced maximum primary election public funds payment for participating candidates on the ballot in one or more primary elections in which the number of persons eligible to vote for party nominees total fewer than such number as shall be specified by the board in such rules, if any. Any such rules shall not apply to participating candidates opposed in a primary election by one or more participating candidates who are not subject to such reduced maximum primary election public funds payment or by a non-participating candidate who makes expenditures in excess of a specified amount for such primary election, as determined by the board.

7. Notwithstanding any provision of this section to the contrary, the amount of public funds payable a participating candidate on the ballot in any covered election shall not exceed one quarter of the maximum public funds payment otherwise applicable under subdivision two of this section, unless:

(a) the participating candidate is opposed by a candidate and the board has determined that such other candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office fixed by subdivision one of section 3-706 of this chapter for participating candidates; or

(b) the participating candidate has submitted a certified signed statement attesting to the need and stating the reason for additional public funds in such election, in which case the board shall publish such statement at the time such additional public funds are paid, including on the board's internet website. Such statement must certify that (i) one or more of the following conditions apply and (ii) such condition or conditions reasonably demonstrate the need for such public funds, and the participating candidate must provide documentation demonstrating the existence of such condition or conditions:

(1) the participating candidate is opposed by (i) a non-participating candidate or (ii) a limited participating candidate, and provides a factual basis with supporting documentation of such candidate's ability to self finance; (2) the participating candidate is opposed by a candidate who has received (i) the endorsement of a citywide or statewide elected official or a federal elected official representing all or a portion of the area covered by the election; (ii) two or more endorsements from other city elected officials who represent all or a part of the area covered by the election; or (iii) endorsements of one or more membership organizations with a membership of over 250 members;

(3) the participating candidate is opposed by a candidate who has had significant media exposure in the twelve months preceding the election. For purposes of this paragraph, significant media exposure shall mean appearance of the opponent or his or her name on television or radio in the area of the covered election or in print media in general circulation in the area of the covered election at least twelve times in the year preceding the covered election; provided, however, that the listing of names of candidates or potential candidates for a covered election without additional information concerning the opponent shall not constitute an appearance for purposes of this paragraph;

(4) the participating candidate is opposed by a candidate who has received twenty-five percent or more of the vote in an election for public office in an area encompassing all or part of the area that is the subject of the current election in the last eight years preceding the election;

(5) the participating candidate is opposed by a candidate whose name is substantially similar to the candidate's so as to result in confusion among voters, as determined by the board;

(6) the participating candidate in a city council or borough-wide race is opposed by a candidate who is a chairman or president of a community board or district manager of a community board; or

(7) the participating candidate is opposed by a candidate whose spouse, domestic partner, sibling, parent or child holds or has held elective office in an area encompassing all or part of the area of the covered election in the past ten years.

The board shall be authorized to verify the truthfulness of any certified statement submitted pursuant to this paragraph and of any supporting documentation and shall post such certified statements and supporting documentation on its website.

(c) the participating candidate is opposed in a primary or special election for an office for which no incumbent is seeking re-election.

If any of the conditions described in paragraphs (a), (b), or (c) occur in such election, the board shall pay any and all additional public funds due to the participating candidate up to the maximum total payment applicable in such election under subdivisions two or six of this section or subdivision three of section 3-706 of this chapter.

8. Contributions by a principal committee of a participating candidate to other political committees shall not be a

basis for reducing public funds payments, provided that: (a) such principal committee has received contributions (other than matchable contributions) that, in the aggregate, exceed the total of such contributions to other political committees and (b) such contributions in the aggregate do not exceed:

(i) three thousand dollars, if such principal committee is the principal committee of a participating candidate seeking nomination for election or election to the office of member of the city council;

(ii) five thousand dollars, if such principal committee is the principal committee of a participating candidate seeking nomination for election or election to the office of borough president; and

(iii) ten thousand dollars, if such principal committee is the principal committee of a participating candidate seeking nomination for election or election to a city-wide office.

9. If a participating candidate endorses or publicly supports his or her opponent for election, such candidate shall not be eligible for public funds.

10. A participating candidate who loses in the primary election but remains on the ballot for the general election must certify to the board before receiving public funds that he or she will actively campaign for office; such campaign activity shall include, but not be limited to, raising and spending funds, seeking endorsements, and broadly soliciting votes.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Open par amended L.L. 12/2003 § 6, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Open par amended L.L. 69/1990 § 4, eff. Nov. 27, 1990

Subds. 1 amended L.L. 69/1990 § 4, eff. Nov. 27, 1990

Subd. 2 amended L.L. 58/2004 § 5, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 2 amended L.L. 21/2001 § 4, eff. Jan. 1, 1999.

Subd. 2 amended L.L. 48/1998 § 7, eff. Oct. 22, 1998.

Subd. 2 amended L.L. 69/1990 § 4, eff. Nov. 27, 1990

Subd. 2 par (a) amended L.L. 67/2007 § 11, eff. Dec. 31, 2007.

Subd. 2 par (a) amended L.L. 34/2007 § 21, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 3 amended L.L. 69/1990 § 4, eff. Nov. 27, 1990

Subd. 3 amended L.L. 48/1998 § 7, eff. Oct. 22, 1998.

Subd. 4 amended L.L. 67/2007 § 5, eff. Dec. 31, 2007.

Subd. 4 amended L.L. 34/2007 § 7, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See §3-702 Note 2]

Subd. 4 amended L.L. 58/2004 § 5, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 5 amended L.L. 12/2003 § 6, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 5 amended L.L. 69/1990 § 4, eff. Nov. 27, 1990

Subd. 6 added L.L. 12/2003 § 6, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 7 amended L.L. 67/2007 § 12, eff. Dec. 31, 2007.

SSubd. 8 added L.L. 12/2003 § 6, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 9 added L.L. 34/2007 § 4, eff. Jan. 1, 2008 as per § 40 of such L.L. and applying to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 10 amended L.L. 67/2007 § 4, eff. Dec. 31, 2007.

Subd. 10 added L.L. 34/2007 § 4, eff. Jan. 1, 2008 as per § 40 of such L.L. and applying to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

DERIVATION

Formerly § Subd. 7 added L.L. 12/2003 § 6, eff. Feb. 18, 2003. [See § 3-703

Note 2]

Subd. 7 par (a) repealed L.L. 34/2007 § 22, eff. Jan. 1, 2008 as per § 40

of such L.L. and shall apply only to elections held on or after Jan.

1, 2008. [See § 3-702 Note 2]

Subd. 7 par (c) amended L.L. 34/2007 § 22, eff. Jan. 1, 2008 as per § 40

of such L.L. and shall apply only to elections held on or after Jan.

1, 2008. [See § 3-702 Note 2] [Became par (b) in L.L. 67/2007 amendment]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-706

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Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-706 Expenditures limitations; additional financing and limits.

1. The following limitations apply to all expenditures made by a candidate and his or her principal committee on or after the first day of January preceding the election for which such candidate chooses to participate in the public funding provisions of this chapter and to expenditures made at any time prior to such date for services, materials, facilities, advertising or other things of value received, rendered, published, distributed or broadcast on or after such date:

(a) Except as provided in paragraph (b) of this subdivision, in each primary election, in each special election to fill a vacancy, and in each general election, expenditures by a participating candidate or a limited participating candidate and his or her principal committee for one of the following offices shall not exceed the following amounts:

mayor: $6,158,000

public advocate

or comptroller: $3,850,000

borough president: $1,386,000

member of the city council: $ 161,000

(b) (i) The expenditure limitation in a run-off primary election held pursuant to section 6-162 of the New York state election law or a run-off special election held to fill a vacancy shall be one half the amount of the applicable limitation provided for an election for such office pursuant to the provisions of paragraph (a) of this subdivision.

(ii) The board shall promulgate rules to provide for a separate expenditure limit applicable to campaign expenditures for an additional day for voting held pursuant to section 3-108 of the New York state election law, an election held pursuant to court order, or a delayed or otherwise postponed election.

(c) Expenditures by participating or limited participating candidates in a primary election made prior to or on the date of such primary election shall be deemed to have been made for such primary election.

(d) The campaign finance board shall, pursuant to section 3-713, submit a report to the mayor and the council on or before September first, nineteen hundred ninety, containing its recommendations whether the expenditure limitations provided by this subdivision should be modified. Such report shall set forth the amount of, and reasons for, any modifications it recommends.

(e) Not later than the first day of March in the year two thousand ten and every fourth year thereafter the campaign finance board shall (i) determine the percentage difference between the average over a calendar year of the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics for the twelve months preceding the beginning of such calendar year and the average over the calendar year two thousand seven of such consumer price index; (ii) adjust each expenditure limitation applicable either pursuant to this subdivision or subdivision 2 of this section by the amount of such percentage difference to the nearest thousand dollars; and (iii) publish such adjusted expenditure limitation in the City Record. Such adjusted expenditure limitation shall be in effect for any election held before the next such adjustment.

2. The following limitations apply to all expenditures made by a participating or limited participating candidate and his or her principal committee in the three calendar years preceding the year of the election for which such candidate chooses to file a certification as a participating or limited participating candidate pursuant to this chapter and to expenditures made at any time prior to such date for services, materials, facilities, advertising or other things of value received, rendered, published, distributed or broadcast in such calendar years. Such expenditures by a participating or limited participating candidate for one of the following offices and his or her principal committee shall not exceed the following amounts:

mayor, public advocate or comptroller: $290,000

borough president: $129,000

member of the city council: $ 43,000

2-a. (a) If the expenditures made by a candidate and his or her principal committee subject to the expenditure limitation of subdivision two of this section exceed the amount of the expenditure limitation applicable under such subdivision, such candidate or his or her principal committee shall not be ineligible to receive public funding for qualified campaign expenditures or be in violation of this chapter by reason of exceeding such limitation unless the amount by which such expenditures exceed such limitation is in excess of the expenditure limitation which next applies to such candidate or his or her principal committee pursuant to subdivision one of this section; and further provided that the amount of the expenditure limitation which next applies to such candidate or his or her principal committee, pursuant to subdivision one of this section, shall be reduced by the amount by which the expenditure limitation applicable under subdivision two of this section is exceeded.

(b) Nothing contained in paragraph (a) of this subdivision shall:

(i) operate to increase or decrease the amount of public funds that may be received pursuant to section 3-705 by the principal committee;

(ii) affect the expenditure limitation set forth in paragraph (b) of subdivision one of this section; or

(iii) affect the expenditure limitation set forth in paragraph (a) of subdivision one of this section for purposes of the application of subdivision three of this section.

3. (a) If any candidate in any covered election chooses not to file a certification as a participating or limited participating candidate pursuant to this chapter, and where the campaign finance board has determined that such candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds half the applicable expenditure limit for such office fixed by subdivision one of this section, then:

(i) such expenditure limit applicable to participating candidates and limited participating candidates in such election for such office shall be increased to one hundred fifty percent of such limit; and

(ii) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of five dollars for each one dollar of matchable contributions, up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of a special election); provided, however, that (A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in subdivision one of this section.

(iii) for elections occurring after January first, two thousand eight, the campaign finance board shall promulgate rules to provide that the principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of special election); provided, however, that (A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation provided for such office in subdivision one of this section.

(b) If any candidate in any covered election chooses not to file a certification as a participating or limited participating candidate pursuant to this chapter, and where the campaign finance board has determined that such candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the applicable expenditure limit for such office fixed by subdivision one of this section, then:

(i) such expenditure limit shall no longer apply to participating candidates and limited participating candidates in such election for such office; and

(ii) the principal committees of such participating candidates shall receive payment for qualified campaign expenditures of six dollars for each one dollar of matchable contributions, up to one thousand five hundred dollars in public funds per contributor (or up to seven hundred fifty dollars in public funds per contributor in the case of a special election); provided, however, that (A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding one hundred twenty-five percent of the expenditure limitation provided for such office in subdivision one of this section.

(iii) for elections occurring after January first, two thousand eight, the campaign finance board shall promulgate rules to provide that the principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand five hundred dollars in public funds per contributor (or up to seven hundred fifty dollars in public funds

per contributor in the case of special election); provided, however, that (A) participating candidates in a run-off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding one hundred twenty-five percent of the expenditure limitation provided for such office in subdivision one of this section.

4. (a) Expenditures made for the purpose of: (i) bringing or responding to any action, proceeding, claim or suit before any court or arbitrator or administrative agency to determine a candidate's or political committee's compliance with the requirements of this chapter, including eligibility for public funds payments, or pursuant to or with respect to election law or other law or regulation governing candidate or political committee activity or ballot status, (ii) expenses to challenge or defend the validity of petitions of designation or nomination or certificates of nomination, acceptance, authorization, declination or substitution, and expenses related to the canvassing or re-canvassing of election results, and (iii) expenses related to the post-election audit shall not be limited by the expenditure limitations of this section.

(b) A participating candidate shall be required to provide detailed documentation substantiating all exempt expenditure claims made pursuant to this subdivision.

HISTORICAL NOTE

Section amended L.L. 58/2004 § 6, eff. Dec. 15, 2004. [See § 3-703 Note 3 which make special provisions regarding L.L. 58/2004 § 6.]

Subd. 1 amended L.L. 34/2007 § 23, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 1 par (a) amended L.L. 67/2007 § 13, eff. Dec. 31, 2007.

Subd. 2 amended L.L. 67/2007 § 14, eff. Dec. 31, 2007.

Subd. 2 amended L.L. 34/2007 § 23, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 3 par (a) subpar (iii) amended L.L. 67/2007 § 22, eff. Dec. 31, 2007.

Subd. 3 par (a) subpar (iii) added L.L. 34/2007 § 34, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 3 par (b) subpar (iii) amended L.L. 67/2007 § 23, eff. Dec. 31, 2007.

Subd. 3 par (b) subpar (iii) added L.L. 34/2007 § 35, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 4 amended L.L. 34/2007 § 23, eff. Jan. 1, 2008 as per § 40 of such L.L. and apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

DERIVATION

Formerly § Section amended L.L. 69/1990 § 5, eff. Nov. 27, 1990

Section added L.L. 8/1988 § 2

Subd. 1 open par amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 1 par (a) amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 1 par (a) amended L.L. 68/1993 § 24, eff. Jan. 1, 1994

Subd. 1 par (b) amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2 amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2 amended L.L. 68/1993 § 25, eff. Jan. 1, 1994

Subd. 2-a amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2-a added L.L. 4/1989 § 3

Subd. 3 amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 3 amended L.L. 21/2001 § 5, eff. Jan. 1, 1999.

Subd. 3 amended L.L. 48/1998 § 8, eff. Oct. 22, 1998.

Subd. 4 amended L.L. 12/2003 § 7, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 5 amended L.L. 4/1989 § 4

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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***** Current through December 2009 ****

NYC Administrative Code 3-707

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-707 Multicandidate committees. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 69/1990 § 6, eff. Nov. 27, 1990

Section added L.L. 8/1988 § 2

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-707 Voluntary registration by political committees.

1. Participating committees may accept contributions from political committees that choose to register with the board, as provided in this section. The board shall issue rules providing for such registration. Such contributions may not exceed the amount applicable under paragraph (f) of subdivision one of section 3-703 of this chapter. The board shall regularly publish a cumulative list of political committees that have registered, including on the internet and in periodic mailings to candidates.

2. It is the responsibility of the participating candidate to determine whether he or she may accept a contribution pursuant to this section. A participating candidate who receives a contribution from a political committee that has not registered with the board prior to making the contribution shall either return the contribution to the contributor or pay to the fund an amount equal to the amount of the contribution, unless the political committee registers with the board within ten days after the publication of the next subsequent list of registered political committees by the board following the date the contribution is received.

HISTORICAL NOTE

Section added L.L. 48/1998 § 9, eff. Oct. 22, 1998.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-708

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-708 Campaign finance board.

1. There shall be a campaign finance board consisting of five members. Two members of the board shall be appointed by the mayor, provided that not more than one such member shall be enrolled in any one political party, and two members shall be appointed by the speaker of the council, provided that not more than one such member shall be enrolled in any one political party, and one member, who shall be the chairperson, shall be appointed by the mayor after consultation with the speaker. The members shall first be appointed to serve as follows:

(a) one member appointed by the speaker for a term of one year;

(b) one member appointed by the mayor for a term of two years;

(c) one member appointed by the speaker for a term of three years;

(d) one member appointed by the mayor for a term of four years; and

(e) the chairperson for a term of five years.

(b)* Each18 term shall commence on April first, nineteen hundred eighty-eight.

Thereafter, each member shall be appointed for a term of five years by the mayor or the speaker, according to the original manner of appointment. In case of a vacancy in the office of a member, a member shall be appointed to serve for the remainder of the unexpired term by the mayor or the speaker, according to the original manner of appointment. In the case of a vacancy in the office of a member for which a member is holding over after expiration of the term for

which the member was appointed, an appointment to such office made after June 1 in a year in which covered elections are scheduled shall not take effect prior to December 1 of that calendar year. Each member shall be a resident of the city, registered to vote therein. Each member shall agree not to make contributions to any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the council which in the aggregate are in excess of the maximum contribution applicable to such office pursuant to paragraph (f) of subdivision one of section 3-703. No member shall serve as an officer of a political party or be a candidate or participate in any capacity in a campaign by a candidate for nomination for election or election to the office of mayor, public advocate, comptroller, borough president or member of the city council. Officers and employees of the city or any city agency, lobbyists required to file a statement of registration under section 3-213 and the employees of such lobbyists shall not be eligible to be members of the board. In appointing members to the board, the mayor and the speaker shall consider campaign experience in general and particularly campaign experience with the New York city campaign finance system. Members of the board shall be required to undergo training developed pursuant to paragraph 14 of subdivision a of section 1052 of the charter.

2. The members of the board shall be compensated at the rate of one hundred dollars per calendar day when performing the work of the board.

3. The board may employ necessary staff, including an executive director and a counsel, and make necessary expenditures subject to appropriation. The board may employ such staff, including legal and accounting staff, as are necessary for providing technical assistance to candidates and prospective candidates in covered elections, for the purpose of promoting understanding of, participation in, and compliance with the requirements of the provisions of this chapter.

4. No member of the campaign finance board shall be removed from office except for cause and upon notice and hearing.

5. The board shall have the power to investigate all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and for such purposes shall have the power to require the attendance and examine and take the testimony under oath of such persons as it shall deem necessary and to require the production of books, accounts, papers and other evidence relative to such investigation.

6. The board shall publicize, as it deems appropriate, the names of candidates for nomination or election to the offices of mayor, public advocate, comptroller, borough president, or city council who violate any of the provisions of this chapter.

7. (a) The board shall render advisory opinions with respect to questions arising under this chapter upon the written request of a candidate, an officer of a political committee or member of the public, or upon its own initiative. The board shall promulgate rules regarding reasonable times to respond to such requests. The board shall make public the questions of interpretation for which advisory opinions will be considered by the board and its advisory opinions, including by publication on its internet website.

(b) The board shall develop a program for informing candidates and the public as to the purpose and effect of the provisions of this chapter. The board shall prepare and make available educational materials, including compliance manuals and summaries and explanations of the purposes and provisions of this chapter. These materials shall be prepared in plain language. The board shall prepare and make available materials, including, to the extent feasible, computer software, to facilitate the task of compliance with the disclosure and record-keeping requirements of this chapter. When disclosure reports are generated by use of the board's disclosure software, the board shall provide an opportunity for candidates to test their electronic filings on any of the three business days prior to the deadline for the filing of such disclosure reports. Any disclosure software issued by the board on or after January 1, 2008 shall enable users to meet their electronic disclosure obligations under this chapter and under article 14 of the election law, as amended by chapter 406 of the laws of 2005.

8. The board shall have the authority to promulgate such rules and regulations and provide such forms as it deems necessary for the administration of this chapter. The board shall promulgate regulations concerning the form in which contributions and expenditures are to be reported, the periods during which such reports must be filed and the verification required. The board shall require the filing of reports of contributions and expenditures for purposes of determining compliance with paragraph (f) of subdivision one of section 3-703, section 3-706, subdivision 1-a of section 3-703, section 3-718, and section 3-719, in accordance with the schedule specified by the state board of elections for the filing of campaign receipt and expenditure statements.

9. The board shall develop a computer data base that shall contain all information necessary for the proper administration of this chapter including information on contributions to and expenditures by candidates and their authorized committees and distributions of moneys from the campaign finance fund. Such data base shall be accessible to the public.

10. The board shall have the authority to implement any system established for the regulation of inauguration and transition donations and expenditures including the promulgation of rules and regulations and the imposition of any penalties related thereto, as required by local law. The specific powers enumerated in subdivisions 5, 6, 7, 8, 9 and 11 of this section, for purposes of this chapter, shall also be applicable in full for purposes of such chapter 8.

11. The board may take such other actions as are necessary and proper to carry out the purposes of this chapter.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Subd. 1 amended L.L. 34/2007 § 24, eff. Jan. 1, 2008 as per § 40 of

such L.L. and shall apply only to elections held on or after Jan. 1, 2008.

[See § 3-702 Note 2]

Subd. 1 amended L.L. 48/1998 § 10, eff. Oct. 22, 1998.

Subd. 1 amended L.L. 68/1993 § 26, eff. Jan. 1, 1994

Subd. 3 separately amended L.L. 58/2004 § 7, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L.

59/2004 § 5, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 5, eff. Dec. 15, 2004.

[See § 3-703 Note 5]

Subd. 3 amended L.L. 69/1990 § 7, eff. Nov. 27, 1990

Subd. 6 amended L.L. 68/1993 § 26, eff. Jan. 1, 1994

Subd. 7 separately amended L.L. 58/2004 § 7, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L.

59/2004 § 5, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 5, eff. Dec. 15, 2004.

[See § 3-703 Note 5]

Subd. 7 amended L.L. 12/2003 § 8, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 7 amended L.L. 69/1990 § 7, eff. Nov. 27, 1990

Subd. 7 par (b) amended L.L. 34/2007 § 25, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 8 amended L.L. 34/2007 § 8, eff. July 3, 2007 as per § 37 of such L.L. [See § 3-702 Note 2]

Subd. 8 separately amended L.L. 58/2004 § 7, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 5, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 5, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 10 added L.L. 39/1998 § 3, eff. Sept. 25, 1998.

Subd. 11 renumbered by amendment L.L. 39/1998 § 3, eff. Sept. 25, 1998. (formerly subd. 10).

CASE NOTES

¶ 1. Where a candidate wishes to challenge the Board's alleged lack of specificity in the charges brought against him, it must be done by way of an administrative proceeding. Where the alleged constitutional violation relates to the specificity of notice of charges, rather than to the constitutionality of the total statute, administrative remedies must be exhausted. Martinez 2001 v. NYC Campaign Finance, 36 A.D.3d 544, 829 N.Y.S.2d 55 (1st Dept. 2007).

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

18

[Footnote 18]: * Erroneous (b) designation in L.L. 34/2007 § 24.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-709

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-709 New York city campaign finance fund.

1. There is hereby established a special fund, to be known as the New York city campaign finance fund. The moneys in such fund may be expended by the campaign finance board only as payments for participating candidates in accordance with the provisions of this chapter.

2. The fund shall be kept separate and shall be credited with all sums appropriated therefor, any donations received pursuant to subdivision nine of this section and all earnings accruing on such funds.

3. As soon as practicable in the year nineteen hundred eighty-eight and in time for inclusion in the executive expense budget in every year thereafter, and at such other times as the board shall deem necessary, the board shall submit its estimate of the amount of public funds which will be necessary to provide candidates sufficient financing for elections in the next year in which elections are scheduled pursuant to the charter and for elections to fill vacancies to be held prior to such year, and a reserve for contingencies. Such estimates shall be submitted in such manner and at such times as to assure that such amounts as shall be necessary may be appropriated in full by the beginning of the fiscal year prior to that in which elections are scheduled pursuant to the charter and that additional amounts may be appropriated as necessary.

4. The moneys in such fund shall be paid to participating candidates by the board upon its certification that such candidates qualify for such funds.

5. No moneys shall be paid to participating candidates in a primary election any earlier than two weeks after the last day to file designating petitions for such primary election.

6. (a) No moneys shall be paid to participating candidates in a run-off primary election held pursuant to section 6-162 of the election law or in a general election any earlier than the day after the day of the primary election held to nominate candidates for such election.

(b) No moneys shall be paid to participating candidates in a run-off special election held to fill a vacancy any earlier than the day after the day of the special election for which such run-off special election is held.

7. No moneys shall be paid to any participating candidate who has been finally disqualified or whose designating or nominating petitions have been finally declared invalid by the New York city board of elections or a court of competent jurisdiction. Any payment from the fund in the possession of such a candidate or his or her principal committee on the date of such final disqualification or invalidation may not thereafter be expended for any purpose except the payment of liabilities incurred in qualified campaign expenditures before such date and shall be promptly repaid to the fund.

8. Prior to the first distribution of public funds to candidates in any election, the board shall make a determination whether the moneys in the fund are sufficient to provide all candidates the amounts they may receive pursuant to this chapter for all elections to be held during the calendar year for which such determination is made. Such determination shall be published in the City Record, together with information supporting such determination.

9. The board shall be empowered to accept donations to be credited to the fund. The board may devise such methods of soliciting and collecting donations as it may deem feasible and appropriate.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Subds. 1, 4-8 amended L.L. 69/1990 § 8, eff. Nov. 27, 1990

Subds. 6, 7 amended L.L. 12/2003 § 9, eff. Feb. 18, 2003. [See § 3-703 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-709.5

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-709.5 Mandatory debates.

1. (a) In any year in which a primary, general or special election is to be held, any participating candidate and any limited participating candidate for nomination or election to a city-wide office shall participate in either of the two pre-election debates, or both, held pursuant to this section for which he or she is eligible and is required to debate pursuant to this section. A participating candidate or limited participating candidate for nomination or election to a city-wide office is eligible to participate in a debate for each election in which he or she is on the ballot if he or she has met such criteria for participation as shall be specified in any agreement between the debate sponsor and the board.

(b) In any year in which a run-off primary or run-off special election to fill a vacancy for a city-wide office is held, any participating candidate and any limited participating candidate for nomination or election to such city-wide office who is on the ballot shall participate in one run-off election debate.

(c) In the case of a primary, the debate shall be among participating candidates and limited participating candidates seeking the nomination of the same political party who meet the requirements provided in paragraph (a) of this subdivision. If there is no contested primary for an office in a political party then no debate for that party's nomination shall be held pursuant to this section.

(d) Each debate held pursuant to this section shall be at least one hour's duration.

2. For purposes of this section, a "debate" shall mean the moderated reciprocal discussion of issues among candidates on the ballot for the same office.

3. The campaign finance board shall select one or more sponsors for each debate required pursuant to this section. For primary, general and special elections, the second debate shall be a debate among the leading contenders for the office, as described in paragraph (b) of subdivision five of this section.

4. Organizations which are not affiliated with any political party or with any holder of or candidate for public office, which have not endorsed any candidate in the pending primary, special, general, or run-off election for the city-wide office shall be eligible to sponsor one or more of the required debates. The rules for conducting such debates shall be solely the responsibility of the organizations selected but shall not be made final without consultation with the campaign finance board. The organizations selected shall be responsible for choosing the date, time and location of the debates.

5. Written applications by organizations to sponsor a debate shall be submitted to the campaign finance board on a form provided by the board not later than a date chosen by the board in any year in which an election is held for city-wide offices.

(a) The written application shall:

(i) demonstrate that the organization and any proposed co-sponsor meet the criteria of subdivision four of this section;

(ii) specify the election and office for which the organization seeks to sponsor the debate;

(iii) set forth the date, time, duration, and location of the debate and the specific and exclusive circumstances under which the date or time may be changed, together with a provision for when the rescheduled debate would be held;

(iv) provide a detailed description of the format and ground rules for the debate;

(v) verify that the staging, promotion, and coverage of the debate shall be in conformance with all applicable laws;

(vi) include an agreement to indemnify the city for any liability arising from the acts or omissions of the sponsor; and

(vii) set forth plans for publicity and for broadcast and other media coverage for the debate; and

(viii) set forth the criteria for determining which candidates are eligible to participate in each debate the organization seeks to sponsor, in accordance with paragraph (b) of this subdivision.

(b) (i) Except as otherwise provided in subparagraph (ii) below, each debate for a primary, general or special election shall include only those participating candidates or limited participating candidates the sponsor of each such debate has determined meet the non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the sponsor and the board; provided, however, that the criteria for the first debate for a primary, general, or special election shall provide, among other criteria, (A) that a participating candidate shall be eligible to participate in such debate if he or she has, by the last filing date prior to such debate, (I) spent, contracted, or obligated to spend, and (II) received in contributions, an amount equal to or more than twenty percent of the threshold for eligibility for public funding applicable to participating candidates contained in subdivision two of section 3-703, and (B) that a limited participating candidate shall be eligible to participate in such debate if he or she has, by the last filing date prior to such debate, spent, contracted, or obligated to spend, an amount equal to or more than twenty percent of the threshold for eligibility for public funding applicable to participating candidates seeking the office for which such debate is being held contained in subdivision two of section 3-703; provided, however, that for the purpose of determining whether a candidate has met the financial criteria to be eligible to participate in such debate, only contributions raised and spent in compliance with the act shall be used to determine whether the candidate has raised and spent twenty percent of the

threshold for eligibility for public funding applicable to participating candidates contained in subdivision two of section 3-703; provided, further, that the second debate for a primary, general, or special election shall include only those participating candidates or limited participating candidates who the sponsor has also determined are leading contenders on the basis of additional non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the sponsor and the board. Nothing in this provision is intended to limit the debates to the two major political parties.

(ii) If a debate sponsor has determined that a non-participating candidate has met all the non-partisan, objective, and non-discriminatory criteria applicable to participating candidates or limited participating candidates for access to any of the primary, general, or special election debates, the sponsor may invite that candidate to participate in such debate. In the case of a run-off primary election or a run-off special election, the sponsor may invite a non-participating candidate to participate in such debate. However, if a non-participating candidate does not accept such invitation to debate or does not appear at such debate, the debate shall go forward as scheduled; provided, however, if there is only one participating candidate or limited participating candidate participating in any such debate, such debate shall be canceled.

6. Prior to choosing a sponsor, the board shall provide for the receipt of comments from interested persons regarding the qualifications of potential sponsors. The board shall consider and give substantial weight to such comments submitted by candidates.

7. Based upon the criteria in subdivision four above and any comments received pursuant to subdivision six above, the board shall select the organization or organizations to sponsor the debates and shall provide written notification to the organization or organizations so selected. In addition to the sufficiency of the application, the board shall consider the applicant's ability to reach a wide audience and present a fair and impartial debate. The board may accept an application subject to modifications as it deems appropriate and as are acceptable to the sponsor.

8. For all debates, the board shall provide each debate sponsor it has selected with a list of participating candidates and limited participating candidates who are eligible to be considered to participate in such debates.

9. If a candidate fails to participate in any debate required under this section before an election, the candidate shall be liable for return of any public matching funds previously received pursuant to the certification filed by the candidate in connection with the election for which such debate is held, shall be ineligible to receive any further matching funds for that election, and may be subject to a civil penalty pursuant to section 3-711. For purposes of this subdivision, each primary, general, special or run-off election shall be considered a separate election.

10. Following the submission of a petition on behalf of the candidate and a hearing before the board, the sanction or sanctions provided in subdivision nine of this section applicable to a candidate for failure to participate in any debate as required under this section may be waived upon a determination by the board that the failure to participate in the debate occurred under circumstances beyond the control of the candidate and of such nature that a reasonable person would find the failure justifiable or excusable.

11. Nothing contained in this section shall preclude any candidate from agreeing to participate in any number of additional debates between any and all candidates for a city-wide office, including non-participating candidates or limited participating candidates. These debates need not be held under guidelines or the purview of the campaign finance board.

12. The city of New York shall indemnify each sponsor for any liability of such sponsor arising out of the acts or omissions of the city of New York in connection with the selection of candidates for participation in any debate held pursuant to this section 3-709.5.

HISTORICAL NOTE

Section amended L.L. 58/2004 § 8, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Section added L.L. 90/1996 § 1, eff. Dec. 2, 1996.

Subd. 5 pars (a), (b) amended L.L. 34/2007 § 9, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 5 par (b) subpar (i) amended L.L. 67/2007 § 6, eff. Dec. 31, 2007.

Subd. 12 amended L.L. 67/2007 § 6, eff. Dec. 31, 2007.

Subd. 12 added L.L. 34/2007 § 9, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-710

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Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-710 Examinations and audits; repayments.

1. The campaign finance board is hereby empowered to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and of chapter 8 of title 3 of this code. The board shall conduct its campaign audits in accordance with generally accepted government auditing standards, and shall promulgate rules regarding what documentation is sufficient in demonstrating financial activity. These audit and examination powers extend to all participating candidates, limited participating candidates, and non-participating candidates, and the principal and authorized committees of all participating, limited participating, and non-participating candidates, provided that:

a. Any draft audit, the subject of which is a participating, limited participating or non-participating candidate, or the principal and/or authorized committees of any participating, limited participating or non-participating candidate shall be completed within (i) eight months after the submission of the final disclosure report for the covered election for city council races and borough-wide races, and (ii) ten months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time;

b. The campaign finance board shall provide each candidate a final audit, which shall contain the final resolution of all issues raised in the draft audit; such final audit shall be provided to the candidate, where such candidate or such candidate's campaign manager or treasurer has completed audit training provided by the board, within (i) fourteen months after the submission of the final disclosure report for the covered election, for city council races and borough-wide races, and (ii) sixteen months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time. Where such candidate or such candidate's campaign manager or treasurer has not completed audit training provided by the campaign finance

board, such final audit shall be provided to such candidate within (i) sixteen months after the submission of the final disclosure report for the covered election, for city council races and borough-wide races, and (ii) eighteen months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time. Provided, however, that where the issuance of such final audit is preceded by a notice of violations and recommended penalties and/or a notice of repayment of public funds, such notice or notices shall include all potential penalties and/or repayment obligations and a notice of a candidate's right to a hearing pursuant to section 3-710.5 or section 3-710(4) of this chapter and shall be provided to the candidate according to the deadlines applicable to final audits as set forth in this paragraph.

c. Any advice provided by board staff to a participating, limited participating, or non-participating candidate with regard to an action shall be presumptive evidence that such action, if taken in reliance on such advice, should not be subject to a penalty or repayment obligation where such candidate or such candidate's committee has confirmed such advice in a writing to such board staff by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt, describing the action to be taken pursuant to the advice given and the board or its staff has not responded to such written confirmation within seven business days disavowing or altering such advice, provided that the board's response shall be by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt.

d. Notwithstanding the provisions of paragraphs a and b of this subdivision, if a committee has failed to respond to a request for information made by board auditors during the post-election audit process, the time period for completing the draft and final audits shall be tolled and extended by the number of days by which the committee has exceeded the original deadline for a response, provided that the committee has received timely written notice of: (i) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested; and (ii) the commencement of the tolling period pursuant to this section. If a committee has responded to a request for information made by board auditors but such response is inadequate, the time period for completing the draft and final audits shall be tolled and extended by the number of days until an adequate response is provided, provided that the committee has received timely written notice of: (i) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested; (ii) the commencement of the tolling period pursuant to this section; and (iii) the detailed reasons why the original response was inadequate.

e. Notwithstanding any provision of law to the contrary, the deadlines provided in paragraphs a and b of this subdivision for the completion of draft and final audits shall not apply in cases where the audit raises issues involving potential campaign-related fraud, potential other criminal activity, or activity that may constitute a breach of certification pursuant to rules of the board or potential significant violations of the limits set forth in section 3-706.

f. Notwithstanding any provision of the law to the contrary, the deadlines provided in paragraphs a and b of this subdivision for the completion of draft and final audits shall not apply in the event that board operations are interrupted due to a catastrophic emergency such as a natural disaster or criminal event, provided that once board operations resume, the board shall within two weeks announce new deadlines for the completion of draft and final audits consistent with paragraphs a and b.

2. (a) If the board determines that any portion of the payment made to the principal committee of a participating candidate from the fund was in excess of the aggregate amount of payments which such candidate was eligible to receive pursuant to this chapter, it shall notify such committee and such committee shall pay to the board an amount equal to the amount of excess payments.

(b) If the board determines that any portion of the payment made to a principal committee of a participating candidate from the fund was used for purposes other than qualified campaign expenditures, it shall notify such candidate and committee of the amount so disqualified and such candidate and committee shall pay to the board an amount equal to such disqualified amount; provided, however, that in considering whether or not a participating

candidate shall be required to pay to the board such amount or an amount less than the entire disqualified amount, the board shall act in accordance with the following: (i) where credible documentation supporting each qualified campaign expenditure exists but is incomplete, the board shall not impose such liability for such expenditure; and (ii) where there is an absence of credible documentation for each qualified campaign expenditure, the board may impose liability upon a showing that such absence of credible documentation for such expenditure arose from a lack of adequate controls including, but not limited to trained staff, internal procedures to follow published board guidelines and procedures to follow standard financial controls.

(c) If the total of contributions, other receipts, and payments from the fund received by a participating candidate and his or her principal committee exceed the total campaign expenditures of such candidate and committee for all covered elections held in the same calendar year or for a special election to fill a vacancy such candidate and committee shall use such excess funds to reimburse the fund for payments received by such committee from the fund during such calendar year or for such special election. No such excess funds shall be used for any other purpose, unless the total amount of the payments received from the fund by the principal committee has been repaid.

3. If a participating candidate whose principal committee has received public funds is disqualified by a court of competent jurisdiction on the grounds that such candidate committed fraudulent acts in order to obtain a place on the ballot and such decision is not reversed, such candidate and his or her principal committee shall pay to the board an amount equal to the total of public funds received by such principal committee.

4. No claim for the repayment of public funds shall be made against any candidate or committee without written notice to such candidate or committee, issued in a timely manner pursuant to all of the requirements of subdivision one of this section, and an opportunity to appear before the board. Any such repayment claim shall be based on a final determination issued by the board following an adjudication before the board consistent with the procedures set forth in section 1046 of the charter unless such procedures are waived by the candidate or principal committee. Such final determination shall be included in and made part of the final audit which shall be issued within thirty days of such determination.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Subd. 1 amended L.L. 67/2007 § 15, eff. Dec. 31, 2007.

Subd. 1 amended L.L. 34/2007 § 26, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 1 separately amended L.L. 58/2004 § 9, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 6, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 6, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 1 amended L.L. 39/1998 § 4, eff. Sept. 25, 1998

Subd. 2 par (b) amended L.L. 67/2007 § 7, eff. Dec. 31, 2007.

Subd. 2 amended L.L. 69/1990 § 9, eff. Nov. 27, 1990

Subd. 2 par (b) amended L.L. 34/2007 § 10, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 2 par (c) amended L.L. 67/2007 § 16, eff. Dec. 31, 2007.

Subd. 2 par (c) amended L.L. 34/2007 § 27, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 2 par (c) amended L.L. 12/2003 § 10, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2 par (c) amended L.L. 48/1998 § 11, eff. Oct. 22, 1998. (Note Bill § 11 erroneously refers to Subd. 3 being amended)

Subd. 3 amended L.L. 69/1990 § 9, eff. Nov. 27, 1990

Subd. 4 amended L.L. 67/2007 § 17, eff. Dec. 31, 2007.

Subd. 4 added L.L. 34/2007 § 28, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

CASE NOTES

¶ 1. In one case, the New York City Campaign Finance Board ordered defendant to return $6,708 in campaign funds, because he had not adequately documented how the funds were spent, and because there were unspent campaign funds that he was still holding. When defendant failed to comply with the order, the Board commenced an action to recover the funds, and to recover civil penalties. The court held that because of petitioner's non-compliance, and petitioner's retention of public funds in violation of the public trust, it was appropriate to impose a civil penalty of $6,708, an amount equal to the defendant's attempted gain at public expense. New York City Campaign Finance Board v. Villaverde, N.Y.L.J., Dec. 24, 2002, page 18, col. 1 (Sup.Ct. New York Co.).

¶ 2. Candidates who move funds among multiple committees may reduce their repayment obligations under Admin. Code § 3-710. Such transfers are permitted under Admin. Code § 3-702. Eisland v. New York City Campaign Finance Board, 31 A.D.3d 259, 818 N.Y.S.2d 501 (1st Dept. 2006).

¶ 3. See Espada 2001 v. New York City Campaign Finance Board, 59 A.D.3d 57, 870 N.Y.S.2d 293 (1st Dept. 2008), reported under 3-711, note 4.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-710.5

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Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-710.5 Findings of violation infraction; adjudications; final determinations.

(i) The board shall determine whether a participating candidate, his or her principal committee, principal committee treasurer or any other agent of a participating candidate has committed a violation or infraction of any provision of this chapter or the rules promulgated hereunder, for which the board may assess a civil penalty pursuant to section 3-711 of this chapter. The board shall promulgate rules defining infractions, and such definitions shall include, but not be limited to, failures to comply with the provisions of this chapter or the rules promulgated hereunder that are limited and non-repetitive.

(ii)(a) The board shall give written notice and the opportunity to appear before the board to any participating, limited participating or non-participating candidate, his or her principal committee, authorized committee, committee treasurer or any other agent of such candidate, if the board has reason to believe that such has committed a violation or infraction before assessing any penalty for such action. Any such written notice of alleged violations shall be issued in a timely manner pursuant to all of the requirements of subdivision one of section 3-710 and shall precede the issuance of the final audit required pursuant to subdivision one of section 3-710. In the case of a written notice issued prior to the date of a covered election, or after the date of a covered election in the case of a notice regarding an alleged failure to respond to a request for audit documentation, such notice may be issued prior to the issuance of a draft audit. Alleged violations and proposed penalties shall be subject to resolution by adjudication before the board consistent with the procedures of section 1046 of the charter, unless such procedures are waived by the candidate or principal committee; provided, however, that in the case of adjudications conducted prior to the date of a covered election, the board shall use the procedures of section 1046 of the charter only to the extent practicable, given the expedited nature of such pre-election adjudications. The board shall issue a final determination within thirty days of the conclusion of the

adjudication proceeding.

(b) The board shall include in every final determination: (i) notice of the respondent's right to bring a special proceeding challenging the board's final determination in New York State supreme court pursuant to article 78 of the civil practice law and rules; and (ii) notice of the commencement of the four-month period during which such a special proceeding may be brought pursuant to article 2 of the civil practice law and rules.

HISTORICAL NOTE

Section amended L.L. 67/2007 § 18, eff. Dec. 31, 2007.

Section amended L.L. 34/2007 § 29, eff. Jan. 1, 2008 as per § 40 of such

L.L. and apply only to elections held on or after Jan. 1, 2008. [See

§ 3-702 Note 2]

Section separately amended L.L. 58/2004 § 10, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L.

59/2004 § 7, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 7, eff. Dec. 15, 2004.

[See § 3-703 Note 5]

Section added L.L. 12/2003 § 11, eff. Feb. 18, 2003.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-711

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Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-711 Penalties.

1.* Any 14 participating or limited participating candidate whose principal committee fails to file in a timely manner a statement or record required to be filed by this chapter or the rules of the board in implementation thereof or who commits a violation or infraction of any other provision of this chapter or rule promulgated thereunder, including any provision of section 3-709.5, and any principal committee treasurer or any other agent of a participating or limited participating candidate who commits such a violation or infraction, shall be subject to a civil penalty in an amount not in excess of ten thousand dollars.

The board shall publish a schedule of civil penalties for common infractions and violations, including examples of aggravating and mitigating circumstances that may be taken into account by the board in assessing such penalties. This schedule shall reflect that infractions are less serious failures to comply with the provisions of this chapter.

1.* Any participating or limited participating candidate and his or her principal committee or any non-participating candidate and his or her authorized committees that fail to file in a timely manner a statement or record required to be filed by this chapter or the rules of the board in implementation thereof or that violate any other provision of this chapter or rule promulgated thereunder, and any committee treasurer or any other agent of a participating, limited participating or non-participating candidate who commits such a violation or infraction, shall be subject to a civil penalty in an amount not in excess of ten thousand dollars.

The board shall publish a schedule of civil penalties for common infractions and violations, including examples of aggravating and mitigating circumstances that may be taken into account by the board in assessing such penalties. This schedule shall reflect that infractions are less serious failures to comply with the provisions of this chapter.

2. (a) In addition to the penalties provided in subdivision one of this section, if the aggregate amount of expenditures by a participating or limited participating candidate and such candidate's principal committee exceed the expenditure limitations contained in this chapter, such candidate and principal committee shall be subject to a civil penalty in an amount not to exceed three times the sum by which such expenditures exceed the applicable expenditure limitation;

(b) In addition to the penalties provided in subdivision one of this section, a participating candidate or his or her principal committee, that have been found by the board to have violated a provision of this chapter by failing to provide any response to a draft audit report sent to the candidate after the election by the board pursuant to section 3-710 of this chapter, shall be subject to a civil penalty for such violation of up to ten percent of the total public funds received by such candidate.

3. The intentional or knowing furnishing of any false or fictitious evidence, books or information to the board under this chapter, or the inclusion in any evidence, books, or information so furnished of a misrepresentation of a material fact, or the falsifying or concealment of any evidence, books, or information relevant to any audit by the board or the intentional or knowing violation of any other provision of this chapter shall be punishable as a class A misdemeanor in addition to any other penalty as may be provided under law, including subdivision one of this section. The board shall assess penalties for such conduct and seek to recover any public funds obtained.

4. Notwithstanding any provision of law to the contrary, any participating or limited participating candidate and his or her principal committee or any non-participating candidate and his or her authorized committees or any other person who commits any violation of this chapter or any rules promulgated hereunder and who takes all steps necessary to correct such violation prior to receiving written notice from the board of the existence of the potential violation shall not be subject to any penalty for such violation.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Subd. 1 amended (laid out first) L.L. 58/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 1 separately amended (laid out second) L.L. 59/2004 § 8, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 8, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 1 amended L.L. 12/2003 § 12, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 1 amended L.L. 69/1990 § 10, eff. Nov. 27, 1990

Subd. 2 amended L.L. 58/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 2 amended L.L. 12/2003 § 12, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Subd. 2 amended L.L. 69/1990 § 10, eff. Nov. 27, 1990

Subd. 3 amended L.L. 58/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 4 amended L.L. 67/2007 § 19, eff. Dec. 31, 2007.

Subd. 4 added L.L. 34/2007 § 30, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008.

[See § 3-702 Note 2]

CASE NOTES

¶ 1. In one case, the court expressed "strong reservation" as to whether Sec. 3-711 authorized the court to impose a civil penalty. However, the Campaign Finance Board appears to have the power to impose civil penalties, and can then ask the court to insure that the penalties are enforced. People v. O'Hara, N.Y.L.J., Apr. 26, 2002, page 23, col. 5 (Sup.Ct. Kings Co.).

¶ 2. A political consulting firm, known as TAG, which had been working on behalf of a candidate for City Council, brought an Article 78 proceeding, seeking to overturn an assessment of $3,157 in penalties by reason of late submission of a draft audit and the late filing of disclosure statements. TAG argued that it was not an agent of the candidate, but the court disagreed. The purpose of the statute is to insure that persons and entities, who have undertaken the responsibility for campaign finance, comply with the laws governing campaigns. As part of its contract with the candidate, the consultant had agreed to satisfy the compliance requirements. The contract called for TAG to complete all filings with the Campaign Finance Board (CFB) and to monitor and explain to the candidate all the campaign rules and regulations. In agreeing to provide these services, TAG agreed to be the candidate's agent, at least with respect to compliance with the CFB. The court said to allow any entity, that has agreed to fulfill the compliance requirements on behalf of a candidate, to shoulder the blame for the candidate's non-compliance (TAG admitted to the CFB that it had organizational and computer problems) and then to allow the same entity to escape liability because it claims it is not an agent of the candidate, would not serve the purpose of the Campaign Finance Act. Thus, the court upheld the CFB's interpretation of the statute, i.e. that the consultant was an agent subject to civil penalties for non-compliance with CFB regulations. Matter of Advance Group v. New York City Campaign Fund, N.Y.L.J., Feb. 3, 2004, at 18, col. 3 (Sup.Ct. New York Co.).

¶ 3. In Espada 2001 v. NYC Campaign Finance, 15 Misc.3d 647, 832 N.Y.S.2d 414 (Sup.Ct. New York Co. 2007), petitioners brought an article 78 proceeding, claiming that the penalties assessed against them for expenditures made by them, and contributions made to their political organization, and asserted by the defendant were arbitrary and capricious. The petitioner was a candidate for the position of Bronx Borough President. The Board's determination assessed penalties of $61,750, jointly and severally, against petitioners, for alleged violations of the NYC Campaign Finance Act, Admin. Code of NYC § 3-701 et seq. Penalties were assessed pursuant to Admin. Code § 3-711. The Board brought a counterclaim for an order directing petitioners to pay assessed penalties.

Initially, petitioners contended that the counterclaim for penalties was untimely in that CPLR 214(2) requires that "an action to recover upon a . . . penalty . . . created or imposed by statute" be commenced with three years of accrual of the claim. However, there is no limitation as to when the Board must render a determination under the Act. There was no penalty upon which the Board could have sued until it rendered its determination in March 2006. Petitioners commenced this proceeding in a timely fashion, and the Board interposed its counterclaim well within three years after assessment became final, which is when the claim accrued.

¶ 4. In Espada 2001 v. New York City Campaign Finance Board, 59 A.D.3d 57, 870 N.Y.S.2d 293 (1st Dept. 2008), a candidate for public office challenged penalties imposed by reason of receipt of improper campaign contributions. The penalties were imposed not only against the candidate himself, but also against the campaign treasurer and the campaign committee. The rules governing these penalties are mentioned in Admin. Code of NYC §3-701 et seq. The penalty portion of the NYC Campaign Finance Act can be found in Sec. 3-711. The defendant Board conducted a pre-election audit of petitioner's 2001 campaign and found a number of campaign finance law violations relating to: 1) large number of individual contributions received by campaign were from employees of a not-for-profit corporation owned and operated by petitioner, 2) expenses related to a van with campaign poster for petitioner had not been reported in his statements, as well as other expenses related to campaign literature, 3) expenditures for joint campaign activities including the petitioner and his son.

The Campaign Finance Board issued a draft report of its post-election audit. Their report contained an allegation that the campaign committee accepted loans that were not repaid and contributions from companies controlled by the candidate, as well as information that employees of the company petitioner reportedly owns were reported to have made cash campaign contributions, that were subsequently reimbursed by their employer.

Before the final audit report was issued, a number of the employees of this corporation pleaded guilty to fraud, grand larceny and perjury. Some of the violations included contributions by the candidate exceeding the required statutory amounts (Admin. Code §3-703[1][f]). Loans made by the candidate to the campaign were not repaid in violation of Admin. Code §3-702[8]. The rules state that a person who extends credit to a campaign beyond 90 days is considered to have made a campaign contribution, unless the contributor or creditor has made a commercially reasonable attempt to collect the debt. Debts forgiven or settled for less than the amount owed are also considered contributions.

In rejecting the challenge, the court held that the Board properly determined that the treasurer and the candidate were jointly and individually liable for the campaign finance violations along with assessed penalties under Admin. Code §3-711. As stated in Admin. Code §3-711(l), any participating candidate whose political committee fails to file a statement in a timely manner as required by the Campaign Finance Board is subject to a violation. A treasurer or other agent of a candidate is included. If any of the rules committed by the campaign are found, the candidate, treasurer and principal committee are jointly and individually responsible.

A candidate who chooses to participate in the New York City Campaign Finance Program is bound by the program requirements, which include obligations to make certain filings and limits on spending and contributions. Once the candidate opts to participate, he must obey all the rules, even if he later fails to qualify for or ultimately does not participate in the program.

Among other things, the petitioner failed to provide certain financial documents in connection with the State Senate campaign. The Board is granted audit and investigatory authority under Admin. Code §3-703[1][d][g], §3-710[l] accepting loans from the candidate that were both beyond the contribution limit and were not repaid, and goods and services from companies, such as the not-for-profit company, were considered to be a single source with the candidate, exceeded the contribution limit. The advisory opinion prohibiting additional campaign spending for the weeks between Sept. 11, 2001 and Sept. 25, 2001 should be upheld and were bound by that opinion. While most advisory opinions do not have the force of rules, this opinion was adopted as a result of the emergency connected with rescheduling the primary. In order to prevent any candidate from gaining an advantage as a result of the Sept. 11 attacks.

Consequently, the Board's determination of liability against all of the petitioners is reinstated. The Board did not improperly broaden the scope of its investigation by addressing the campaign in its final post election audit. Petitioners were given more than adequate notice that the Board would now consider violations and penalties against the candidate, treasurer and the political campaign committee.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

14

[Footnote 14]: * NYLP carries two subdivisions 1. The NYC campaign finance board reconciles three amendments to subdivision 1 as follows (from its website):

1. Any participating or limited participating candidate and his or her principal committee or any

non-participating candidate and his or her authorized committees that fail to file in a timely manner a statement or record required to be filed by this chapter or the rules of the board in implementation thereof or that violate any other provision of this chapter or rule promulgated thereunder, including any provision of section 3-709.5, and any committee treasurer or any other agent of a participating, limited participating or non-participating candidate who commits such a violation or infraction, shall be subject to a civil penalty in an amount not in excess of ten thousand dollars. The board shall publish a schedule of civil penalties for common infractions and violations, including examples of aggravating and mitigating circumstances that may be taken into account by the board in assessing such penalties. This schedule shall reflect that infractions are less serious failures to comply with the provisions of this chapter.

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NYC Administrative Code 3-712

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-712 Campaigns for office not subject to this chapter.

Contributions, loans, guarantees and other security for such loans used and expenditures made toward the payment of liabilities incurred by a candidate in an election held prior to the effective date of this section or in a campaign for public office other than one covered by this chapter, shall not be subject to the requirements and limitations of this chapter.

HISTORICAL NOTE

Section separately amended L.L. 58/2004 § 13, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 9, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 9, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Section added L.L. 8/1988 § 2

Section heading amended L.L. 69/1990 § 11, eff. Nov. 27, 1990

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-713

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-713 Reports.

1. The campaign finance board shall review and evaluate the effect of this chapter upon the conduct of election campaigns in the city and shall submit a report to the mayor and the city council on or before September first, nineteen hundred ninety, and every fourth year thereafter, and at any other time upon the request of the mayor or the city council and at such other times as the board deems appropriate, containing:

(a) the number and names of candidates qualifying for and choosing to receive public funds pursuant to this chapter, and of candidates failing to qualify or otherwise not choosing to receive such funds, in each election during the four preceding calendar years;

(b) the amount of public funds provided to the principal committee of each candidate pursuant to this chapter and the contributions received and expenditures made by each such candidate and the principal committee of such candidate, in each election during the four preceding calendar years;

(c) the number and names of candidates filing a certification pursuant to section 3-718 of this chapter in each election during the four preceding calendar years, together with the expenditures made by each such candidate and the principal committee of such candidate in each such election;

(d) the number and names of non-participating candidates in each election during the four preceding calendar years, together with the expenditures made by each such candidate and the authorized committees of such candidate in each such election;

(e) recommendations as to whether the provisions of this chapter governing maximum contribution amounts, thresholds for eligibility and expenditure limitations should be amended and setting forth the amount of, and reasons for, any amendments it recommends;

(f) analysis of the effect of this chapter on political campaigns, including its effect on the sources and amounts of private financing, the level of campaign expenditures, voter participation, the number of candidates and the candidates' ability to campaign effectively for public office;

(g) a review of the procedures utilized in providing public funds to candidates; and

(h) such recommendations for changes in this chapter as it deems appropriate.

2. For the report submitted in the year nineteen hundred ninety, the board also shall review any contributions made to candidates and authorized committees prior to the effective date of this chapter which exceed the amount of the maximum contribution applicable pursuant to paragraph (f) of subdivision one of section 3-703 and report as to whether such contributions were returned, expended or otherwise used and the purposes of such expenditures or other uses.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

Subd. 1 separately amended L.L. 58/2004 § 14, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 10, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 10, eff. Dec. 15, 2004. [See § 3-703 Note 5] Note paragraph (d) separately added, and paragraph lettering from L.L. 59 and 60 of 2005.

Subd. 1 par (b) amended L.L. 12/2003 § 13, eff. Feb. 18, 2003. [See § 3-703 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-714

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-714 Construction.

Nothing in this chapter shall be construed to prohibit the making or receipt of contributions to the extent permitted by the election law or to permit the making or receipt of contributions otherwise prohibited.

HISTORICAL NOTE

Section added L.L. 8/1988 § 2

NOTE

L.L. 8/1988 provisions

Section 1. Declaration of legislative intent and findings. The council finds that both the possibility of privilege and favoritism and the appearance of impropriety harm the effective functioning of government. The council further finds that whether or not the reliance of candidates on large private campaign contributions actually results in corruption or improper influence, it has a deleterious effect upon government in that it creates the appearance of such abuses and thereby gives rise to citizen apathy and cynicism.

The council further finds that it is vitally important to democracy in the city of New York to ensure that citizens, regardless of their personal wealth, access to large contributions or other financial connections, are enabled and encouraged to compete effectively for public office by educating the voters as to their qualifications, positions and aspirations for the city.

The council further finds that special conditions have arisen in the city of New York, as a result of the presence of unique concentrations of wealth and financial power, which require special measures pertaining to ethics in government. The council finds that these special conditions were recognized by the State-City Commission on Ethics in Government, whose reports on governmental ethics and campaign financing included specific recommendations for the city of New York. The council further finds that the state legislature has recognized the special nature of these conditions in the city of New York respecting ethics in government by passing chapter 689 of the Laws of 1986, which limits campaign contributions to members of the New York city board of estimate by persons with business before the board. The council further finds that chapter 813 of the Laws of 1987, the ethics in government act, establishes minimum ethical standards for local officers and employees but allows localities, including the city of New York, to enact more stringent controls so that they may address their special needs.

The council has determined that the enhancement of ethics in government is part of the property, affairs and government of the city of New York and that the enactment of this local law is within the council's legislative authority. The council intends to accomplish its purpose of improving governmental ethics in the city of New York by means of a voluntary system of public financing of local election campaigns. The council intends by means of this local law to improve popular understanding of local issues, to increase participation in local elections by voters and candidates, to reduce improper influence on local officers by large campaign contributors and to enhance public confidence in local government. The council intends that the campaign finance fund provided by this law shall receive appropriations in a timely manner so that there is sufficient money to meet the needs of eligible candidates and so candidates know well in advance of their campaigns that there is sufficient money in the fund.

The council finds that this local law will supplement and be consistent with state law. The council does not intend by the enactment of this local law to prohibit any person from making or receiving any campaign contributions to the extent allowed by state law, or to permit any person to make or receive such contributions when prohibited by state law. Rather it intends, by means consistent with state law, to ensure an open and democratic political system that inspires the confidence and participation of its citizens.

§ 3. The council hereby declares its intent that not more than twenty-eight million dollars shall be appropriated in the expense budget as adopted for the fiscal year beginning on July first, nineteen hundred eighty-eight, to the New York city campaign finance fund established by this local law for payments for eligible candidates in accordance with the provisions of this local law.

§ 4. Severability. If any clause, sentence, subdivision, paragraph, section or part of this local law be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 5. This local law shall take effect immediately, except that the provision of this local law providing optional public financing shall first apply to elections held in nineteen hundred eighty-nine.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-715

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-715 Joint campaign activities.

Nothing in this chapter shall be construed to restrict candidates from authorizing expenditures for joint campaign materials and other joint campaign activities, provided that the benefit each candidate derives from the joint material or activity is proportionally equivalent to the expenditures authorized by such candidate.

HISTORICAL NOTE

Section added L.L. 69/1990 § 12, eff. Nov. 27, 1990

NOTE

Provision of L.L. 69/1990 revising the legislative intent

Section 1. Declaration of legislative intent and findings. The council finds that simplifying and clarifying the requirements of the New York City Campaign Finance Act will encourage greater candidate participation in the voluntary system of public financing created thereunder. Under the New York City Charter, approved by the electorate in 1989, the council will expand from thirty-five to fifty-one districts before elections to be held in 1991. Thus, it is especially important at this time to simplify the Act in order to promote participation in the Program by candidates for these seats.

The council intends by means of this local law to reaffirm the goals and strenghten the achievements of the landmark campaign finance legislation it enacted in Local Law No. 8 of 1988: reducing the possibility and the

appearance that wealthy special interests exercise corrupt or undue influence over local elected officials; making public funds available to candidates for municipal office who abide by contribution and expenditure limitations and who abide by reasonable requirements for campaign financing disclosure and record-keeping: providing computerized public disclosure of meaningful information about the sources of campaign financing during the course of the election; increasing voter participation and information about candidates in local elections; and enhancing public confidence in local government.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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NYC Administrative Code 3-716

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Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-716 Application of the contribution and expenditure limitations to certain political activities.

1. Nothing in this chapter shall be construed to restrict candidates or their agents from making appearances at events sponsored or paid for by persons, political committees, or other entities that are not in any way affiliated with such candidate or any agent of such candidate. The costs of such events shall not be considered contributions to or expenditures by such a candidate pursuant to this chapter solely because such an appearance is made; provided that this subdivision shall not apply to any event in relation to which contributions are solicited on behalf of such candidate.

2. The following activities in support of other candidates by a participating, or limited participating or non-participating candidate or his or her principal committee shall not be considered contributions to or expenditures by such participating, or limited participating or non-participating candidate or his or her principal committee, except to the extent such activities are paid for by such candidate or his or her principal committee for a covered election:

(a) The act alone of endorsing or appearing with another candidate for public office, party nomination or party position.

(b) The insubstantial communication of such endorsement or appearance described in paragraph (a), such as where the participating, or limited participating or non-participating candidate's name is one of several names appearing on the communication and is of equivalent prominence as the other names.

(c) Fundraising assistance to another candidate in the form of written communications that do not promote the participating, or limited participating or non-participating candidate, such as the appearance of the participating, or limited participating or non-participating candidate's name or signature on a letter soliciting funds for another candidate

or the appearance of such participating, or limited participating or non-participating candidate's name on fundraising material where such participating, or limited participating or non-participating candidate's name appears alone or with other names and is of equivalent prominence as the other names.

(d) A typical communication by a political club to its members, which includes the name of a participating, or limited participating or non-participating candidate, provided that such candidate is already a member of the political club, the political club has fewer than 500 members, and the communication does not solicit funds on behalf of or otherwise promote such candidate's campaign for a covered election.

3. The communication of an endorsement or appearance which is not insubstantial under paragraph (b) of subdivision two, fundraising assistance which is promotional under paragraph (c) of subdivision two and a political club communication which does not meet the requirements of paragraph (d) of subdivision two, shall be contributions to and expenditures by the participating, or limited participating or non-participating candidate. Among the factors the board shall consider in determining the value of the contribution to and expenditure by the participating, or limited participating or non-participating candidate are the following factors:

(a) the focus of the communication;

(b) the geographical distribution or location of the communication;

(c) the subject matter of the communication;

(d) the references to the participating, or limited participating or non-participating candidate or the participating, or limited participating or non-participating candidate's appearances in the communication;

(e) the relative prominence of a participating, or limited participating or non-participating candidate's references or appearances in the communication, including the size and location of such references and any photographs of the participating, or limited participating or non-participating candidate; and

(f) the timing of the communication.

HISTORICAL NOTE

Section amended L.L. 12/2003 § 14, eff. Feb. 18, 2003. [See § 3-703 Note 2]

Section added L.L. 48/1998 § 12, eff. Oct. 22, 1998.

Subd. 2 separately amended L.L. 58/2004 § 15, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 3 separately amended L.L. 58/2004 § 15, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 11, eff. Dec. 15, 2004. [See § 3-703 Note 5]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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***** Current through December 2009 ****

NYC Administrative Code 3-717

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-717 Receipt of11 post election contributions from previous contributors for debt repayment.

1. Eight or more years after the date of any covered election, a participating candidate, who has incurred debt as a result of his or her participation in such covered election and has not been a candidate in any subsequent election and is not raising funds for his or her candidacy in any election, may accept contributions pursuant to this section from contributors who previously contributed to the participating candidate's campaign for such covered election only for the purposes of repayment of debt incurred in connection with such covered election; provided, however, such participating candidate shall not accept contributions from corporations, except corporations that are political committees as defined in subdivision eleven of section 3-702 of this chapter. Debt repayment shall include payments for expenses incurred in maintaining a committee until debt is repaid and expenses incurred as a result of repaying the debt.

2. A participating candidate who chooses to accept contributions pursuant to paragraph one of this section shall designate a single committee to accept such contributions.

a. The designated committee shall register with the board.

b. The designated committee shall report to the board every contribution received by the committee, the full name, residential address, occupation, employer, and business address of each individual, corporation, partnership, political committee, employee organization or other entity making, or which is the intermediary for, such contribution. An intermediary need not be reported for any contribution that was collected from a contributor in connection with a party or other candidate-related event held at the residence of the person delivering the contribution, unless the expenses for such events exceed five hundred dollars or the aggregate contributions received from that contributor at such events exceed five hundred dollars. Contributions pursuant to paragraph one aggregating not more than ninety-nine dollars

from any one contributor need not be separately itemized in disclosure reports submitted to the board on behalf of a participating candidate. For purposes of this section, the treasurer of the designated committee need not collect or disclose the occupation, employer, and business address of any contributor pursuant to paragraph one making contributions aggregating not more than ninety-nine dollars. Such reports shall be submitted at such times and in such form as the board shall require and shall be clearly legible. The committee designated to accept contributions pursuant to paragraph one of this section shall maintain any additional records of receipts and debt repayment expenditures as required by the board.

3. A participating candidate accepting contributions pursuant to paragraph one of this section shall not accept and his or her designated committee shall not accept, either directly or by transfer, any contribution or contributions from any one individual, partnership, political committee, employee organization or other entity which in the aggregate shall exceed the contribution limitations as set forth under paragraph f of subdivision one of section 3-703 as of the date such contributions are received, as adjusted pursuant to subdivision seven of section 3-703. Contributions received pursuant to this section shall not be aggregated with contributions received during the covered election for which the debt was incurred for the purposes of determining compliance with such contribution limitations.

4. After all debt referred to in subdivision one has been repaid, the participating candidate shall no longer accept contributions pursuant to this section. If any excess funds remain after such debt has been repaid, the participating candidate shall return such excess funds to contributors in reverse order of contribution, beginning with the most recent contributor, until the excess funds are exhausted.

HISTORICAL NOTE

Section added L.L. 13/2003 § 1, eff. Feb. 18, 2003 and expires June 30, 2005 as per L.L. 13/2003 § 2.

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

11

[Footnote 11]: * Expires June 30, 2005.

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NYC Administrative Code 3-718

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-718 Limited Participation.

1. Requirements. (a) To be a limited participating candidate, a candidate for nomination for election or election must:

(i) be a candidate for mayor, public advocate, comptroller, borough president or member of the city council in a primary, special, or general election;

(ii) not have filed a certification pursuant to section 3-703 for the election or elections for which he or she seeks to file a certification pursuant hereto;

(iii) (A) file a written certification in such form as may be prescribed by the campaign finance board, which sets forth his or her acceptance of and agreement to comply with the terms and conditions of this section and the rules promulgated hereby, which includes an affirmation that the candidate has a sufficient amount of personal funds to fund his or her campaign; and

(B) the deadline for filing such certification for a primary, general, or special election shall be the deadline date for filing written certifications pursuant to section 3-703(1)(c) by candidates seeking nomination for election or election to the same office in the same calendar year as candidates seeking to file a certification pursuant to this subparagraph, and the provisions of such section 3-703(1)(c) relating to the occurrence of an "extraordinary circumstance" shall apply to limited participating candidates; and

(iv) notify the board in the candidate's written certification as to: (1) the existence of each authorized committee

authorized by such candidate that has not been terminated, (2) whether any such committee also has been authorized by any other candidate, and (3) if the candidate has authorized more than one authorized committee, which authorized committee has been designated by the candidate as the candidate's principal committee for the election(s) covered by the candidate's certification; provided, that such principal committee (a) shall be the only committee authorized by such candidate to aid or otherwise take part in the election(s) covered by the candidate's certification, (b) shall not be an authorized committee of any other candidate, and (c) shall not have been authorized or otherwise active for any election prior to the election(s) covered by the candidate's certification. The use of an entity other than the designated principal committee to aid or otherwise take part in the election(s) covered by the candidate's certification shall be a violation of this section and shall trigger the application to such entity of all provisions of this chapter governing principal committees.

(b) A limited participating candidate and his or her principal committee shall comply with the provisions of paragraphs (d), (e), (g), (i), and (o) of subdivision one, and subdivisions six, six-a, eight, nine, ten, and twelve of section 3-703 of this chapter.

(c) A limited participating candidate and his or her principal committee shall not accept, at any time before or after the filing of a certification pursuant to paragraph (a) of this subdivision, either directly or by transfer, any monetary or in-kind contribution, or any loan, guarantee, or other security for such loan made in connection with such candidate's nomination for election or election, except for monetary contributions from the candidate to his or her principal committee made out of the candidate's personal funds, in-kind contributions made by the candidate to his or her principal committee, and advances received pursuant to subparagraph (d) of this paragraph.*15

(d) A limited participating candidate and his or her principal committee shall make expenditures in furtherance of the election(s) for which the candidate has filed a certification pursuant to paragraph (a) of this subdivision, whether before or after the filing of such certification, only with contributions received pursuant to subparagraph (c) of this paragraph**16 and, to the extent permitted by rule promulgated by the board pursuant hereto, advances by the limited participating candidate.

(e) A limited participating candidate, together with his or her principal committee, shall not make expenditures which in the aggregate exceed the applicable expenditure limitations set forth in section 3-706.

(f) Neither a limited participating candidate nor an authorized committee of a limited participating candidate shall be eligible to receive public funds pursuant to section 3-705.

(g) If a limited participating candidate is a candidate for the same office for which he or she filed a certification pursuant to paragraph (a) of this subdivision in any other election held in the same calendar year as the election for which such candidate filed such certification, other than a special election to fill a vacancy, he or she shall be bound in each such other election by the provisions of this section.

(h) A candidate who files a certification pursuant to paragraph (a) of this subsection shall not be eligible to file a certification pursuant to section 3-703.

(i) Notwithstanding any limitations in this chapter, a limited participating candidate may contribute to his or her own nomination for election or election with his or her personal funds or property, in-kind contributions made by the candidate to his or her authorized committees with the candidate's personal funds or property, and advances made by the limited participating candidate with the candidate's personal funds or property. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children, but shall not include other personal funds or property of his or her spouse, domestic partner or unemancipated children.

HISTORICAL NOTE

Section separately added L.L. 58/2004 § 16, eff. Dec. 15, 2004. [See § 3-703 Note 3] and L.L. 59/2004 § 12, eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 12, eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 1 par (b) amended L.L. 34/2007 § 31, eff. Jan. 1, 2008 as per § 41 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

15

[Footnote 15]: ** Should be paragraph (d) of this subdivision.

16

[Footnote 16]: ** Should be paragraph (c) of this subdivision.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-719

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-719 Obligations of non-participating candidates.

1. Disclosure requirements of non-participating candidates. (a) A non-participating candidate shall notify the board in such form as may be prescribed by the board as to: (i) the existence of each committee authorized by such candidate that has not been terminated, and (ii) whether any such committee also has been authorized by any other candidate.

(b) A non-participating candidate, and the authorized committees of such a non-participating candidate, shall comply with the same requirements as a participating candidate who files a certification pursuant to paragraph (c) of subdivision one of section 3-703 of this chapter as provided in paragraphs (d) and (g) of such subdivision, subdivision one-b of section 3-703, and subdivisions six, six-a and eight of section 3-703 of this chapter.

(c) A non-participating candidate and his or her authorized committee shall submit the disclosure reports required pursuant to this chapter, filed in accordance with the schedule specified by the state board of elections for the filing of campaign receipt and expenditure statements, and such other disclosure reports as the rules of the board may require.

(d) Neither a non-participating candidate nor an authorized committee of a non-participating candidate shall be eligible to receive public funds pursuant to section 3-705.

2. Contribution limitations of non-participating candidates. (a) A non-participating candidate shall notify the board in such form as may be prescribed by the board as to: (i) the existence of each committee authorized by such candidate that has not been terminated, and (ii) whether any such committee also has been authorized by any other candidate.

(b) A non-participating candidate, and the authorized committees of such a non-participating candidate, shall only accept contributions as limited by the provisions of paragraphs (f) and (l) of subdivision one of section 3-703, subdivision 1-a of section 3-703, and subdivision ten of section 3-703 of this chapter. Notwithstanding any contribution limitations in paragraphs (f) and (h) of subdivision one of section 3-703 and subdivision 1-a of section 3-703, a non-participating candidate may contribute to his or her own nomination for election or election with his or her personal funds or property, in-kind contributions made by the candidate to his or her authorized committees with the candidate's personal funds or property, and advances or loans made by the non-participating candidate with the candidate's personal funds or property. A candidate's personal funds or property shall include his or her funds or property jointly held with his or her spouse, domestic partner, or unemancipated children.

(c) Neither a non-participating candidate nor an authorized committee of a non-participating candidate shall be eligible to receive public funds pursuant to section 3-705.

HISTORICAL NOTE

Section separately added L.L. 59/2004 § 13 (Subd. 1 only), eff. Dec. 15, 2004. [See § 3-703 Note 4] and L.L. 60/2004 § 13 (Subd. 2 only), eff. Dec. 15, 2004. [See § 3-703 Note 5]

Subd. 1 par (b) amended L.L. 34/2007 § 11, eff. July 3, 2007 as per § 37 of such L.L. [See § 3-702 Note 2]

Subd. 2 par (b) amended L.L. 34/2007 § 12, eff. July 3, 2007 as per § 37 of such L.L. [See § 3-702 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-720

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 7 CAMPAIGN FINANCING*4

§ 3-720 Tolling of time for notice of alleged violations and/or notice of repayment of public funds.

If a committee has failed to respond to a request for information made by board auditors or has inadequately responded during the post-election audit process and the board has satisfied the provisions of subdivision 1 of section 3-710, the time period for serving notice shall be tolled and extended by the number of days by which the committee has exceeded the original deadline for a response, provided that the committee has received timely written notice of: (a) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested, and (b) the commencement of the tolling period pursuant to this section.

HISTORICAL NOTE

Section amended L.L. 67/2007 § 20, eff. Dec. 31, 2007.

Section added L.L. 34/2007 § 32, eff. Jan. 1, 2008 as per § 41 of such

L.L. and shall apply only to elections held on or after Jan. 1, 2008.

[See § 3-702 Note 2]

FOOTNOTES

4

[Footnote 4]: * (Chapter added L.L. 8/1988 § 2, effective 2/29/1988; see note after § 3-714.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-801

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 8 TRANSITION AND INAUGURAL DONATIONS AND EXPENDITURES*10

§ 3-801 Transition and inauguration donations and expenses.

1. Candidates elected to the office of mayor, public advocate, comptroller, borough president, or member of the city council may authorize one or more entities, other than a political committee, for the purpose of accepting donations and loans, and for making expenditures, for transition or inauguration into office. Such donations and loans may not be accepted and such expenditures may not be made on behalf of the candidate prior to the registration with the campaign finance board of each such entity. The campaign finance board shall promulgate rules to establish the time and manner for such registration.

2. Candidates elected to the office of mayor, public advocate, comptroller, borough president, or member of the city council, and the entities they authorize pursuant to subdivision one of this section, shall:

(a) not use funds accepted by a political committee authorized by the candidate for any election to make expenditures for transition or inauguration into office, and shall not transfer funds from a political committee to an entity the candidate is required to register pursuant to subdivision one of this section;

(b) not accept any donation or donations of money, goods, or services from any individual, political committee, employee organization, or entity which in the aggregate exceeds:

(i) four thousand five hundred dollars, in the case of a candidate elected to the office of mayor, public advocate, or comptroller;

(ii) three thousand five hundred dollars, in the case of a candidate elected to the office of borough president; or

(iii) two thousand five hundred dollars, in the case of a candidate elected to the office of member of the city council;

(c) not incur any liabilities after January thirty-first in the year following the election, nor accept any donations after all liabilities are paid; and

(d) not accept any donation or donations of money, goods, or services from any corporation, limited liability company, limited liability partnership or partnership not permitted to contribute pursuant to paragraph (l) of subdivision 1 of section 3-703 or from any person whose name appears in the doing business database as of the date of such donation; provided, however, that this limitation on donations shall not apply to any donation to a transition or inauguration entity authorized pursuant to subdivision one of this section made by a natural person who has business dealings with the city where such donation is from the candidate-elect or from the candidate-elect's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

3. Donations that do not exceed the limitations set forth in paragraph (b) of subdivision 2 of this section may be accepted only from political committees that register with the campaign finance board, as shall be provided for in rules issued by such board. Any donation accepted from a political committee that has not registered with the board prior to making the donation must be returned to the political committee. However, a subsequent donation may be accepted if such political committee registers with the board in accordance with the rules issued by the board.

4. To the extent not repaid by the date of the candidate's inauguration into office, a loan received by such entity shall be deemed a donation subject to the limits and restrictions set forth in paragraph (b) of subdivision 2 and subdivision 3 of this section.

5. (a) Each transition and inauguration entity authorized pursuant to subdivision one of this section shall report to the campaign finance board every donation of money, goods, or services, and every loan, it receives, the full name, residential address, occupation, employer, and business address of each individual, corporation, partnership, political committee, employee organization or other entity making or serving as the intermediary for such donation or loan, and every expenditure it makes.

(b) Donations aggregating not more than ninety-nine dollars from any one donor need not be separately itemized in disclosure reports submitted to the campaign finance board. The treasurer of such entity need not collect or disclose the occupation, employer, or business address of any donor making donations aggregating not more than ninety-nine dollars.

(c) Disclosure reports shall be submitted at such times and in such form as the campaign finance board shall require and shall be clearly legible. The campaign finance board shall make available to the public a copy of these disclosure reports within two business days after they are accepted by the campaign finance board.

6. The final disclosure report submitted by such entity shall set forth the disposition of any funds remaining after all liabilities are paid, after which the entity shall be terminated. If an entity has funds remaining after all liabilities have been paid, it shall return those funds to one or more of the entity's donors, or if that is impracticable, to the New York city election campaign finance fund.

7. Entities required to be registered pursuant to subdivision one of this section shall not incur liabilities for purposes other than transition or inauguration into office.

8. This section shall apply to every candidate elected to the office of mayor, public advocate, comptroller, borough president, or member of the city council, regardless whether such candidate filed a written certification pursuant to section 3-703 of this code.

9. For purposes of this chapter, the terms "intermediary" and "political committee" shall have such meanings as

are set forth in section 3-702 of this code.

10. Notwithstanding any restriction in this section, a candidate may self-fund his or her own entity.

HISTORICAL NOTE

Section added L.L. 39/1998 § 5, eff. Sept. 25, 1998.

Subd. 2 amended L.L. 58/2004 § 17, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 2 par (b) amended L.L. 34/2007 § 33, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 2 par (c) amended L.L. 34/2007 § 33, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 2 par (d) amended L.L. 67/2007 § 21, eff. Dec. 31, 2007.

Subd. 2 par (d) added L.L. 34/2007 § 33, eff. Jan. 1, 2008 as per § 40 of such L.L. and shall apply only to elections held on or after Jan. 1, 2008. [See § 3-702 Note 2]

Subd. 5 amended L.L. 58/2004 § 17, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 6 amended L.L. 58/2004 § 17, eff. Dec. 15, 2004. [See § 3-703 Note 3]

Subd. 10 added L.L. 58/2004 § 17, eff. Dec. 15, 2004. [See § 3-703 Note 3]

FOOTNOTES

10

[Footnote 10]: * Chapter added L.L. 39/1998 § 5, eff. Sept. 25, 1998. Note provisions of L.L. 39/1998 § 1:

Section 1. Declaration of Legislative Intent and Findings. Successful candidates for City office have, in recent years, undertaken activities for purposes of commencing their term of office. These "transition" and "inauguration" activities have included the hiring of government officials, inaugural parties, and public relations. The financing of these activities is not regulated by either State law or the New York City Campaign Finance Act. The lack of regulation of transition and inauguration activities increases the likelihood, or at least the appearance, that wealthy special interests will have undue influence over New York City's elected officials. The Council has determined to address these issues by regulating private financing of transition and inaugural activities.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 3-802

Administrative Code of the City of New York

Title 3 Elected Officials

CHAPTER 8 TRANSITION AND INAUGURAL DONATIONS AND EXPENDITURES*10

§ 3-802 Penalties.

1. Any candidate whose transition or inauguration entity fails to file in a timely manner a statement or record required to be filed by this chapter or the rules of the board in implementation thereof or who violates any other provisions of the chapter or rules promulgated thereunder, and any transition or inauguration entity treasurer or any other agent of the candidate who commits such a violation, shall be subject to a civil penalty in an amount not in excess of ten thousand dollars.

2. In addition to the penalties provided in subdivision one of this section, if the amount of a donation to the candidate's transition or inauguration entity exceeds the limitations contained in this chapter such candidate, such entity shall be subject to a civil penalty in an amount not to exceed three times the sum by which such donation exceeds the applicable donation limitation.

3. The intentional or knowing furnishing of any false or fictitious evidence, books, or information to the board under this chapter, or the inclusion of any evidence, abooks, or information so furnished of a misrepresentation of a material fact, or the intentional or knowing violation of any other provision of this chapter shall be punishable as a class A misdemeanor in addition to any other penalty as may be provided under law.

HISTORICAL NOTE

Section added L.L. 39/1998 § 5, eff. Sept. 25, 1998.

FOOTNOTES

10

[Footnote 10]: * Chapter added L.L. 39/1998 § 5, eff. Sept. 25, 1998. Note provisions of L.L. 39/1998 § 1:

Section 1. Declaration of Legislative Intent and Findings. Successful candidates for City office have, in recent years, undertaken activities for purposes of commencing their term of office. These "transition" and "inauguration" activities have included the hiring of government officials, inaugural parties, and public relations. The financing of these activities is not regulated by either State law or the New York City Campaign Finance Act. The lack of regulation of transition and inauguration activities increases the likelihood, or at least the appearance, that wealthy special interests will have undue influence over New York City's elected officials. The Council has determined to address these issues by regulating private financing of transition and inaugural activities.

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NYC Administrative Code 4-101

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-101 Acquisition of certain lands; by reversion.

In the event that any site or plot of ground, transferred to the United States, for the erection and maintenance of a light and fog signal at Hunt's Point Park, in the borough of the Bronx, should become unnecessary or cease to be used for such purposes, such site shall revert to the city, as if such transfer had not been made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 381-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 225

(formerly § 384-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-102

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-102 Loss of certain lands; by reversion.

The lands situate in the county of Westchester which were taken by the city, by virtue of the act entitled "An act to provide for supplying the city of New York with pure and wholesome water" passed May second, eighteen hundred thirty-four, shall be held and appropriated by the city for the use and purpose of introducing water into the city, and for purposes necessarily incident thereto, and for no other uses or purposes whatever. In case the city should use any of such lands situate in the county of Westchester for purposes other than in this section permitted, or in case such land should not be required for the purpose of introducing water into the city, such lands so improperly used, or not so required, shall become vested in the individual from whom such city obtained it, as full and perfectly as though such act had never been enacted, upon repaying to the city the amount originally paid for the same, after deducting from such amount the damages sustained by such individual by reason of any alteration or work which the city may have made upon such land.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 381-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 226

(formerly § 384-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-104

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-104 Title to certain public beaches; limitations thereon.

a. Title acquired or to be acquired by the city to any uplands, filled in lands, lands under water, estates, rights, easements, interests or privileges for public beaches on the Atlantic ocean from the westernmost point of Coney Island to the westerly line of Beach Second street, in the borough of Queens, and on the lower New York bay from the southerly line of the United States reservation Fort Wadsworth to the northerly line of the United States reservation Miller Field, in the borough of Richmond, in each and every case shall be a title in fee in trust for the use of the public to pass and repass over and along such public beach and beaches in the same manner as public beaches ordinarily are used. The owners of property abutting on the inland side of any such public beach or beaches shall possess easements of light, air and access over, along and across such public beach or beaches to the Atlantic ocean and to the lower New York bay, as the case may be, and a frontage on and access to such public beaches, streets, parks, avenues, boulevards, promenades, walks and boardwalks as may be authorized and constructed within the same.

b. Where such owners have laid out and are maintaining pipes for the drawing and discharging of sea water under the soil to be acquired for a public beach, they shall have the right to maintain such pipes under the soil of such public beach or beaches for the purpose only of drawing and discharging sea water, the maintenance of such pipes to be under the supervision of the commissioner of parks and recreation. Where owners have not laid and are not maintaining pipes under such soil for drawing and discharging of sea water, the board of estimate, under such terms and conditions as to it shall seem proper, may grant to such owners the right to lay and maintain pipes for the drawing and discharging of sea water only under the soil of such public beach or beaches.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 383-1.0 added chap 929/1937 § 1

Subd b amended LL 54/1977 § 21

CASE NOTES FROM FORMER SECTION

¶ 1. In action by City to foreclose tax liens covering certain water-front property at Rockaway Beach, defense asserting that defendant owned lot 75 in fee and that the decree in a 1925 condemnation proceeding constituted a previous adjudication which precluded the City from asserting title to the parcel and estopped it from questioning defendant's title thereto, **held** insufficient (Admin. Code § 383-1.0).-City of N.Y. v. Rabinowitz, 112 (143) N.Y.L.J. (12-21-44) 1791, Col. 5 T.

¶ 2. Whether plaintiff acquired an easement over the land sought to be condemned for park purposes by virtue of statute or agreement such a grant was for a private beneficial use and was conditional and subject to the paramount power of the State to acquire the same for public use.-Camp Ideal v. Wagner, 132 (59) N.Y.L.J. (9-23-54) 11, Col. 3 M.

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Administrative Code of the City of New York

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NYC Administrative Code 4-105

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-105 Land in private or in closed or discontinued streets; conveyance to abutting owners or other persons.

a. Whenever the city shall have any right, title or interest in and to the land lying within a private street, however acquired, or within a street, closed or discontinued in whole or in part, the owner of land fronting thereon at the time of acquisition of such private street or at the time of such closing or discontinuance, or the owner's heirs or assigns, may acquire, such right, title and interest in and to any parcel or parcels of such land lying in front of the lands owned by such person or persons, upon payment to the commissioner of finance for the right title or interest to be acquired within such private street or within such closed or discontinued street of such consideration as shall be determined by the commissioner of citywide administrative services; provided, however, that, except as otherwise provided by law, such consideration shall be in an amount not less than the appraised value of such right, title or interest as determined by appraisal made within six months prior to the authorization of such conveyance.

b. Such owner or owners or owner's heirs or assigns or the department of citywide administrative services on behalf of such owner or owners or owner's heirs or assigns shall apply, in writing, to the department of city planning for such conveyance either simultaneously with an application for the closing or discontinuance of a street or not later than two years after the acquisition of such private street or not later than two years after the closing or discontinuance of such closed or discontinued street. The department of city planning shall process such application pursuant to sections one hundred ninety-seven-c and one hundred ninety-seven-d of the charter. The department of city planning shall notify or cause to be notified all other owners eligible to purchase such right, title or interest pursuant to the provisions of this section of the filing of such application prior to certifying that such application is complete. Such notice shall be served by registered or certified mail addressed to the last known address of such owner or owners, as the same appears in the records of the office of the commissioner of finance or if there is no name in such records, such notice may be served by

ordinary mail addressed to "Owner" at the street address of the improvement parcel or property in question. Failure by the department to give such notice or cause such notice to be given shall not invalidate any proceedings with respect to such application. If the conveyance is approved by the mayor and in the manner prescribed by any applicable provisions of sections one hundred ninety-seven-c and one hundred ninety-seven-d of the charter, the mayor shall cause to be prepared and delivered to such owner or owners or owner's heirs or assigns a conveyance of the right, title and interest of the city in and to such parcel or parcels of land in such form as shall be approved by the corporation counsel. Such conveyance shall be delivered to such owner or owners or owner's heirs or assigns upon payment of the sum required by subdivision a hereof to be paid.

c. The mayor, in conveying such right, title or interest, shall not be obliged to convey the right, title or interest of the city in and to the land within one-half of such private or such closed or discontinued street to the owner of the land abutting on such half. Subject to any land use restrictions imposed pursuant to sections one hundred ninety-seven-c or one hundred ninety-seven-d of the charter, the mayor may convey all right, title or interest of the city in and to the lands in such private or such closed or discontinued street to the owner of the land abutting on one side thereof, whenever in his or her judgment it shall be just and proper, or in the best interests of the city, to do so, or to such abutting owners as require the same to make their abutting lands more available for improvements.

d. Subject to the provisions of section three hundred eighty-four of the charter, the mayor may at any time sell or otherwise dispose of the right, title and interest of the city in and to so much of the land lying within such private or such closed or discontinued street for which no application this section, to any person or persons whomsoever upon such terms and conditions as the mayor may deem proper.

e. The provisions of this section which refer to land or lands lying within a private street or within a street closed or discontinued shall be deemed to refer to the surface and subsurface of and air space over such street or any part of the surface or subsurface of or the air space over such street.

HISTORICAL NOTE

Section amended L.L. 8/1991 § 1, eff. Feb. 13, 1991

Section added chap 907/1985 § 1

Subds. a, b amended L.L. 59/1996 § 33, eff. Aug. 8, 1996

DERIVATION

Formerly § 383-2.0 added chap 929/1937 § 1

Subd d amended LL 50/1942 § 26

Subds a, b amended chap 100/1963 § 223

Amended chap 1060/1969 § 1

Subd e added chap 1002/1971 § 3

Amended LL 54/1977 § 22

CASE NOTES FROM FORMER SECTION

¶ 1. Upon the closing of a street, the Board of Estimate, for a consideration, could release the land in the street to an abutting church for playground purposes.-Klee v. Wagner, 8 N.Y. 2d 991, 205 N.Y.S. 2d 162, 169 N.E. 2d 285 [1960], mod. 8 N.Y. 2d 1019, 206 N.Y.S. 2d 787, 170 N.E. 2d 209 [1961].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-106

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-106 City real property; exceptions to inalienability and to public sale of.

Notwithstanding any provisions of law to the contrary, the board of estimate is authorized, subject to the provisions of sections one hundred ninety-seven-c and three hundred eighty-four of the charter, where applicable:

1. To convey to the state of New York in fee simple absolute such dock land and adjacent lands under water as may by determination of the commissioner of transportation be declared necessary for canal terminals, such lands to be and remain public lands under the sole control of the state.

2. To sell and convey to the upland owner any of the lands now or formerly under water, including lands under water excepted or reserved for street purposes out of grants of lands under water heretofore made by the city or its predecessors, along the westerly line of Franklin D. Roosevelt Drive (formerly known as East River Drive), between the northerly side of East Thirteenth street and the southerly side of East Fourteenth street, the northerly side of East Twentieth street and the southerly side of East Twenty-first street, the northerly side of East Thirtieth street and the southerly side of East Fifty-eighth street, the northerly side of East Fifty-ninth street and the southerly side of East Sixty-third street, the northerly side of East Eighty-ninth street and the southerly side of East Ninetieth street, in the borough of Manhattan. Such board of estimate, in its discretion, on and after May first, nineteen hundred forty-four, may sell and convey to any person or persons whomsoever, pursuant to section three hundred eighty-four of the charter, the aforesaid lands, described in this subdivision, which have not theretofore been granted or conveyed to the upland owners as provided in this subdivision, except as to such lands lying between the northerly side of East Thirteenth street and the southerly side of East Fourteenth street, which land such board, in its discretion on and after May first, nineteen hundred forty-seven, may sell and convey to any person or persons whomsoever, pursuant to section three hundred eighty-four of the charter.

2-a To sell and convey to the upland owner any of the lands now or formerly under water, including lands under water excepted and reserved for street purposes out of grants of lands under water heretofore made by the city or its predecessors, along the westerly shore of the Harlem river inside the bulkhead line, between the northerly side of Academy street and the southerly side of West Two hundred second street, and between the northerly side of West Two hundred sixth street and the southerly side of West Two hundred eighth street, and between the southerly line of lot 25 in block 2189 of section 8 as shown on the tax map of the city of New York for the borough of Manhattan and the southerly side of West Two hundred fifteenth street, and between the northerly side of West Two hundred sixteenth street and the prolongation eastwardly of the most southerly division line between lot 47 and lot 67 in block 2197 of section 8 as shown on said tax map, in the borough of Manhattan. Such board of estimate, in its discretion, on and after May first, nineteen hundred seventy, may sell and convey to any person or persons whomsoever, pursuant to section three hundred eighty-four of the charter, the aforesaid lands, described in this subdivision, which have not theretofore been granted or conveyed to the upland owners as provided in this subdivision.

3. a. To cede, grant and convey to the United States, free of cost, all the estate, right, title and interest of the city in and to any lands and lands under water, acquired by and owned by the city, required for the improvement of the navigation of waters within, or separating portions of the city, in accordance with the plan or plans, establishing bulkhead or pierhead lines in such waters, prepared by the secretary of defense; and

b. To cede, grant and convey to the United States, free of cost, or upon such consideration as may be agreed upon between such board and the United States, all the estate, right, title and interest of the city in and to any lands and lands under water acquired by or owned by the city, required for the establishment of air stations, in connection with the defense of New York harbor and the Atlantic coast; and

c. Whenever any part of such lands or lands under water shall have been ceded, to give a certificate under their hands, or those of a majority of them, that the same have been ceded as herein provided, and upon the production of such certificate it shall be the duty of the mayor and city clerk in the name and on behalf of the city to execute a proper conveyance of such lands and lands under water under their hands and the seal of such city.

d. To convey to the United States free of cost, or upon such consideration as may be agreed upon between such board and the United States, a perpetual easement of passage for military purposes from Fort Totten across the right-of-way of Cross Island parkway in the borough of Queens.

4. a. To set aside and use for public streets and parks, and for such city purposes as it may deem necessary, so much of the lands under water, islands, hummocks, hassocks, marshes and meadow lands in Jamaica bay and Rockaway inlet and tributaries thereto lying to the north of latitude forty degrees and thirty-three minutes north and to the eastward of longitude seventy-three degrees and fifty-six minutes west, granted to the city by the state of New York, including the portion or areas laid out for and included in a public street or park improvement authorized in accordance with law; and

b. To lease for residential use so much of the lands described in paragraph a of this subdivision, excluding any areas now adopted or which may hereafter be adopted as a marginal street, wharf or place, as may be determined by it to be unadaptable for commercial, manufacturing or industrial use and to be adaptable for such residential use; and

c. To release to adjoining upland owners, upon such terms and conditions and for such consideration as it may deem proper, such portions of the lands under water referred to in paragraph a of this subdivision, as are comprised in the beds of creeks, inlets and tributaries of Jamaica bay, situated inshore of the interior lines thereof and not required for the purposes specified in paragraphs a and b of this subdivision; or

d. To exchange so much of the lands under water comprising the beds of such creeks, inlets and tributaries, so situated, which it is authorized to release pursuant to paragraph c of this subdivision, for adjacent privately owned lands required for the opening and extending of public streets or avenues, duly laid out upon the final map of the city.

5. To sell and convey, at private sale, to a corporation organized solely for religious, charitable or educational purposes, such portion of the islands or of an island in Jamaica bay as shall be required by such corporation for religious, charitable or educational purposes, on such terms as the board may deem proper, provided that the deed of conveyance contain a covenant that the land so conveyed shall be used in perpetuity for such purposes.

6. To grant and convey to abutting upland owners, upon such terms and conditions and for such consideration as such board may deem proper, by proper instrument or instruments in writing under the corporate seal of the city, all the property, right, title and interest that it now has or may hereafter acquire in and to any lands under the waters of the Atlantic ocean which are or shall be located inland of the interior line or lines of any public beach or beaches now laid out and established, or which may hereafter be laid out and established from the westernmost point of Coney Island to the westerly boundary line of Beach Second street, in the borough of Queens.

7. From time to time, to sell, either at public or private sale, for part cash or part secured by purchase money mortgage, in such proportions and upon such terms as they may determine, and to convey all or any part of the common lands of the late town of Gravesend remaining unsold, and all other lands and property of such late town not needed or used for governmental purposes.

8. To grant to railroad corporations for the construction and maintenance of their roadbeds, tracks, bridges and other structures, and the operation over the same of their railroads in perpetuity or for shorter periods, easements or rights of way, in, over, along or across any lands, or over and across any lands under water, and the waters covering the same, heretofore or hereafter acquired by the city pursuant to law, in the counties of Westchester and Putnam, for or in connection with its water supply, upon such terms and conditions, for such consideration and subject to such restrictions as in the judgment of such board shall seem proper. No such grant, however, shall be made unless such board shall first determine that the use or enjoyment for such purposes of such lands is not inconsistent with the purposes for which such lands were or may hereafter be acquired. Every such grant shall contain covenants restricting the manner and form of such use and enjoyment in accordance with the determination of the board, and providing for the forfeiture thereof to the city upon breach of any of such covenants. No such grant of any easement or right of way shall be made to any railroad corporation where the length of such easement or right of way exceeds one mile, unless such grant embraces several distinct and separate easements or rights of way, in which event the aggregate length of all of such easements or rights of way may be, but shall not exceed, three miles, and no one easement or right of way included in such aggregate length shall exceed in length three-fourths of a mile. The consideration provided to be paid by the grantee in and by any such grant shall be paid into the real property fund.

9. Except as limited by subdivision eight of this section, to lease or grant, without public letting in perpetuity or for shorter periods, rights, easements or rights-of-way in, over or across any city real property heretofore or hereafter acquired and used for the purposes of impounding, storing or transporting water for municipal water supply or for the sanitary protection thereof wheresoever located, for park, parkway, roadway, highway, sewer, railroad or any other public purpose, and for elimination of highway railroad crossings at grade for such consideration and upon such terms and conditions and subject to such restrictions as such board may deem proper. No such lease or grant, however, shall be made unless the agency having jurisdiction over such property shall first determine and certify in writing that such property or interest therein so leased or granted will not endanger or injure the water supply structures or other property of the city or interfere with the use and operation thereof for water supply or sanitary protection purposes. Every such lease or grant shall contain covenants restricting the use of such property or interest therein in accordance with the determination of such board, and providing for the forfeiture to the city of such property or interest therein upon breach of any such covenants.

10. To exchange and convey lands under water in creeks, tributaries thereto, ditches, ponds and bays no longer required by the city for public purposes. In exchange for lands conveyed the mayor may acquire lands of private owners, necessary for sewer drainage canals, within the lines of any sewer drainage canal as laid out, and the mayor is authorized to take deeds and conveyances. Such exchange, however, shall not be made to or with any owner or owners whose upland does not abut, bound or adjoin the lands under water to be exchanged, nor shall such board convey such

lands under water until the agency having under control or supervision such lands under water, shall have first certified to the board that the lands to be conveyed are no longer necessary or required for public purposes. In the exchange of such lands all right, title and interest of private owners in that portion of creeks, tributaries thereto, ditches, ponds and bays not abutting, bounding or adjoining lands under water so exchanged, shall be deeded and delivered to the city, and the board by resolution and the mayor by order shall authorize such exchange. The corporation counsel by the direction of the board and the mayor, shall thereupon prepare and certify the forms of all legal instruments and deeds necessary on the part of the city to effect such exchange in law. The board and the mayor shall designate and authorize the proper official or officials to execute and deliver all legal instruments and deeds necessary to effect such exchange. The land so acquired by the exchange shall be assigned to the agency requiring the use of the same, upon proper application therefor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 383-3.0 added chap 929/1937 § 1

Subd 9 amended chap 616/1939 § 1

Subd 2 amended chap 815/1939 § 1

Subd 2 amended chap 517/1940 § 1

Subd 3 par d added chap 435/1942 § 1

Subd 2 amended chap 837/1942 § 1

Subd 2-a added chap 837/1942 § 1

Subd 2 amended chap 900/1945 § 1

Subd 2 amended chap 348/1947 § 1

Subd 2-a amended chap 69/1955 § 1

Subd 2-a amended chap 196/1956 § 1

Subd 4 pars a, c, d amended chap 100/1963 § 224

Subd 10 amended chap 100/1963 § 224

Subd 2-a amended chap 686/1963 § 2

Subd 2-a amended chap 707/1965 § 1

Subd 2-a amended chap 845/1968 § 1

Open par amended LL 54/1977 § 23

CASE NOTES FROM FORMER SECTION

¶ 1. Property which came within the category of properties which the City of New York was permitted to sell or

otherwise dispose of under applicable statutes (Admin. Code § 383-3.0; N.Y.C. Charter § 384) could be lost to the City by adverse possession (278 N.Y. 86; 228 N.Y. 140; &c.).-City of N.Y. v. Milone, 105 (12) N.Y.L.J. (1-15-41) 240, Col. 6 F.

¶ 2. In condemnation proceeding involving acquisition of land for widening of East River Drive from East 100th Street to 102nd Street, and in proceeding involving the closing of a portion of 12th Avenue from West 55th Street to West 57th Street, claim of city that, at times of grants made by it in 1889 and in 1893 of certain parcels of land situated outshore of the Randel highwater line but inshore of the exterior bulkhead line established in 1857, there was no power in the city to alienate any land, whether under water or filled in, which was outshore of the Randel highwater line, was rejected. When the Legislature declared that no grants were to be made beyond the exterior lines of the City it would seem to have intended that grants inshore of the exterior lines should be valid, and that the factor in determining the city's power to make grants of land underwater was to be the legislatively fixed exterior lines rather than the original Randel highwater line of 1820. Furthermore, it would unduly extend any implied restraint on alienation of waterfront property to apply it to land which was removed from the category of waterfront property by filling in of the land under water in pursuance of the authority of the Department of Docks, and it was immaterial whether the filling in had been completed at the time of the grant, where the filling had been authorized.-In re City of New York (East River Drive; Closing of 12th Avenue), 295 N.Y. 415, 68 N.E. 2d 422 [1946].

¶ 3. The City of New York, by its use of the parcel, which was located some two or three blocks distant from the waterfront and west of Park Avenue and south of 135th Street, and by its actions with respect thereto prior to 1871 when acts were passed prohibiting the alienation of waterfront property by the City, particularly in changing the exterior boundary line by putting in avenues and streets on which many structures were erected, **held** to have shown that it considered as upland the land lying between the original Randel line and the west side of Park Avenue as opened. Hence, alienability was not prohibited and quitclaim deeds granted by the City after 1871 were valid.-In re City of N.Y. (Park Ave., Abraham Lincoln Houses), 113 (110) N.Y.L.J. (5-11-45) 1804, Col. 6 M.

¶ 4. Land formerly under the East River was properly sold to defendant without a public auction where defendant was the upland owner to the land, even though he had previously been divested of the fee title to upland property.-Beekman Campanile, Inc. v. City of N.Y., 148 (13) N.Y.L.J. (7-19-62) 6, Col. 2 F.

¶ 5. This section did not impose any obligation upon the Board of Estimate to grant an easement to plaintiff, owner of a landlocked parcel, for passage to a public highway over land under jurisdiction of the Commissioner of Water Supply, Gas and Electricity. It merely authorizes the Board of Estimate to grant an easement without public auction provided the agency having jurisdiction over the property first certifies that the grant of such an easement would not endanger the water supply structures or other property of the City.-Am. Foundation for the Blind, Inc. v. City of N.Y., 149 (42) N.Y.L.J. (3-4-63) 20, Col. 7 F.

¶ 6. Release by Board of Estimate to plaintiff of right of City to portion of tax lots under water without consideration was void as a gift of city property in violation of New York State Constitution, Art. VIII, § 1.-Solow v. City of N.Y., 25 App. Div. 2d 442, 266 N.Y.S. 2d 823 [1966], aff'd 20 N.Y. 2d 960, 233 N.E. 2d 855, 286 N.Y.S. 2d 852 [1967].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-107

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-107 City real property; transfer of, to department of citywide administrative services.

Whenever any real property of the city is unproductive, or the term for which it may have been leased or let shall have expired or be about to expire, the agency having jurisdiction over such real property shall forthwith transfer the same to the department of citywide administrative services.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 34, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 228

(formerly § 384-4.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 384-4.0 was without application to action in ejectment by City to recover possession, for street uses, of land which it, allegedly without legal authority, had granted for private use.-City of N.Y. v. Aviation

Distributors, Inc., 84 N.Y.S. 2d 84 [1948].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-108

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-108 City real property; condition precedent to disposition of.

The board of estimate, before it shall dispose of any real property, shall determine that such real property is no longer required for a public use.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 228

(formerly § 384-5.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-109

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-109 City real property; sale of.

City real property, including buildings, fixtures and machinery therein, shall be sold in the manner prescribed in subdivision b of section three hundred eighty-four of the charter pursuant to a resolution adopted by the board of estimate, and such sale shall be under the sole supervision of such board. In case such buildings, fixtures and machinery be sold at public auction, the board of estimate may provide as a condition of such sale that such buildings, fixtures or machinery shall not in any case be relocated or re-erected within the lines of any proposed street or other public improvement, and if after such sale such buildings or parts of buildings or other structures be relocated or re-erected within the lines of any proposed street or other public improvement, title thereto shall thereupon become vested in the city and a resale at public or private sale may be made in the same manner as if no prior sale had been made of the same.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-3.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 228

(formerly § 384-6.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-110

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-110 School lands; sale of, at auction.

The board of estimate is authorized, upon the application of the board of education duly authorized and certified, to sell at public auction at such times and on such terms as they may deem most advantageous for the public interest, any land or lands and the buildings thereon, owned by the city, occupied or reserved for school purposes, and no longer required therefor. No property, however, shall be disposed of for a less sum than the same may be appraised by the board of estimate, or a majority of them, at a meeting to be held and on an appraisement made within two months prior to the date of the sale. At least thirty days notice of such sale, including a description of the property to be sold, shall be published in the City Record.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 228

(formerly § 384-7.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-111

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-111 Market property; sale of.

If the real property sold by the board of estimate be market property it shall be sold only pursuant to a resolution adopted by a three-fourths vote thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-5.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 228

(formerly § 384-8.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-112

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-112 Deeds; execution of, by city.

Whenever the sale of any real property of the city shall have been authorized pursuant to this charter or other applicable law, the mayor or the commissioner of citywide administrative services and the city clerk, or for a sale of real property of the city that is under the jurisdiction of the department of housing preservation and development, the mayor or the commissioner of the department of housing preservation and development and the city clerk, shall execute proper conveyances of such real property signed by them and bearing the seal of the city. A conveyance of such real property shall not be delivered to the grantee until the proceeds of such sale have been received by the city.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 35, eff. Aug. 8, 1996.

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-6.0 added chap 929/1937 § 1

Amended LL 8/1940 § 1

Amended chap 309/1959 § 5

Amended chap 715/1962 § 1

Renumbered chap 100/1963 § 229

(formerly § 384-9.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-113

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-113 Power to exchange lands no longer used for public purpose.

The board of estimate is authorized by a three-fourths vote upon the application of any agency of the city to whose use any lands of the city have been assigned and upon the determination of such board that such real property of the city as shall be specified in such application is no longer needed for departmental or public purposes, to convey any such land, with or without the improvements thereon, and, in exchange therefor, the mayor is authorized to acquire other land of equal or greater value of private owners lying within the same borough; provided that the mayor shall determine that such lands of private owners are needed for a public purpose. To determine the value of the land of the city, and of the land to be exchanged therefor, the board shall have such property of the city and the mayor shall have the property of the owners duly appraised by three discreet and disinterested appraisers to be appointed by such board and the mayor. The appraisers shall be residents of the borough in which such lands are situated, and such appraisal shall be made within three months prior to the date of such exchange. The corporation counsel, as directed by a resolution duly adopted and certified by the board and by order of the mayor, shall approve the form of all legal instruments necessary on the part of the city to effect such exchange in law, and the board and the mayor shall designate and authorize the proper officer to execute and deliver any and all legal instruments necessary to effectuate such exchange. The land so acquired by the exchange shall be assigned to the agency requiring the use of the same upon proper appplication therefor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-7.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 230

(formerly § 384-10.0)

CASE NOTES FROM FORMER SECTION

¶ 1. A housing project entered into by the City of New York pursuant to the Redevelopment Companies Law providing that the approval of a housing plan by the local legislative body could be adopted by a majority of the whole number of votes authorized to be cast by all the members thereof, was validly entered into by the City. Contention that there was a non-compliance with § 384 of the Charter and § 384-10.0 of the Admin. Code, providing that a sale of city property should be had only after a three-fourth's vote of the Board of Estimate, was rejected.-Pratt v. LaGuardia, 182 Misc. 462, 47 N.Y.S. 2d 359 [1944], aff'd 268 App. Div. 973, 52 N.Y.S. 2d 569, appeal dismissed, 294 N.Y. 842, 62 N.E. 2d 394 [1945].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-114

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-114 Boundary disputes; power to settle.

The board of estimate shall have power, by three-fourths vote, to settle and adjust by mutual conveyances or otherwise, and upon such terms and conditions as may seem to them proper, disputes existing between the city and private owners of real property, in respect to boundary lines, and to release such interest of the city in real property as the corporation counsel shall certify in writing to be mere clouds upon titles of private owners, in such manner and upon such terms and conditions as in its judgment shall seem proper.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-8.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 231

(formerly § 384-11.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-115

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-115 Demolition or removal of buildings.

a. The board of estimate shall have discretion to direct the demolition or removal of all buildings or other structures owned by the city and not needed for any public purpose.

b. Upon the failure of the board of estimate to receive any bids for the demolition or removal of buildings or other structures on land acquired by the city for a public improvement, the agency under whose jurisdiction such public improvement is to be made may provide for suchdemolition or removal in the contract or contracts relating to such improvement.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-9.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 231

(formerly § 384-12.0)

CASE NOTES FROM FORMER SECTION

¶ 1. The approval of the art commission is required in respect to the "cleaning, restoration, repair, alteration, removal or relocation of any work of art" owned by the City. However, the approval of the commission was not required where the Board of Estimate had ordered the demolition of the aquarium building, with walls and foundation of what was formerly Fort Clinton. The remains of the fort did not constitute a work of art within the meaning of Charter § 854.-Matter of Hamilton (Moses), 275 App. Div. 76, 87 N.Y.S. 2d 717 [1949].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-116

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-116 Discrimination in housing.

Every deed, lease or instrument made or entered into by the city, or any agency thereof, for the conveyance, lease or disposal of real property or any interest therein for the purpose of housing construction pursuant to the provisions of article fifteen of the general municipal law and laws supplemental thereto and amendatory thereof shall provide that no person seeking dwelling accommodations in any structure erected or to be erected on such real property shall be discriminated against because of race, color, religion, national origin or ancestry.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 384-10.0 added LL 111/1949 § 1

Renumbered and amended chap 100/1963 § 236

(formerly § 384-16.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-117

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-117 Title to former town burial grounds; care, maintenance and operation; appropriation for care and maintenance; transfer of funds.

a. Title to former town burial grounds. Title to any burial ground which formerly was the public property of any town, village or city, consolidated into and now a part of the city of New York, is hereby declared to vest in the city of New York.

b. Care and maintenance of said burial grounds. The agency designated by executive order of the mayor shall be charged with the care, maintenance and operation of said burial grounds.

c. The head of such agency shall promulgate such regulations as he or she deems necessary and proper in relation to the care, maintenance and operation of any such cemetery under his or her jurisdiction. The head of such agency shall prescribe in such regulations reasonable interment fees and charges for the care of graves and other services customarily rendered in cemeteries. Notwithstanding any other provision of law, the head of such agency shall prescribe in such regulations, a schedule of prices as recommended by the commissioner of citywide administrative services for the sale of lots in any such cemetery, and the commissioner of citywide administrative services shall be authorized to sell such lots for such prices without further approval of any other official. Instruments evidencing the ownership of any purchaser of such lot shall be executed by the commissioner of citywide administrative services and approved as to form by the corporation counsel. All fees, charges, and other moneys received by the head of such agency in connection with the care, maintenance and operation of any such cemetery and all sums paid to the commissioner of citywide administrative services for lots shall be paid to the comptroller and deposited in and credited to the general fund.

d. Appropriation for care, maintenance and operation. There shall be appropriated by the city funds to provide for the proper care, maintenance and operation of said burial grounds.

e. All funds and property held by any trustee of such burial grounds, other than funds and property held in trust, shall be paid over to the comptroller and deposited in and credited to the general fund. All funds and property held by any such trustee in trust shall be paid over or delivered to the comptroller, and shall be held in trust, administered and managed by the comptroller, with power to invest and reinvest, for the purposes for which such funds and property were held in trust by such trustee. In any case in which an officer or agency of the city incurs any expense in carrying out any such trust, including expenses for providing perpetual care, cemetery maintenance and care, or any other service, work or materials contemplated by such trust, the comptroller may reimburse the city for such expense from the income from the trust funds or property held by the comptroller in connection with such trust, and from the corpus thereof where the terms of such trust permit the use of the corpus for carrying out its purposes.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended L.L. 59/1996 § 36, eff. Aug. 8, 1996

DERIVATION

Formerly § 384-11.0 added LL 121/1940 § 1

Amended LL 38/1947 § 1

Amended chap 739/1948 § 1

Renumbered and amended chap 100/1963 § 233

(formerly § 384-14.0)

Amended chap 822/1968 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-118

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-118 Investment of trust funds for perpetual care and maintenance in cemeteries.

In investing and reinvesting trust funds held by him or her pursuant to section 4-117 or otherwise for the perpetual care and maintenance of any lot, plot or part thereof in a cemetery or burial ground maintained and operated by the city of New York, and under the jurisdiction of the borough president of the respective borough in which such cemetery or burial ground exists, the comptroller may add moneys and property received by him or her, whether by contract, in trust or otherwise, to any similar trust fund or funds, and apportion shares or interests to each trust fund, showing upon his or her records at all times every share or interest, or he or she may combine two or more trust funds or portions of the same.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93e-1.0 added chap 568/1954 § 1

Renumbered and amended chap 100/1963 § 145

(formerly § 93f-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-119

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 1 REAL ESTATE TRANSACTIONS

§ 4-119 Acquisition of certain cemetery lands in the borough of the Bronx.

a. The city may acquire by gift, and maintain and continue to operate as a cemetery principally for the burial of members of the armed forces of the United States, the following described premises:

All that piece or parcel of cemetery land situate in the borough of Bronx, city and state of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the northerly side of East one hundred eightieth street, and the westerly side of Bryant avenue; running thence northerly along the said westerly side of Bryant avenue; one hundred ninety and eighty-seven one-hundredths (190.87) feet; thence westerly, parallel with the northerly side of East one hundred eightieth street, one hundred fifty-six and ninety-seven one-hundredths (156.97) feet; thence southerly, parallel with the westerly side of Bryant avenue, one hundred eighty-eight and nine one-hundredths (188.09) feet to the northerly side of East one hundred eightieth street; and running thence easterly, along the northerly side of East one hundred eightieth street, one hundred fifty-five and fifty-six one-hundredths (155.56) feet to the point or place of beginning. Be the said several distances and dimensions more or less.

b. b. The head of the agency designated by executive order of the mayor shall be charged with the care, maintenance and operation of said burial ground, and shall promulgate such regulations as he or she deems necessary and proper in relation thereto. The head of the agency designated by the mayor shall prescribe in such regulations interment fees and charges for the care of graves and other services customarily rendered in cemeteries. Notwithstanding any other provision of law, the agency so designated shall prescribe in such regulations, a schedule of prices as recommended by the commissioner of citywide administrative services for the sale of lots in the cemetery, and

the commissioner of citywide administrative services shall be authorized to sell such lots for such prices without further approval of any other official. Instruments evidencing the ownership of any purchaser of such lot shall be executed by the commissioner of citywide administrative services and approved as to form by the corporation counsel. All fees, charges and other moneys received by such agency in connection with the care, maintenance and operation of the cemetery and all sums paid to the commissioner of citywide administrative services for lots shall be paid to the comptroller and deposited in and credited to the general fund.

c. There shall be appropriated by the city funds to provide for the proper care, maintenance and operation of said burial ground.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended L.L. 59/1996 § 37, eff. Aug. 8, 1996

DERIVATION

Formerly § 384-12.0 added chap 337/1955 § 1

Renumbered chap 100/1963 § 234

(formerly § 384-14.1)

Subds b, c amended chap 100/1963 § 234

Amended chap 776/1969 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-201

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-201 Commissioner of citywide administrative services, functions.

a. The commissioner of citywide administrative services under the direction of the mayor may, in his or her discretion, require any person offering to sell to the city real property located within the city, or any agent of such person, or any officer or agent of a corporation offering to sell such real property to the city, to be sworn before the commissioner or a person deputized by the commissioner, and to answer orally as to the persons interested in the real property, the price paid by the owner therefor, the interest of any other person, as broker, agent or other intermediary, in effecting the proposed sale to the city, and as to any other facts and circumstances affecting the propriety of the purchase of such property by the city, and the fair market value thereof. Any other person having knowledge of any relevant and material fact or circumstance affecting the propriety of the proposed purchase by the city or the fair market value of the real property to be acquired, may likewise be examined under oath. Willful false swearing before the commissioner or a person deputized by the commissioner is perjury and punishable as such, and in a prosecution for perjury, it shall be no defense that such false swearing did not aid in effecting a sale of such property to the city, or in fixing the price paid therefor.

b. The commissioner, under the direction of the board of estimate, shall:

1. After due inquiry to be made by the commissioner, present to the board, a statement, in writing, of the facts relating to any real property proposed to be leased and the purpose for which such property is required by the city, with a report embodying the commissioner's opinion, and the reasons therefor, as to the fair and reasonable rent of such premises. The commissioner shall enter into, on behalf of the city, any lease, authorized by the board, of property leased to the city.

2. Recommend that legal proceedings be taken when necessary to enforce payment of rents or moneys due the city from city real property or to obtain possession of premises to which the city is entitled.

3. Report to the board whether or not it will be in the public interest to lease or otherwise dispose of the property transferred to the commissioner pursuant to section 4-107 of the code, provided that no such report shall be required with respect to the leasing or renting or the granting of licenses, permits or other authorizations for the use of real property entered into by the commissioner pursuant to the provisions of section 4-203 of the code. The commissioner, under the sanction of the board, shall appoint experienced and qualified appraisers upon behalf of the city to settle the rent or renewal of any lease, or the value of the building, to be paid for on the expiration of any lease, in which the city is or shall be interested, whenever by the provisions of such lease the appointment of appraisers is required. All leases authorized by the board shall be executed by (a) either the mayor or the commissioner of citywide administrative services and (b) the city clerk, under their hands and the seal of the city.

4. When any person offers to purchase or lease real property belonging to the city, have discretion to require such person to deposit with the department of finance a sum of money, prescribed by the commissioner, as security that such person will pay the amount bid by that person upon the sale or lease of such property at public auction or by sealed bids, and that such person will execute and deliver all papers necessary to carry such sale or lease into effect, if that person's bid for the purchase or lease of such property shall be accepted. Such deposit shall, in the event of the default of the person depositing the same, pay the amount bid by such person, or of that person's failure to execute and deliver the necessary papers as hereinbefore provided, become the property of the city as liquidated damages. Upon the sale or lease of real property belonging to the city as herein provided, if such real property shall be sold or leased to a purchaser or lessee procured by a broker and the purchase price or rental accepted by the city upon the consummation of the sale or lease shall equal or exceed the offer made by such broker in behalf of the purchaser or lessee, the city is hereby authorized to pay the usual commissions to such broker. No commissions shall be paid for the procuring of any sale or lease unless the written authority of the broker to make the offer, signed by the person for whom the broker is acting, shall be filed in the department of citywide administrative services before the day the sale or lease of the property is advertised to take place, or at such time prior thereto as may be fixed by the commissioner of citywide administrative services.

5. Report to the board whether or not it is in the public interest to grant permission to the lessee or assignee of a lease made by the city for a term of one year or longer, to assign the same or to underlet the demised premises notwithstanding any provision in the lease to the contrary. A prerequisite to any favorable report shall be the prior payment of all arrears of rent on the premises.

6. Preserve in a book to be kept in the commissioner's office for that purpose, to be called the "record of quit-rents", maps of all grants of land heretofore made by the city, on which quit-rents are payable, showing the original grants and subdivisions thereof as definitely as these can be ascertained. The commissioner shall receive the sums proportionately due from each owner in payment of the portion of the moneys payable under the original grant, as such sums, from time to time, shall become payable and shall likewise receive any commuted quit-rents paid as hereinafter provided. The commissioner of citywide administrative services, on receiving written notice from the grantee of the city, or his or her assignee, of the sale of any portion of land subject to quit-rent, shall enter in the record of quit-rents the name of the purchaser, the date of the sale, and the portion of the land sold. The commissioner thereafter shall receive the sum proportionately due from such purchaser in payment of his or her portion of the moneys payable under the original grant, as the same, from time to time, shall become payable, and the commissioner shall receive from the owner of the lot or parcel mentioned in the notice, or the owner's legal representative, the sum proportionately due from the owner in payment of his or her proportion of the moneys payable under the original grant. When land heretofore granted by the city, subject to a quit-rent, portions of which have been assigned by the grantee, shall be re-entered by the city for nonpayment of the quit-rent, the commissioner may grant releases in severalty to such of the assignees of portions of the land granted as shall, within six months from the re-entry, pay to the commissioner their respective apportionments of commutation money and the expenses of re-entry and conveyance, with such portions of the rent as may be justly due from the respective assignees for the land held by them, as the same shall be apportioned by the

commissioner. Whenever any person shall desire to commute any quit-rent due the city, the commissioner shall calculate such commutation at the rate of six per cent and, upon the production of evidence that such quit-rent and all arrears of rent have been paid into the treasury of the city to the credit of the real property fund, the mayor and city clerk shall execute a release of such quit-rent. All sums received by the commissioner pursuant to the provisions of this subdivision shall be paid daily to the commissioner of finance.

7. Upon the payment in full of the principal and interest due on any bond and mortgage held by the city, the mayor and city clerk shall execute, under their hands and the seal of the city, upon evidence being exhibited to them showing that the principal and interest on such bond and mortgage have been paid into the treasury of the city to the credit of the appropriate fund an assignment or proper satisfaction of said bond and mortgage. The release by such officials of any part of the premises described in such mortgage from the lien created by such mortgage is prohibited.

8. Keep on file in the department of citywide administrative services all title deeds, leases, bonds, mortgages, or other assurances of title, except as otherwise provided by law.

9. Record all grants, leases and counter-parts of leases, and all deeds executed by the city in proper books. The commissioner shall also keep a record of all property owned and acquired by the city. Such record shall show the date the property was acquired, the tax map description thereof, the borough in which the property is located, and shall be properly cross indexed with reference to the original deeds of acquisition. The commissioner shall also keep a record of all property on which rent is in arrears and the amounts of the arrearages.

10. Submit to the corporation counsel for approval as to correctness of form all contracts, leases or other legal documents of similar character, except forms prepared or approved by the corporation counsel.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 38, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1082-1.0 added chap 929/1937 § 1

Amended chap 309/1959 § 6

Subd 8 amended LL 80/1960 § 4

Renumbered and amended chap 100/1963 § 232

(formerly § 384-13.0)

Subd b par 3 amended chap 315/1964 § 1

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-202

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-202 Collection of rents.

The commissioner of citywide administrative services shall collect all rents, charges and any other sums payable or due to the city from any tenant, occupant or other person, under any lease, rental agreement, permit, license or otherwise, for occupancy, use and occupation or other use of real property of the city or any portion of such property, which the commissioner is under the duty to manage and superintend. It shall be the duty of the commissioner to collect rental or other charges for temporary occupancy, use and occupation or other use of property acquired by the city for public purposes between the time of the acquisition thereof and the time when the same can be actually utilized for the purpose for which it was acquired, and for occupancy, use and occupation or other use of all property which, having been originally acquired for public purposes, has ceased to be used for such purposes. All such rents, charges and other sums collected by the commisssioner as provided in this section shall be paid by the commissioner daily to the commissioner of finance and a public record thereof shall be kept in the commissioner's office.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 39, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1082b-1.0 added chap 309/1959 § 8

Renumbered and amended chap 100/1963 § 1708

(formerly § 1152b-1.0)

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-203

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-203 Leasing or renting of real property by commissioner of citywide administrative services.

a. Under the conditions and subject to the restrictions hereinafter set forth in this section, the commissioner shall have power, without the concurrence of any other officer or agency, to lease or rent in behalf of the city to any person, or to grant to any person in behalf of the city, a permit or license or other authorization for the use of, any real property of the city or portion thereof which the commissioner is authorized to manage and superintend.

b. The commissioner may lease or rent, or grant any such permit, license or authorization with respect to any such property or portion thereof, for such rental or other charge and upon such terms and conditions as the commissioner may determine, in any case where the terms of such lease, rental agreement, permit, license or other authorization is less than one year except that where such property or portion thereof has previously been leased, rented, the subject of such a permit, license or other authorization, the term of such lease, rental agreement, permit, license or other authorization may be for a term of up to five years, and the rental or other charge fixed by the commissioner therein does not exceed five thousand dollars per month or any equivalent of such rental or charge. Before the commissioner shall enter into any such lease or rental agreement or issue any such permit, license or other authorization, there shall be filed in the department and with the board of estimate a written certification signed by two officers or employees of the department having the rank of senior real estate manager or an equivalent or higher rank, stating that the rental or other charge fixed therein is fair and reasonable.

c. Except as otherwise provided in subdivision d of this section, the commissioner may lease or rent or grant a permit, license or other authorization with respect to any such property or portion thereof, only for the highest marketable price or rental at public auction or by sealed bids and after advertisement for at least fifteen days in the City Record and after appraisal made within ninety days prior to such transaction, in any case where the term of such lease,

rental agreement, permit, license or other authorization is less than one year, and the rental or other charge fixed therein is more than five thousand dollars per month or any equivalent thereof.

d. In any case where, on the date of the acquisition of any such real property by the city by purchase, condemnation or otherwise, if any tenant, occupant or other person is lawfully in possession of such property or any portion thereof, or holds a permit, license or other authorization of use thereof, the commissioner may lease or rent to any such tenant, occupant or other person, the premises occupied by him or her on such date, or may grant to such holder the rights or privileges enjoyed by him or her on such date, at a rental or other charge in excess of five thousand dollars per month or any equivalent thereof, and upon such terms and conditions as the commissioner may determine, provided (i) the terms of such lease, rental agreement, permit, license or other authorization is no more than five years, and (ii) the possession of such tenant, occupant or other person, or the right or privilege of use enjoyed by such holder is continuous from such date and (iii) there shall be filed in the department, with respect to such lease, rental agreement, permit, license or other authorization, a written certification, signed by two officers or employees of the department having the rank of senior real estate manager or an equivalent or higher rank, stating that the rental or other charge fixed therein is fair and reasonable.

e. In any case where the board of estimate and Triborough bridge and tunnel authority shall agree that any real property under the jurisdiction of such authority shall be managed and superintended by the commissioner, he or she shall, in accordance with the terms of such agreement, manage and superintend such property and collect the rents, charges and other proceeds therefrom, and shall dispose of such moneys in the manner provided in such agreement. The commissioner, with the prior approval of such authority, and in accordance with the applicable provisions of subdivisions b, c and d of this section, may lease or rent or grant permits, licenses or other authorizations with respect to any real property or any portion thereof subject to such agreement.

HISTORICAL NOTE

Section heading amended L.L. 59/1996 § 40, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1082b-2.0 added chap 309/1959 § 8

Renumbered chap 100/1963 § 1709

(formerly § 1152b-2.0)

Subd b amended LL 30/1969 § 1

Subds b, c, d amended LL 68/1973 § 1

Subd d amended chap 409/1980 § 1

Subds b, c, d amended chap 814/1983 § 1

CASE NOTES

¶ 1. A letter from an assistant commissioner offering to renew a lease to an existing tenant does not meet the certification requirement set forth in § 4-203(d). Henry Modell & Co., Inc. v. City of New York, 159 A.D.2d 354, 552 N.Y.S.2d 632 (1st Dept. 1990).

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-204

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-204 Demolition of buildings and structures.

a. The commissioner of citywide administrative services or the commissioner of housing preservation and development, when requested to do so by the mayor, may cause to be demolished any buildings or structures located on any real property which the commissioner is authorized to manage and superintend.

b. Whenever a borough superintendent of the department of buildings requests, pursuant to the provisions of section 26-240 of the code, that the commissioner demolish any building or structure or part thereof as to which a precept has been issued pursuant to the provisions of section 26-239 of the code, the commissioner shall cause same to be demolished in accordance with such request.

c. The commissioner may effect any demolition work mentioned in subdivision a or b of this section, through personnel of the city or by letting a contract for such work, or where such board shall so direct, such demolition work shall be done, under the direction of the commisssioner, by any other agency of the city designated by the board, through personnel of the city or through the letting of a contract by such agency for the work.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 59/1996 § 41, eff. Aug. 8, 1996

DERIVATION

Formerly § 1082c-2.0 added chap 309/1959 § 8

Amended LL 69/1960 § 2

Renumbered chap 100/1963 § 1711

(formerly § 1152c-2.0)

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-205

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-205 Supervision of management activities of developers.

The commissioner of citywide administrative services or, when designated by the mayor, the commissioner of design and construction, shall supervise the management activities of any party to a contract with the city which requires such party to develop any real property in accordance with the terms of such contract, in any case where such contract provides that the commissioner shall exercise such supervision.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 42, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1082c-3.0 added chap 309/1959 § 8

Amended LL 68/1962 § 4

Renumbered chap 100/1963 § 1712

(formerly § 1152c-3.0)

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-206

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-206 Displaying a POW/MIA flag over public property.

Until such time as all persons listed as missing in action from any branch of the United States Armed Forces, and all persons from any branch of our armed forces who are prisoners of war, are accounted for by the United States government, the commissioner of citywide administrative services shall assure that the Prisoner of War/Missing in Action (POW/MIA) flag is flown:

(1) over all borough halls every day the American flag is flown; and

(2) over all public property supervised by the commissioner on the dates when the American flag is flown in observance of Memorial Day, Veterans Day, and POW/MIA day.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 43, eff. Aug. 8, 1996

Section added L.L. 68/1990 § 1, eff. Nov. 27, 1990

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 4-207

Administrative Code of the City of New York

Title 4 Property of the City

CHAPTER 2 REAL PROPERTY MANAGEMENT*1

§ 4-207 Assessment of certain clean on-site power generation technologies.

a. By January 1, 2008, the department of citywide administrative services shall conduct an assessment of all facilities owned by the city with a five hundred kilowatt or greater peak demand to determine whether cogeneration and natural gas-based distributed generation projects are appropriate for such facilities. For purposes of this section, "cogeneration and natural gas-based distributed generation projects" shall only include those projects where such electric generation would be connected to the distribution level of the grid, would be located at or near the intended place of use and would produce fewer emissions of carbon dioxide and particulate matter per unit of useful energy output than a new combined-cycle natural-gas fired central power plant. Such assessment shall include, but not be limited to, the technical, physical and/or economic feasibility of installing such electric generation.

b. The assessment required to be completed pursuant to subdivision a of this section shall be reviewed by the department of citywide administrative services at a minimum of every five years and shall be updated, as appropriate, to reflect newly acquired facilities and changes in existing facilities that may alter the conclusions made in such assessment, as it may have been revised, as well as developments in the electric generation technologies specified in subdivision a of this section that affect the emissions of carbon dioxide or particulate matter resulting from the use of such technologies or affect prior technical, physical or economic feasibility assessments, including the availability of funding or financing sources.

c. A report on the assessment and updates required to be completed pursuant to subdivisions a and b of this section shall be submitted to the mayor and the speaker of the council within ten days of the completion of such assessment and updates, and shall include, but not be limited to, an explanation of the process, criteria and specific analyses used for such assessments and updates and the results of such assessments and updates for each facility.

HISTORICAL NOTE

Section added L.L. 1/2007 § 1, eff. Jan. 17, 2007.

FOOTNOTES

1

[Footnote 1]: * Formerly Chapter 48 Department of Real Estate included §§ 4-202-4-205, such chapter was added by chap 309/1959 § 8 and renumbered by chap 100/1963 § 1707 (formerly Chapter 52)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-101

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-101 Definitions.

As used in this chapter:

1. The term "capital project" shall mean:

(a) Any physical public betterment or improvement of any preliminary studies and surveys relative thereto, which would be classified as capital expenditures under generally accepted accounting principles for municipalities.

(b) The acquisition of property of a permanent nature including wharf property.

(c) The acquisition of any furnishings, machinery, apparatus or equipment for any public betterment or improvement when such betterment or improvement is first constructed or acquired.

(d) Any public betterment involving either a physical improvement or the acquisition of real property for a physical improvement consisting in, including or affecting: (1) streets and parks;

(2) bridges and tunnels;

(3) receiving basins, inlets and sewers, including intercepting sewers, plants or structures for the treatment, disposal or filtration of sewage, including grit chambers, sewer tunnels and all necessary accessories thereof;

(4) the fencing of vacant lots and the filling of sunken lots.

(e) Any combination of the above.

2. The term "pending" shall mean not yet completed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 211-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 185

Amended LL 54/1977 § 15

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-102

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-102 Additional items in report of comptroller.

On or before the first day of September in each year the comptroller shall submit to the mayor, the board of estimate and the council a statement showing the funded debt of the city at the close of business on the preceding thirtieth day of June and a statement setting forth the constitutional debt-incurring power, or debt limit, of the city as of the preceding first day of July.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 212-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 186

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-103

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-103 Departmental estimates; details.

The departmental estimates of capital projects submitted pursuant to the provisions of section two hundred fourteen of the charter shall clearly distinguish between those that are for new projects and those that are for the continuance of projects already under way. In the case of pending projects, estimates shall be submitted showing the amount required to continue such projects throughout the next fiscal year, the amount required to complete such projects and the amount already appropriated for such projects. Departmental estimates shall also include detailed estimates of new projects which the head of each agency believes should be undertaken within the ensuing fiscal year and the three succeeding fiscal years. Each departmental estimate shall include the estimated maintenance charges of the project when completed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 213-1.0 added chap 929/1937 § 1

Amended LL 54/1977 § 16

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-104

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-104 Departmental estimates; not submitted on time.

If a departmental estimate is not submitted on such date as the mayor may direct, the director of management and budget shall cause to be prepared such estimate and data necessary to include a detailed estimate of all capital projects pending or which the director believes should be undertaken within the ensuing fiscal year and the three succeeding fiscal years. In no event later than the fifteenth day of January, or such earlier date as the mayor may direct, the director of management and budget will forward copies of such estimate to the secretary of the board of estimate, the council and each community board and borough board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 213-2.0 added LL 6/1979 § 27

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-105

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-105 Adoption of capital budget not authorization for expenditures.

The adoption of the capital budget shall in no way constitute an authorization to proceed with the expenditure of the funds except as provided in section two hundred twenty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 223d-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 187

(formerly § 223-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-106

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-106 Capital projects; contracts; certification of debt incurring power.

Before any contract for any of the projects authorized within the capital budget shall be approved by the mayor, the comptroller shall certify in writing to the mayor that there is sufficient margin of constitutional debt-incurring power legally to enable the registration of such contract or contracts within such constitutional limitation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 228b-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 189

(formerly § 223-3.0)

Amended chap 101/1963 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Under this section, the Board of Estimate is the body which gives final authorization to a capital project and in requiring the approval of a subsidy-guaranty contract for a housing project, the Legislature contemplated that such

contract should be made under the same procedure as is required for the final authorization of a capital project. Therefore, approval of this contract could be given by the Board of Estimate and it was not necessary that approval of the City Council be obtained.-Neufeld v. O'Dwyer, 192 Misc. 538, 79 N.Y.S. 2d 53 [1948].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-107

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 1 CAPITAL PROJECTS AND BUDGET

§ 5-107 New York city housing development corporation capital reserve fund.

So long as any notes or bonds of the New York city housing development corporation issued pursuant to article twelve of the private housing finance law shall be outstanding and unpaid, amounts needed for the purpose of restoring the capital reserve fund to the maximum capital reserve fund requirement pursuant to such article are hereby authorized to be paid to the corporation for deposit therein from the sources specified in paragraph e of subdivision one of section six hundred fifty-six of such law; provided, however, that no such amounts are authorized to be paid in notes or bonds of the corporation issued for the purpose of making loans pursuant to article eight of the private housing finance law. However, such payments may be made, notwithstanding the issuance of notes and bonds of the corporation for the purpose of making loans pursuant to article eight of the private housing finance law provided that: (1) the corporation shall have delivered to the council a report describing the site selection criteria, standards for development plans, management program and other safeguards it will impose in making loans pursuant to article eight of the private housing finance law, which said report shall in any event be delivered to the council no later than August eight, nineteen hundred seventy-two; (2) the aggregate amount of loans to be made by the corporation pursuant to article eight of the private housing finance law for any fiscal year of the city shall be set forth in a statement which shall accompany the proposed executive capital budget (but not be considered a part thereof), as submitted to the board of estimate and council pursuant to section two hundred nineteen of the charter, and such aggregate amounts shall be adopted, and may thereafter be amended, in accordance with the procedures set forth in chapter nine of the charter for the adoption and amendment of the capital budget; and (3) the chairperson of the corporation shall certify with respect to each mortgage loan issued pursuant to article eight of the private housing finance law that the estimated revenues from the mortgage property, including subsidies, after rehabilitation will be sufficient in amount to secure repayment of the loan and interest thereon and to pay all of the necessary expenses of the mortgagor relating to such property.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C51-11.0 added LL 34/1972 § 2

(Legislative findings, lack of housing, LL 34/1972 § 1)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-201

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-201 Collection of income of sinking funds.

The comptroller shall supervise the collection of all moneys due the several sinking funds of the city established prior to July first, nineteen hundred eighty-one, and direct all necessary measures to complete their payment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 274-1.0 added chap 929/1937 § 1

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-202

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-202 Separate accounts to be kept for the several sinking funds.

The assets and accounts of each of the several sinking funds of the city established prior to July first, nineteen hundred eighty-one shall be kept separate and distinct, and they shall in all respects be administered as independent trusts, with the intent and purpose of preserving inviolate the rights of holders of corporate stock redeemable therefrom.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 274-2.0 added chap 929/1937 § 1

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-203

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-203 Funds and revenues pledged to redemption of city debt.

Between the city and the holders of its corporate stock redeemable from the several sinking funds of the city established prior to July first, nineteen hundred eighty-one there is hereby declared to be a contract that the funds and revenues of the city, raised pursuant to section two hundred seventy-six of the charter and the rapid transit law as amended shall be applied to such sinking funds until all of such debt redeemable therefrom is fully redeemed and paid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 274-3.0 added chap 929/1937 § 1

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-204

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-204 Cancellation of city obligations held by the several sinking funds.

It shall be lawful for the comptroller in his or her discretion from time to time but not before maturity, to cancel any portion of the indebtedness of the city incurred on or after January first, eighteen hundred ninety-eight, which may be held by him or her in any sinking fund of the city established prior to July first, nineteen hundred eighty-one and which may by law be redeemable from such sinking fund.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 274-4.0 added chap 929/1937 § 1

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-205

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-205 Procedure for investment of sinking fund moneys.

All obligations which shall be purchased by the comptroller with respect to the several sinking funds of the city established prior to July first, nineteen hundred eighty-one shall be transferred to the comptroller, and all transfers thereof shall be made by the comptroller. Obligations of the city which shall be purchased by the comptroller shall not be cancelled by the comptroller until the final redemption of the same, and all interest accruing therefrom shall regularly be paid to the appropriate sinking funds.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 275-1.0 added chap 929/1937 § 1

Amended LL 50/1942 § 16

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-206

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-206 Duties when accumulations in sinking funds are insufficient.

Whenever it shall appear to the mayor that the accumulations in any sinking fund of the city established prior to July first, nineteen hundred eighty-one will be insufficient to meet the payment of any corporate stock falling due in the next following fiscal year redeemable therefrom, it shall be the mayor's duty to include in the annual budget for such year, such an amount to be applied to the payment of such corporate stock as shall be sufficient to meet any such deficiency, and the amount shall be paid into such sinking fund.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 276-1.0 added chap 929/1937 § 1

Amended LL 50/1942 § 17

Amended chap 100/1963 § 195

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-207

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 2 SINKING FUNDS*1

§ 5-207 Alteration of rates prohibited.

It shall be unlawful for the city to make, or cause to be made, any alteration of rates or charges affecting any item or source of the revenues of the several sinking funds established prior to July first, nineteen hundred eighty-one or of the general fund which may tend to a diminution of the receipts from such sources of revenue, or either of them, except that it shall be lawful for the city to exempt places of public worship from the payment of any fee for the construction of vaults under the sidewalk or in front thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 276-2.0 added chap 929/1937 § 1

Amended LL 81/1981 § 8

FOOTNOTES

1

[Footnote 1]: * Chapter added (as chap 11) chap 929/1937 § 1, amended LL 81/1981 § 8.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-301

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-301 Definitions.

As used in this subchapter unless otherwise expressly stated, or unless the context or subject matter otherwise requires, the following terms shall mean:

1. "The court", "the supreme court": A special term of the supreme court for condemnation proceedings held in the county within the city and within the judicial district in which real property being acquired or some part thereof is situated.

2. "Application to condemn": An application to the supreme court to have the compensation which should justly be made to the respective owners of the real property proposed to be taken, ascertained and determined by the court without a jury.

3. "Justice": The justice assigned to hold such court.

4. "Days": Calendar days exclusive of Sundays and full legal holidays.

5. "Owner": A person having an estate, interest or easement in the real property being acquired or a lien, charge or encumbrance thereon.

6. "Real property": Includes all lands and improvements, lands under water, waterfront property, the water of

any lake, pond or stream, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise.

7. "Street": Includes street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk and viaduct, and every class of public road, square and place, except marginal streets and wharves.

8. "Capital project proceeding": A condemnation proceeding pursuant to the provisions of this chapter for capital project purposes, authorized pursuant to the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-1.0 added chap 929/1937 § 1

Subs 2, 8, 9 amended chap 100/1963 § 237

CASE NOTES FROM FORMER SECTION

¶ 1. Petitioner, who held position of assistant clerk of condemnation proceedings, **held** not to come within Civil Service Law § 13 (3), providing that one clerk of each court should be in the exempt class, since there is no "Condemnation Court" per se, and consequently no separate court to which the petitioner was clerk. Use of the expression "Condemnation Court", was merely one of convenience, and there is no such court per se, inasmuch as Constitution, Art. 1, § 7 by providing for compensation in condemnation matters, says that compensation shall be ascertained by Supreme Court, and Admin. Code § B15-1.0 to B15-41.0 defines the court as a Special Term of the Supreme Court.-In re Molloy (Kern), 104 (87) N.Y.L.J. (10-11-40) 1046, Col. 3 T.

¶ 2. Whether plaintiff acquired an easement over the land sought to be condemned for park purposes by virtue of statute or agreement such a grant was for a private beneficial use and was conditional and subject to the paramount power of the State to acquire the same for public use.-Camp Ideal v. Wagner, 284 App. Div. 980, 136 N.Y.S. 2d 368 [1954].

¶ 3. The Housing Authority entered into an agreement with the owner of property for the purchase of the property. The agreement containing a provision that the acquisition of the property by eminent domain would not affect the validity of the agreement but that, on the closing, the seller would be obligated to execute an assignment of any award therefor to the authority. Shortly thereafter, title to the parcel vested in the City. In the condemnation proceeding, the trial court had the right to pass upon the claim of the City to be the equitable owner. It was held that the vendee under the executory contract was an owner as that term is described in this section and had a recognizable interest in the "real property" as that term is described in this section.-Matter of City of New York (Jefferson Houses), 306 N.Y. 278, 117 N.E. 2d 896 [1954].

¶ 4. The mortgagee of property and the former owner of the property are accorded the identical status as "owner", and each is equally authorized to apply for an advance payment of part of the condemnation award. Where both the former owner and the mortgagee were guilty of laches in making such application, the consequent loss of interest should be shared by them proportionately.-In re City of New York (Stephen Wise Housing Project), 38 Misc. 2d 455, 236 N.Y.S. 2d 785 [1962].

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Administrative Code of the City of New York

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NYC Administrative Code 5-302

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-302 Construction.

The provisions of this subchapter shall apply to all capital project proceeding instituted within the city unless the context or subject-matter otherwise requires, but shall not apply to street closing proceedings, except as provided in section 5-459 of the code, nor to proceedings to acquire real property for rapid transit purposes.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 238

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-303

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-303 Special provisions in proceedings for drainage of land by means other than sewers.

In proceedings for the acquisition of real property for the drainage of land by means other than sewers, pursuant to an order of the department of health and mental hygiene, the time or times for the giving or publication of notices shall be one-half of that required in this subchapter for other proceedings, provided that any resultant one-half day shall be deemed a whole day. The time for the supreme court to hear objections to the tentative decree in any such drainage proceeding shall be two days.

HISTORICAL NOTE

Section amended L.L. 22/2002 § 11, eff. July 29, 2002 and deemed in

effect as of July 1, 2002.

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-3.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-304

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-304 Cession to and purchase by the city of the real property being acquired.

a. An owner of real property, which property the city is authorized to acquire, may cede the same to the city upon such terms and conditions, including exemptions from assessments, as the mayor from time to time may prescribe, provided such real property be free from encumbrances inconsistent with the title to be acquired.

b. The mayor shall also have power and is hereby authorized to agree as to the purchase price of any real property selected for acquisition in a capital project proceeding, or any part thereof, and to purchase the same for and on behalf of the city. An option to purchase such real property, granted to the city for a period not to exceed ninety days, shall not be withdrawn or cancelled during the period named therein.

c. When a conveyance of the real property ceded or purchased shall have been approved and accepted, the city shall become vested with title to such real property so conveyed to the same extent and effect as if it had been acquired for the improvement by a proceeding had for that purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-4.0 added chap 929/1937 § 1

Subs a, b amended chap 100/1963 § 239

CASE NOTES FROM FORMER SECTION

¶ 1. Provision of Admin. Code § B15-4.0(c) that where title is acquired by purchase it shall vest to the same extent and effect as if it had been acquired by condemnation, was intended merely to give to the title acquired by purchase the same firmness as results where title is acquired by condemnation.-In re City of N.Y. (Harlem River Drive), 202 Misc. 540, 113 N.Y.S. 2d 292 [1952].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-305

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-305 Preparation of maps in capital project proceeding; filing.

a. When a capital project proceeding has been authorized, the agency submitting the departmental estimate shall cause to be prepared five similar surveys, diagrams, maps or plans of the real property being acquired, stating thereon the amount or valuation at which each parcel of real property to be acquired has been assessed for purposes of taxation on the city tax rolls for each of the three years preceding the date of such selection; one of such surveys, diagrams, maps or plans to be filed in the office of such agency, the second to be filed in the office of the corporation counsel, the third to be filed in the office in which instruments affecting real property are required to be recorded in the county in which such real property is situated, the fourth to be filed in the office of the department of citywide administrative services, and the fifth to be filed in the department of design and construction.

b. It shall be lawful for the duly authorized agents of such agency, and all persons acting under its authority and by its direction, and in accordance with the provisions of section four hundred four of the eminent domain procedure law to enter in the daytime into and upon such real property which it shall be necessary so to enter, for the purpose of making such surveys, diagrams, maps or plans, or for the purpose of making such soundings or borings as such agency may deem necessary.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 59/1996 § 44, eff. Aug. 8, 1996

DERIVATION

Formerly § B15-5.0 added chap 929/1937 § 1

Sub a amended LL 44/1965 § 1

Sub b amended chap 840/1977 § 123

CASE NOTES FROM FORMER SECTION

¶ 1. Under an order to condemn land to widen a street and the filing of a damage map, the City had no authority to enter upon plaintiffs' land without their permission or consent. Since plaintiffs failed to give notice of claim as required, they were not entitled to recover treble damages for destruction of trees and shrubs.-Rice v. The City of New York, 32 Misc. 2d 942, 225 N.Y.S. 2d 65 [1962].

¶ 2. No provision of the Admin. Code empowers the City to enter upon the lands condemned, in advance of the vesting of title, except for the purposes stated in this section.-Rice v. City of New York, 32 Misc. 2d 942, 225 N.Y.S. 2d 65 [1962].

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Administrative Code of the City of New York

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NYC Administrative Code 5-306

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-306 Lis pendens.

Upon the authorization by the mayor of a capital project proceeding, it shall be the duty of the corporation counsel to file in the office of the clerk of the county where the real property to be acquired or any part thereof is situated, a notice of the pendency of such proceeding, according to the provisions of subdivision (B) of section four hundred two of the eminent domain procedure law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-6.0 added chap 929/1937 § 1

Amended chap 100/1963 § 240

Amended chap 840/1977 § 124

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-307

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-307 Notice of application to condemn.

Upon the filing of the lis pendens in a capital project proceeding, the corporation counsel for and on behalf of the city shall promptly proceed to give notice of the city's intention to apply to the supreme court for permission to condemn and ascertain damages, as provided in subdivision (B) of section four hundred two of the eminent domain procedure law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-7.0 added chap 929/1937 § 1

Amended chap 100/1963 § 241

Amended chap 840/1977 § 124

CASE NOTES FROM FORMER SECTION

¶ 1. Where the condemnation proceeding provided for the taking of a strip of land through which passed the Mott Haven Canal, and during the course of the proceedings the owners of Parcel No. 381 applied for leave to file a claim in the proceeding on ground the taking would extinguish their easements in the canal, the notice of the condemnation proceeding published pursuant to § 999 of the old Charter was not inadequate because it failed specifically to describe Damage Parcel 381 as included in the taking. Such parcel could not be included within the line of taking because it was not proposed to acquire such parcel and the damage thereto was merely the consequential loss of easements occurring by reason of the taking of the property described in the notice. The subsequent inclusion of Parcel 381 within the damage maps did not constitute an amendment of a defect in the notice of application or other proceeding in condemnation as contemplated by § 994 of the old Charter. The filing of claims for consequential damages and the assignment of additional damage parcel numbers did not enlarge or diminish the area within the line of taking. Accordingly, payments made by the City to the owners of Parcel 381 was proper, in the absence of prior demand by the mortgagee, where there was no fraud or bad faith shown.-In re Exterior Street, Bronx, City of N.Y., 293 N.Y. 1, 55 N.E. 2d 841 [1944].

¶ 2. The intention of the City to apply to the Supreme Court to have compensation for property owners determined is effective as of the date of completion of the publication, instead of the date publication started. Hence, an attorney discharged on the date of the starting of publication did not have a lien under the Judiciary Law.-Matter of City of New York (Samuel Gompers Houses), 143 (5) N.Y.L.J. (1-8-60) 11, Col. 4 M.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-308

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-308 Application to condemn; contents of petition.

Upon the application to condemn, the corporation counsel shall present to the court a petition signed and verified by him or her, setting forth in addition to other requirements of the eminent domain procedure law, the following:

1. The order of the mayor authorizing the proceeding.

2. The amount of valuation at which each parcel of the real property to be acquired has been assessed for purposes of taxation on the city tax rolls for each of the three years preceding the date of the petition. Such assessed valuation, in case only part of an entire plot in a single ownership is to be acquired, shall be pro-rated according to the area of the part so to be acquired but shall include the valuation of all buildings encroaching upon or within the lines of the proposed improvement.

3. A prayer that the real property described therein be condemned by such court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-8.0 added chap 929/1937 § 1

Amended chap 100/1963 § 242

Amended chap 840/1977 § 124

CASE NOTES FROM FORMER SECTION

¶ 1. The condemnation court is one of limited jurisdiction and is powerless to award damages for property not described in the resolution authorizing the proceeding, and in the petition and order of condemnation.-In re City of New York (Fort Greene Housing Proceeding), 177 Misc. 101, 29 N.Y.S. 2d 980 [1941], aff'd 291 N.Y. 788, 53 N.E. 2d 367 [1944].

¶ 2. In proceeding for acquisition of real property for a subway yard in conjunction with operation of the City's Independent Rapid Transit System, claims of telephone, gas and electric light companies for damages for their equipment lying in certain streets was denied on ground the property of the utilities was not described and designated in any of the jurisdictional papers in the proceeding, and regardless of whether such property should be deemed real or personal it was not appurtenant to any of the parcels described and taken (Rapid Transit Act § 40).-In re Sutter Ave., &c. (Pitkin Ave. Subway Yard), 106 (20) N.Y.L.J. (7-24-41) 190, Col. 2 F.

¶ 3. In a proceeding to determine valuation of real property condemned for a slum clearance project, the assessed valuation required to be set forth in the petition was one entitled to very little weight in determining just compensation. Furthermore, this section does not preclude the owner or claimant from rebutting or overcoming the assessed valuation by contradictory and better evidence.-Matter of City of New York (Lincoln Square Slum Clearance Project), 22 Misc. 2d 260, 194 N.Y.S. 2d 259 [1959].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-309

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-309 Notice to file claims.

The corporation counsel, after the filing of the order granting the application to condemn, shall proceed in accordance with section four hundred three of the eminent domain procedure law and provide notice to file claims.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-11.0 added chap 929/1937 § 1

Amended chap 100/1963 § 244

Amended chap 840/1977 § 126

CASE NOTES FROM FORMER SECTION

¶ 1. Refusal of City Comptroller to pay the condemnation award, with interest, for the bulkhead rights and physical bulkhead as well as for the land and improvements, on ground the demand for payment of the award as to the

bulkhead rights and physical bulkhead was insufficient, was overruled, where the demand stated that "this demand is for the net amount due said owner * * * by reason of the acquisition of her property in the above entitled proceeding" (202 N.Y. 602). Claimant was entitled to full interest from date of payment on the entire award.-In re City of N.Y. (East River Drive), 108 (74) N.Y.L.J. (9-26-42) 759, Col. 7 T.

¶ 2. On retrial in condemnation proceeding pursuant to directions of the Appellate Court, Special Term might consider only the matter remitted to it by the Appellate Court, as the final decree was final and conclusive on all persons except insofar as reversed and remitted to Special Term. However, it would seem that no express permission was required to allow the filing of a claim at this state of the proceeding.-In re Braddock Ave. (Rocky Hill Rd.), 101 (28) N.Y.L.J. (2-3-39) 553, Col. 3 M at 3 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-310

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-310 Proof of ownership.

a. The proof of title to the real property to be acquired, where the same is undisputed, together with proof of liens or encumbrances, thereon, shall be submitted by the claimant to the corporation counsel, or to such assistant as the corporation counsel shall designate. The corporation counsel shall serve upon all parties or their attorneys, who have served upon him or her copies of their verified claims, a notice of the time and place at which the corporation counsel will receive such proof of title.

b. Where the title of the claimant is disputed it shall be the duty of the court to determine the ownership of such real property upon the proof submitted to the court during the trial of the proceeding. The court shall also have power to determine all questions of title incident to the trial of the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-12.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. In condemnation proceeding wherein a tentative decree had been filed providing for payment of the award for a certain parcel to a named person subject to a certain mortgage, court was without jurisdiction to entertain an affirmative proceeding commenced by the former owner to declare the mortgage invalid, which application was, in reality, an action to remove a cloud on title. Admin. Code § B15-12.0, subd. b, merely grants the court power to determine questions of title, which question was not involved in the instant proceeding. Petitioner's remedy was by a proceeding pursuant to Real Property Law § 500, subd. 4.-In re City of N.Y. (Pike St.), 101 N.Y.S. 2d 457 [1950].

¶ 2. Where the final decree in condemnation made an award to an unknown owner for land and improvements, and the petitioner as mortgagee claimed the entire amount of the award, respondent, by cross-motion seeking an order directing payment of the award to her as fee owner, might properly in such proceeding assail the validity of the mortgage as outlawed by the Statute of Limitations and request that the award be made payable to her. Contention that respondent's sole remedy was to assail the validity of the mortgage by action to remove the mortgage as a cloud on the title was rejected. However, even though the mortgage was unenforceable, the mortgagee was entitled to recover in the instant proceeding unpaid interest payable out of the award, and it was not limited to a formal action at law to recover such interest.-In re Dry Dock Savings Bank (Harlem River Dr.), 125 (12) N.Y.L.J. (1-17-51) 206, Col. 3 F.

¶ 3. A mortgage lien on condemned real property is extinguished upon vesting of title in the City, and title so vests free and clear of the mortgage lien. The award made is deemed personal property into which the real property has been converted by operation of law, and the mortgagee thereupon acquires an equitable lien upon the award. The Court in the condemnation proceeding had jurisdiction to determine the validity and effect of the challenged outstanding mortgage liens and to determine to whom the award should be paid.-In re N.Y.C. Housing Authority (Delancey St., etc.), 127 (13) N.Y.L.J. (1-18-52) 244, Col. 5 F.

¶ 4. In a condemnation proceeding, the Court has the power to determine all questions of title incident to the trial. Thus, trial court had the power to determine whether the housing authority was the equitable owner of real property under its executory contract to purchase the property where, after execution of the contract by the owner, title to the property vested in the City.-Matter of City of New York (Jefferson Houses), 306 N.Y. 278, 117 N.E. 2d 896 [1954].

¶ 5. Where lien of attorneys in condemnation case for fixture claimant attached two weeks before claimant filed a petition in bankruptcy the state court had jurisdiction to order an award of counsel fees and attorneys would not be required to enter the federal district court where the bankruptcy proceeding was pending. Matter of City of N.Y. (Washington Street Urban Renewal Project), 161 (66) N.Y.L.J. (4-4-69) 15, Col. 4 M.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-311

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-311 Examination before trial of party or witness.

A proceeding by the city to acquire title to real property for a public use or purpose by condemnation shall be deemed a special proceeding, in which testimony may be taken by deposition pursuant to the provisions of article thirty-one of the civil practice law and rules and subject to theprovisions of this section. The pendency of such a proceeding shall constitute special circumstances which render it proper that the deposition of any person not an owner be taken pursuant to sections three thousand one hundred one and three thousand one hundred six of the civil practice law and rules. Such deposition may be taken upon any question or issue in the proceeding and for the purpose of obtaining testimony as to any sale or lease as described in subdivision a of section 5-314 of this subchapter at the instance of the city or of any owner or at the direction of the court at any time after the expiration of the date fixed for filing claims. Any owner desiring to obtain testimony by deposition shall give at least five days' notice or, if service is made through the post office, at least eight days' notice to the corporation counsel and to all other owners or their attorneys who have duly filed their verified claims. If the corporation counsel shall desire to obtain testimony by deposition he or she shall give like notice to all owners or their attorneys who have duly filed and served on the corporation counsel copies of their verified claims. For the purpose of any such examination before trial brought on by an owner and noticed for and held at any office of the corporation counsel in the borough in which the real property is situated or at such other place as the corporation counsel shall designate, the corporation counsel shall at the expense of the city provide proper stenographic service and shall furnish to the owner bringing on such examination a copy of the typewritten transcript of such examination, duly certified by the officer before whom the same was taken. In all other

cases, the party bringing on such examination shall at his or her own cost and expense provide proper stenographic service and shall furnish to the corporation counsel two copies of the typewritten transcript of such examination duly certified by the officer before whom it was taken. The deposition of a witness need not be subscribed by such witness, if such subscription shall be waived by the parties appearing upon the witness' examination. The corporation counsel, at the office address subscribed by him or her upon the papers in the proceeding, shall from and after the date of his or her receipt thereof keep on file, available for inspection by all parties to the proceeding a certified copy of each deposition in the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-13.0 added chap 929/1937 § 1

Amended chap 100/1963 § 245

CASE NOTES FROM FORMER SECTION

¶ 1. Pursuant to Civil Practice Act section 322, property owners may require a city which has taken title to their properties to admit facts relating to the values.-Matter of City of New York (Fifth Avenue Coach Lines, Inc.), 38 Misc. 2d 201, 237 N.Y.S. 2d 261 [1963].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-312

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-312 Note of issue of the proceeding.

After all parties who have filed verified claims as provided in section 5-309 of this subchapter, have proved their title or have failed to do so after being notified by the corporation counsel of the time and place when and where such proof of title would be received by him or her, the corporation counsel shall serve upon all parties or their attorneys who have appeared in the proceeding a note of issue as provided in section five hundred six of the eminent domain procedure law. The clerk of the court must thereupon enter the proceeding upon the proper calendar according to the date of the entry of the order granting the application to condemn. When the note of issue has been served and filed, the proceeding must remain on the calendar until finally disposed of.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-14.0 added chap 929/1937 § 1

Amended chap 840/1977 § 127

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-313

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-313 View by court.

It shall be the duty of the justice trying any such proceeding, to view the real property to be thereby acquired in accordance with section five hundred ten of the eminent domain procedure law. Where title to real property being acquired in a proceeding shall have been vested in the city, and buildings or improvements situated thereon shall have been removed or destroyed by the city or pursuant to its authority prior to the trial of the proceeding, and whereby the justice trying the proceeding is deprived of a view of the buildings or improvements so removed or destroyed, the fact that the justice has not had a view thereof shall not preclude the court from receiving on the trial of the proceeding testimony and evidence, as to the damage sustained by the claimant by reason of the taking thereof, when offered on behalf of either the claimant or the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-15.0 added chap 929/1937 § 1

Amended chap 100/1963 § 246

Amended chap 840/1977 § 128

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-314

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-314 Trial of proceeding; evidence.

a. Upon the trial, evidence of the price and other terms upon any sale, or of the rent reserved and other terms upon any lease, relating to any of the property taken or to be taken or to any other property in the vicinity thereof, shall be relevant, material and competent, upon the issue of value or damage and shall be admissible on direct examination if the court shall find the following:

1. That such sale or lease was made within a reasonable time of the vesting of title in the city,

2. That it was freely made in good faith in ordinary course of business, and

3. In case such sale or lease relates to other than property taken, that it relates to property which is similar to the property taken or to be taken.

No such evidence, however, shall be admissible as to any sale or lease, which shall not have been the subject of an examination before trial either at the instance of the city or of an owner, unless at least twenty days before the trial the attorney for the party proposing to offer such evidence shall have served a written notice in respect of such sale or lease, which notice shall specify the names and addresses of the parties to the sale or lease, the date of making the same, the location of the premises, the office, liber and page of the record of the same, if recorded, and the purchase price or rent reserved and other material terms, or unless such sale or lease shall have occurred within twenty days before the

trial. Such notice by the corporation counsel shall be served upon all owners or their attorneys who have appeared in the proceeding; or if served on behalf of an owner, shall be served upon the corporation counsel and upon all other owners or their attorneys who have appeared in the proceeding. The testimony of a witness as to his or her opinion or estimate of value or damage shall be incompetent, if it shall appear that such opinion or estimate is based upon a sale or lease of any of the property taken or to be taken or of any of the property in the vicinity thereof, which shall not have been the subject of an examination before trial, unless it shall have been specified in a notice served as aforesaid or shall have occurred within twenty days before the trial.

b. Upon the trial, no map or plan of proposed streets, drains or sewers for the subdivision and improvement of any property, nor any drawing or other specification of excavation or filling or piling or of any proposed structure above or under ground deemed necessary or proper to provide a foundation for a suitable or adequate improvement, or of any other structure or improvement not existing on the property on the date that title thereto may vest in the city, nor any oral or written estimate or cost or expense of constructing the streets, drains or sewers in conformity with such map or plan, nor any oral or written estimate of the cost of making such excavation or filling or piling or of constructing any such other proposed structure or improvement in conformity with such drawing or other specification thereof, nor any evidence of value of damage based upon any of the foregoing, shall be received in evidence, unless the party offering the same in evidence shall have served upon the adverse party, at least thirty days prior to the trial, a notice of intention to offer such evidence on the trial and of the particulars thereof, including a true copy of the map or plan or drawing and other specifications and estimate of cost or expense to be so offered in evidence, provided, however, that when offered such evidence shall be subject to objection upon any legal ground.

c. Upon the trial, no evidence shall be admitted, as against an owner of real property being acquired, of an offer made by or on behalf of such owner for the sale of his or her property or any part thereof to the city, or for the sale or assignment of any right and title to the award or awards, or any part thereof, to be made for such property or any part thereof, in the proceeding; nor shall any evidence be received, as against the city, of any offer made to such owner, by or on its behalf, for the purchase of such property or any part thereof or for the purchase of the award or awards or any part thereof, to be made for such property, or any part thereof, in the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-16.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-315

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-315 Maps to be supplied court.

a. The agency submitting the departmental estimate for a capital project shall furnish to the court such surveys, diagrams, maps and plans as the court shall require, to enable the court to hear and determine the claims of the owners of the real property affected by the proceeding. Such surveys, diagrams, maps and plans shall distinctly indicate by separate numbers, the names of the claimants to, or of the owners of the respective parcels of real property to be taken in such proceedings, so far as the same are known, and shall also specify in figures with sufficient accuracy the dimensions and bounds of each of such tracts to be taken. The court may require any agency of the city, if the corporation counsel shall approve, to furnish such other surveys, diagrams, maps and plans and such other information as shall aid and assist the court in the trial or determination of the proceeding.

b. It shall be lawful for the duly authorized agents of the agency furnishing such surveys, diagrams, maps and plans, and all persons acting under their or its authority and by their or its direction, to enter in the daytime into and upon such real property which it shall be neces- sary so to enter, for the purpose of making such surveys, diagrams and maps or plans as such agency shall deem necessary.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-17.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 247

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-316

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-316 Clerks to be furnished the court.

The corporation counsel and the comptroller, in a capital project proceeding, shall furnish the court such necessary clerks and other employees and shall provide such suitable offices for such clerks and employees as may be required to enable the court to fully and satisfactorily discharge the duties imposed by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-18.0 added chap 929/1937 § 1

Amended chap 100/1963 § 248

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-317

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-317 Tentative decree; what to contain; where filed.

a. The court, after hearing such testimony and considering such proofs as may be offered, shall ascertain and estimate the compensation which should justly be made by the city to the respective owners of the real property being acquired. The court shall instruct the corporation counsel to prepare separate tabular abstracts of its estimate of damage.

b. The tabular abstract of the estimated damage shall set forth separately the amount of loss and damage, the names of the respective owners of each and every parcel of real property affected thereby as far as the same shall be ascertained, and a sufficient designation or description of the respective lots or parcels of real property acquired, by reference to the numbers of the respective parcels indicated upon the surveys, diagrams, maps or plans used by the court, or copies thereof, which, together with all of the affidavits and proofs upon which such estimates are based, shall accompany or be attached to such tabular abstracts.

c. The finance department shall furnish to the corporation counsel sets of the tax maps of the city in duplicate for filing therein and for convenience of reference thereto in the tabular abstract of estimated damage. The surveyor of the finance department shall make and furnish all necessary surveys and corrections of the section maps, necessary to keep the maps furnished to the corporation counsel as accurate as practicable.

d. Such tabular abstract or abstracts shall be signed by the justice trying the proceeding and filed with the clerk of the court in the county in which the order granting the application to condemn was filed and when so filed such

abstract or abstracts shall constitute the tentative decree of the court as to awards for damages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-19.0 added chap 929/1937 § 1

Amended chap 100/1963 § 249

CASE NOTES FROM FORMER SECTION

¶ 1. Where no part of the costs of the proceeding was being assessed locally, the award would not be separated to show the amount allowed for direct land damage, for consequential damage, and for damage to buildings or other improvements, especially where the proceeding involved numerous parcels and large sums of money on which interest was running (Greater N.Y. Charter § 1001; Admin. Code § B15-19.0, subd. c).-In re Public Parks (Rockaway Beach), 102 (107) N.Y.L.J. (11-6-39) 1512, Col. 2 F at 3 M.

¶ 2. Assessments for benefit resulting from removal of an elevated railroad should be distributed on the basis of frontage, having consideration for all factors relative to the proportionate benefit received (Admin. Code § B15-19.0; 169 N.Y. 521; &c.).-In re City of New York (Sixth Ave. El. R.R.), 181 Misc. 1028, 50 N.Y.S. 2d 363 [1943], rev'd on other grounds, 265 App. Div. 200, 38 N.Y.S. 2d 730 [1942].

¶ 3. Removal of the Fulton Street Elevated Railroad in Brooklyn, **held** to have been of economic value to owners of department store properties on Fulton Street, as respects propriety of assessing one-third of the cost of removal on the owners of property within a hundred feet of Fulton Street on each side. The removal of the elevated structure did not take away potential customers, as the Eighth Avenue Subway System more than replaced the old elevated. The amounts of the benefit assessments were not based upon the assessed valuations but were fixed in proportion to the amount of benefit received by each parcel within the assessment area as ascertained from the testimony offered, exhibits submitted, inspection of benefit parcels by the Court, assessed valuations of the parcels, and any and all elements which would affect the proportionate amount of benefit derived by each benefit parcel (265 N.Y. 180; Admin. Code § B15-19.0).-In re Fulton Street Elevated R.R. (East River to Rockaway Ave., B'klyn), 110 (28) N.Y.L.J. (8-3-43) 229, Col. 3 T.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-318

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-318 Agreements for compensation to be awarded for the removal of structures from premises being acquired.

a. The mayor, prior to the purchase of the premises being acquired, upon which buildings or parts of buildings or other structures are erected, or prior to the signing of the final decree of the court, may agree with the owner or owners thereof, or any person having a beneficial interest therein, in case title thereto has not vested in the city:

1. As to the cost and compensation to be allowed and paid to them to remove such buildings or parts of buildings or other structures, and

2. That such sum or sums shall be the compensation to be awarded by the court, or allowed for the damage done such buildings or parts of buildings or other structures by virtue of such proceeding.

Such agreement may also be made as a condition of the sale by the city, at private sale, of its interest in such buildings or parts of buildings or other structures, after vesting of title thereto, to the owner or owners of the award or awards therefor or other persons having an interest therein.

b. Such buildings or parts of buildings or other structures shall not, in any case, be relocated or re-erected within the lines of any proposed street or other public improvement. The mayor shall prescribe such conditions in the terms of sale, which, if broken, shall entitle the city to a resale of such property and which shall revest title thereto in the city.

c. The court shall accept such agreed amounts of compensation for the removal of buildings or parts of buildings or other structures as the amounts to be awarded as such compensation and include the same in the tentative and final decrees.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-20.0 added chap 929/1937 § 1

Subs d, e added chap 588/1946 § 2

(Legislative findings chap 588/1946 § 1)

Subs d, e amended chap 332/1948 § 2

(Legislative findings chap 332/1948 § 1; expires)

Sub d amended chap 589/1951 § 1

Sub d amended chap 137/1952 § 1

Sub e amended chap 137/1952 § 2

Sub f added chap 137/1952 § 3

Sub f amended chap 151/1954 § 2

Sub f amended chap 64/1956 § 1

Sub f amended chap 109/1958 § 1

Sub f amended chap 361/1960 § 1

Subs d, e, f amended chap 471/1962 § 1

Subs a, b amended chap 100/1963 § 250

Sub f amended chap 352/1968 § 1

Sub f amended chap 390/1970 § 1

Sub f amended chap 727/1972 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Orders on applications to fix salvage value of City-owned houses and to award them to those entitled thereto under Laws of 1946, ch. 588, should be substantially in the following form: "Caption. Damage Parcel Number. Recitals. And proof having been submitted satisfactory to the Court that (name of person to whom house is awarded) a former owner in occupancy, a tenant in possession, or a World War veteran has made diligent effort to obtain a house or rooms for his family elsewhere and has been unable to find anything available within his financial means and requires the dwelling on Damage Parcel _____ for use as a home and that he is in possession or under contract to purchase

a lot to which such dwelling may be removed, and is able to finance the transaction, within the time hereinafter specified, and that such dwelling is to be used as a home by petitioner and his own family and is not purchased for resale or speculation, Now, on motion of _____ attorney for _____, it is Ordered, that the _____ partial and separate final decree herein be, and the same hereby is, amended as to Damage Parcel _____ by providing that title to the improvements of said parcel is vested in _____upon condition that the salvage value of $_____ be paid by him to the Bureau of Real Estate in cash or by check drawn to the order of the City Collector, on or before the 22nd day of May, 1946, and the improvements moved from said Damage Parcel solely at the risk of said _____on or before the 30th day of June, 1946, unless additional time is granted upon application to this Court. Enter in Queens County _____J.S.C."-In re City of New York (Idlewild Airport, Second Addition), 115 (114) N.Y.L.J. (5-16-46) 1950, Col. 4 F.

¶ 2. Where tenant had been in continuous possession of the house from the time it was erected, the owner, not having been in possession at time of vesting of title by City, had no claim for the house notwithstanding any stipulation to the contrary. Furthermore the tenant, having failed to show that he "is in possession of or under contract to purchase a lot to which such dwelling may be removed and is able to finance the transaction within the time fixed by the real estate bureau," was not entitled to an order to fix a fair value of the house pursuant to Admin. Code § B15-20.0.-In re City of N.Y. (Willowbrook Pky.), 121 (1) N.Y.L.J. (1-3-49) 15, Col. 4 M.

¶ 3. Where the City had formerly represented that the residence upon the parcel was to be razed and not until after petitioner began the instant proceeding for permission to remove the building under Admin. Code § B15-20.0 did the City disclose that it wanted the building to be used as a dwelling for one of the general medical superintendents of the Department of Hospitals, the trial justice properly determined that he should reconsider the elimination of this element of value by reopening the main proceeding.-In re Site for New General Hospital, 280 App. Div. 196, 112 N.Y.S. 2d 101 [1952], aff'd 305 N.Y. 835, 114 N.E. 2d 38 [1953].

¶ 4. The statutory provisions relative to the removal of structures from acquired property relate to private dwellings but not to an office building used in connection with a monument works.-In re City of New York (Throgs Neck Expressway), 141 (41) N.Y.L.J. (3-3-59) 13, Col. 1 F.

¶ 5. A veteran was granted an order authorizing him to remove a certain building where he had obtained consent thereto by the Director of the Bureau of Real Estate. The owner failed to obtain such a consent and delayed voicing any objection until a year after the property had been acquired by the City.-In re City of New York (Clove Lakes Expressway), 141 N.Y.L.J. (1-21-59) 14, Col. 5 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-319

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-319 Separate and partial tentative and final decrees.

a. The court upon the authorization of the mayor, may make a separate and partial tentative decree and a separate and partial final decree embracing the entire real property being acquired therein, or successive sections or parcels thereof.

b. Whenever a separate and partial tentative and final decree or decrees shall have been authorized, the corporation counsel may file in the office of the county clerk and in the office in which instruments affecting real property are required to be recorded in the county in which the order granting the application to condemn is filed, a survey or map showing the part of the real property being acquired as to which a separate and partial tentative and final decree has been authorized, subdivided into parcels corresponding with separate ownerships thereof, as far as ascertained, and the corporation counsel and the court shall proceed with the ascertainment and determination of the damages with relation to the real property shown on such partial damage map in the same manner as provided for the ascertainment and determination of damages with relation to the entire real property embraced in the proceeding.

c. In case a separate and partial final decree or decrees as to damage, including part of the real property being acquired in the proceeding, shall have been made or filed therein and the justice who made and filed the separate and partial final decree or decrees as to damage shall have died or retired from the bench, or become incapacitated for any reason, the corporation counsel and the court shall proceed with the ascertainment and determination of damage with relation to the remaining real property damaged in the same manner as provided for the ascertainment and determination

of damage with relation to the entire real property being acquired and shall make a separate and partial tentative and final decree as to damage as to all the real property being acquired in the proceeding, which shall not have been included in prior separate and partial final decrees as to damage. All provisions of this subchapter relating to tentative and final decrees shall apply to the separate and partial final decrees as to damage so made, provided, however, that the provision making it the duty of the justice to view the property being acquired shall not apply in case the buildings or improvements on the property or the part thereof being acquired shall have been removed or destroyed by the city or pursuant to its authority prior to the time the matter shall have been assigned to such justice for trial.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-21.0 added chap 929/1937 § 1

Sub b amended LL 49/1951 § 2

Amended chap 100/1963 § 251

CASE NOTES FROM FORMER SECTION

¶ 1. Under the Admin. Code money may be paid to a claimant in a condemnation proceeding under one of four procedures: 1. As a partial advance payment, as authorized by the mayor; 2. Under a separate and partial filed decree, after agreement by the parties to settle the amount of compensation and to waive a hearing of objections in the issuance of a tentative decree; 3. Under a separate and partial filed decree, after trial, if authorized by the mayor or; 4. Under a single filed decree after trial of all claims. Claimant could not have partial summary judgment on stipulation as to value. Matter of City of New York (Fifth Avenue Coach Lines, Inc.), 41 Misc. 2d 1066, 267 N.Y.S. 2d 313 [1964].

¶ 2. This section does not prevent entry of a separate partial decree directing payment of an award for tangible property taken as section is expressly limited to real property and "rests upon the entire taking being `subdivided in parcels' ". Matter of City of N.Y. (Fifth Avenue Coach Lines, Inc.), 18 N.Y. 2d 741, 221 N.E. 2d 174, 274 N.Y.S. 2d 349 [1966], modifying, 23 A.D. 2d 463, 261 N.Y.S. 2d 784 [1965], which affirmed, 46 Misc. 2d 558, 259 N.Y.S. 2d 313 [1965].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-320

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-320 Notice to file objections; objections; hearings.

a. Upon the filing of the tentative decree the corporation counsel shall give notice, by advertisement in the City Record, of the filing of such tentative decree and that the city and all other parties interested in such proceedings, or in any of the real property affected thereby, having an objection thereto, shall file such objections, in writing, duly verified in the manner required by law for the verification of pleadings in an action, setting forth the real property owned by the objector, and such objector's post office address, in the office in which the tentative decree was filed within fifteen days after such publication in a capital project proceeding. Such notice shall be so published for a period of ten days in a captial project proceeding. Similar notice shall be given of the filing of any new, supplemental or amended tentative decree, and for the filing of objections thereto. The notice shall further state that the corporation counsel on a date specified in the notice will apply to the justice who made the tentative decree to fix a time when he or she will hear the parties objecting thereto.

b. After the filing of the tentative decree or of any new, or supplemental, or amended tentative decree, no award for damages shall be diminished without notice to the owner of the real property affected or the owner's attorney appearing in the proceeding and an opportunity given for a hearing in regard thereto before signing the final decree.

c. Every party objecting to the tentative decree or to the new supplemental or amended tentative decree or such party's attorney, within the time specified in the notice to file objections, shall serve on the corporation counsel a copy of such verified objections.

d. Upon the application of the corporation counsel, the justice shall fix the time when he or she will hear the parties so objecting and desiring to be heard. At the time so fixed the justice shall hear the person or persons who have objected to the tentative decree, or to the new, supplemental or amended tentative decree, and who may then and there appear, and shall have the power to adjourn from time to time until all parties who have filed objections and who desire to be heard shall have been fully heard.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-22.0 added chap 929/1937 § 1

Subs a, b amended chap 100/1963 § 252

CASE NOTES FROM FORMER SECTION

¶ 1. Where, after filing of the tentative decree claimant had been notified of the City's objection which sought to have the award reduced, and thereafter both claimant and the City took advantage of the opportunity accorded them to present evidence, Admin. Code § B15-22.0, subd. b, did not require that a further notice be given the claimant of a reduction in the amount of the award and an opportunity afforded for another hearing in regard thereto prior to signing of the final decree, since subdivision b clearly referred to an application to reduce an award upon the hearing of objections.-In re Public Place (Union Turnpike, Queens; Kew Garden Estates, Inc.), 104 (39) N.Y.L.J. (8-15-40) 367, Col. 5 M.

¶ 2. In Sixth Avenue Elevated Railway condemnation proceeding wherein the City of New York was not only the condemnor but also the claimant by reason of its purchase of the rights of the Railroad, assessees along the portion of Sixth Avenue affected by the proceeding did not have the absolute right to be heard at the trial (217 N.Y. 294), although the court possessed discretion to say whether they should be heard (94 App. Div. 514, aff'd 171 N.Y. 549; 69 Misc. 381). In the immediate case in the interest of justice court would permit the assessees to cross-examine the witnesses produced by the City.-In re Sixth Ave. Elevated RR., 106 (3) N.Y.L.J. (7-3-41) 31, Col. 1 M, rev'd on other grounds, 265 App. Div. 200, 38 N.Y.S. 2d 730 [1942].

¶ 3. In the proper exercise of his powers, the Commissioner might resort to reports of investigations and other sources of information made available to him, and it was not persuasive that in the immediate case the precise charge which was the occasion for the revocation in and of itself might not otherwise warrant the drastic action taken.-Id.

¶ 4. Basic purpose for filing of objections as provided by Admin. Code § B15-22.0, and for consideration thereof, § B15-23.0, is to permit Special Terms to review the awards, and if justice requires to make adjustments before filing of the final decree, which is final and binding upon all parties unless set aside or reversed upon appeal.-In re Idlewood Blvd., 112 (125) N.Y.L.J. (11-30-44) 1497, Col. 7 F.

¶ 5. Where property was condemned and a tentative decree was made, claimant had no absolute right, on the hearing of objections to the decree, to introduce additional testimony on the issues already tried, where such testimony could and should have been presented on the first trial.-Matter of City of New York (Addition to Lincoln Sq.), 143 (91) N.Y.L.J. (5-11-60) 12, Col. 7 F.

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NYC Administrative Code 5-321

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Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-321 Final decree; preparation thereof; what to contain.

a. After considering the objections, if any, and making any corrections or alterations in the tentative decree as to awards for damage, the justice trying the proceeding shall give instructions to the corporation counsel as to the preparation of the final decree. Such decree shall consist of the tentative decree, altered and corrected in accordance with the instructions of the justice; of the final awards, as determined by the court, set opposite the respective damage parcel numbers in a column headed "final award" in the tabular abstract of awards for damage; of a statement of the facts conferring upon the court jurisdiction of the proceeding; and of such other matters as the court shall require to be set forth. The final decree shall also contain a statement that the amounts set opposite the respective damage parcel numbers in the column headed "final awards" in the tabular abstract of awards for damage constitute and are the just compensation which the respective owners are entitled to receive from the city. The final decree shall also set forth the names of the respective owners of the several parcels acquired, but in all cases where the owners are unknown or not fully known to the court, it shall be sufficient to set forth and state in general terms in the decree the respective sums to be allowed and paid to the owners of the respective parcels for loss and damage without specifying their names or their estates or interests therein, and in such case the owners may be specified as unknown.

b. To the final decree shall be attached the surveys, diagrams, maps or plans referred to in subdivision a of section 5-315 of this subchapter, duly corrected, when necessary. Such decree shall set forth the several parcels taken by reference to the numbers of such parcels on the respective surveys, diagrams, maps or plans, and it shall not be necessary to describe any parcels acquired by metes and bounds.

c. Should any errors exist in the tentative decree, or in the surveys, diagrams, maps or plans attached thereto, or should there occur, between the date of the tentative decree and the time of the signing by the court of the final decree, any changes in ownership resulting in changes in the size of area, by subdivision or otherwise, of any of the parcels of any real property to be acquired, the court may alter and correct the respective surveys, diagrams, maps or plans to show such changes in such final decree. At the time of the entry of the final decree, the court shall direct that the maps furnished to the corporation counsel in the proceeding shall be revised and altered in agreement with the tax maps as of the date of the entry of such decree.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-23.0 added chap 929/1937 § 1

Amended chap 100/1963 § 253

CASE NOTES FROM FORMER SECTION

¶ 1. Under the Admin. Code money may be paid to a claimant in a condemnation proceeding under one of four procedures: (1. As a partial advance payment, as authorized by the mayor; 2. Under a separate and partial filed decree, after agreement by the parties to settle the amount of compensation and to waive a hearing of objections in the issuance of a tentative decree; 3. Under a separate and partial filed decree, after trial, if authorized by the mayor or; 4. Under a single filed decree after trial of all claims.) Claimant could not have partial summary judgment on stipulation as to value.-Matter of City of New York (Fifth Avenue Coach Lines, Inc.), 41 Misc. 2d 1066, 267 N.Y.S. 2d 313 [1964].

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NYC Administrative Code 5-322

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Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-322 Filing of final decree as to damage where objections and the filing of a tentative decree are waived.

a. Notwithstanding any other provision of this subchapter, in any case where the owner of any real property affected by any proceeding under this subchapter or the owner's attorney and the corporation counsel enter into an agreement in writing whereby it is agreed that with respect to the award of damages in relation to such property, the filing of a tentative decree, the giving of notice to file objections and the filing and hearing of objections are waived, the filing of a tentative decree, the giving of such notice and the hearing of objections in relation to such award shall not be required.

b. In a capital project proceeding, the court may make a separate and partial final decree or decrees determining the final awards to any owners of real property affected by the proceeding who have entered into such waiver agreements or in whose behalf such agreements have been made by their attorneys, or where such agreements have been so entered into by or in behalf of all owners of real property affected by such proceeding, the court may make a final decree determining the final awards to such owners. In accordance with the procedure regularly governing where the provisions of subdivision a of this section are not applicable, the court may make such separate and partial tentative or final or other decrees as may be appropriate for the determination of awards to owners of real property affected by the proceeding who have not entered into such agreements and in whose behalf such agreements have not been made by their attorneys.

c. 1. Any separate and partial final decree or final decree determining final awards to owners of real property by

whom or in whose behalf such waiver agreements have been so entered into shall be prepared by the corporation counsel in accordance with the instructions of the justice trying the proceeding, and shall set forth the following:

(a) such awards, as determined by the court, set opposite the respective damage parcel numbers;

(b) the facts conferring jurisdiction over the proceeding upon the court and such other matters as the court shall require to be included;

(c) a statement that the amounts set opposite the respective damage parcel numbers constitute and are just compensation which the respective owners are entitled to receive from the city; and

(d) the names of the respective owners of the several parcels acquired, as far as the same shall have been ascertained, but in all cases where the owners are unknown or not fully known to the court, it shall be sufficient to set forth and state in general terms in the decree the respective sums to be allowed and paid to the owners of the respective parcels for loss and damage, without specifying their names or their estates or interests therein, and in such case the owners may be specified as unknown.

2. If any such decree is the first separate and partial final decree or final decree filed in such proceeding, there shall be attached thereto the surveys, diagrams, maps or plans referred to in subdivision a of section 5-315 of this subchapter, duly corrected, when necessary. Any such decree referred to in this subdivision shall set forth the several parcels taken by reference to the numbers of such parcels on the respective surveys, diagrams, maps, or plans, and it shall not be necessary to describe any parcels acquired by metes and bounds.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-23.1 added chap 821/1960 § 1

Sub c repealed chap 100/1963 § 254

Sub d par 3 repealed chap 100/1963 § 254

Sub c relettered chap 100/1963 § 254

(formerly sub d)

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NYC Administrative Code 5-323

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-323 Final decree; how filed; effect.

a. The final decree, together with all affidavits and proofs upon which the same is based, shall be filed in the office of the clerk of the county in which the order granting the application to condemn was filed, and a certified copy of such decree shall be filed in the office in which instruments affecting real property are required to be recorded, in every county in which any part of the real property affected is situated and shall be filed in the department of citywide administrative services of the city of New York.

b. The final decree, unless set aside or reversed on appeal, shall be final and conclusive as well upon the city as upon the owners of the real property mentioned therein, and also upon all other persons whomsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 59/1996 § 44, eff. Aug. 8, 1996

DERIVATION

Formerly § B15-24.0 added chap 929/1937 § 1

Sub a amended LL 49/1951 § 3

Sub a amended LL 89/1961 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Special Term was without jurisdiction, after entry of final decree in condemnation proceeding, to make an order directing the City Treasurer to refund to respondents certain tax payments made by them (Admin. Code § B15-24.0, subd. b).-Matter of City of New York (Park Ave.-Ferrazzo), 257 App. Div. 860, 12 N.Y.S. 2d 663 [1939].

¶ 2. On retrial in condemnation proceeding pursuant to directions of the appellate court, Special Term might consider only the matter remitted to it by the appellate court, as the final decree was final and conclusive on all persons (Greater N.Y. Charter § 1003; Admin. Code § B15-24.0), except insofar as reversed and remitted to Special Term. However, it would seem that no express permission was required to allow the filing of a claim at such stage of the proceedings (Admin. Code § 15-11.0).-In re Braddock Ave. (Rocky Hill Rd.), 101 (28) N.Y.L.J. (2-3-39) 553, Col. 3 M, at 3 F.

¶ 3. Final decree in condemnation proceeding, granting plaintiff an award for its land taken, did not preclude the court from presently passing upon validity of a transfer of tax lien affecting such land, since question of validity of assessments was not litigated in the condemnation proceeding (Admin. Code § B15-24.0, subd. b).-In re City of N.Y. (Hutchinson River P'kwy Ext.), 104 (61) N.Y.L.J. (9-11-40) 589, Col. 6 M.

¶ 4. Condemnation decree awarding owner substantial compensation on theory the building on the premises was totally destroyed by the taking, whereas the true fact was that the building was not touched by the taking, the error having been occasioned by a mistake in the damage map prepared for the proceeding, was vacated and the matter set down for a new hearing to determine the just compensation due for the parcel.-In re DeHart, 105 (75) N.Y.L.J. (4-1-41) 1448, Col. 3 T.

¶ 5. Fact that City failed to give proper notice of street extension proceeding should not weigh against the City on motion by owner for payment of condemnation award.-Application of Joseph E. Marx Co. Inc., 139 N.Y.S. 2d 311 [1954].

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***** Current through December 2009 ****

NYC Administrative Code 5-324

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-324 Appeal to appellate division.

The city or any party or person affected by the proceeding and aggrieved by the final decree of the court therein as to awards may appeal to the appellate division of the court. An appeal from the final decree of the court must be taken within thirty days after notice of the filing of such final decree. Except as herein otherwise provided, such appeal shall be taken and heard in the manner provided by the civil practice law and rules and the rules and practice of the court in relation to appeals from orders in special proceedings, and such appeal shall be heard and determined by such appellate division upon the merits both as to matters of law and fact. The determination of the appellate division shall be in the form of an order. The taking of an appeal by any person or persons shall not operate to stay the proceedings under this subchapter except as to the particular parcel of real property with which the appeal is concerned. The final decree of the court shall be deemed to be final and conclusive upon all parties and persons affected thereby, who have not appealed. Such appeal shall be heard upon the evidence taken by the court or such part or portion thereof as the justice who made the decree may certify, or the parties to such appeal may agree upon as sufficient to present the merits of the questions in respect to which such appeal shall be had. An appeal taken but not prosecuted within six months after the filing of the notice of appeal, unless the time within which to prosecute the same shall have been extended by an order of the court, shall be deemed to have been abandoned and no agreement between the parties extending the time within which such appeal may be prosecuted shall vary the provisions hereof. When a final decree of the court shall be reversed on appeal, such reversal shall not divest the city of title to the real property affected by the appeal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-25.0 added chap 929/1937 § 1

Amended chap 100/1963 § 255

CASE NOTES FROM FORMER SECTION

¶ 1. In a proceeding to condemn a temporary easement, the Appellate Division reduced the awards and, as reduced, affirmed them. The judgment of the Appellate Division was affirmed over contention that it should have remitted the matter to the condemnation tribunal.-Matter of City of New York (Venda), 294 N.Y. 795, 62 N.E. 2d 235 [1945].

¶ 2. In the City of New York, the Appellate Division, upon an appeal from a final decree in a condemnation proceeding, has power to determine the appeal "upon the merits both as to matters of law and fact". However, the power to reverse a finding of fact may be exercised only in accord with the general rules of law regulating appeals to that court. It may not set aside a finding of value unless such finding is based upon an erroneous theory of law or an erroneous ruling in the admission or exclusion of evidence, or unless it appears that the lower court has failed to give the proper weight to conflicting evidence and thus arrived at an excessive or inadequate value. Thus, the Appellate Division erred in increasing an award where the value found by Special Term was in accord with credible evidence and there were no errors in the admission or exclusion of evidence.-Matter of City of New York (Newtown Creek), 274 N.Y. 493, 31 N.E. 2d 916 [1940].

¶ 3. An Appellate Division order decreasing the award allowed in a condemnation proceeding was affirmed over claimant's contention that since the appeal had not been prosecuted by the city within six months after filing notice of appeal, it was deemed to have been abandoned.-Matter of City of New York (Sound View Houses), 308 N.Y. 814, 125 N.E. 2d 870 [1955].

¶ 4. Appeal from order granting petitioner's motion to quash a subpoena duces tecum and to vacate a notice of deposition was dismissed since no appeal lies from an intermediate order in a condemnation proceeding brought under this section.-Matter of City of N.Y. (Goldhirsh), 73 A.D. 2d 646 [1979].

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CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-325 Appeal to court of appeals.

An appeal to the court of appeals may be taken by the city or any person or party interested in the proceeding and aggrieved by the order of the appellate division. Such appeal shall be taken and heard in the manner provided by the civil practice law and rules and the rules and practice of the court of appeals in relation to appeals from orders in special proceedings. An appeal taken but not prosecuted within six months after the filing of the notice of appeal, unless the time within which to prosecute the same shall have been extended by an order of the court, shall be deemed to be abandoned, and no agreement between the parties to the appeal extending the time to prosecute the same shall vary the provisions hereof. The court of appeals may affirm or reverse the order appealed from, and may make such order or direction as shall be appropriate to the case. If the final decree or decrees of the court shall be reversed by the court of appeals, such reversal shall not divest the city of title to the real property affected by the appeal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-26.0 added chap 929/1937 § 1

Amended chap 100/1963 § 256

Administrative Code of the City of New York

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NYC Administrative Code 5-326

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-326 Taxation of costs, charges and expenses.

a. The bill of the reasonable and necessary costs, charges and expenses which by law are required to be taxed shall not be paid or allowed until they shall have been taxed by the court after notice given as in this section provided. Upon such taxation, due proof of the nature and extent of the services rendered and the disbursements charged shall be furnished, and no unnecessary costs or charges shall be allowed. All items in the bill shall be stated in detail and shall be accompanied by such proof of the reasonableness thereof and the necessity therefor, as is now required by law and the practice of the court upon taxation of costs and disbursements in other special proceedings or actions in such court. Proof by affidavit shall also be given of the dates of rendering services. No such claim for compensation, in a capital project proceeding, shall be allowed or paid unless it be accompanied by a certificate of the comptroller setting forth that the same has been audited and examined, and further certifying the result of such audit and examination. Such certificate shall be presumptive evidence of the correctness, reasonableness and necessity of such bill.

b. In a capital project proceeding, the corporation counsel shall be given five days' notice of the taxation of the bill of costs, charges and expenses.

c. Property owners appearing in the proceedings shall not be entitled to recover counsel fees, costs, disbursements or allowances, except as provided in sections seven hundred one and seven hundred two of the eminent domain procedure law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended chap 230/1988 § 1

DERIVATION

Formerly § B15-27.0 added chap 929/1937 § 1

Amended chap 100/1963 § 257

Sub c amended chap 840/1977 § 129

CASE NOTES FROM FORMER SECTION

¶ 1. Request for $5500 for services allegedly rendered by deceased to City of New York as appraiser in a condemnation proceeding was allowed in sum of $1800 only.-Smith v. City of N.Y. (Gowanus Canal), 101 (52) N.Y.L.J. (3-6-39) 1043, Col. 7 M.

¶ 2. In reversing the decree in the condemnation proceedings "with costs", Appellate Division **held** not to have intended to subject to liability for costs the mortgagees and a tenant who were merely nominal respondents on the appeal.-In re Public Park (Beach Channel Dr.), 106 (51) N.Y.L.J. (8-29-41) 463, Col. 1 M, at 2 F.

¶ 3. In a proceeding for the condemnation of a capital improvement, costs and expenses could be taxed by the corporation counsel in the usual manner and it was not necessary that they be taxed by the court.-In re City of New York, 147 (119) N.Y.L.J. (6-20-62) 14, Col. 7 T.

¶ 4. Pursuant to Civil Practice Act § 322, property owners may require a city which has taken title to their properties to admit facts relating to the values.-Matter of City of New York (Fifth Avenue Coach Lines, Inc.), 38 Misc. 2d 201, 237 N.Y.S. 2d 261 [1963].

¶ 5. Claimant property owners appearing in condemnation proceedings in city are not entitled to recover "counsel fees, costs, disbursements or allowances".-Matter of City of N.Y. Relative to Acquiring Title to Real Property for Arverne II, Stage II, Urban Renewal Project, 52 A.D. 2d 878 [1976].

¶ 6. Litigation of the reasonableness issue as part of the condemnation is not precluded by this section.-Adventurers Whitestone v. N.Y., 65 N.Y. 2d 83 [1985].

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CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-327 Damages; when, how and to whom paid.

a. All damages awarded by the court, with interest thereon from the date title to the real property acquired shall have vested in the city and all costs, charges and expenses which may have been taxed shall be paid by the city to the respective owners mentioned or referred to in the final decree or to the persons in whose favor such costs, charges and expenses were taxed, as hereinafter provided.

b. In a capital project proceeding, payment shall be made within two calendar months after the entry of the final decree. In default of such payment, the owners or other persons entitled to be paid in the proceeding may at any time after application first made to the comptroller therefor, sue for and recover the amount due, with lawful interest, and the costs of such suit. Upon the application to the comptroller for payment, the applicant may state that any outstanding taxes, assessments or other liens may be deducted from the amount otherwise payable, and in that event, the fact that there are outstanding taxes, assessments or other liens shall not impair or invalidate such application nor operate as a bar to the collection of interest upon the amount awarded less the amount of such outstanding taxes, assessments or other liens.

c. Payment of an award to a person named in the final decree as the owner thereof, if not under legal disability, shall in the absence of notice in writing to the comptroller of adverse claims thereto, protect the city.

d. Where an award shall be paid to a person not entitled thereto, the person to whom it ought to have been paid

may sue for and recover such award, with lawful interest and costs of suit, as so much money had and received to his or her use by the person to whom the same shall have been paid.

e. 1. When an owner in whose favor an award shall have been made in a final decree, shall be under legal disability or absent from the city, and when the name of the owner shall not be set forth or mentioned in the final decree or when the owner, although named in such decree, cannot, upon diligent inquiry, be found, or where there are adverse or conflicting claims to the money awarded as compensation, the city shall pay such award into the supreme court, to be secured, disposed of, invested or paid out as such court shall direct, and such payment shall be as valid and effectual in all respects as if made to the owner or other person entitled thereto.

2. In default of such payment into court, the city shall be and remain liable for such award, with lawful interest thereon from the date upon which title to the real property for which said award was made vested in the city, in a capital project proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-28.0 added chap 929/1937 § 1

Sub b amended LL 50/1942 § 27

Subs b, c amended chap 710/1943 § 571 (Part 3)

Amended chap 100/1963 § 258

Sub a amended chap 840/1977 § 130

CASE NOTES FROM FORMER SECTION

¶ 1. Owner of condemnation award **held** entitled to interest thereon only at the new lawful rate of 4 percent from the effective date of General Municipal Law § 3a.-In re Public Parks, Rockaway (Home Life Ins. Co.), 16 N.Y.S. 2d 688 [1939].

¶ 2. General Municipal Law § 3a, making four per cent the maximum rate of interest payable by municipal corporations upon judgments or accrued claims, **held** not unconstitutional on theory it denied claimants against a municipal corporation the equal protection of the laws because the general interest rate in the state was six percent. The sovereign and public character of municipal corporations and the lower rates of interest usually applicable on their borrowings forms a valid basis for differentiation and results in a reasonable classification.-In re Bronx River Parkway, 284 N.Y. 48 [1940], aff'g 259 App. Div. 552, 20 N.Y.S. 2d 53; aff'd 313 U.S. 540 [1940].

¶ 2.1. General Municipal Law § 3-c applies to condemnation proceedings. The section is applicable to proceedings where title vested in May, 1938, even though on the vesting date the owners made assignments of the awards bearing interest at 6 percent and some of the mortgages which were liens on the property carried interest at 6 percent. Under the statutes in effect until July 1, 1939, interest was payable at the rate of 6 percent and although General Municipal Law § 3-c could not take away the interest already accrued, it could and did fix the maximum rate payable by the City after that date.-Matter of City of New York (Public Parks, Queens), 172 Misc. 877, 17 N.Y.S. 2d 209 [1939].

¶ 2.2. In an action to recover interest on a condemnation award for the period commencing six months after the entry of a final decree to the time of final payment, the City's contention that interest in a waterfront and harbor

proceeding stopped running six months after the entry of the final decree unless the awardee filed a demand within a six-month period, was rejected. Respondent contended that such demand was only required in case of an assessable improvement proceeding and was not necessary in a capital project proceeding such as the present case.-Delaware, Lackawanna & Western R.R. Co. v. City of New York, 296 N.Y. 1042, 73 N.E. 2d 912 [1947].

¶ 3. Delinquent taxes continued to be an obligation after the City had taken title to property upon condemnation, and interest thereon continued to accrue until paid.-Kew Gardens Estates, Inc. v. City of N.Y., 35 N.Y.S. 2d 508 [1942].

¶ 4. Mortgagee was entitled to interest upon its mortgage lien at the statutory rate of four percent, rather than at its contract rate of six percent, from July 1, 1939, the effective date of the statute prescribing the four percent rate, until date of payment of the condemnation award, since the lien of the mortgage as of date of vesting was transferred from the land to the award.-In re Public Parks (Rockaway Beach), 288 N.Y. 51, 41 N.E. 2d 454 [1942], modf'g 261 App. Div. 936, 25 N.Y.S. 2d 511 [1941], which modified 172 Misc. 877, 17 N.Y.S. 2d 209 [1939].

¶ 5. Mortgagee who in condemnation proceedings had asked and received payment of the award was entitled to interest thereon from the date of taking only at the rate at which the City was bound to pay, and not at the higher rate which the mortgagor agreed to pay, since the voluntary act of the mortgagee in requesting payment had resulted in the substitution of the sovereign's obligation for the contractual obligation in the bond. The question might be different if the mortgagee had chosen to enforce the obligation of the bond and had resorted to the award only to the extent necessary to pay a mortgage foreclosure deficiency. That the mortgagor had paid interest upon the entire amount of the mortgage debt at the agreed rate until the amount of the award was fixed by final decree, did not bar the mortgagor from asking that excess payments be applied in reduction of principal, since without such payments it might have been claimed that the mortgagor was in default in payment of interest.-Muldoon v. Mid-Bronx Holding Corp., 287 N.Y. 227 [1942], aff'g 262 App. Div. 734, 27 N.Y.S. 2d 812 [1941], which aff'd without opinion, 175 Misc. 700, 25 N.Y.S. 2d 36 [1941].

¶ 6. Where the City's demand for payment of taxes exceeded the amount legally deductible from the condemnation award, the City's tender of partial payment was ineffectual and invalid, and the interest on the award did not cease to accrue by virtue of such tender. Moreover, claimant had six months from date of service of order amending the final decree within which to make a demand for payment of its award and interest. The order of reversal by the Appellate Division was the final mandate. A later tender made by the City was not a valid tender because two of the warrants included interest only up to a date 28 months earlier, and another warrant excluded interest for a period of ten months.-In re City of N.Y. (Harlem River Drive), 122 N.Y.S. 2d 866 [1953].

¶ 7. Presence of transfers of tax liens open of record was sufficient ground for the Comptroller's refusal to pay compensation awards until certificates discharging the transfers of tax liens were filed, and hence running of interest ceased on dates when the City was ready to make payment under the awards.-In re City of N.Y. (George Washington Houses), 129 (114) N.Y.L.J. (6-12-53) 1985, Col. 6 M.

¶ 8. Petitioner would not be allowed additional interest on condemnation award for delay in making payment, where the delay was due to a dispute between petitioner and junior lienors, with which the City was not concerned and in which it took no part.-In re Frank (Public Park, Beach Channel Drive, &c.), 109 (81) N.Y.L.J. (4-8-43) 1378, Col. 7 T.

¶ 9. On a taking in condemnation of the mortgaged premises, the mortgagee was entitled to only 4 percent interest from date of vesting to payment of award, notwithstanding the mortgage called for 6 percent interest (239 App. Div. 74; &c.).-In re City of N.Y. (Hamilton Ave., &c.), 105 (47) N.Y.L.J. (2-27-41) 901, Col. 3 M.

¶ 10. Inasmuch as the final decree in condemnation had made the award payable to the owner, subject to the first mortgage, and the mortgagee had failed to move upon entry of the decree for amendment thereof so as to make the amount of the mortgage payable to it, mortgagee **held** entitled to interest on the award only to date the award was ready

for payment, and not to the date payment was actually made. Admin. Code § B15-28.0 had no application to the mortgagee as the decree did not direct payment to it but to the fee owner.-In re City of N.Y. (Hamilton Ave., D.P. 65), 106 (39) N.Y.L.J. (8-15-41) 354, Col. 4 F.

¶ 11. Prior to vesting of title to the mortgaged premises in the City in condemnation on January 16, 1939, provisions of the mortgage governed with respect to rate of interest payable as between the parties to the mortgage, but after vesting of title the rate of interest was such as the law required, which was at the rate of 6 percent until July 1, 1939, and thereafter 4 percent. The same rules applied to advances made for payment of tax arrears.-In re Dry Dock Sav. Inst. (1st and 3rd Aves., &c.), 104 (78) N.Y.L.J. (10-1-40) 875, Col. 2 T.

¶ 12. However, interest would continue only until the date the City was ready to pay the award in full, and not until such time as the mortgagee chose to move to collect the amount of its claim.-Id.

¶ 13. Mortgagee who had refused to accept payment of his mortgage on date City was ready to make payment on ground he was not satisfied with the amount offered and also because he would have been obliged to accept a check made payable to the corporate owner and indorsed over to him, was not entitled to interest beyond the date when the City was ready to make payment, although the mortgagee was unquestionably entitled to a direct payment to him of the amount of his mortgage.-In re Stoker Realty Corp. (E. River Dr., Grand St. to Montgomery St.), 104 (80) N.Y.L.J. (10-3-40) 915, Col. 1 T.

¶ 14. Where the City Comptroller had paid the award to the City Treasurer in disregard of the judgment of the App. Div. holding petitioners entitled thereto, petitioners were entitled to interest thereon. The decree, as modified by the App. Div., became the final decree, and the six-month period within which demand for interest was required to be served, began to run from the date of the modification, rather than from the original entry of the decree at Special Term (264 N.Y. 319).-In re North Conduit Ave. (D.P. 206), 106 (128) N.Y.L.J. (12-3-41) 1796, Col. 2 F.

¶ 15. Application for additional interest on a condemnation award was denied where petitioner failed to comply with requirement of Admin. Code § B15-28.0, subd. b, that a demand for interest be served on the Comptroller within six months from the filing of the final decree. The requirement that a demand be made for interest was not unconstitutional, nor was it unreasonable to require such a demand even where the City had appealed.-Application of Rose, 266 App. Div. 975, 44 N.Y.S. 2d 379 [1943].

¶ 16. Petitioner's stipulation with the Corporation Counsel might not be deemed the equivalent of a demand, nor a consent by the City that the order affirming the decree constitute the decree itself for purpose of calculating interest.-Id.

¶ 17. Where resolution of Board of Estimate under which the proceedings were brought provided that the property might be purchased or in lieu thereof acquired by condemnation, the resolution contained no provision for the manner in which the costs and expenses of the proceeding were to be borne, and the improvement was allegedly for a marginal street, the proceeding was deemed to be a capital project proceeding and not an assessable improvement proceeding, since in the case of an assessable improvement the Board of Estimate must provide for the manner in which the costs and expenses are to be borne (Charter § 300, subd. c), the City may purchase property included in a capital project proceeding (Admin. Code § B15-4.0, subd. b), and a marginal street may not be acquired in an assessable improvement proceeding (Charter § 291, subd. 4). Hence petitioner, seeking to compel the Comptroller to pay him interest on an award, was required to bring a separate action instead of seeking relief by means of a motion (Admin. Code § B15-28, subd. c; 262 A.D. 487).-In re City of New York (Vanneck Realty Corp.), 114 (116) N.Y.L.J. (11-19-45) 1364, Col. 7 M, aff'd 271 App. Div. 873, 66 N.Y.S. 2d 640 [1946], aff'd 296 N.Y. 1040; 73 N.E. 2d 911 [1947].

¶ 18. Where the condemnation awards were made to unknown owners and the sums were not paid into court, interest did not commence to run on them until one year after entry of the final decree, notwithstanding it was due to inadvertence in the Corporation Counsel's office that title was not certified in the claimant. Court could not amend the final decree so as to compel City to pay interest on the awards.-In re Maresca, 119 (99) N.Y.L.J. (5-21-48) 1918, Col. 2

T.

¶ 19. After payment of attorney's lien Court directed payment of the principal of the first mortgage, with interest thereon, at the rate provided in the mortgage from the date of last payment until the date of vesting, and then with interest from date of vesting until date when the award was available for payment at the rate of 4 percent, and without further interest thereafter.-In re City of N.Y. (Blancato; Melrose Houses), 125 (113) N.Y.L.J. (6-12-51) 2177, Col. 5 F.

¶ 20. Where part of the mortgaged property was taken in condemnation, the mortgagee was entitled to payment of the entire award after deduction of taxes and assessments, where award was less than the mortgage, but since the mortgagor had paid in full the interest due to date upon the entire mortgage the interest on the award was payable to the owner (273 N.Y. 62).-In re Flushing Manor, Inc., 104 (107) N.Y.L.J. (11-6-40) 1434, Col. 6 T.

¶ 21. The mortgagee who is an "owner" under this section has a right to apply for direct payment of a balance due on the mortgage out of any authorized payment and where the mortgagee does not take affirmative action to obtain direct payment of his lien out of an advance payment he cannot receive any more interest than he would have been entitled to had he moved for direct payment and where both the former owner and the mortgagee failed to make timely application for direct payment on equitable principles they should bear proportionately the loss of interest.-In re Lawrence v. Cedarhurst Federal Savings & Loan Association, 161 (121) N.Y.L.J. (6-23-69) 17, Col. 5 F.

¶ 22. Interest of 4% on condemnation awards is now so unreasonably low as to constitute a deprivation of just compensation and thus claimant was entitled to interest at 4% from the respective vesting dates to August 1, 1966, but at 6% from August 1, 1966 to date of payment.-In re City of N.Y. (New Municipal Bldg.), 159 (110) N.Y.L.J. (6-6-68) 2, Col. 6 M.

¶ 23. Petitioner who, as owner, had been awarded a stated sum by the final decree in a condemnation proceeding known as a capital project proceeding as distinguished from an assessable improvement proceeding, was obliged to proceed by plenary action on default of payment of the award by the City, and might not obtain a summary direction for payment to it of the net balance of the award.-In re Public Park, Bronx, City of N.Y. (Pell Estate, Inc.), 262 App. Div. 487, 30 N.Y.S. 2d 500 [1941].

¶ 24. Where an order directing payment of the condemnation award had been served on the Comptroller in 1929 but the Comptroller neglected or refused to make the payments thereon, and since that time certain papers in connection with the matter had allegedly been lost by the Deputy Comptroller and postponements had occurred, and in the meantime some of the former petitioners had died, the present petitioners adopted the proper procedure in applying for an order directing payment of the award theretofore made. The order entered in 1929 was res judicata.-In re Patterson, 106 (113) N.Y.L.J. (11-14-41) 1498, Col. 5 M.

¶ 25. To avoid delay in the making and paying of awards in condemnation proceedings involving 650 ownerships, and a possible preying upon small home owners by money lenders, procedure was adopted by Housing Authority of making direct purchases whereby prices were agreed upon, titles searched and closed and purchase prices paid within ten days to two weeks, the owner and his attorney having conferred with the Corporation Counsel and the Court having agreed upon the amount of the award, which was then incorporated into a partial tentative decree eliminating the delay of a trial and possible appeal, and allowing the Corporation Counsel and the Authority to go forward with title examination and closing. Also, parties having homes for sale undertook to accept assignments of award in payment from persons whose properties were taken in condemnation, inasmuch as they realized that the City would pay awards promptly.-In re Myrtle, Carlton, &c., Avenues (Fort Greene Houses), 105 (80) N.Y.L.J. (4-7-41) 1549, Col. 3 F, at 4 T.

¶ 26. In a condemnation proceeding involving a boardwalk which the City replaced with a new one at a higher level, a contention by the City that no damages should be awarded on a mere change of grade was overruled. The measure of damages was the difference between the market value of the entire tract and improvements before the taking

and the value of the remainder after the taking, including such damages resulting to the residue as were sustained by reason of the use, permanent in character, to which the portion taken by the City had been put.-In re Public Beach (Rockaway Beach), 288 N.Y.S. 75, 41 N.E. 2d 465 [1942].

¶ 27. Where a condemnation award was made to claimant for fixtures and equipment in a condemned building, and the City thereafter awarded a contract to wreck the building, which contract provided, among other things, that all equipment and materials of any kind remaining in the vacated building should belong to the demolition contractor, but without guaranteeing the number of fixtures, amount of material or other equipment in the buildings, payment of the award would not be delayed because of a complaint by the demolition contractor, who asserted that claimant had improperly removed certain equipment. It appeared that there was no valid ground for the complaint, and claimant had acted in good faith.-In re Park Avenue, &c. (Wallace & Co.), 109 (84) N.Y.L.J. (4-12-43) 1431, Col. 5 F.

¶ 28. That during the fifteen-month period since title to the occupied buildings in question had vested in the City, the City or the City housing authority had been the beneficiary of the income from the buildings in an amount far exceeding the statutory 4 percent interest which the City pays on the amount of a condemnation award, would not permit the Court to award this excess income to the owners, as property must be valued as of the date title passes, and no increment may be added for rents received or rental value subsequent to that date.-In re City of N.Y. (Housing Authority), 118 (108) N.Y.L.J. (11-19-47) 1369, Col. 1 T.

¶ 29. Where, after City took title to claimant's premises and certain of the machinery, in condemnation, claimant had remained in possession and had the use of the machinery under an agreement whereby he was to pay the City one-half of 1 percent a month out of any award made for the machinery, the claimant was bound by such rent provision and might not limit the City's claim for rent to those fixtures which were actually taken, since claim of the City was not one sounding in use and occupation, but arose out of the agreement between the parties.-In re 430 East 59th St. Corp., 104 (80) N.Y.L.J. (10-3-40) 916, Col. 4 T.

¶ 30. Public utility companies were not entitled to be reimbursed for value of their franchise and equipment claimed to have been acquired in a proceeding by the City of New York to acquire title to property for and on behalf of the New York City Housing Authority.-In re City of New York (Brownsville Houses), 111 (45) N.Y.L.J. (2-25-44) 748, Col. 4 F, at 5 F.

¶ 31. Petitioner, as lessee-assignee of lease between railroad company as landlord and coal company as lessee, **held** not entitled to an award of damages in condemnation for the structures, equipment and improvements placed upon the land by the lease, where the City had acquired title to the land only by purchase and not by condemnation, and the lease provided for removal of the structures by the tenant at his own expense at termination of the lease, thus indicating that they were never intended to become an integral part of the land so as to be inseparably interwoven with the land.-In re City of N.Y. (Harlem River Drive), 202 Misc. 540, 113 N.Y.S. 2d 292 [1952].

¶ 32. On payment of mortgage out of condemnation award, mortgagee was not entitled to an allowance of $25 for preparation of the satisfaction piece.-In re Stoker Realty Corp. (E. River Dr., Grand St. to Montgomery St.), 104 (80) N.Y.L.J. (10-3-40) 915, Col. 1 T.

¶ 33. Inasmuch as no claim was filed by the second mortgagee with the City until almost two years after the balance of the award had been paid, and the Comptroller had no means of knowing there was interest in arrears on the mortgage, the second mortgagee was entitled only to payment of the warrant held by the Comptroller (227 N.Y. 279; Admin. Code § B15-28.0).-In re Jaret, 106 (114) N.Y.L.J. (11-15-41) 1520, Col. 6 M.

¶ 34. Mortgagee which had paid the assessment for benefit against the mortgaged premises in order to prevent the accrual of penalties, could not be said to be a mere volunteer, and since it had secured the release of the condemnation award by the City by paying the benefit assessment, it alone was entitled to an offset of the assessment against the award (142 N.Y. 307).-In re H.O.L.C. (Amundsen Ave. &c.), 109 (112) N.Y.L.J. (5-14-43) 1894, Col. 6 T.

¶ 35. That title to the property was in litigation did not suspend the City's power to levy or collect taxes (220 App. Div. 595), and all taxes which were a lien upon the entire property of which the damage parcels formed part should consequently have been deducted from the condemnation award.-In re Reid, 106 (114) N.Y.L.J. (11-15-41) 1520, Col. 6 M.

¶ 36. On deducting a sum from the award for unpaid taxes, penalties on taxes were to be computed at 7 percent up to the vesting date, which was February 9, 1939, at 6 percent to July 1, 1939, and at 4 percent thereafter.-Id.

¶ 37. In view of controlling precedent, property owner **held** entitled to collect condemnation award without deduction of taxes and assessments which were a lien on the property on date title vested in the City, where the City had theretofore offered for sale the tax lien covering the unpaid taxes and, upon no bid being received, had itself taken in the lien, although this had not resulted in any actual payment of the tax moneys (250 App. Div. 762).-In re Englander (Ave. K), 104 (93) N.Y.L.J. (10-19-40) 1168, Col. 4 T.

¶ 38. The City of New York, as owner of a tax lien, and the assignee from the City of the tax lien, were "owners" entitled to resort to the condemnation award, on the condemnation of a part of the lot covered by the tax lien, in order to satisfy the lien or any deficiency remaining after its foreclosure against the premises not taken in condemnation.-In re Ryan (Wyckoff Ave. from B'klyn Borough Line to Moffet St., Queens), 105 (144) N.Y.L.J. (6-21-41) 2800, Col. 2 T.

¶ 39. Where the condemnation award was made to an unknown owner, and the City was therefore required to pay such award into court, the moneys thereupon became trust funds and petitioner, as owner of a tax lien, consequently was not barred by the Statute of Limitations from resorting to the award to satisfy the lien (241 App. Div. 614; dist'g 239 N.Y. 220).-In re Ryan (Wyckoff Ave. from B'klyn Borough Line to Moffet St., Queens), 105 (144) N.Y.L.J. (6-21-41) 2800, Col. 2 T.

¶ 40. Owner of property taken in condemnation had no right to direct the City how it should apply the condemnation award to the payment of taxes and water charges, but the determination was one to be made by the Court.-City of N.Y. v. Idlewild Beach Co. [1943], 182 Misc. 213, 50 N.Y.S. 2d 341.

¶ 41. Where City had acquired title to the parcels in question through condemnation, such property, which had been the subject of the tax lien, ceased to exist, having been converted into a condemnation award, and hence discontinuance of tax foreclosure action by the City with respect to such parcels should be allowed, and any question as to the legality of the taxes against the parcels would be a matter for the condemnation court.-In re Section 11, Bronx, N.Y., 125 (112) N.Y.L.J. (6-11-51) 2160, Col. 3 F.

¶ 42. Practice of City Comptroller in deducting from the advance payment of a condemnation award interest and penalties on taxes and assessments which were liens on the damaged parcels for the period from the vesting of title to the parcels in the City, up to date of payment, was disapproved. Interest on taxes and property taken should be charged and deducted up to date of vesting.-In re Boos (101st St.), 106 (145) N.Y.L.J. (12-23-41) 2106, Col. 3 F.

¶ 43. Petitioner, asserting that awards paid to City of New York pursuant to the final decree in condemnation should have been paid to petitioner was required to bring an action against the City for money had and received, and might not proceed by moving for an order directing the Comptroller to pay the awards to him, or, in the alternative, vacating the final decree and setting the matter down for a hearing to determine ownership (254 App. Div. 685, aff'd 278 N.Y. 721).-In re Reid (Bayview Ave.), 106 (142) N.Y.L.J. (12-19-41) 2059, Col. 4 F.

¶ 44. If plaintiff claimed any interest in the damage parcel, for which an adequate award was made, his remedy, if any, was against the payee of the award and not against the City.-In re Puma (Circumferential Pky.), 112 (122) N.Y.L.J. (11-27-44) 1446, Col. 2 T.

¶ 45. Notice of condemnation which disclosed that the City was acquiring a fee for street purposes in land within the widened portions of East 135th Street, through which passed the waters of the Mott Haven Canal, and which thus

informed owners of the land abutting on the Canal outside the taking that the City was to acquire property in fee for a use permanent in character, was sufficient to inform them that there would be an impairment or destruction of their easements, and hence mortgagee of damage parcel had no valid complaint when damages on extinguishment of easements in the Canal with respect to such parcel were paid to the owner without provision for the mortgagee, where no fraud or bad faith was involved on part of the City.-In re Exterior Street, Bronx, 293 N.Y. 1, 55 N.E. 2d 841 [1944]. See also Merriman v. City of N.Y., 227 N.Y. 279 [1919].

¶ 46. Duty of the Special Term for condemnation is to make awards for the damage parcels acquired by the condemnor, and after the signing and entry of the final decree it was not its function to direct the Comptroller as to the distribution of such award among those who may have filed claims, against such award, with him.-In re City of N.Y. (La Guardia Houses), 130 (107) N.Y.L.J. (12-3-53) 1312, Col. 3 M.

¶ 47. Special Term would direct the Comptroller to pay an attorney's lien out of a condemnation award, which lien included an appraiser's fee, but the Court would not adjudicate with respect of other claims of creditors.-In re Vic-Ranz Holding Co., 132 (120) N.Y.L.J. (12-23-54) 6, Col. 5 T.

¶ 48. The lessee of property condemned by the City for slum clearance entered into a written contract with an attorney on a 20 percent basis. Two years and two months after the attorney had fully performed his services and secured an award, the Federal government filed a lien for withholding taxes and the lessor filed for back rent. **Held:** the lessor was entitled to payment of rent out of the fund. The attorney was entitled to 20 percent of the balance prior to payment of U.S. taxes. Matter of City of New York (U.S.A.-Coblentz) 5 N.Y. 2d 300, 184 N.Y.S. 2d 585, 157 N.E. 2d 587 [1959].

¶ 49. The City has a lien for rent for the period from the date of vesting of title to the date of payment of the award. This is not defeated by the tenant's assignment of a claim for trade fixtures to the landlord.-In re City of New York (Fashions Institute), 136 (30) N.Y.L.J. (8-13-56) 2, Col. 6 M.

¶ 50. Under an order to condemn land to widen a street and the filing of a damage map, the City had no authority to enter upon plaintiffs' land without their permission or consent. Since plaintiffs failed to give notice of claim as required, they were not entitled to recover treble damages for destruction of trees and shrubs.-Rice v. The City of New York, 32 Misc. 2d 942, 225 N.Y.S. 2d 65 [1962].

¶ 51. The mortgagee of property and the former owner of the property are accorded the identical status as "owner," and each is equally authorized to apply for an advance payment of part of the condemnation award. Where both the former owner and the mortgagee were guilty of laches in making such application, the consequent loss of interest should be shared by them proportionately.-In re City of New York (Stephen Wise Housing Project), 38 Misc. 2d 455, 236 N.Y.S. 2d 785 [1962].

¶ 52. Plaintiffs were entitled to 9% interest on unpaid condemnation awards. Just compensation includes a sum in addition to the bare value of the property to account for the delay between the taking and the ultimate payment to the property owner.-Glantz v. N.Y.C., 191 (54) N.Y.L.J. (3-20-84) 6, 3 M.

CASE NOTES

¶ 1. A mortgagee is not in a better position than the owner of the property in terms of entitlement to interest on a condemnation award. Thus, a mortgagee will not be awarded any more interest on an advance payment than the fee holder would have received. Therefore, the mortgagee receives interest covering only the period until an advance payment was made to the owner. In Re City of New York, 12 Misc.3d 1171(A), 820 N.Y.S.2d 842, 2006 WL 1707929 (Sup.Ct. Kings Co.).

Administrative Code of the City of New York

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NYC Administrative Code 5-328

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-328 Advance payments.

The mayor may authorize the comptroller to pay to the person entitled to an award for real property acquired in a proceeding, in advance of the final determination of such person's damages pursuant to the requirements of article three of the eminent domain procedure law, a sum to be determined by the corporation counsel, after an appraisal of the damages sustained by such person by the expert or experts employed by the corporation counsel less any liens or encumbrances of record upon such property, which amount shall be certified to the comptroller by the corporation counsel. The mayor shall authorize the comptroller to cause to be published in the City Record for ten consecutive days a notice stating that the comptroller is ready to pay such persons entitled to awards for real property acquired in such proceed-ing, in advance of the final determination of their damage. Such notice shall describe the property for which such advance payment may be made by tax block and lot numbers or the damage parcel numbers of the real property involved. Before any such advance payment shall be made, the comptroller shall procure the certificate of the corporation counsel showing the amount to be paid to the claimant, that said amount does represent one hundred percent of the city's appraised valuation and that the person to whom payment is to be made is the person legally entitled to receive the same. In case the person entitled to an award at the date of the vesting of title to the real property in the city shall have transferred or assigned his or her claim, such transfer or assignment made by such person, or by his or her successor in interest or legal representative, shall not become binding upon the city unless the instrument or instruments evidencing such transfer or assignment shall have been executed and filed in the office of the comptroller prior to any such advance payment. When any such advance payment shall have been made, the comptroller, on paying the awards

made for the real property acquired, shall deduct from the total amount allowed as compensation the sum advanced plus interest thereon from the date of the payment of such advance to the date of the final decree and the balance shall be paid as provided in section 5-327 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-29.0 added chap 929/1937 § 1

Amended chap 732/1948 § 1

Amended chap 452/1962 § 1

Amended chap 100/1963 § 259

Amended chap 444/1964 § 1

Amended chap 395/1966 § 1

Amended chap 840/1977 § 131

CASE NOTES FROM FORMER SECTION

¶ 1. That notice of advance payment of award, given pursuant to Admin. Code § B15-29.0, was mailed to claimant to a wrong address and was never received, did not prevent the notice from being effective, since the mailing of notice was surplusage as the Comptroller had also given notice by publication.-In re City of N.Y. (Carver Houses), 114 N.Y.S. 2d 760 [1952], aff'd 281 App. Div. 970, 120 N.Y.S. 2d 926 [1953].

¶ 2. The notice was not ineffective because it stated that the Comptroller "will be" ready to make payment on a certain date, instead of "is" ready as prescribed by the statute. The words "will be" were used in the present case in the sense of "is".-Id.

¶ 3. A tender or partial payment of a compensation award after damages had been fixed by trial court and pending an appeal was made "in advance of the final determination" of damages. Even though the tender was in excess of 75% of the assessed valuation of the premises, it stopped the running of interest from the date of such tender.-Matter of City of New York (West Park Slum Clearance Project), 208 Misc. 629, 144 N.Y.S. 2d 598 [1955].

¶ 4. There is no provision in the statutes for cessation of interest on unpaid taxes, assessments or water rents, upon the taking of real property by eminent domain, hence City could collect interest on the unpaid taxes from date of vesting title to date when delinquent taxes were paid. However, those liable for payment did have some relief available under the provision of this section relating to advance payments.-In re Public Parks (Rockaway Beach), 288 N.Y. 51, 41 N.E. 2d 454 [1942], modf'g 261 App. Div. 936, 25 N.Y.S. 2d 511 [1941], which modified 192 Misc. 877, 17 N.Y.S. 2d 309 [1939].

¶ 5. Under the Admin. Code money may be paid to a claimant in a condemnation proceeding under one of four procedures: 1. As a partial advance payment, as authorized by the mayor; 2. Under a separate and partial filed decree, after agreement by the parties to settle the amount of compensation and to waive a hearing of objections in the issuance of a tentative decree; 3. Under a separate and partial filed decree, after trial, if authorized by the mayor or; 4. Under a single filed decree after trial of all claims. Claimant could not have partial summary judgment on stipulation as to value.-Matter of City of New York (Fifth Avenue Coach Lines, Inc.), 41 Misc. 2d 1066, 247 N.Y.S. 2d 313 [1964].

¶ 6. A mortgagee who applied for direct payment of the balance due on its mortgage out of the proceeds of a condemnation award was entitled to interest at the rate of 6% to the date of vesting of title and thereafter at the statutory rate of 4% to date when interest ceased to run.-Matter of City of N.Y. (P.S. 40), 49 Misc. 2d 527, 261 N.Y.S. 2d 950 [1966].

¶ 7. Where mortgagee made an application for direct payment of the balance due on its mortgage out of the proceeds of a condemnation award mortgagee was entitled to interest at the mortgage rate of 6% to the date of vesting of title and then at 4% to July 7, 1965, the date interest ceased to run on the authorized advance payment.-In re City of N.Y. (Damage Parcel No. 8), 155 (44) N.Y.L.J. (3-4-66) 17, Col. 4 M.

CASE NOTES

¶ 1. Since payments to condemnees are based on appraisals, the City must complete the appraisal within a reasonable time. In one case, where the City inexplicably failed to complete the appraisal after four months, the court directed the City to provide the court and the condemnee with its appraisal within 30 days, and to make an advance payment to the condemnee for the taking of the property, within 15 days thereafter. In Re: Application of the City of New York relative to acquiring title in fee simple where not heretofore acquired for the South Beach Bluebelt, Phase I, 2009 N.Y. Misc. Lexis 1313, 2009 WL 1522168 (Sup.Ct. Kings Co.).

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Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-329 Purchase of awards by the city.

a. In any proceedings instituted pursuant to any of the provisions of this subchapter, or pursuant to the provisions of any other statute providing for the acquisition of title to real property by the city, in which title thereto shall have become vested in such city prior to the entry of the final decree of the court, the mayor shall have power and is hereby authorized to purchase or to approve the purchase on behalf of the city from the individuals or corporations who were the owners of such real property at the date of the vesting of title thereto, or their successors in interest or legal representatives, their right and title to the award or awards, or any part thereof, to be made in such proceeding and to take an assignment thereof to the city. If such owner or owners or their successors in interest or legal representatives shall have transferred or assigned such claim, such transfer or assignment made by such owner or owners or by their successors in interest or legal representatives shall not become binding upon the city unless the instrument or instruments evidencing such transfer or assignment shall have been executed and filed in the office of the comptroller as provided in section 5-330 of this subchapter, prior to the completion of such purchase by the city.

b. An option granted to the city to purchase such award or awards for a period not to exceed six months shall not be withdrawn or cancelled during the period named therein.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-30.0 added chap 929/1937 § 1

Amended chap 100/1963 § 260

CASE NOTES FROM FORMER SECTION

¶ 1. Tenant's complaint stated a cause of action for breach of the lease's covenant of quiet enjoyment where it alleged that landlord facilitated and instigated condemnation proceedings by giving the City an option to purchase any award which the landlord might receive upon condemnation for an amount less than the assessed valuation and market value of the property.-Dolman v. U.S. Trust Co. of N.Y., 206 Misc. 929, 134 N.Y.S. 2d 508 [1954], aff'd 1 App. Div. 2d 809, 148 N.Y.S. 2d 809.

¶ 2. A landowner's cooperation with the City in a condemnation proceeding by granting it the right to purchase the condemnation award did not constitute a violation of its covenant with its tenants for quiet enjoyment of the premises.-Dolman v. United States Trust Co., 2 N.Y. 2d 110, 157 N.Y.S. 2d 537, 138 N.E. 2d 784; rev'g 1 A.D. 2d 809, 148 S. 2d 809 [1954].

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Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-330 Instruments assigning or pledging awards.

In case of the pledge, sale, transfer or assignment of an award by the person entitled to receive the same by virtue of the final decree of the court, or by other order of the court, the instrument evidencing such pledge, sale, transfer or assignment, acknowledged or proved as instruments are required to be acknowledged or proved for the recording of transfers of real property, shall be filed in the office of the comptroller, who shall endorse on such instrument its number and the hour, day, month and year of its receipt. If an assignment of an award be contained in an instrument recorded in an office in which instruments affecting real property are by law required to be recorded, a certified copy thereof may be filed in the office of the comptroller in place of the original. An alphabetical index shall be kept under the names of the pledgor or assignor, and of the pledgee or assignee, stating the title of the proceeding, the time of the filing of the instrument, the file number thereof, and what part of the award is assigned thereby. A memorandum of the file number of the instrument shall be made by the comptroller on the duplicate decree of the court opposite the place where the amount of the award so assigned is set forth. Every such instrument not so filed shall be void as against any subsequent pledgee or assignee in good faith and for a valuable consideration from the same pledgor or assignor, his or her heirs, administrators or assigns, of the same award or any portion thereof, the assignment of which is first duly filed in the office of the comptroller. Payment to the assignee or pledgee shown to be entitled to the award by such record in the office of the comptroller shall protect the city from liability to any other person or persons.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-31.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. For protection of owners against unscrupulous money lenders, suggestion was made that all assignments of, or liens against, awards filed with Comptroller should be promptly inquired into by a representative of the Corporation Counsel, and if the facts disclosed warranted, that they be promptly referred to the proper prosecuting authorities, and suggestion was further made that assignments of liens be made in duplicate, one for the Comptroller, and one for the condemnation division of the Corporation Counsel's office.-In re Woodhaven Blvd. (Myrtle Ave. to Rockaway Blvd.), 103 (128) N.Y.L.J. (6-1-40) 2497, Col. 6 T.

¶ 2. Claim based on assignment of award was disallowed where such assignment was never filed in the office of the Comptroller as required by this section. In re City of N.Y. (John Purroy Mitchel Houses), 150 (106) N.Y.L.J. (12-2-63) 15, Col. 1 T.

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NYC Administrative Code 5-331

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-331 Correction of defects.

The court at any time may correct any defect or informality in any notice, petition, pleading, order or decree in the proceeding, or cause real property affected by such defect, informality or lack of jurisdiction to be excluded therefrom, or other real property affected by such defect, informality or lack of jurisdiction to be included therein by amendment, upon ten days' notice, published and posted as provided for the institution of the proceeding, and may direct such further notices to be given to any party in interest as it shall deem proper.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-32.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The City's right to acquire property for street use is limited to the taking of lands located within the territorial limits of the City, and any purported acquisition of lands outside such limits for street purposes is void for want of jurisdiction (Greater N.Y. Charter §§ 974, 976). Hence where the City by mistake included in the condemnation

proceedings to acquire property for street use certain parcels which were outside the territorial limits of the City the Corporation Counsel was directed to take necessary steps to effect a correction of the defect, and motion by mortgagee for order directing payment of the award made by mistake for lands outside the City limits was denied (Admin. Code § B15-32.0).-In re Kathryn W. Caffrey, 106 (3) N.Y.L.J. (7-3-41) 34, Col. 6 M.

¶ 2. Court had power to correct mathematical errors in its condemnation decree, even though notice of appeal therefrom had been served and filed.-In re Port of N.Y. Authority, 133 (55) N.Y.L.J. (3-21-55) 7, Col. 8 T.

¶ 3. Failure of Board's resolution to delineate the extent of perpetual easements to be acquired was not fatal, since resolution could be amended, as State plans, the foundation of the original resolution, specified the extent of the easements.-Matter of City of New York (Throgs Neck Expressway), 142 (116) N.Y.L.J. (12-16-59) 13, Col. 4 F.

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CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-332 Order to expedite proceeding.

At any time after the date of entry of the order granting the application to condemn, the corporation counsel, or any owner may apply to the court for an order directing any owner or owners, or the corporation counsel, as the case may be, to show cause why further proceedings under this subchapter on the part of such owner or owners or of the corporation counsel should not be expedited. Upon the hearing directed by such order to show cause, the court in its discretion may make an order directing that such proceedings be expedited in the manner stated therein and also making such further directions with respect to the particulars shown upon the application as shall be just and proper in the premises.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-33.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. A redevelopment company does not act as the condemnor and may not be a party to such proceeding even

though, under the terms of agreement, it pays the awards to be determined. Accordingly, that part of a motion to expedite filed pursuant to § B15-33.0 of the Admin. Code, which asked for an order directing the corporation counsel to deliver to said company or its attorney true copies of all appraisals made on behalf of the City of New York relating to property required in condemnation proceedings, was denied.-Matter of the City of New York, relative to 79th Street et al., 30 Misc. 2d 615, 198 N.Y.S. 2d 671 [1960].

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SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-333 Discontinuance of proceedings by the mayor.

The mayor may effect a discontinuance of any proceeding as to the whole or a part of the lands to be acquired in such proceeding, at any time before title to the real property to be thereby acquired shall have vested in the city, and may cause new proceedings to be taken for the condemnation of such real property. In case of such discontinuance, however, the city shall adhere to the provisions of section seven hundred two of the eminent domain procedure law and the reasonable actual cash disbursements, necessarily incurred and made in good faith by any party interested, shall be paid by the city, after the same shall have been taxed by a justice of the supreme court, upon ten days' notice of such taxation being previously given to the corporation counsel, provided the application to have such disbursements taxed shall be made and presented to the court within one year after the action of the mayor. For the purposes of this section, the fair and reasonable value of the services of an attorney retained by any interested party to represent such party's interests in said condemnation proceedings, whether on a contingent fee basis or otherwise, if such retainer be made in good faith, shall be deemed to be an actual cash disbursement, necessarily incurred by such interested party and shall be taxable in the same manner as other disbursements. The amounts taxed as disbursements shall be due and payable thirty days after written demand for payment thereof shall have been filed with the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-35.0 added chap 929/1937 § 1

Amended chap 853/1940 § 1

Amended chap 100/1963 § 262

Amended chap 840/1977 § 132

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§ 5-334 Vesting of title; date of; seizin*4 ; possession.

a. The title to any piece or parcel of the real property authorized to be acquired hereunder for any public improvement or for any public purpose shall be vested in the city upon the entry of the order granting the application to condemn, in a capital project proceeding, in accordance with section four hundred two of the eminent domain procedure law.

b. Upon the date when title to the real property shall have vested as provided in subdivision a of this section, the city, in a capital project proceeding shall become and be seized in fee of or of an easement in, over, upon, or under such real property as the mayor may have determined, the same to be held, appropriated, converted and used for the purposes for which the proceeding was instituted.

c. The city or any person acting under its authority, or the agency which upon the acquisition of title to such real property will have jurisdiction thereof, shall immediately or any time thereafter take possession of such property without suit or other judicial proceedings in accordance with the provisions of the eminent domain procedure law pertaining to possession.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-36.0 added chap 929/1937 § 1

Amended chap 100/1963 § 263

Amended chap 840/1977 § 132

CASE NOTES FROM FORMER SECTION

¶ 1. Where only five weeks had elapsed since the vesting of title in connection with City's taking of property for a traffic highway to connect the Circumferential Parkway with the new Brooklyn-Battery Tunnel, certain owners of property taken were granted extensions of the 15-day period allowed them to vacate the premises, where there were special circumstances such as that a new home to which the owner proposed to remove was not quite completed, or that difficulties were encountered in relocating a small business.-In re Hamilton, Prospect and Third Aves., B'klyn, 14 (16) N.Y.L.J. (7-19-40) 152, Col. 7 F.

¶ 2. Petitioner, who for the past eight years had operated a restaurant at a point where a bridge, requiring demolition of the restaurant building, was to be constructed to carry the Circumferential Parkway across an intersecting avenue, would be granted a stay of eviction until September 3, rather than until November 15 as requested, where petitioner had more than three months' notice of the acquisition of the property, delay in starting work on the bridge abutments would greatly handicap the work and increase the expense, the main part of petitioner's season would end with the Labor Day holidays, and a temporary frame structure might be erected to take care of petitioner's post-season business while work on its permanent adjoining building was under way.-In re Circumferential P'kwy (Coney Is. Ave., B'klyn), 104 (41) N.Y.L.J. (8-17-40) 385, Col. 7 T.

¶ 3. Where proprietors of drug store established over 50 years at a certain site had been notified on January 23 that title to the property would vest in the City on February 3 in connection with a project of the Tri-Borough Bridge Authority, on February 6 the proprietors leased new premises but were unable to get possession until February 15 and extensive alterations were necessary and could not be completed before the end of March, a proceeding by the Authority to dispossess the proprietors was stayed until March 17.-In re Calise (Hamilton Ave. Proceeding), 105 (50) N.Y.L.J. (3-3-41) 964, Col. 3 M.

¶ 4. In connection with acquisition of land for construction of the Brooklyn-Battery Tunnel, applications of various owners and tenants of the business property affected for extension of time to remove to new premises on ground of difficulty in obtaining possession of new business properties or completing remodeling and renovation, were granted.-In re Hamilton Ave. (Henry to Hicks Sts.), 105 (53) N.Y.L.J. (3-6-41) 1027, Col. 4 M.

¶ 5. Owner of property on which was erected a monument works would be granted only a short extension of time to remove from the property, title to which had been acquired by the City, where the property was needed for an approach to carry the Connecting Highway over Grand Central Parkway Extension, the contractor was required to complete the improvement within a short period of time, and any further delay would cause large financial loss to the City and possible postponement of completion of the undertaking.-In re Connecting Highway (Laurel Hill Blvd., B'klyn), 105 (108) N.Y.L.J. (5-9-41) 2092, Col. 5 T.

¶ 6. Inasmuch as all tenants affected by the condemnation proceeding whereby the Port of New York Authority had acquired title to land for purpose of constructing a union bus terminal should have known for more than a year that they would have to relocate, and had actual notice to move for about six months, the work of demolition occurring preliminary to construction would not be delayed by the withholding of orders directing the sheriff to put the Port Authority into possession, notwithstanding difficulty confronting the commercial tenants in acquiring other locations. However, tenants should not be required to vacate before the work on their particular building was to be commenced in accordance with the schedule of operations.-In re Port of N.Y. Authority (Port Authority Motor Bus Terminal), 119 (88)

N.Y.L.J. (5-6-48) 1701, Col. 2 F.

¶ 7. City would be granted an order directing sheriff to put City into possession of two certain private residences used in recent years for furnished rooms or two or three room furnished apartments, where the City had made every reasonable effort to relocate two families which refused to move, the delay had resulted in claims for damages against the City by contractors, and demolition work on adjoining buildings made it unsafe to permit continued residence in such buildings.-In re Brooklyn-Queens Connecting Highway, 118 (28) N.Y.L.J. (8-8-47) 231, Col. 7 M.

¶ 8. Application of City of New York for writ of assistance for removal of tenants in occupancy of premises on sight of the Governor Alfred E. Smith Houses Development was granted, with a stay of execution until March 1, 1949, and with leave to apply for a further stay if any tenant-occupant should not have been offered comparable space at equivalent rental. The Housing Authority should defray moving expenses of each tenant to any temporary quarters and also removal to permanent housing up to $100, and the removed tenants who were eligible should be given preference for suitable accommodations at either the Lillian Wald or Gov. Alfred E. Smith Houses.-In re City of N.Y. (N.Y. City Housing Authority), 121 (12) N.Y.L.J. (1-18-49) 212, Col. 1 F.

¶ 9. Port of New York Authority, which was engaged in clearance of terminal site for construction of the Port Authority Union Motor Bus Terminal, **held** entitled to an order putting it into possession of the premises mentioned in its application, where title to the property had vested in the Port Authority over nine months ago, failure to obtain possession of the premises had already delayed construction, all occupants of the site had known for over a year that they would have to relocate and had actual notice to move for about eight months, the Port Authority had arranged to rehabilitate five apartment houses which would soon be available for possession, and it did not contemplate that any occupant who cooperated would be deprived of his present quarters until other living accommodations were available. The order for possession would be conditioned upon a stay of limited duration to enable the tenants to obtain other living quarters.-In re Port of New York Authority (Port Authority Union Motor Bus Terminal), 192 Misc. 787, 81 N.Y.S. 2d 475 [1948].

¶ 10. Right of City of New York to acquire property for a public use such as the construction of the Brooklyn-Battery Tunnel could not be curtailed by the Commercial Rent Control Law. Hence, application of employer of 10 to 20 people to restrain the City from removing it as occupant of building because of provisions of the Rent Control Law, was denied, particularly since the granting of such an application would require work on the tunnel to be shut down, several thousand men laid off, huge losses sustained and the R.F.C. loan perhaps jeopardized, although the occupant had long notice of the proceeding.-In re City of New York (Far Eastern Manufacturing Co.), 186 Misc. 603, 62 N.Y.S. 2d 303 [1946], aff'd without opinion, 270 App. Div. 1027, 64 N.Y.S. 2d 175 [1946].

¶ 11. Even if the Commercial Rent Control Law were applicable to proceeding by the City for possession of commercial property in connection with the exercise of its right of eminent domain for purpose of constructing the Brooklyn-Battery Tunnel, the City was entitled to possession as it had acquired title to the property subsequent to January 24, 1945, it had an equity in the property of over 25 percent of the purchase price and an interest of 50 percent in the business which it proposed to carry on in such space, and the lease affecting the property had terminated upon vesting of title in the City.-Id.

¶ 12. Admin. Code § B15-36.0 subd. c, offers no authority for the proposition that the City was entitled, in obtaining possession of land, willfully to destroy the owner's personal property.-Boardwalk Stores Corp. v. Moses, 269 App. Div. 506, 911, 56 N.Y.S. 2d 303 [1945].

¶ 13. The City in order to gain some revenue from condemned premises when the contemplated improvement was delayed leased the premises as parking lots. Thereafter, the City could not compel the lessees to deliver up possession on a writ of assistance but was required to proceed against them by summary proceedings.-In re City of New York (West Houston Street) 135 (118) N.Y.L.J. (6-19-56) 9, Col. 5 T.

FOOTNOTES

4

[Footnote 4]: * So in original. (Word misspelled.)

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CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-335 Vesting of title; effect of, upon real property contracts.

a. Where the whole of any lot or parcel of real property, under lease or other contract, shall be taken, all the covenants, contracts and engagements between landlord and tenant or any other contracting parties touching the same, or any part thereof, upon the vesting of title in the city, shall cease and determine and be absolutely discharged. Where part only of any lot or parcel of real property so under lease or other contract shall be so taken, all contracts and engagements respecting the same, upon such vesting of title, shall cease and determine and be absolutely discharged, as to the part thereof so taken, but shall remain valid and obligatory as to the residue thereof.

b. All persons in possession of such premises at the time of the vesting of title thereto in the city, shall at the option of the city become tenants at will of such city and shall, unless the parties otherwise agree in writing, pay the same rent in effect immediately prior to vesting of title or unless within ten days after the vesting of title they shall elect to vacate and give up their respective holdings.

c. Where a person or persons in possession of the premises at the time of vesting of title thereto are the owners thereof, such person or persons shall at the option of the city become tenants at will of such city, unless within ten days after the vesting of title they shall elect to vacate and give up their holdings. Where such person or persons fail to vacate and give up their holdings, and become tenants at will of the city as herein provided, such person or persons shall pay the reasonable value for the use and occupancy of the premises.

d. Where a person in possession is entitled to an award in such proceeding the rental as provided in subdivision b and the sum fixed for use and occupation as provided in subdivision c herein, during the period between the date of vesting of title in the city and the date of the actual payment of the award, shall be a lien against such award, subject only to liens of record at the time of the vesting of title in the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-37.0 added chap 929/1937 § 1

Sub b amended LL 63/1948 § 1

Sub b amended LL 57/1962 § 1

Subs c, d added LL 57/1962 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Award made by City for trade fixtures on theory the fixtures had become realty, **held** payable to chattel mortgagee, notwithstanding contention of mortgagor that failure to timely refile the chattel mortgage during the period between the taking of title by City and payment of the award rendered the mortgage inoperative and extinguished the lien, since the taking of title by the City extinguished all liens so that there was no lien which could have been continued by a refiling. Furthermore, the final decree was determinative of the validity of the chattel mortgage as a lien upon the award.-Application of Konopny (Site for Courthouse and Jail), 173 Misc. 552, 18 N.Y.S. 2d 345 [1939].

¶ 2. In condemnation proceeding, the City of New York took title to the premises free from the mortgage lien thereon, but the equitable lien of the mortgage then attached to the damages awarded for the land (Admin. Code § B15-37.0).-Muldoon v. Mid-Bronx Holding Corp., 287 N.Y. 227 [1942], aff'g 262 App. Div. 734, 27 N.Y.S. 2d 812 [1941], which aff'd without opinion, 175 Misc. 700, 25 N.Y.S. 2d 36 [1941].

¶ 3. First mortgagee in condemnation proceeding is entitled to payment of the principal of the mortgage with 6% interest, which was the rate reserved in the bond to the date when a lawful tender of the principal balance with interest thereon should be made, the mortgagee having the right to sue on its bond or assert a claim against the condemnation award.-In re City of N.Y. (Public School No. 328), 157 (94) N.Y.L.J. (5-16-67) 20, Col. 3 M.

¶ 4. It was to be assumed that the court in the condemnation proceeding fixed the tenant's damages with Admin. Code § B15-37.0 in mind, and hence the amount awarded to the tenant was deemed to include all the damages suffered by her, and the tenant therefore was not entitled to have the rent for the remainder of the term apportioned.-Gardella v. Hagopian, 263 App. Div. 816, 31 N.Y.S. 2d 450 [1941], rev'g 28 N.Y.S. 2d 250 [1941].

¶ 5. Clause of lease providing for a notice to be given by landlord at its option to effect that all engagements between landlord and tenant under the lease should come to an end and the lease become void, ceased to be operative on date of vesting of title to the premises in the City of New York pursuant to provisions of Greater New York Charter § 979 (now Admin. Code § B15-37.0).-Matter of City of N.Y. (W. 92nd St., east of Amsterdam Ave.), 99 (122) N.Y.L.J. (5-26-38) 2553, Col. 6 T.

¶ 6. Greater New York Charter § 979, providing that all contracts between parties respecting property taken in condemnation should upon vesting of title in City cease and determine and be absolutely discharged, **held** to render nugatory provisions in lease authorizing lessor to terminate lease and providing for compensation for improvements erected on property by tenant, and hence notice given to tenant under such provision of lease was ineffective to vest title

to the building in the landlord under terms of the lease, where notice was given after date of vesting of title in City, at which time right of tenant to compensation in condemnation had become fixed.-Matter of City of N.Y. (E. River Dr., Grand St. to E. 14th St.), 99 (150) N.Y.L.J. (6-29-38) 3128, Col. 2 T, at 2 M.

¶ 7. Clause of lease providing for recapture of premises in event premises were required for a waterfront improvement, was inapplicable where improvement contemplated in the condemnation proceeding was not a waterfront improvement (163 N.Y. 134).-Id.

¶ 8. Provision in lease authorizing cancellation thereof in event that lessee should become bankrupt, that a receiver of his assets should be appointed, or that lessee should be divested of its estate "by other operation of law", **held** not to contemplate a divesting of its estate by a condemnation proceeding, as phrase "other operation of law" apparently referred to those acts which result from voluntary action of tenant.-Id.

¶ 9. The vesting of title in the City on behalf of the New York City Housing Authority as landlord, in a capital project proceeding of which the premises in question were subject, nullified all existing leases, and as tenant in possession the tenant in the immediate proceeding became the tenant at will of the landlord by operation of the Administrative Code. Hence, in absence of a subsequent agreement providing for a definite rental, the tenant could only be charged the reasonable value of the use of the premises after the vesting.-N.Y. City Housing Authority v. Philmo Garage Corp., 67 N.Y.S. 2d 48 [1945], rev'd 187 Misc. 413, 63 N.Y.S. 2d 236 [1946].

¶ 10. Where an agreement is made for the use and occupancy of premises, title to which has vested in the City, and in which trade fixtures are contained, and there is no agreement to separately charge a rental for the fixtures acquired by the City and contained in the premises and used by the occupant in connection with the use of the premises, there is no right in the City thereafter to assess a rental charge therefor and to deduct it from the award. Admin. Code §§ B15-37.0 and 384-13.0 were inapplicable.-In re City of N.Y. (Queensborough Bridge, E. 60th St., &c.), 127 (20) N.Y.L.J. (1-29-52) 389, Col. 1 T.

¶ 11. Claim of lien asserted by attorney for claimant against award in condemnation proceeding by City Housing Authority, was rejected, where the attorney was not retained until one week after the vesting of title in the Authority and his claim of attorney's lien was not made a matter of record by filing with the City Comptroller until 16 days after date of vesting of title. Under the circumstances, the attorney acquired no superior lien by virtue of Admin. Code § B15-37.0, nor did he acquire a superior lien by virtue of Judiciary Law § 476.-In re Jefferson Houses, City of N.Y., 118 N.Y.S. 2d 253 [1952].

¶ 12. The lien of the City for use of premises occupied by claimants after title became vested in the city was entitled to priority over the lien of claimant's attorney, where the lien of the attorney was not in existence at the time title vested in the city.-Matter of City of New York (Public School 19), 141 N.Y.S. 2d 80 [1961].

¶ 13. An award in a condemnation proceeding under this section of the Administrative Code of New York City, is reduced, to the extent of arrears of rent due the City after the vesting of title, and both an attorney's lien under § 475 of the Judiciary Law, or any assignment of the award to the attorney under the express provisions of a retainer agreement, are effective, only, as against such reduced balance. Matter of Bruckner Boulevard (Bruckner Express Way), 22 Misc. 2d 374, 197 N.Y.S. 2d 888 [1960].

¶ 14. The lien granted to the City against the condemnation award for the use and occupancy of the premises between the date of vesting of title and payment of the award enures to the benefit of the City only and not to a subsequent purchaser, sponsor of a slum clearance project who purchased the property from the City at a public auction.-Matter of City of New York (Seward Park Slum Clearance Project), 144 (89) N.Y.L.J. (11-7-60) 14, Col. 3 F.

¶ 15. In view of the provisions of this section, petitioner's contention that the City's claim for "rent" was no different than any other claim which had not been reduced to judgment was without merit.-In re City of New York, 146 (48) N.Y.L.J. (9-8-61) 9, Col. 4 F.

¶ 16. The sponsor in an urban renewal project, who is a grantee of property condemned by the city, cannot avail itself of the provisions of this section which create a statutory lien in favor of the city for the use and occupation of condemned property after title vests in the city.-Matter of City of New York, 20 App. Div. 2d 450, 247 N.Y.S. 2d 646 [1963].

¶ 17. Where proceeding out of which attorney's lien sprang was not begun until March 26, 1965 when claim for fixtures was filed in relation to condemnation action but was not a lien of record on November 2, 1964 at the time that title vested in the city it could not take precedence over city's lien for unpaid rent and the fund being insufficient to satisfy the claim of the city for unpaid rent the attorney was entitled to no part thereof. In re Brooklyn Bridge Southwest Urban Renewal Project, 31 A.D. 2d 895, 297 N.Y.S. 2d 835 [1969].

¶ 18. Housing Authority asserted lien for unpaid rent accruing while fixture claimant was in possession from date of vesting of title until he vacated the premises. The reasonable value of the use and occupancy had not been fixed by agreement or by order of the court. **Held:** The Authority's claim was inchoate and did not have the status of a lien.-In re City of N.Y. (John Purroy Mitchel Houses), 150 (106) N.Y.L.J. (12-2-63) 15, Col. 1 T.

¶ 19. The provisions of this section creating a lien for rent is limited to the City of New York and is not applicable to the New York City Housing Authority.-In re City of New York (Gerard Swope Houses), 147 (109) N.Y.L.J. (6-6-62) 14, Col. 5 M.

¶ 20. Under subdivision b of this section regarding payment of rent after vesting of title a subtenant comes within the meaning of person in "possession" of premises.-City of N.Y. v. Robbins Men and Boys Wear Corp., 75 Misc. 2d 104, 347 N.Y.S. 2d 249 [1973].

¶ 21. City had authority to raise rent as to title vesting tenant since reasonable interpretation of statute is that the rent payable before vesting shall continue until such time as it is changed so that there shall be no hiatus in the amount or existence of the rental obligation because of the title vesting.-Spiegelberg v. Gomez, 58 A.D. 2d 548 [1977], aff'd 44 N.Y. 2d 920 [1978].

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NYC Administrative Code 5-336

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Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-336 Rights of certain owners of property condemned for public use.

1. Notwithstanding any general, special or local law to the contrary, where rent is paid for the use of land on which a one or two family dwelling has been constructed, in the event of condemnation for public use a separate award shall be made to the owner of the land and a separate award shall be made to the owner of the dwelling except where there is a written agreement to the contrary.

2. In no event shall the total of the awards, as above, be in excess of what a single award would have been.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-37.1 added chap 912/1965 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Despite the provisions of this section, when the City legally closes a street in the public interest under § E15-3.0, no actionable damage in favor of nonabutting owners arises because of the so-called trust unless that block and

the bed of the street thereon were prior to its public opening owned by a common grantor.-Matter of City of New York (East 5th St.), 134 (89) N.Y.L.J. (11-7-55) 6, Col. 6 F.

¶ 2. Streets are held by the City in trust for street uses only and the only way in which the Board of Transportation could obtain the use of a street for a bus repair shop and garage would be through a street closing proceeding. Inasmuch as the rapid transit system is a proprietary rather than a sovereign function, public utilities maintaining installations in the street which was closed were entitled to be compensated for the value of their sub-surface pipes and conduits and for their actual loss of the right of unobstructed passage through the street.-Matter of City of New York (Gillen Place), 304 N.Y. 215, 106 N.E. 2d 897 [1952].

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CHAPTER 3 CONDEMNATION PROCEDURES

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§ 5-337 Title acquired for streets and courtyards.

a. The title acquired in real property required for any streets shall be kept in trust, that the same be appropriated and kept open for, or as part of a public street, forever, in like manner as the other streets in the city are and of right ought to be.

b. The mayor, at the time of authorizing the proceedings in which lands are to be acquired for courtyard purposes, may determine whether the fee or an easement shall be acquired in lands required therefor, and the mayor may prescribe such conditions and limitations on the title so to be acquired and as to the temporary or permanent use of the land so to be acquired as he or she may deem proper. The title which the city shall acquire to the lands required for courtyard purposes shall be such as the mayor shall determine. Such title shall be held by the city subject to such limitations and conditions as to title thereto, or as to the use thereof, as the mayor shall prescribe. If not inconsistent with such limitations and conditions as to title or as to the use, land acquired for courtyard purposes may be devoted to general street uses whenever the board of estimate shall determine that the public interest requires such use.

c. The title in fee acquired by the city to real property, except for street and courtyard purposes, shall be a fee simple absolute.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-38.0 added chap 929/1937 § 1

Amended chap 100/1963 § 264

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SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-338 Title acquired for streets; subject to certain easements.

If any individual or corporation, before the entry of the order granting the application to condemn, has acquired any easement for the purpose of laying or maintaining in the real property to be acquired for street purposes in a proceeding pursuant to this subchapter, underground pipes or conduits for the distribution of water, gas, steam or electricity, or for pneumatic service, such easement shall not be extinguished, but the title to the real property so to be acquired for the purposes authorized shall be taken subject to such easement; provided, however, that nothing herein contained shall be so construed as to limit the power of the city to acquire by purchase or by condemnation proceedings the entire plant or service of such individual or corporation, or to acquire such easement in such street in any other appropriate proceedings.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-39.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Streets are held by the City in trust for street uses only and the only way in which the Board of Transportation could obtain the use of a street for a bus repair shop and garage would be through a street closing proceeding. Inasmuch as the rapid transit system is a proprietary rather than a sovereign function, public utilities maintaining installations in the street which was closed were entitled to be compensated for the value of their sub-surface pipes and conduits and for their actual loss of the right of unobstructed passage through the street.-Matter of City of New York (Gillen Place), 304 N.Y. 215, 106 N.E. 2d 897 [1952].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-339

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-339 Title acquired for streets; subject to rights of railroads.

The city may acquire for street purposes title in fee or to an easement, as may be determined by the mayor to any real property heretofore acquired through purchase or condemnation by any railroad corporation in the boroughs of Brooklyn and Queens for its corporate purposes and which real property lies within the lines of, is adjacent to, adjoins or separates any street or any part or parts thereof, now or hereafter laid out upon the city map, where the state commissioner of transportation certifies that the ownership or exclusive use of such real property or easement thereover is no longer necessary to the carrying out of such corporate purposes. Such title or easement, however, shall be acquired by the city subject to the right of the corporation to continue to use such real property during the term of its corporate existence and for its corporate purposes, or in lieu thereof to use for a like term and like purposes such other portion of the streets within which such real property shall lie, as the public service commission shall designate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-40.0 added chap 929/1937 § 1

Amended chap 100/1963 § 265

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-340

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 1 CONSOLIDATED CONDEMNATION PROCEDURE

§ 5-340 Title acquired for intercepting sewer purposes; over railroad lands.

Notwithstanding any provisions of the railroad law or of any other statute, general or special, the city is hereby authorized and empowered to acquire title in fee or to a permanent or temporary easement, as may be determined by the mayor, in, under, through, over and across the lands of any railroad company, in any borough of the city, necessary to construct and maintain an intercepting sewer and the appurtenances thereunto appertaining, including grit chambers, in any such borough.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B15-41.0 added chap 929/1937 § 1

Amended chap 231/1941 § 1

Amended chap 100/1963 § 266

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-341

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-341 Definitions.

As used in this subchapter, unless otherwise expressly stated, or unless the context or subject matter otherwise requires, the following terms shall mean:

1. "Improvement": The laying out, widening, extending or relocating a park, public place, highway or street, or the acquisition of title to real property required for laying out, widening, extending or relocating a park, public place, highway or street.

2. "Excess lands", or "additional lands", or "additional real property": The real property in addition to the real property needed or required for laying out, widening, extending or relocating a park, public place, highway or street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-1.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-342

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-342 Construction.

The provisions of this subchapter shall be construed as supplementing and extending the effect of the provisions of subchapter one of this chapter so as to provide for the acquisition of title to additional lands in connection with an improvement and nothing in this subchapter contained shall be construed as limiting the effect of the provisions of such subchapter one in their application to the acquisition of title to real property required for an improvement when acquired in a proceeding in which additional lands shall or shall not be acquired, except as the provisions of such subchapter one are in this subchapter expressly so limited in their application.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-2.0 added chap 929/1937 § 1

Amended LL 50/1942 § 28

Amended chap 100/1963 § 267

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-343

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-343 Power to condemn excess lands.

The city, in acquiring real property for any improvement, may acquire more real property than is needed for the actual construction of the improvement. The mayor may authorize the city to acquire additional real property in connection with any improvement, and direct that the same be acquired with the real property to be acquired for the improvement. Such additional real property, however, shall be not more than sufficient to form suitable building sites abutting on the improvement. The title which the city shall acquire to additional real property shall in every case be a fee simple absolute. Additional real property shall be acquired by the city in connection with a street improvement only when the title acquired for the improvement shall be in fee. When the mayor shall have authorized the acquisition of title to additional real property in connection with an improvement, title to such additional real property shall be acquired by the city in the manner and according to the procedure, except in such respects as in this subchapter set forth, provided for the acquisition of title to the real property required for the improvement and in the same proceeding in which title to the real property required for the improvement shall be acquired; except further that such acquisition shall be made in compliance with the appropriate provisions of the eminent domain procedure law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-3.0 added chap 929/1937 § 1

Amended chap 100/1963 § 268

Amended chap 840/1977 § 134

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-344

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-344 Amendment of improvement proceeding to include or exclude excess lands.

After the institution of a proceeding for an improvement, the mayor may amend the proceeding by authorizing the acquisition of lands additional to those required for the improvement, provided that title shall not have vested in the city to any parcel of real property to be acquired for the improvement within the block, between legally existing public streets, embracing the additional lands sought to be acquired. The mayor may also amend any proceeding so as to exclude any or all additional lands being acquired in the proceeding, provided title to such additional lands shall not have vested in the city. Thereafter the proceeding shall be conducted in the same manner as if the additional lands included or excluded by the amendment had been included or had not been included in the proceeding at the time of the institution thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-4.0 added chap 929/1937 § 1

Amended chap 100/1963 § 269

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-345

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-345 Damage maps to be prepared.

When the mayor shall authorize the acquisition of additional real property in connection with any improvement, the mayor shall cause to be prepared and shall approve a map showing the real property to be acquired for the improvement and such additional real property in connection with the real property to be acquired for the improvement, and such map shall be filed, prior to the application to condemn the same, as follows: One copy thereof in the office in which conveyances of real property are required by law to be recorded in each county in which the real property or any part thereof shown on such map is situated; one copy thereof in the office of the corporation counsel; one copy thereof in the office of the president of each borough in which the real property or any part thereof shown on such map is situated; and one copy thereof in the office of the mayor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-5.0 added chap 929/1937 § 1

Amended chap 100/1963 § 270

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-346

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-346 Petition and notice.

When the mayor shall have authorized the acquisition of additional real property in connection with any improvement, such additional real property shall be separately described in the notice of application to condemn by the supreme court and in the petition presented on any such application, and separately shown on the rule map attached to the petition and on the damage map in the proceeding, and such notice and petition shall state what part of the real property to be condemned is required for the improvement, and what part thereof is to be acquired as additional real property. The acquisition of such additional real property, when authorized by the mayor, shall be deemed to be for a public purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-6.0 added chap 929/1937 § 1

Amended chap 100/1963 § 271

Amended chap 840/1977 § 134

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-347

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-347 Vesting of title; seizin*2 ; possession.

a. In a proceeding in which additional real property shall be acquired, the mayor shall direct that on the date of entry of the order granting the application to acquire by the supreme court the title to the whole but not less than the whole of such additional real property to be acquired in the proceeding shall vest in the city. Such order shall also direct the vesting in such city, simultaneously, of the title to all of the real property being acquired in the proceeding for the improvement. In a proceeding involving the acquisition of title to additional real property required for a street, highway or public place, however, the mayor shall not be required to vest, at one time, the title to all the additional real property to be acquired, provided that:

1. In vesting title to parts of such additional real property every such part shall be of at least a block length along the improvement, and no fractional portion of a block shall be contained in any such part, and

2. The mayor shall also direct that all the real property required for the street, highway or public place in such block or blocks shall vest in the city simultaneously.

b. Upon the date of the entry of the order granting the application to acquire, the city shall be and become seized in fee simple absolute to such additional real property. The reversal on appeal of the final decree, or of any part thereof, shall not operate to divest the city of title to any of the real property so acquired. In a proceeding in which excess lands shall be acquired, the mayor shall not have power to direct the vesting of title in the city to the real property required for

the improvement without also directing the vesting of title in the city, simultaneously, to the excess lands being acquired in the proceeding in connection with the improvement, except that the mayor may direct, in the manner provided in subdivision a of this section, that title to the real property required for a street, highway or public place shall vest in the city in any block of such street, highway or public place abutting which no excess lands are taken.

c. In any proceeding in which excess lands shall be acquired, when title to any part less than the whole of the real property required for the street, highway or public place in any one block thereof, between legally existing public streets, shall vest in the city, title to the remainder of the real property required for the street, highway or public place in the same block and title to the additional lands to be acquired in the proceeding abutting on the street, highway or public place in the same block, shall vest in the city simultaneously. The reversal on appeal of the final decree of the court, or of any part thereof, shall not operate to divest the city of title to any of the real property so acquired for the street, highway or public place in the same block or to the additional lands abutting thereon.

d. Upon the vesting of title, as in this section provided, to any such additional lands and to lands required for the improvement, the city, or any person acting under its authority, may immediately, or at any time thereafter, take possession of the additional lands so vested and of the real property required for the improvement so vested, or any part or parts thereof, in accordance with the provisions of the eminent domain procedure law pertaining to possession.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-7.0 added chap 929/1937 § 1

Subs a, b amended chap 100/1963 § 272

Amended chap 840/1977 § 135

FOOTNOTES

2

[Footnote 2]: * So in original. (Word misspelled.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-348

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-348 Ascertainment of damages where part of parcel is taken for an improvement and remainder as excess lands.

a. Where part of a parcel of real property shall be acquired for an improvement, and the remainder or a portion of the remainder of such parcel in the same ownership shall be acquired in the same proceeding as excess lands, the portion of the damages due to the acquisition of the real property required for the improvement shall be determined and stated separately from the entire damage due to each such owner. In determining the damages due to the acquisition of so much of such parcel as may be required for the improvement, the same rule shall be applied as would govern the determination of damages for the taking of the real property required for the improvement in case no excess lands were acquired. Where part of a parcel of real property shall be acquired for the improvement, and the remainder or a portion of the remainder thereof in the same ownership shall be acquired in the same proceeding as excess lands, the damages due to the acquisition of title to the real property required for the improvement, shall, in every case, equal the amount which would be awarded to such owner in case only that part of his or her real property, which shall be required for the improvement, were acquired.

b. Nothing in this section contained shall be construed to authorize the award to an owner, part of whose real property is taken for the improvement, and the remainder or a portion of the remainder of whose property is taken as additional lands, any greater amount of compensation than such owner shall be entiled to by reason of the taking of his or her real property for the improvement and as additional lands, considered together as one parcel.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-8.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-349

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-349 Payments of awards and interest.

The provisions of subchapter one of this chapter relative to the payment by the comptroller of sums awarded as damages and interest thereon, and to the advance payment on account of such damages, and relative to the assignment or pledge of awards, shall apply to awards or damages for the taking of additional lands. Interest on the entire amount due to the owner for the real property acquired for the improvement, or for the excess lands, or for both, from the date of the vesting of title thereto to the date of the final decree shall be awarded as a part of such owner's compensation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-9.0 added chap 929/1937 § 1

Amended chap 840/1977 § 136

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-350

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 2 EXCESS LANDS ACQUISITION PROCEDURE

§ 5-350 Sale and lease of acquired excess lands.

a. After title to the real property required for the improvement, and to the additional lands, shall have vested in the city, the additional lands may be either held and used by the city, or sold or leased in the manner provided by the charter as long as consistent with the provisions of section four hundred six of the eminent domain procedure law. The board of estimate may provide that such additional lands shall be sold or leased subject to such restrictions, covenants or conditions as to location of buildings with reference to the real property acquired for the improvement, or the height of buildings or structures, or the character of construction and architecture thereof, or such other covenants, conditions or restrictions as it may deem proper. Such additional lands shall be sold or leased subject to such restrictions, covenants or conditions, if any, as the board of estimate may have prescribed, which shall be set forth in the instrument of conveyance or lease.

b. Nothing in subdivision b of section three hundred eighty-four of the charter limiting the term of leases by the city to a different period shall apply to a lease by the city, acting through the board of estimate, of such additional real property for housing purposes, including stores on the street level.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C15-10.0 added chap 929/1937 § 1

Amended chap 840/1977 § 136

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-351

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-351 Definitions.

As used in this subchapter unless otherwise expressly stated or unless the context or subject matter otherwise requires, the following terms shall mean and include:

1. "Real Estate": All uplands, lands under water, the water of any lake, pond or stream, all water rights or privileges, and any and all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal and equitable, in lands or water, or any privilege or easement, thereunder, including terms for years, including all real estate heretofore or hereafter acquired or used for railroad, highway or other public purposes, and liens thereon by way of judgment, mortgage or otherwise, and also all claims for damage to such real estate.

2. "Commissioner": The commissioner of the department of environmental protection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-352

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-352 Construction.

a. The provisions of this subchapter shall apply to the acquisition by the city of real estate outside the city for the purposes of water supply.

b. The provisions of section 5-329 of the code shall be construed to apply to this subchapter.

c. Nothing in this subchapter contained shall be deemed to repeal the provisions of chapter nine hundred forty-two of the laws of eighteen hundred ninety-six except where said chapter may be inconsistent with the provisions of the eminent domain procedure law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-2.0 added chap 929/1937 § 1

Sub c amended chap 840/1977 § 137

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-353

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-353 Authority to acquire real estate outside the state of New York.

The city is authorized to acquire by purchase, lease, or otherwise, lands or water in any other state, or rights, interests, or privileges in, to or over any lands or water in any other state for the purpose of supplying water to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-3.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-354

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-354 Acquisition of real estate.

In all cases where the commissioner shall hereafter enter upon, acquire, take or use, or shall deem it necessary to enter upon, acquire, take or use, any real estate, for the purpose of maintaining, preserving or increasing the supply of pure and wholesome water for the use of the city, or for the purpose of preventing the contamination or pollution of the same, the commissioner is authorized in behalf, and in the name of the city of New York, pursuant to the provisions of this subchapter, and pursuant to the provisions of the eminent domain procedure law, to acquire all rights, titles and interests in and to such real estate, by whomsoever the same may be held, enjoyed or claimed, and to pay for and extinguish all claims or damages on account of such rights, titles or interests, or growing out of such taking or using.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-4.0 added chap 929/1937 § 1

Amended chap 840/1977 § 138

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Administrative Code of the City of New York

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NYC Administrative Code 5-355

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-355 Condemnation proceedings.

a. It shall be lawful for the city to acquire by condemnation any real estate or any interest therein that may be necessary in order to acquire the sole and exclusive property in the source or sources of water supply, which may be needed for the supply of the public waterworks of the city, and to wholly extinguish the water rights of any person or corporation therein, with the right to lay, relay, repair and maintain aqueducts, conduits and water pipes with the connections and fixtures on the lands of others, and, if necessary, to acquire by condemnation lands for such purpose in any county or counties through which it may be necessary to pass in conducting such waters to the city. The city shall have the right to intercept and to direct the flow of water from lands of riparian owners, and from persons owning or interested in any water, and the right to prevent the flow or drainage of noxious or impure matters from the lands of others into its reservoirs or sources of supply.

b. The city, however, shall not have power to acquire or to extinguish the property rights of any person or corporation in or to any water rights that at the time of the initiation of proceedings for condemnation are in actual use for the supply of the waterworks of the people of any other city, town or village of the state, or for the supply and distribution of waters to the people thereof, or which in the opinion of the court on such proceedings may reasonably become necessary for such supply, or to take or use the water from any of the canals of the state, any canal reservoirs, or waters used exclusively as feeders for canals, or from any of the streams acquired by the state for supplying the canals with water.

c. The city shall not acquire by condemnation any property or factory in Putnam county which has been used for twenty-five years for the manufacture of food products; nor acquire by condemnation any lands, easements, streams or water, or water rights, on the east branch of the Croton river, below the village of Brewster in the town of Southeast, Putnam county, for the construction of any reservoir, in which water will or may be impounded at a higher level than three hundred and ten feet above tide water at the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-5.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 5-356

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-356 Acquisition of real estate used for railroad, highway or other public purpose.

a. The persons or corporations owning real estate, heretofore or hereafter acquired or used for railroad, highway or other public purpose, or claiming interest therein shall be allowed the perpetual use, for such purposes, of the same or of such other real estate to be acquired for the purposes of this title as will afford a practicable route or location for such railroad, highway or other public purpose, and in the case of a railroad, commensurate with and adapted to its needs.

b. Such persons or corporations shall not directly or indirectly, be subject to expense, loss or damage by reason of changing such route or location, but such expense, loss or damage shall be borne by the city.

c. In case such real estate shall be taken or affected for the purposes of this subchapter, there shall be designated upon the maps referred to in this subchapter, and there shall be described in the petition referred to, such portion of the other real estate shown, on such maps and described in such petition, as it shall be proposed to substitute in place of the real estate then used for such railroad, highway or other public purposes. The supreme court, at the special term to which the petition is presented, or at such other special term as the consideration thereof may be noticed for, or adjourned to, shall either approve the substituted route or place, or refer the same back to the commissioner for alteration or amendment. The court may refer the same back with such directions, or suggestions as it may deem advisable, and as often as necessary, and until the commissioner shall determine such substituted route or place as may be approved by such court. An appeal from any order made by the court at special term, under the provisions of this section may be taken by any person or corporation interested in and aggrieved thereby, to the appellate division of the

judicial department in which the real estate is situated, and shall be heard as a nonenumerated motion.

d. A justice of the supreme court before whom the proceedings are brought, in determining the compensation to be made to the persons or corporations owning such real estate, or claiming interest therein, shall include in the amount of such compensation such sum as shall be sufficient to defray the expenses of making such change of route and location and of building such railroad or highway. The court, subject to review by the appellate division, shall determine what reasonable time after payment of the awards to the persons or corporations entitled thereto shall be sufficient within which to complete the work of making such change. The city or the commissioner shall not be entitled to take possession or interfere with the use of such real estate, for such purposes, before the expiration of such time. That time may subsequently be extended by the court (subject to such review), upon sufficient cause shown. After the expiration of the time so determined or extended, no use shall be made of such real estate which shall cause pollution of the water in any reservoir, or interfere with its flow.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-6.0 added chap 929/1937 § 1

Sub d amended chap 840/1977 § 139

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-357

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-357 Maps; preparation and filing of.

a. Whenever, in the opinion of the commissioner, it shall be necessary to acquire any real estate for any of the purposes of this subchapter, or for the purpose of extinguishing any right, title or interest thereto or therein, such commissioner, for and on behalf of the city shall prepare a map or maps of the real estate which in his or her opinion it is necessary to acquire for such purposes, and shall submit the same to the mayor for approval. The mayor may adopt, modify or reject such maps in whole or in part, and may require others to be made instead.

b. A copy of the map or maps so prepared, with a certificate of the adoption thereof, signed by the commissioner and the mayor, shall be filed in the office of such commissioner and be open to public inspection, and shall be the map or maps of the real estate to be acquired, subject to such changes or modifications as the commissioner may from time to time deem necessary for the more efficient carrying out of the provisions of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-7.0 added chap 929/1937 § 1

Amended chap 100/1963 § 273

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-358

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-358 Hearing by the mayor.

The mayor, prior to the final adoption of such map or maps, shall afford to all persons interested a full opportunity to be heard respecting such map or maps and the acquisition of the real estate shown thereon, and shall give public notice of such hearing, by publishing a notice, once in each week, for three successive weeks in the City Record, and in two papers published in the county or counties in which the real estate to be acquired or affected is situated, and in two daily papers in the city. At such hearing or hearings, testimony may be produced by the parties appearing before it in such manner as the mayor may determine, and he or she is hereby authorized to administer oaths and issue subpoenas in any such proceeding pending before him or her.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-8.0 added chap 929/1937 § 1

Amended chap 100/1963 § 274

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-359

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-359 Entry upon lands to make maps.

The commissioner, his or her agents, engineers, surveyors, and such other persons as may be necessary to enable him or her to perform his or her duties under this subchapter, are hereby authorized, pursuant to section four hundred four of the eminent domain procedure law, to enter upon real estate, and any land or water on or contiguous to the line, course, site or track of any pond, lake, stream, reservoir, dam, aqueduct, culverts, sluices, canals, bridges, tunnels, pumping works, blow-offs, shafts and other appurtenances for the purpose of making surveys or examinations and preparing and posting the notices required by this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-9.0 added chap 929/1937 § 1

Amended chap 840/1977 § 140

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-360

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-360 Damage maps; preparation and filing of.

a. After the final adoption of such map or maps, the commissioner shall prepare six similar maps or plans of the proposed site of any dam, reservoir, aqueduct, sluice, culvert, canal, pumping works, bridges, tunnels, blow-offs, ventilating shafts, and other necessary appurtenances for the proper completion of the work so proposed by the commissioner. Upon such maps there shall be:

1. Laid out and numbered the various parcels of real estate, on, over or through which the same are to be constructed and maintained, or which may be necessary for the prosecution of the work authorized by this subchapter.

2. Delineated the natural and artificial division lines existing on the surface of the soil at the time of the survey.

3. Plainly indicated thereon, of which parcels the fee or other interest is to be acquired.

b. Such maps may be made and filed in sections. One or more sections may be determined before the maps of the whole construction are completed. The proceedings herein authorized may, in like manner be taken separately, in reference to one or more of such sections, before the maps of the whole are filed. The work upon one or more of such sections may be begun before the maps of the remaining sections are filed. The map or maps, when adopted by the commissioner and mayor, shall be by such commissioner transmitted to the corporation counsel, with a certificate of approval written thereon and signed by the commissioner and the mayor.

c. The corporation counsel shall cause one of such maps to be filed in the office of the clerk of each county in which any real estate laid out on such maps shall be located, except that in any county in which there may be a register's office, such map shall be filed therein, instead of with the county clerk. The fourth, fifth and sixth maps shall be disposed of in the manner indicated in section 5-366 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-10.0 added chap 929/1937 § 1

Sub b amended chap 100/1963 § 275

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-361

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-361 Agreements with owners of real estate or other persons.

a. The commissioner, subject to the approval of the mayor, may agree with the owners or persons interested in any real estate laid down on such maps upon the amount of compensation to be paid to such owners or persons interested for the taking or using and occupying such real estate. In case any such real estate shall be owned, occupied or enjoyed by the people of this state, or by any county, town or school district within this state, such rights, titles, interests or properties may be paid for upon agreement respectively with the New York State office of general services, who shall act for the people of the state, with a chairperson and a majority in numbers of the board of supervisors of any county, who shall act for such county, and with the supervisor and commissioners of highways in any town, who shall act for such town, and with the trustees of any school district, who shall act for such district, and with the president and a majority of the board of trustees of any incorporated village. The New York State office of general services shall have power to grant to the city any real estate belonging to the people of this state which may be required for the purposes indicated in this subchapter, on such terms as may be agreed on between them and such commissioners. If any real estate of any county, town or school district is required by the city for the purposes of this subchapter, the majority of the board of supervisors, acting for such county, or the supervisors of any such town, with the commissioners of highways therein, acting for such town, or the trustees of any school district, acting for such district, or the president and majority of trustees of any incorporated village, may grant or surrender such real estate for the compensation agreed upon between such officers respectively and such commissioners.

b. In case any real estate required by the city for the purpose of this subchapter shall be vested in any trustee not

authorized to sell, release and convey the same, or in any infant, idiot, or person of unsound mind, the supreme court shall have power, by a summary proceeding, on petition, to authorize and empower such trustee or general guardian or committee of such infant, idiot, or person of unsound mind, to sell, convey, or surrender the same to the city on such terms as may be just. In case any such infant, idiot, or person of unsound mind has no general guardian or committee, the court may appoint a special guardian or committee for the purpose of making such sale, surrender, or conveyance, and may require such security from such general or special guardian or committee as such court may deem proper. Before any conveyance or release authorized by this subchapter shall be executed, the terms on which the same shall be executed shall be reported to the court on oath, and if the court shall be satisfied that such terms are just to the party interested in such rights, titles, interests, or properties, the court shall confirm the report and direct to be executed the proper conveyance or release, which shall have the same effect as if executed by an owner of such rights, titles, interests or properties having legal power to sell, surrender, and convey the same.

c. In case any person owning private property not actually taken or proposed to be taken, pursuant to the provisions of this subchapter, but which will in such person's opinion be damaged, the commissioner representing the city, with the approval of the mayor, may agree with such person as to the amount of such damages, and if such agreement cannot be made, such damages, if any, shall be determined in the same manner provided for ascertaining and determining the value of real estate taken under such proceedings, and the amount of such damages so agreed upon or so determined shall be payable and collectible in the same manner as is provided in the case of awards made in such proceedings.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-11.0 added chap 929/1937 § 1

Amended chap 100/1963 § 276

Sub c amended chap 840/1977 § 141

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § D15-11.0 applies only to proceedings instituted by the Commissioner of Water Supply, Gas and Electricity, and not to a proceeding by the Board of Water Supply under Admin. Code, title K.-In re Schiff (Gold), 105 (63) N.Y.L.J. (3-18-41) 12221, Col. 3 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-362

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-362 Institution of proceedings.

After such maps shall have been filed, as provided for in section 5-360 of this subchapter, the corporation counsel, upon first giving the notice required in section 5-363 of this subchapter, shall apply, pursuant to section four hundred two of the eminent domain procedure law, to the supreme court, at a special term thereof to be held in the judicial district in which the real estate to be acquired or affected is situated, for an order to acquire such property. Upon such application the corporation counsel shall in addition to the other requirements of section four hundred two of the eminent domain procedure law, present to the court a petition, signed and verified by the commissioner, setting forth the action theretofore taken by such commissioner and the mayor, and the filing of such maps. Such petition shall contain a general description of all the real estate to, in or over which any title, interest, right or easement is sought to be acquired for the city for the purposes of this subchapter, each parcel being more particularly described by a reference to the number of such parcel, as given on such map, and the title, interest or easement sought to be acquired to, in or over such parcel, whether a fee or otherwise, shall be stated in the petition.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-12.0 added chap 929/1937 § 1

Amended chap 100/1963 § 277

Amended chap 840/1977 § 142

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-363

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-363 Notice of the proceeding.

a. The corporation counsel in addition to the notice required in section four hundred two of the eminent domain procedure law shall give notice in the City Record, and in two public newspapers published in the city. A statement of the boundaries of the real estate to be acquired or affected, with separate enumerations of the numbers of the parcels to be taken in fee, and of the numbers of the parcels in which any interest or easement is to be acquired, with a reference to the date and place of filing the map or maps shall be sufficient description of the real estate sought to be so taken or affected. The notice in the City Record and public newspapers in the city shall be published and posted in accordance with the applicable provisions on publication and posting contained in subdivision (B) of section four hundred two of the eminent domain procedure law.

b. At the time and place mentioned in such notice, unless the court shall adjourn such application to a subsequent day, and in that event, at the time to which the same may be adjourned, the court, upon due proof to its satisfaction of such publication and posting, and upon filing the petition, shall make an order which shall not only grant the petition, but satisfy the other requirements of paragraph five of subdivision (B) of section four hundred two of the eminent domain procedure law. After satisfaction of the applicable provisions of the eminent domain procedure law, the court shall ascertain and appraise the compensation to be made to the owners and all persons interested in the real estate laid down on such maps, as proposed to be taken or affected for the purposes indicated in this subchapter. There shall be submitted to the same judge, at one time, however, only as many parcels as can reasonably be passed upon and an award made therefor, by the court, within the limits of one year from entry of the order granting the petition.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-13.0 added chap 929/1937 § 1

Amended chap 840/1977 § 143

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-364

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-364 Vesting of title; removal of buildings.

a. On entry of the order and filing of the acquisition map, the city shall be and become seized in fee of all those parcels of real estate which are shown on the map hereinbefore referred to made by the commissioner of which it has been determined by the commissioner that the fee shall be acquired, and shall be entitled to take and hold such interest in the parcels of land in which it has been determined that the fee shall not be acquired, as has been shown on such map and described in the petition. The city may upon satisfaction of the requirements of the eminent domain procedure law, take possession of the lands shown on such map, or any part or parts thereof.

b. The buildings or improvements thereon, however, shall not be removed or disturbed within one year from the date of the completion of notice of entry of the order as required by section five hundred two of the eminent domain procedure law unless ten days' notice is given to the owner or to the owner's attorney, of the intention to make such removal, and affording the owner an opportunity to examine the property with a justice of the court and such witnesses as the owner may desire. If the owner of the property cannot be found with due diligence, and there is no attorney representing the property or parcel, before removing, disturbing or destroying any of the buildings or improvements, the representatives of the city or the corporation counsel shall cause measurements to be made of the buildings and photographs to be taken of the exterior views thereof, which measurements and photographs shall be at the disposition, thereafter, of the claimant or the claimant's attorney in case such claimant or attorney shall appear and demand the same before the claim shall have been tried.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-15.0 added chap 929/1937 § 1

Amended chap 840/1977 § 145

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-365

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-365 Presentation of claims.

Every owner or person in any way interested in any real estate taken, affected or entered upon or used and occupied for the purposes contemplated by this subchapter, and any owner or person interested in real estate contiguous thereto, and which is affected by the acquisition, use or occupation of the real estate shown on such map, whether such contiguous real estate is shown on the maps or not, if they intend to make claim for compensation for such taking, entering upon, using or occupying, shall, within one year after completion of notice of entry of the order, file a statement of claim, pursuant to section five hundred three of the eminent domain procedure law, and shall thereupon be entitled to offer testimony and to be heard by the court touching such claim and the compensation proper to be made, and to have a determination made by such court as to the amount of such compensation. Every person, corporation, or body politic, neglecting or refusing to present such claim within such time shall be deemed to have surrendered his, her or its title or interest in such real estate or his, her or its claim for damages thereto, except so far as they may be entitled, as such owner or person interested, to the whole or a part of the sum of money awarded by the court as a just compensation for taking, using and occupying, or as damages for affecting the real estate owned by such person, corporation, or body politic.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-16.0 added chap 929/1937 § 1

Amended chap 840/1977 § 145

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-366

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-366 Proceedings before the court.

a. It shall be the duty of the corporation counsel to furnish copies of the maps provided for in this subchapter to the court. The court shall view the real estate laid down on such maps, and shall hear the proofs and allegations of any owner, lessee or other person in any way entitled to, or interested in such real estate, or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the city.

b. After the testimony is closed, the court shall without unnecessary delay, ascertain and determine the just compensation which should be made by the city to the owners, or to the persons interested in the real estate sought to be acquired or affected by such proceedings.

c. In the ascertainment of the compensation for any property or property rights so acquired, such compensation shall be based upon the actual values of the property or the interest acquired therein at the time of its taking, and there shall not be taken into consideration any prospective or speculative value, based upon the possible, probable or actual future use of such property, or property rights, if the same had not been acquired by the city for public use.

d. The court shall determine:

1. The height to which the waters of any lake, pond, or natural stream concerning which such proceedings were instituted may be raised and the point to which such waters may be drawn down by the city, such determination to be

made before any award of damages shall be made on account of such proposed raising or depression of such waters.

2. The sum to be paid to the general or special guardian or committee of an infant, idiot or person of unsound mind, and to the attorney appointed by the court to attend to the interests of any unknown owner or party in interest, or to the attorney or guardian of any party in interest whose interests are unknown or the interest of any person or persons not in being.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-18.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-367

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-367 Tentative decree.

a. The tentative decree of the court shall generally contain, in addition to one or more maps involved in the proceedings, the following:

1. A brief description of the several parcels of real estate taken or affected, with a reference to the map as showing the location and boundaries of each parcel.

2. A statement of the sum estimated and determined upon by the court as a just compensation to be made by the city to the owners of or persons entitled to or interested in each parcel so taken or affected.

3. A statement of the names of respective owners of or persons entitled thereto or interested therein. In all cases where the owners and parties interested, or their respective estates or interests are unknown, or not fully known to the court, it shall be sufficient for the court to set forth and state, in general terms, the respective sums to be allowed and paid to the owners thereof and parties interested therein generally, without specifying the names or estates or interests of such owners or parties interested or any or either of them. The court shall also recommend such sums as shall seem to the court proper to be allowed to the parties or attorneys appearing before the court, as costs, counsel fees, expenses and disbursements, including reasonable compensation for witnesses as provided in sections seven hundred one and seven hundred two of the eminent domain procedure law.

b. The court, in its discretion, may take up any specified claim or claims, and finally ascertain and determine the compensation to be made thereon, and make a separate finding with reference thereto, annexing to such finding a copy of so much of the maps as displays the parcel or parcels so reported on. Such finding, as to the claims therein specified, shall be the finding required in this subchapter, and the subsequent action with reference thereto shall be had in the same manner as though no other claim was embraced in the proceeding, which, however, shall continue as to all claims upon which no such determination and finding shall have been made.

c. The tentative decree, shall be filed in the office of the clerk of the county in which the real estate shall be situated.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-19.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-368

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-368 Tentative decree; notice of motion to confirm; confirmation thereof.

a. The corporation counsel, or in case of his or her neglect to do so within ten days after receiving notice of the filing of the tentative decree, any person interested in the proceedings, shall give notice that such decree will be presented for confirmation to the supreme court, at a time and place to be specified in such notice. The notice shall contain a statement of the time and place of the filing of the decree, and shall be published in each of the newspapers referred to in section 5-358 of this subchapter, once in each week, for at least four weeks immediately prior to the presentation of such decree for confirmation.

b. Upon the hearing of the application for the confirmation thereof, such court shall confirm such decree in whole or in part after hearing any objections thereto and amending the same if proof presented justifies such amendments. As to the whole or any portion of the decree confirmed, the court shall make an order, containing a recital of the substance of the proceedings in the matter of the appraisal with a general description of the real estate appraised, and for which compensation shall be made. The court shall also direct to whom the money shall be paid, or in which trust company it shall be deposited by the comptroller. Such decree when so confirmed, except in the case of an appeal, as provided in section 5-369 of this subchapter, shall be final and conclusive as well upon the city as upon the owners and all persons interested in or entitled to such real estate, and also upon all other persons whomsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-20.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-369

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-369 Appeals.

Within twenty days after the making, entry and service of the final decree, either party may appeal by notice, in writing, to the appellate division of the supreme court of the judicial department in which the real estate described in the petition and shown on the map is situated. Such appeal shall be heard, on due notice thereof being given, according to the rules and practice of such court, and pending such appeal the comptroller shall deposit in such trust company as the court shall direct, the amount of the award, with interest to the date of such deposit and the funds so deposited shall remain with the trust company, subject to the further order of the court. On the hearing of such appeal the court may direct a new trial by the supreme court and either party if aggrieved, may take a further appeal, which shall be heard and determined by the court of appeals. If the amount of compensation to be made by the city shall be increased at the second trial, the difference shall be paid by the comptroller to the parties entitled to the same, or shall be deposited, as the court may direct; and if the amount shall be diminished, the difference shall be refunded to the city by the trust company. The taking of an appeal by any person or persons, however, shall not operate to stay the proceedings under this subchapter, providing such award and interest have been deposited.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-21.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-370

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-370 Awards; payment of.

The comptroller, within four calendar months after the making and entry of the final decree, shall pay to the respective owners and bodies, politic or corporate, mentioned or referred to in such decree, in whose favor any sum or sums of money shall be determined, the respective sum or sums so determined in their favor respectively, with lawful interest thereon, from the date title to the real property vested. In case of neglect or default in the payment of the same within such time, the respective person or persons, or bodies, politic or corporate, in whose favor the same shall be so determined, his, her or their executors, administrators, legal representatives or successors, at any time or times, after application first made by him, her or them to the comptroller, for payment thereof, may sue for and recover the same, with such lawful interest and the costs of suit, in any proper form of action against the city in any court having cognizance thereof, and in which it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this subchapter, for real estate taken or affected for the purposes herein mentioned. The final decree, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action, and entitle plaintiff to judgment therein.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-22.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-371

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-371 City protected by payment; recovery from person not entitled thereto.

a. Payment of the compensation awarded in the final decree to the person or persons, corporation, or body politic named therein, (if not infants or persons of unsound mind) shall, in the absence of notice to the city of other claimants to such award, protect the city.

b. Where, however, any such sum or sums, or compensation, determined in favor of any person or persons, or party or parties, whatsoever, whether or not named in such report, shall be paid to any person or persons, or party or parties, when the same shall of right belong and should have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons, or party or parties to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suits, as so much money had and received to his, her or their use, by the person or persons, party or parties respectively to whom the same shall have been so paid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-23.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-372

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-372 Awards; deposit of.

Whenever:

1. The owner or owners, person or persons interested in any real estate taken or affected in the proceedings, or in whose favor any such sum or sums or compensation shall have been determined, shall be under the age of twenty-one years, of unsound mind, or absent from the state of New York, or

2. The name or names of the owner or owners, person or persons interested in any such real estate shall not be set forth or mentioned in such final decree, or

3. Such owner or owners, person or persons, being named therein cannot, upon diligent inquiry, be found or

4. There are adverse or conflicting claims to the money awarded as compensation.

It shall be lawful for the city to pay the sum or sums determined to be payable to, or to which such owner or owners, person or persons, respectively, shall be entitled, with interest, thereon into such trust company as the court may direct. Such deposit shall be to the credit of such owner or owners, person or persons, and such payment shall be as valid and effectual, in all respects, as if made directly to the owner or owners, person or persons interested therein, respectively, according to their just rights.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-24.0 added chap 929/1937 § 1

Amended chap 840/1977 § 147

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-373

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-373 How defects may be remedied.

The supreme court of the judicial district in which the real estate is situated shall have power at any time to correct any defect or informality in any of the special proceedings authorized by this subchapter as may be necessary, or to cause other property to be included therein, and to direct such further notices to be given to any party in interest, as it deems proper. If, in any particular, it shall, at any time, be found necessary to amend any pleading or proceeding, or supply any defect therein, arising in the course of any special proceeding authorized by this subchapter, the same may be amended or supplied in such manner as shall be directed by the supreme court, which is hereby authorized to make such amendment or correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-26.0 added chap 929/1937 § 1

Amended LL 50/1942 § 29

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-374

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3 ACQUISITION OF REAL PROPERTY FOR WATER SUPPLY PURPOSES

§ 5-374 Acquisition of real estate for sewage disposal in connection with the city water supply.

a. The commissioner shall be authorized and empowered, subject to the approval of the mayor, by purchase or condemnation, to acquire, real estate

In or about the village of Brewster,

In or about the town of Carmel,

Within the Croton watershed in the county of Westchester, and

Within the Esopus and Schoharie watersheds in the counties of Ulster, Delaware, Schoharie and Greene, as may be necessary:

1. To carry into effect any agreed plan for the disposal of the sewage

Of the village of Brewster,

Of one or more villages or sewer districts, in the town of Carmel, (and for such purpose, to construct, operate and maintain a sewage disposal plant, equipment and facilities, or the extension and improvement of existing plants, if any, therein),

Within the Croton watershed in the county of Westchester and

Within the Esopus and Schoharie watersheds in the counties of Ulster, Delaware, Schoharie and Greene, including any agreed plan for the collection thereof in such counties.

2. To improve and protect the water supply of the city therein, any special or general act to the contrary, notwithstanding.

b. The land which shall be required for the purpose of carrying out any such agreed plan and to protect and improve the water supply of the city within the enumerated localities, except the town of Carmel, shall be taken only with the consent and approval of the authorities thereof.

c. If the city shall have been unable to secure such approval of the municipal authorities of the village or the town board of the town in which the land to be acquired is located, where such real estate shall be located within the Esopus and Schoharie watersheds in the counties of Ulster, Delaware, Schoharie and Greene, and the plans for such operating systems and plants for the collection and disposal of sewage shall have been approved by the state department of health, the city acting by or through its commissioner of environmental protection, notwithstanding the provisions of any special or general act to the contrary, may present a petition to the supreme court in the county involved, stating the proposed location of such operating system or plant for the collection and disposal of sewage, that the plans therefor have been approved by the state department of health, that application for the location thereof in accordance with such plans has been made to the municipal authorities or town board having jurisdiction thereover and has been unreasonably denied, or withheld, and such other facts as the petitioner may deem pertinent, together with a prayer for an order authorizing the construction of such operating system or sewage disposal plant in accordance with such plans. Notice of the time and place of presentation of such petition shall be served on the necessary municipal authorities or town board having jurisdiction over such applications and on the state department of health, and posted in such village or town in at least ten conspicuous public places for a period of ten days prior to the hearing of such petition. Upon the presentation of such petition, the presiding justice shall hear the parties to such proceeding and also such other residents of the sewer district of the village or town as desire to be heard. If the justice presiding be satisfied that the municipal authorities of the village or the town board of the town have unreasonably withheld the approval of the location of such operating system or sewage disposal plant, the justice may, by order, grant the petition. Upon the entry of such order, the city may acquire, by purchase or condemnation, in the manner provided by law, such real estate, rights of way and easements to and into such real estate as may be necessary for the proper erection, construction and operation, of such operating system or sewage disposal plant, and may construct the same in accordance with the plans approved by the state department of health.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D15-27.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 278

Sub c amended chap 840/1977 § 149

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-376

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-376 Determination of additional sources of water supply; reports to board of estimate.

a. It shall be the duty of the commissioner of environmental protection to proceed immediately and with all reasonable speed, to ascertain what sources exist and are most available, desirable and best for an additional supply of pure and wholesome water for the city. The commissioner shall make such studies, investigations, surveys, maps, plans, profiles, estimates and reports as the commissioner may deem proper in order to ascertain the facts as to such sources and shall report to the board of estimate with recommendations as to what action should in the commissioner's opinion be taken with reference thereto. It shall be lawful for the board of estimate and the commissioner to report upon, consider and determine the project in parts or sections from time to time as they may deem fit, so that the city may be able to obtain an additional supply of water from one or more sources before the whole additional supply contemplated may be obtained.

b. If at any time the board of estimate shall determine it to be advisable that the needs of the city with respect to its water supply or with regard to the delivery of such supply to points convenient for distribution among the several boroughs shall be made the subject of study and investigation, the commissioner of environmental protection shall forthwith proceed with such studies and investigations and, together with his or her recommendations, report to the board of estimate. Upon receipt of any such report the board of estimate may consider and act upon it in the same manner and with the same authority as provided in this section and in any following sections.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-2.0 added chap 929/1937 § 1

Amended chap 357/1939 § 1

Renumbered chap 100/1963 § 1349

(formerly § K41-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-377

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-377 Further reports to board of estimate; hearings; map or plan of whole work to be approved and filed.

a. The board of estimate upon the receipt of such report or reports of the commissioner may adopt, modify or reject the whole or any part of the same, and may cause such studies, investigations, surveys, maps, plans, profiles, estimates and reports to be made, and such further information to be obtained as the commissioner shall deem expedient to enable him or her to act intelligently in the premises. In case of the modification or rejection of the recommendations in such report or reports or any part thereof by the board of estimate, the commissioner in like manner as aforesaid shall prepare and submit to the board of estimate further studies, investigations, surveys, maps, plans, profiles, estimates and reports and make such changes and modifications as shall seem proper to the board of estimate, and shall continue so to do under the direction of the board of estimate, until a map, plan or plans covering the entire work contemplated by this subchapter shall be approved and adopted by such board. The map, plan or plans may be made and adopted in parts or sections from time to time, and may be changed or modified either before or after adoption as the board of estimate may deem necessary for the more efficient carrying out of the provisions of this subchapter.

b. The board of estimate prior to the adoption of such map, plan or plans, or to a modification thereof shall afford to all persons interested a reasonable opportunity to be heard respecting the same, and shall give reasonable public notice of such hearing, at which testimony may be produced by the parties appearing in such manner as the board of estimate may determine, and each member of the board is hereby authorized to administer oaths and issue subpoenas in any proceeding pending before them under this subchapter. Notice of such hearing shall be given, in addition to the above provision, by mailing to the chairperson and clerk of the board of supervisors of the county where the real estate

to be acquired is situated a notice of such hearing at least eight days before the time named in the notice.

c. A final map, plan or plans approved and adopted by the board of estimate shall be executed in quadruplicate, one of which shall remain on file with the clerk of the board of estimate, one shall be placed on file in the office of the commissioner of environmental protection, one, or a certified copy thereof, shall be filed in the county clerk's office or register's office of each county in which any of the land affected thereby is situated.

d. Provided, however, that no reservoir or other structure for the storage or impounding of water, shall be constructed, at any time, within the drainage area of the Esopus creek in the county of Ulster, other than that designated in the reports of William H. Burr, Rudolph Hering and John R. Freeman to the Honorable George B. McClellan, mayor, chairman, board of estimate of the city of New York, as to the Ashokan reservoir, the flow line of which shall not exceed elevation six hundred feet coast and geodetic survey datum.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-3.0 added chap 929/1937 § 1

Amended chap 357/1939 § 2

Renumbered chap 100/1963 § 1349

(formerly § K41-3.0)

Sub c amended chap 702/1969 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-378

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-378 Entry to prepare maps and to post notice.

The commissioner of environmental protection, the commissioner's agents, engineers, surveyors and such other persons as may be necessary to enable the commissioner to perform his or her duties under this subchapter are hereby authorized to enter upon any land, or water, for the purpose of making surveys, examinations or investigations and preparing the maps, plans and reports contemplated by this subchapter and for the purpose of posting any notices that may be required to be published in like manner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1350

(formerly § K41-4.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-379

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-379 Real estate maps; preparation, submission and adoption thereof.

After the approval, adoption and filing of a final map, plan or plans described in section 5-377 of this subchapter, the commissioner shall prepare and submit to the board of estimate six similar maps of the real estate to be acquired or affected for the purpose of carrying out the said plan or plans, or any part thereof. Upon those maps there shall be laid out and separately numbered the various parcels of real estate acquisition of which is made necessary for the prosecution of the work authorized by this subchapter, including the lands adjoining the Esopus creek between the point on such creek, in the town of Shandaken, Ulster county, where the Schoharie tunnel empties into such creek, and the Ashokan reservoir of the city, in such county, the owners of which lands shall be entitled to recover the decrease in value of such lands by reason of any acts of the city under the provisions of this subchapter or any previous act, such damages to be determined by a commission in the same manner as damages for the taking of real property are determined. On such maps, the property division lines existing at the time of the survey shall be delineated, and there shall be plainly indicated those parcels of which the fee, and over or through which parcels the right to use and occupy the same temporarily or in perpetuity, is to be acquired. The board of estimate may adopt, modify or reject such maps in whole or in part and require others to be made instead thereof. In case of such rejection, the commissioner of environmental protection shall in like manner, as aforesaid, prepare and submit others, until maps shall be approved by the board of estimate covering the entire area required for the purpose of carrying out the said plan or plans, or any part thereof. Such maps may be made and filed in sections. One or more sections may be determined before the maps of the whole construction are completed. Such sections shall be determined and decided upon previous to the appointment of

the commissions as hereinafter provided for, and shall be so determined that one commission shall not be appointed for a section covering more property than can reasonably be passed upon and awards made by such commission within the limits of a year from the time of the filing of the oaths, as hereinafter provided. The proceedings hereinafter authorized may, in like manner, be taken separately in reference to one or more of such sections before the maps of the whole are filed. The work upon one or more of such sections may be begun before the maps of the remaining sections are filed. The maps when adopted by the board of estimate shall be transmitted by such board to the corporation counsel, with a certificate of such adoption written thereon and signed by a majority of the board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-5.0 added chap 929/1937 § 1

Amended chap 357/1939 § 3

Renumbered and amended chap 100/1963 § 1351

(formerly § K41-5.0)

CASE NOTES FROM FORMER SECTION

¶ 1. A "taking map" is sufficient if it clearly delineates the properties in which the City proposes to acquire the fee or an easement. It need not similarly delineate all other parcels which might be affected by the taking. It is up to the owners of such "outside" parcels to assert their claims. Notice of the proceeding given by advertising and posting to such owners must be deemed sufficient.-Matter of Huie (Neilson), 6 App. Div. 2d 837, 176 N.Y.S. 2d 193 [1958].

¶ 2. A claimant owned a property located at a distance from a river with an easement to the river and the right, in common with others, to use the beach. The land, subject to these rights, was designated as Parcel 238 on the taking map, and as owned by another person. **Held:** The statute of limitations was not tolled as to the claimant, since the board was not required to map the upland parcels.-Matter of Huie (Consolidated Neversink Riparian Sections 3, 4 and 5), 9 App. Div. 2d 1009, 195 N.Y.S. 2d 30 [1959].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-380

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-380 Maps; filing of.

The corporation counsel shall cause one of the maps described in section 5-379 of this subchapter, or a certified copy thereof, to be filed in the office of the clerk of each county in which any real estate laid out on such map shall be located except that in any county in which there is a register's office, such map shall be filed therein instead of in the office of the county clerk. The other maps described in section 5-379 of this subchapter shall be disposed of in the manner indicated in succeeding sections of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-6.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1352

(formerly § K41-6.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-381

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-381 Application for appointment of commissioners of appraisal.

After such maps shall have been filed as provided for in the preceding section of this subchapter, the corporation counsel, for and on behalf of the city, upon first giving the notice required in the next section of this subchapter, shall apply to the supreme court at any special term thereof to be held in the judicial district in which the lands or some part thereof shown on such maps, and the title to which it is proposed to acquire in the proceeding thus instituted, is situated, for the appointment of commissioners of appraisal. Upon such application the corporation counsel shall present to the court a petition signed and verified by the commissioner of environmental protection, according to the practice of the court, setting forth the action theretofore taken by the commissioner and by the board of estimate and the filing of such maps, and praying for the appointment of commissioners of appraisal. Such petition shall contain a general description of all the real estate to, in, or over which any title, interest, right or easement is sought to be acquired for the city for the purpose of this subchapter, each parcel being more particularly described by a reference to the number of such parcel as given on such maps, and the title, interest or easement sought to be acquired to, in or over such parcel, whether a fee or otherwise, shall be stated in the petition.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-7.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1353

(formerly § K41-7.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-382

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-382 Notice of application for appointment of commissioners of appraisal.

The corporation counsel shall give notice in the City Record, and in two public newspapers published in the city of New York and in two public newspapers published in each other county in which any real estate laid out on such maps may be located, and which it is proposed to acquire in the proceeding, of the corporation counsel's intention to make application to such court for the appointment of commissioners of appraisal which notice shall specify the time and place of such application, shall briefly state the object of the applications and shall describe the real estate sought to be taken or affected. A statement of the real estate to be acquired or affected for the purpose of carrying out the said plan or plans or in any part thereof with separate enumerations of the numbers of the parcels to be taken in fee, and of the numbers of the parcels in which an easement is to be acquired, together with the route of the tunnels and aqueducts by courses and distances and of the greatest and least width of its required easement or parcel of land with a reference to the dates and places of filing such maps, shall be sufficient description of the real estate sought to be so taken or affected. Such notice shall be so published, once in each week, in each of such newspapers, for six weeks immediately previous to the presentation of such petition; and the corporation counsel shall in addition to such advertisement cause copies of the same in hand bills to be posted up, for the same space of time in at least twenty conspicuous places on the line of the aqueduct or in the vicinity of the real estate so to be taken or affected and shall cause a copy of such notice to be mailed to the owners of such real estate whose names and addresses are known or are readily ascertainable. After the original appointment of commissioners of appraisal pursuant to the provisions of this subchapter, the corporation counsel may apply at a special term of the supreme court in the same judicial district where application for such original

commission was made for the appointment of a successor commission, upon first giving ten days' notice by advertisement in the newspapers hereinabove described of his or her intention to make such application.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-8.0 added chap 929/1937 § 1

Amended chap 357/1939 § 4

Renumbered chap 100/1963 § 1354

(formerly § K41-8.0)

Amended chap 215/1964 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where notice of the presentation of the petition upon which the order appointing commissioners of appraisal was based was given by publication pursuant to Admin. Code § K41-8.0, claimant, not having appeared on the return of the petition upon which the order was granted, was only constructively before the court and was bound by the order only insofar as it appointed the commissioners, and the attempted adjudication of the construction of certain release paragraphs of the lease in question was a nullity.-Delaware County Electric Cooperative, Inc. v. City of N.Y., 99 N.Y.S. 2d 42 [1950], aff'd on this point, 278 App. Div. 526, 105 N.Y.S. 2d 960 [1951].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-383

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-383 Appointment of commissioners of appraisal; their qualifications.

At the time and place mentioned in such notice, unless such court shall adjourn such application to a subsequent day and in that event at the time to which the same may be adjourned, such court, upon due proof to its satisfaction of the required publication and posting aforesaid, and upon filing such petition, shall make an order for the appointment of three disinterested and competent freeholders, at least one of whom shall reside in the city and at least one of whom shall reside in the county or one of the counties in which such real estate shall be situated, as commissioner of appraisal to ascertain and appraise the compensation to be made to the owners and all persons interested in the real estate laid down on such maps as proposed to be taken or affected for the purpose indicated in this subchapter. Such order shall fix the time and place for the first meeting of such commissioners.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-9.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1355

(formerly § K41-9.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § K41-9.0, providing for appointment of three commissioners, one residing in New York City and at least one of the others residing in one of the counties in which the real estate was situated, applied also to a proceeding which included groups of parcels located severally in more than one county.-Application of Gillespie, 180 Misc. 139, 44 N.Y.S. 2d 424 [1942].

¶ 2. Admin. Code § K41-9.0 was not invalid on contended ground that the Constitution vested the power of appointment of commissioners in the court, and that the legislative prescription as to the residence of commissioners was an improper intrusion upon the constitutional grant.-Id.

¶ 3. An application to extend the terms of office of commissioners of appraisal can be made and entertained without notice to all parties interested, since the Admin. Code makes no requirement that notice be given, the giving of notice to all claimants over whose claims the expiring commission might have jurisdiction would be difficult, and in the absence of any statutory requirement there would be a problem as to what kind of notice should be given.-In re Gillespie, 271 App. Div. 767, 65 N.Y.S. 2d 113 [1946], reversing 64 N.Y.S. 2d 706 [1946], aff'd without opinion, 296 N.Y. 989, 73 N.E. 2d 567 [1947].

¶ 4. The fact that there were several unfinished claims before the expiring commission and some claims in which testimony had been taken but no reports made, constituted sufficient cause to extend the commission's life.-Id.

¶ 5. On the question whether the term of a commission of appraisal should be extended, any inquiry as to the amount of work done by the commission is irrelevant, as it is notorious that the work of any commission depends largely upon the diligence of the claimants and the Corporation Counsel of the City of New York.-Id.

¶ 6. The chairman of the Commission on Appraisal, after a hearing, consulted with accountants, teachers and bankers to resolve confusing theories of appraisal. **Held:** He was not entitled to compensation for the time so spent. His acts were illegal and transcended the statutory powers and duties of a Commissioner of Appraisal.-Matter of Ford, 18 App. Div. 2d 135, 238 N.Y.S. 2d 346 [1963].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-384

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-384 Oath of commissioners of appraisal; filing thereof.

Such commissioners shall take and subscribe the oath or affirmation required by article thirteen of the constitution and shall forthwith file the same or a certified copy thereof in the office of the clerk of the county in which the land or any part thereof is situated, and shall forthwith file certified copies of such oaths in the office of the clerk of the county of New York, and in the register's office in any county in which there is a register's office and in which is situated any of the real estate sought to be taken or affected by the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-10.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1356

(formerly § K41-10.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-385

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-385 Eligibility of commissioners for reappointment.

No person appointed a commissioner of appraisal in any proceedings conducted under this subchapter shall be eligible for reappointment on any commission provided for under this subchapter until three years shall have elapsed since such person shall have finished the duties imposed upon him or her as a commissioner under any previous appointment except a person appointed to fill a vacancy occurring in a commission more than six months after the original appointment of such commission, which said appointee shall be eligible for one additional appointment to the successor commission or any other commission.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-10.1 added chap 357/1939 § 5

Renumbered chap 100/1963 § 1357

(formerly § K41-10.1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-386

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-386 Vesting of title; possession; removal of buildings or improvements.

On filing such oaths, in the manner provided in section 5-384 of this subchapter, the city shall be and become seized in fee of all those parcels of real estate which are on the maps referred to in section 5-379 of this subchapter delineated as parcels, of which it has been determined that the fee should be acquired, and shall also be and become vested of the easements, in, over, upon or through all those other parcels of real estate which are on said maps delineated as parcels in, over, upon or through which it has been determined that easements should be acquired; and may immediately or at any time or times thereafter take possession of the same or any part or parts thereof without any suit or proceeding at law for that purpose; provided, however, that before the city takes possession of the same it shall pay to the respective owner or owners of each of such parcels of real estate, which are upon such maps delineated as parcels of which it has been determined that the fee should be acquired, (a) if located outside the counties of Ulster, Greene, Sullivan, Schoharie and Delaware, a sum of money equal to one-half the assessed valuation of such real property as the same appears upon the assessment roll of the town or tax district in which the same is situate for the year next preceding that in which the city becomes seized in fee of each of such parcels of real estate, and (b) if located in the counties of Ulster, Greene, Sullivan, Schoharie or Delaware, a sum of money equal to fifty per centum of the full valuation of such real estate. In the event that a parcel so delineated on said map as a fee parcel is not separately assessed on the assessment roll of the town or tax district in which the same is situated but is assessed as a part of another tract, then the amount which the city shall be required to pay or deposit under this section shall be (a) if the parcel be located outside the counties of Ulster, Greene, Sullivan, Schoharie and Delaware, the proportion which the

assessed valuation of the parcel acquired bears to the assessed valuation of the entire property as a part of which said parcel is assessed, and (b) if the parcel be located in the counties of Ulster, Greene, Sullivan, Schoharie or Delaware, the proportion which the full valuation of the parcel acquired bears to the full valuation of the entire property as a part of which said parcel is assessed. The supreme court in the judicial district in which the land is situated is hereby authorized to make an order prorating such assessed valuation or full valuation, as the case may be, and to determine the proportion of such assessed valuation or full valuation, as the case may be, which the city of New York shall be required to pay before taking possession of such parcel. The city, at its option and by agreement with such respective owner or owners, may, instead of paying to him or her or them the amount or amounts hereinbefore required, pay to him or her or them a sum or sums of money greater than but not more than twice the amount or amounts hereinbefore required. For the purposes of this section only, "full valuation" of real estate shall mean the assessed valuation thereof, as the same appears on the assessment roll of the town or tax district in which the real estate is situate for the year next preceding that in which the city becomes seized in fee thereof, divided by the rate of assessment of real property in such town or tax district for the same year as finally recommended for adoption by the state tax commission under the provisions of the real property tax law formerly contained in sections fifty and one hundred seventy-four of the tax law. Deposit of all moneys hereunder to the credit of, or payable to the order of the owner, pursuant to the direction of the court, shall be deemed a payment within the provisions of this section, and, thereupon, the commissioner of environmental protection, or any person or persons acting under their or its authority may enter upon and use and occupy to the exclusion of any and all other persons all the parcels of real estate delineated on such map for the purpose of carrying out the plan or plans, or any part thereof, described in section 5-377 of this subchapter, provided, however, that no buildings or improvements shall be removed or disturbed within one year from the date of the filing of the oaths of the commissioners unless thirty days' notice in writing is given to the owner, or to his or her attorney, if any, by the corporation counsel of the intention to make such removal, and affording the owner an opportunity to examine the property with the commissioners of appraisal and such witnesses as he or she may desire. If the owner of the property can not be found with due diligence, and there is no attorney representing such property or parcel, before removing, disturbing, or destroying any of the buildings, or the improvements, a representative of the commissioner of environmental protection or of the corporation counsel shall cause measurements to be made of the buildings and photographs of the exterior views thereof, which measurements and photographs shall be at the disposition thereafter of the claimants, or their attorneys, in case such claimants or their attorneys should appear and demand the same before the case is tried.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-11.0 added chap 929/1937 § 1

Amended chap 357/1939 § 6

Renumbered and amended chap 100/1963 § 1358

(formerly § K41-11.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In view of Admin. Code §§ K41-11.0 and K41-17.0, providing that City should become vested with title to the parcels involved upon filing of the oath of the Commissioners of Appraisal, and that interest upon any award subsequently made should run from date of filing of the oath, the right to interest at the lawful rate prevailing at the time of the taking was a vested contractual obligation which might not be impaired until the lawful rate was changed, and consequently owner of award was entitled to interest thereon at 6 percent until July 1, 1939, when the lawful rate was changed to no more than 4 percent, and thereafter the owner was entitled to interest at 4 percent.-Application of

Gillespie, 173 Misc. 336, 16 N.Y.S. 2d 579 [1939].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-387

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-387 Commissioners of appraisal; powers and proceedings thereof; provisions for filling of vacancies.

a. Any one of such commissioners of appraisal may issue subpoenas and administer oaths to witnesses; and they or any one of them, in the absence of the others, may adjourn the proceedings from time to time in their discretion; but they shall continue to meet from time to time as may be necessary, within the judicial district where the lands or any part thereof may be located, to hear, consider and determine upon all claims which may be presented to them under the provisions of this subchapter. Within thirty days after the commissioners have been appointed and have qualified, the city shall furnish the commission with a list of the claims that have been filed and are to be determined and the commissioners shall have full power and authority to prepare a calendar of all such claims and to determine the order and priority of the hearing of such claims; to set down the hearing of any such claim for a day certain; and to order an inquest in or a dismissal of any claim for failure of a party to appear at the time designated for the hearing thereof unless the commissioners shall determine that a reasonable excuse for such failure exists. They shall view the real estate laid down on the maps and shall hear the proofs and allegations of any owner, lessee, or other person in any way entitled to or interested in such real estate or any part or parcel thereof, and also such proofs and allegations as may be offered on behalf of the city. They shall rule upon motions and objections made in connection with the admission or exculsion of testimony or evidence in any hearing before the commissioners and shall make findings upon which their awards are made and separate findings upon which the fees and allowances are based. They shall reduce the testimony taken before them to writing, and after the testimony is closed, they or a majority of them, all having considered the same, and having an opportunity to be present, shall without unnecessary delay, ascertain and determine the just and equitable

compensation which ought justly to be made by the city to the owners or the persons interested in the real estate sought to be acquired or affected by such proceedings, including just and equitable compensation to the owner of any leasehold taken or affected in the proceeding. Such commissioners of appraisal shall make reports of their proceedings to the supreme court as in the next section provided, with the minutes of the testimony taken by them and the findings of fact made by them, and they shall be entitled to the payments hereinafter provided for their services and expenses to be paid from the fund hereinafter provided.

b. In case of the death, resignation, refusal or neglect to serve of any or all of such commissioners of appraisal, the corporation counsel shall upon ten days' notice to be given by advertisement in the newspapers designated as hereinbefore provided, apply to the supreme court at a special term thereof, to be held in the judicial district in which the land or any part thereof affected by the proceedings, is situated, for the appointment of one or more commissioners to fill the vacancy or vacancies so occasioned.

c. In the event that the corporation counsel shall fail, neglect or refuse to make such application within thirty days after any such vacancy shall have occurred as hereinabove provided, any person interested in the proceeding may similarly apply after such advertisement for the filling of any vacancy. The city of New York shall be liable for the reasonable expenses of such advertisement together with ten dollars costs of motion in the event of any such application by any such interested person.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-12.0 added chap 929/1937 § 1

Amended chap 357/1939 § 7

Renumbered chap 100/1963 § 1359

(formerly § K41-12.0)

Sub a amended chap 794/1964 § 2

(Committee on city affairs, legislative declaration chap 794/1964 § 1)

CASE NOTES FROM FORMER SECTION

¶ 1. Under Admin. Code § K41-12.0, the Commissioners appointed "to hear, consider and determine upon all claims which may be presented to them under the provisions of this article," were limited to a finding of the value of claimant's property taken by eminent domain, and they were not empowered to hear and determine title to property.-Water Right & Electrical Co. v. Kaercher, 200 Misc. 1107, 109 N.Y.S. 2d 242 [1951].

¶ 2. Gas and electric corporation which, as result of the City's acquisition of electric light and power lines within the reservoir basin of the Roundout Reservoir, had been obliged to relocate its lines over a substitute hilly route through wooded terrain, **held** entitled to compensation representing the excess of cost of operating and maintaining the lines on the substituted route over cost of operating and maintaining the lines within the reservoir area. Admin. Code § K41-26.0 permitted the acquisition of the lines only upon providing a substitute route and upon the City bearing the expense or loss by reason of changing the route, and §§ K41-12.0 and K41-13.0 confirmed the broad legislative intent that the City should pay for all damage reasonably traceable to its exercise of the power of condemnation. That the corporation had waived any claim under § K41-44.0, which allows business damage claims, did not amount to a waiver as to the claimed items, particularly since the claim for increased cost of maintenance was not the same as a

claim for decrease in value of an established business or the consequential damage to real estate not taken.-Petition of Gillespie (Central Hudson Gas & Elec. Corp.), 263 App. Div. 175, 32 N.Y.S. 2d 96 [1942], aff'd without opinion, 288 N.Y. 514, 41 N.E. 2d 926 [1942].

¶ 3. Petitioner owned a parcel of property on a branch of the Delaware River. When the City diverted water from the river it caused variations in the depth, temperature and flow of the water and this damaged the swimming and fishing in the area. **Held:** Petitioner was entitled to damages for the diversion of the water and the consequent damage to his property. However, petitioner was not entitled to damages for an adjacent piece of property which he purchased about six weeks after the City took the diversion rights. As to this property, petitioner's claim was not within the ambit of this section.-Matter of Ford, 18 App. Div. 2d 855, 236 N.Y.S. 2d 591 [1962].

¶ 4. The chairman of the Commission on Appraisal, after a hearing, consulted with accountants, teachers and bankers to resolve confusing theories of appraisal. **Held:** He was not entitled to compensation for the time so spent. His acts were illegal and transcended the statutory powers and duties of a Commissioner of Appraisal.-Matter of Ford, 18 App. Div. 2d 135, 238 N.Y.S. 2d 346 [1963].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-388

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-388 Report of commissioners; compensation for loss to railroad or electric corporation or owner of water power; expenses.

a. The commissioners of appraisal shall prepare a report, and such copies thereof as may be required. Such report or reports shall contain a brief description of the several parcels of real estate so acquired, taken or affected, with a reference to the map or maps as showing the exact location and boundaries of each parcel; a statement of the sum estimated and determined upon by them as a just and equitable compensation to be made by the city to the owners or persons entitled to or interested in each parcel so taken, or as to which any right, title, interest, privilege or easement is taken, acquired or extinguished; and a statement of the respective owners or persons entitled thereto, or interested therein. In every case where the owners and parties interested, or their respective estates or interests are unknown, or not fully known to the commissioners of appraisal, it shall be sufficient for them to set forth and state in general terms the respective sums to be allowed and paid to the owners of, and parties interested therein generally, without specifying the name of estates or interests of such owners, or parties interested, or any or either of them.

b. Where loss, damage or expense, direct or consequential, has resulted to any duly incorporated railroad corporation, operating a steam railroad in any county in which land shall be acquired in pursuance of the provisions of this subchapter, or by reason of any of the matters in this subchapter involved, or any electric corporation, or the owner of any water power on any of the streams or waters affected by the provisions of this subchapter, the board of estimate is hereby authorized and empowered to agree with such railroad corporation, or any such electric corporation, or the owner of any such water power, upon the compensation which shall be made to it for such loss, damage or expense. In

the event of no agreement being reached between such board and such railroad corporation, or any such electric corporation, or the owner of any such water power, the commissioners of appraisal appointed to estimate damages for lands acquired in such county are hereby authorized and directed to pass upon such claim and to make awards therefor as provided in this subchapter.

c. Subject to review by the court as hereinafter provided, the commissioners may also recommend such sums, if any, as shall seem to them proper to be allowed, to parties appearing in the proceeding, as expenses and disbursements including reasonable compensation for witnesses and what sums, if any, ought to be paid to the general or special guardian of an infant, idiot, or person of unsound mind, or to an attorney appointed by the court to attend to the interests of any known owner or party in interest who has not appeared in the proceedings for expenses or counsel fees.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-13.0 added chap 929/1937 § 1

Amended chap 357/1939 § 8

Sub b amended chap 710/1943 § 577 (Part 3)

Renumbered chap 100/1963 § 1360

(formerly § K41-13.0)

Amended chap 794/1964 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. In proceeding by Board of Water Supply to acquire real estate for water supply purposes, **held** the evidence did not justify an award of $7,500 as compensation for the loss of a general store business.-In re Huie, 285 App. Div. 1206, 140 N.Y.S. 2d, 658 [1955].

¶ 2. Determination of value by Commissioners of Appraisal will be approved where it does not shock the conscience or sense of justice of the Court.-Matter of Huie, 2 N.Y. 2d 168, 157 N.Y.S. 2d 957, 139 N.E. 2d 140 [1956]; aff'g 283 App. Div. 678, 127 N.Y.S. 2d 214 [1954], aff'd 2 N.Y. 2d 168, 157 N.Y.S. 2d 957, 139 N.E. 2d 140 [1956].

¶ 3. Plaintiffs were entitled to interest on an award under § K41-44.0 of the Code from the date of confirmation of the award.-Hartman v. City of New York, 29 Misc. 2d 578, 218 N.Y.S. 2d 404 [1961].

¶ 4. The statute of limitations provided for in the New York City Water Supply Act may be waived.-Application of Huie, 14 A.D. 2d 627, 218 N.Y.S. 2d 791 [1961].

¶ 5. On appeal by the City from an order confirming awards for damages on account of the diversion of the Neversink River the Court found that one claim had not been filed within the statutory three-year period and that other awards were excessive.-Application of Huie, 14 App. Div. 2d 627, 218 N.Y.S. 2d 791 [1961].

¶ 6. In a proceeding for an order directing the Board of Water Supply to accept petitioner's claim which was not timely filed, petitioner contended that due process had been violated and the statute of limitations was ineffective. The Court found that the provisions of the Water Supply Act providing for constructive notice did not deny due process.-Application of Huie, 28 Misc. 2d 708, 221 N.Y.S. 2d 689 [1956].

¶ 7. Grantees who obtained title subsequent to legal date of vesting in City were not entitled to personal notice of condemnation nor to award of damages being made to estate of grantor.-Matter of Ford, 60 Misc. 2d 900, 304 N.Y.S. 2d 773 [1969].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-389

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-389 Filing of the commissioners' report.

Such report signed by such commissioners or a majority of them, shall be filed not more than one year after the date of the filing of the oaths of the commissioners in the office of a clerk of a county in which real estate sought to be acquired may be situated and in case a part of the real estate is in another county a duplicate report or certified copy shall be filed in the office of the clerk of such other county, provided, however, that the supreme court upon application and good reasons shown therefor may extend the time for the taking of testimony or for the preparation and filing of such report, or both, beyond one year for a period not exceeding eight months. The commissioners of appraisal shall notify the corporation counsel immediately upon the filing of a report.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-14.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1361

(formerly § K41-14.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Special Term has no authority to appoint a new commissioner or extend the life of an existing commissioner after an initial period in excess of one year and an extension exceeding eight months.-In re Huie (Furman), 24 App. Div. 2d 707, 261 N.Y.S. 2d 964 [1965].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-390

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-390 Notice of hearing on report.

The corporation counsel, or in case of the corporation counsel's neglect to do so within ten days after receiving notice of such filing, any person interested in the proceeding, shall give notice that such report will be presented for confirmation, modification (specifying the particulars of such modification in respect to the amount of the award, witness fees or other allowances made by the commissioners) or for rejection in whole or in part to the justice of the supreme court appointing the commissioners, or if the justice be unavailable, to a justice of the supreme court at a special term thereof, to be held in the judicial district in which the land or a part thereof is situated at a time and place to be specified in such notice, and the objections, if any, to the confirmation, modification or rejection of such report or any part thereof, shall be heard at such special term. The notice shall contain a statement of the time and place of the filing of the report and of the copy or copies thereof, and shall be published once in each week in each of the newspapers referred to previously in this subchapter, for at least three weeks immediately prior to the presentation of such report to the supreme court. As used in this section, section 5-391 and section 5-399 of this subchapter, the terms "modify" and "modification" shall be construed to include an increase, a decrease or any other change in an award, fee or allowance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-15.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1362

(formerly § K41-15.0)

Amended chap 794/1964 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-391

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-391 Hearing on the report.

The application for the confirmation, modification or rejection of the report shall be made to the supreme court at a special term thereof held in the judicial district in which the land or some part thereof is situated. Upon the hearing of the application such court may confirm or modify such report or may in its discretion order that the report or any portion thereof affecting one or more parcels be referred to the same commission, or a new commission for a new hearing, and make an order containing a recital of the substance of the proceedings in the matter of the appraisal with a general description of the real estate appraised and for which compensation is to be made; and shall also direct to whom the money is to be paid or in what bank or trust company and in what manner it shall be deposited by the comptroller. Such order confirming or modifying the report shall (except in case of an appeal, as provided in this subchapter) be final and conclusive as well upon the city as upon owners and all persons interested in or entitled to such real estate; and also upon all other persons whomsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-16.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1363

(formerly § K41-16.0)

Amended chap 794/1964 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-392

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-392 Payment by the city.

The city shall, within three calendar months after the confirmation of the report of the commissioners of appraisal, pay to the respective owners and bodies politic or corporate, mentioned or referred to in such report, in whose favor, any sum or sums of money shall be estimated and reported by such commissioners, the respective sum or sums so estimated and reported in their favor respectively, with lawful interest thereon, from the date of filing the oath and certified copies thereof as by this subchapter required, deducting therefrom all sums of money paid on account thereof as provided in section 5-386 of this subchapter. In case of neglect or default in the payment of the same within the time aforesaid, the respective person or persons or bodies politic or corporate in whose favor the same shall be so reported, his, her, or their executors, administrators or successors, at any time or times, after application first made by him, her, or them, to the comptroller for payment thereof, may sue for and recover the same, with lawful interest as aforesaid, and the costs of suit in any proper form of action against the city in any court having cognizance thereof, and it shall be sufficient to declare generally for so much money due to the plaintiff or plaintiffs therein by virtue of this subchapter for real estate taken or affected for the purpose herein mentioned, and the report of such commissioners, with proof of the right and title of the plaintiff or plaintiffs to the sum or sums demanded shall be conclusive evidence in such suit or action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-17.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1364

(formerly § K41-17.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In view of Admin. Code §§ K41-11.0 and K41-17.0, providing that City should become vested with title to the parcels involved upon filing of the oath of the Commissioners of Appraisal, and that interest upon any award subsequently made should run from date of filing of the oath, the right to interest at the lawful rate prevailing at the time of the taking was a vested contractual obligation which might not be impaired until the lawful rate was changed, and consequently owner of award was entitled to interest thereon at 6 percent until July 1, 1939, when the lawful rate was changed to no more than 4 percent, and thereafter the owner was entitled to interest at 4 percent.-Application of Gillespie, 173 Misc. 336, 16 N.Y.S. 2d 579 [1939].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-393

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-393 Limitation of time for presenting claims.

All claims of every name and nature under this subchapter, except claims provided for under section 5-398, must be exhibited and presented to the commissioners of appraisal having jurisdiction of the same within the following periods of time:

(a) in the case of real estate acquired in fee or in which an easement is acquired, within three years after title thereto shall have become vested in the city;

(b) in the case of claims under section 5-423, within three years from the date of the filing of the oaths of the commissioners appointed after the acquisition by the city of New York of the real estate, the acquisition of which is claimed to be the direct or indirect cause of damage, or within three years from the execution of the plan or work, the execution of which is claimed to be the direct or indirect cause of damage.

In the case of real estate acquired in fee or in which an easement is acquired, every person neglecting or refusing to present a claim within such time shall be deemed to have surrendered his or her interest in such real estate or his or her claims for damages thereto, except so far as such person may be entitled as an owner of, or person interested in the award, if any, made by the commissioners of appraisal. All other claims not exhibited and presented within the time above specified shall be forever barred.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-18.0 added chap 929/1937 § 1

Amended chap 357/1939 § 9

Renumbered and amended chap 100/1963 § 1365

(formerly § K41-18.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § K41-18.0, providing that all claims under the Article except claims provided for under § K41-22.0 must be presented to the Commissioners of Appraisal within three years after the title shall have become vested in the City, in the case of real estate acquired in fee or in which an easement is acquired, and claims not so presented should be forever barred, **held** constitutional.-Application of Huie, 204 Misc. 945, 125 N.Y.S. 2d 925 [1953]. (2) Where title to petitioner's property was acquired by the City on October 14, 1947, a claim for compensation which was not made until 1952, **held** barred by the clear language of Admin. Code § K41-18.0.-Id.

¶ 2. Plaintiff, power and light company, was entitled to a declaratory judgment which will entitle it to file a claim for damages pursuant to § K41-18.0 where allegations in complaint state a good cause of action and right to file has been denied.-Rockland Light & Power Co. v. The City of New York, 263 App. Div. 284, 33 N.Y.S. 2d 258 [1942], aff'd 289 N.Y. 45, 43 N.E. 2d 803 [1942].

¶ 3. The Statute of Limitations began to run on claims for damages for the removal of people and the destruction of homes and businesses in November, 1955, when the construction of the reservoir, the removal of people and the destruction of homes and farms was completed. It did not begin to run only when the construction of highway and access roads was completed in 1957.-Matter of Huie (Tweedie), 18 App. Div. 2d 437, 239 N.Y.S. 2d 939 [1963].

¶ 4. Failure of petitioner to present claim for damages to Commissioners of Appraisal within three-year period barred claim for damages. Schroeder v. City of New York (371 U.S. 208) which held that the notice provisions were constitutionally deficient was not applicable where claimant had knowledge of condemnation proceeding and its right to assert a claim against the City and of the time limitations provided for its presentation.-Matter of Huie v. Furman, 22 App. Div. 2d 984, 254 N.Y.S. 2d 748 [1964].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-394

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-394 Calendar call after eighteen months; cessation of interest.

Not less than eighteen months after the date of the filing of the oaths of any original commission appointed pursuant to the provisions of this subchapter, the corporation counsel may call a session of the commission appointed and acting as successor to such original commission for the purpose of having such successor commission fix dates for the hearing and presentation of any and all claims not theretofore disposed of and heard; such session shall be known as the calendar call.

At least ten days prior to such calendar call the corporation counsel shall give personal notice in writing to any or all persons interested in the proceeding and their attorneys, if any, that such a calendar call will be held and that dates will be fixed for the hearing and presentation of claims. All persons so notified may appear at such calendar call for the purpose of having dates fixed for the hearing and presentation of their claims. In the event that persons so notified fail to appear at such calendar call, the commission at the request of the corporation counsel shall fix dates for the hearing and presentation of their claims, which dates shall be not less than twenty days after such calendar call. The corporation counsel shall further notify such persons in writing of the dates thus fixed, which notice shall be so served not less than five days before the date so fixed. All persons failing to appear on the dates fixed by the commission at such calendar call, or failing to give legal excuse for so failing to appear to the commission at or before the time of such calendar call, shall forfeit their right to interest from and after the date fixed by the commission at the calendar call on any award made to them.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-18.1 added chap 357/1939 § 10

Renumbered chap 100/1963 § 1366

(formerly § K41-18.1)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-395

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-395 Payment by city as termination of liability.

Payment of the compensation awarded by the commissioners of appraisal to the persons named in their report (if not infants or persons of unsound mind) shall, in the absence of notice to the city of other claimants to such award, protect the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-19.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1367

(formerly § K41-19.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-396

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-396 Payment to trust company to the credit of the owner; suit to determine the rightful owner.

Whenever the owner or owners, person or persons interested in any real estate taken or affected in such proceedings, or in whose favor any such sum or sums or compensation shall be so reported shall be under the age of twenty-one years, of unsound mind, or absent from the state of New York, and also in all cases where the name or names of the owner or owners, person or persons interested in any such real estate shall not be set forth or mentioned in such report, or where the owner or owners, person or persons being named therein, can not upon diligent inquiry be found, or where there are adverse or conflicting claims to the moneys awarded as compensation, it shall be lawful for the city to pay the sum or sums mentioned in such report, payable, or that would be coming to such owner or owners, persons or persons respectively, with interest aforesaid, into such trust company as the court may in the order of confirmation direct, to the credit of such owner or owners, person or persons, and such payment shall be as valid and effectual, in all respects as if made to such owner or owners, person or persons interested therein respectively, themselves, according to their just rights. In all cases, however, where any such sum or sums or compensation, reported by the commissioners in favor of any person or persons or party or parties, whatsoever, whether named or not named in such report shall be paid to any person or persons or party or parties, whomsoever, when the same shall of right belong and ought to have been paid to some other person or persons, or party or parties, it shall be lawful for the person or persons or party or parties to whom the same ought to have been paid, to sue for and recover the same with lawful interest and costs of suit as so much money had and received to his, her or their use by the person or persons, party or parties, respectively, to whom the same shall have been so paid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-20.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1368

(formerly § K41-20.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-397

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-397 Separate reports by the commissioners.

The commissioners of appraisal may, in their discretion, take up any specified claim or claims and finally ascertain and determine the compensation to be made thereon, and make a separate report with reference thereto, annexing to such report a copy of so much of the maps as displays the parcel or parcels so reported on. Such report as to the claims therein specified shall be the report required in this subchapter, and the subsequent action with reference thereto shall be had in the same manner as though no other claim were embraced in such proceeding, which, however, shall continue as to all claims upon which no such determination and report is made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-21.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1369

(formerly § K41-21.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-398

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-398 Unforeseeable damages; settlement or determination thereof.

Whenever the owner of any private property any part of or interest in which shall have been taken under any proceeding had pursuant to this subchapter shall claim that the prosecution of any work done pursuant to such proceeding has been the proximate cause of actual and material damage to any part of such property and that commissioners of appraisal could not have taken cognizance of such damage pursuant to section 5-387 of this subchapter, until the actual happening thereof because of its unforeseeable or speculative nature, the proper person or board representing the city may agree with such owner as to the amount of such damages. If such agreement cannot be made, such owner may present to the commissioners of appraisal his or her claim in writing duly verified on oath. It shall be the duty of the commissioners to hear allegations and proofs and to proceed in like manner as is provided in the case of property taken pursuant to such proceedings as aforesaid and to determine such actual damages, if any, which were unforeseeable or speculative until the actual happening thereof. The amount of such damages so agreed upon, if any, or so determined, shall be payable and collectible in the same manner as is provided in the case of awards made through the confirmation of a report of commissioners of appraisal in such proceedings. In case at the time of making any such claim there shall be no commissioners authorized to take cognizance thereof, the corporation counsel, for and on behalf of the city, shall make an application for the appointment of commissioners of appraisal in the manner prescribed by this subchapter, to take cognizance of such claims. Provided, however, that such claims shall be presented in the manner above specified within two years from and after the completion of the work, the prosecution of which is claimed to have been the proximate cause of such damage and that such claim shall be supported by proof of interest in

the property alleged to have been damaged and of such damage and that it resulted proximately from the prosecution of such work, as aforesaid, and that it was so unforeseeable or speculative, as aforesaid; and that the claim could not, with due diligence, have been presented to prior commissioners of appraisal subsequently to the happening of the damage. In every case the payment of the amount agreed upon or determined or adjudged under and pursuant to this section shall be a continuing, complete, and conclusive bar to all claim of damage by anyone whomsoever to the property concerned or any part thereof due to the prosecution of the work.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-22.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1370

(formerly § K41-22.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-399

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-399 Appeal from the report of the commissioners.

Within twenty days after notice of the confirmation, modification or rejection of the report of the commissioners, as provided for in section 5-391 of this subchapter, either party may appeal, by notice in writing to the other party, to the appellate division of the supreme court, from the order confirming, modifying or rejecting the report of the commissioners. Such appeal shall be heard on due notice thereof being given, according to the rules and practice of such court. On the hearing of such appeal, the court may affirm, modify or reverse the order of special term or it may direct a new appraisal and determination of any question passed upon, by the same or new commissioners, in its discretion, but from any determination of the appellate division, either party, if aggrieved, may take an appeal which shall be heard and determined by the court of appeals. If the amount of compensation to be made by the city is increased after a new trial, the difference shall be paid by the comptroller to the parties entitled to the same, or shall be deposited, as the court may direct; and if the amount is diminished, the difference shall be refunded to such city by the party to whom the same may have been paid, the judgment therefor may be rendered by the court, on the filing of a subsequent decision, against the party liable to pay the same. But the taking of an appeal by any person or persons shall not operate to stay the proceedings under this subchapter, except as to the particular parcel of real estate with which such appeal is concerned. Such appeal shall be heard upon the evidence taken before such commissioners, and any affidavits as to irregularities submitted to the court at special term, and three typewritten copies of such evidence shall be furnished by the city to the party taking the appeal within ten days after the appeal is perfected, and such appeals may be heard on the evidence so furnished, and such appeals may be taken without security thereon.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-23.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 1371

(formerly § K41-23.0)

Amended chap 794/1964 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. Appellate Division is not prevented from modifying awards upon an appeal from the order of confirmation even though appellant sought rejection of awards at Special Term.-Matter of Ford (Whitton) 35 App. Div. 2d 626, 313 N.Y.S. 2d 42 [1970], aff'd 29 N.Y. 2d 628, 273 N.E. 2d 143, 324 N.Y.S. 2d 416 [1971].

¶ 2. An action for additional interest on an award for acquisition by the city of riparian interests owned by plaintiff could not be maintained to fix the amount of interest due on a judgment while an appeal instituted by plaintiffs in a collateral action was pending even though city made preliminary payment of plaintiffs. Ferguson v. City of N.Y., 67 Misc. 2d 817, 324 N.Y.S. 2d 894 [1971], modf'd 39 A.D. 2d 569, 331 N.Y.S. 2d 735 [1972].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-401

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-401 Powers of the supreme court.

The supreme court of the judicial district in which the real estate, or any part thereof, is situated, shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this subchapter as may be necessary, or to cause other property to be included therein and to direct such further notice to be given to any party in interest as it deems proper, and also to appoint other commissioners in place of any who shall die, or refuse or neglect to serve, or be incapable of serving or be removed. Such court may at any time remove any of such commissioners of appraisal who, in its judgment, shall be incapable of serving or who shall for any reason in its judgment be an unfit person to serve as such commissioner. The cause of such removal shall be specified in the order making the same. If, in any particular, it shall, at any time, be found necessary to amend any pleading or proceeding, or to supply any defect therein, arising in the course of any special proceeding authorized by this subchapter, the same may be corrected or supplied in such manner as may be directed by the supreme court, which is hereby authorized to make such amendment or correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-24.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1372

(formerly § K41-24.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In connection with the construction by the City of a reservoir in Delaware County, the Supreme Court directed the City to construct and maintain highways incident thereto. On motion of two towns to amend order to require the City to remove snow and ice from the said highways, held dispute could not be determined upon motion but towns should seek a determination of the controversy through an action or proceeding.-Huie v. City of N.Y., 285 App. Div. 922, 137 N.Y.S. 2d 605 [1955].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-402

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-402 Agreements as to compensation.

The commissioner of environmental protection, subject to the approval of the board of estimate, may agree with the owners and persons interested in any real estate laid down on such maps as to the amount of compensation to be paid to such owners or persons interested for the taking or using and occupying such real estate. In case any such real estate shall be owned, occupied or enjoyed by the people of this state or by any county, town or school district within this state, such rights, titles, interests or properties may be paid for upon agreement respectively with the office of general services, who shall act for the people of the state, with a chairman and a majority in numbers of the board of supervisors of any county who shall act for such county, and with the supervisors and commissioner of highways, of any town who shall all act for such town, and with the trustees of any school district who shall act for such district. The office of general services shall have power to grant to the city any real estate belonging to the people of this state, which may be required for the purposes indicated in this subchapter, on such terms as may be agreed on between it and the commissioner of environmental protection, always, however, reserving and maintaining the rights of the people and riparian owners to go to the water at any point to which the same may be drawn. If any real estate of any county, town or school district is required by the city for the purposes of this subchapter the majority of the board of supervisors acting for such county, or the supervisors of any such town, with the commissioners of highway therein acting for such town, or the trustees of any school district acting for such district, may grant or surrender such real estate for such compensation as may be agreed upon between such officers respectively and the commissioner of environmental protection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-25.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1373

(formerly § K41-25.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-403

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-403 Definitions; special provision concerning acquisition of real estate used for public purposes.

The term real estate as used in this subchapter shall be construed to signify and embrace all uplands, lands under water, the waters of any lake, pond or stream, all water rights or privileges, and any and all easements and incorporated hereditaments and every estate, interest and right, legal and equitable, in land or water, including terms for years, and liens thereon by way of judgment, mortgages or otherwise, and also all claims for damage to such real estate. It shall also be construed to include all real estate (as the term is above defined) heretofore or hereafter required or used for railroad, highway or other public purposes, providing the persons or corporations owning such real estate or claiming interest therein, shall be allowed the perpetual use for such purposes of the same or of such other real estate to be acquired for the purposes of this subchapter as will afford practicable route or location for such railroad, highway or other public purpose, and in the case of a railroad, commensurate with and adapted to its needs; and provided also that such persons or corporations shall not directly or indirectly be subject to expense, loss or damage by reason of changing such route or location, but that such expense, loss or damage shall be borne by the city. In case any real estate so acquired, or used for public purposes, is sought to be taken or affected for the purposes of this subchapter there shall be designated upon the maps referred to in the previous sections of this subchapter, and there shall be described in the petition, hereinbefore referred to, such portion of the other real estate shown on such maps and described in such petition, as it is proposed to substitute in place of the real estate then used for such railroad, highway or other public purposes. Provided, that wherever the commissioner of environmental protection has heretofore located on any map filed in the office of the commissioners of appraisal, a substituted route for any railroad, the same shall not be

subsequently changed without the assent of such company. The supreme court at the special term to which the petition is presented or at such other special term as the consideration thereof may be adjourned to, shall either approve the substituted route or refer the same back to the commissioner of environmental protection for alteration or amendment and may refer the same back, with such directions or suggestions as such court may deem advisable, and as often as necessary and until such commissioners shall determine such substituted route as may be approved by the court. An appeal from any order made by such court at special term, under the provisions of this section, may be taken by any person or corporation interested in and aggrieved thereby to the appellate division and court of appeals, and shall be heard as a non-enumerated motion. The commissioners of appraisal, hereinbefore referred to, in determining the compensation to be made to the persons or corporations owning such real estate, or claiming interest therein, shall include in the amount of such compensation such sum as shall be sufficient to defray the expenses of making such change of route and location and of building such railroad or highway. Such commissioners of appraisal shall suggest in their report, and the court in the order confirming such report shall determine, subject to review by the appellate division, what reasonable time after payment of the awards to such persons or corporations shall be sufficient within which to complete the work of making such change. Neither the city, nor the commissioner of environmental protection shall be entitled to take possession or interfere with the use of such real estate for the enumerated purposes, before the expiration of such time. Such time may be subsequently extended by the court (subject to review as aforesaid) upon a sufficient cause shown. After the expiration of this time so determined or extended no use shall be made of such real estate which shall cause pollution to the water in such reservoir or interfere with its flow.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-26.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1374

(formerly § K41-26.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Gas and electric corporation which, as result of the City's acquisition of electric light and power lines within the reservoir basin of the Rondout Reservoir, had been obliged to relocate its lines over a substitute hilly route through wooded terrain, **held** entitled to compensation representing the excess of cost of operating and maintaining the lines on the substituted route over cost of operating and maintaining the lines within the reservoir area. Admin. Code § K41-26.0 permitted the acquisition of the lines only upon providing a substitute route and upon the City bearing the expense or loss by reason of changing the route, and §§ K41-12.0 and K41-13.0 confirmed the broad legislative intent that the City should pay for all damage reasonably traceable to its exercise of the power of condemnation. That the corporation had waived any claim under § K41-44.0, which allows business damage claims, did not amount to a waiver as to the claimed items, particularly since the claim for increased cost of maintenance was not the same as a claim for decrease in value of an established business or the consequential damage to real estate not taken.-Petition of Gillespie (Central Hudson Gas & Elec. Corp.), 263 App. Div. 175, 32 N.Y.S. 2d 96 [1942], aff'd without opinion, 288 N.Y. 514, 41 N.E. 2d 926 [1942].

¶ 2. Where in connection with the City's acquisition of land and the proposed discontinuance of a certain town highway the improvement of a dirt cross road became necessary, an order which provided that the City should cause the cross road to be improved and necessary bridges erected thereon or in the alternative might require the town to do so, in which event the City should pay the town the actual cost of improvement. City should be obliged to maintain the highway and bridges thereafter. The actual cost was $12,000 instead of $3500, and under the statute, § K41-26.0, the City was required to pay all expense of relocating a highway, and moreover was required thereafter to maintain the

substituted highway and bridges thereon. By its failure to appear on return day for approval of maps and appointment of Commissioners of Appraisal the town did not waive its rights under the statute, as it had a right to assume that the order would follow the statute.-Application of Gillespie, 263 App. Div. 451, 264 App. Div. 972, modf'd in 33 N.Y.S. 2d 638 [1942] 37 N.Y.S. 2d 488 [1942].

¶ 3. The City of New York had purchased an abandoned railroad bed in 1942 in an area lying within a proposed reservoir, and thereafter it granted an electric light company a lease permitting its lines to cross the railway lands, but such lease was revocable by the City on 90 days' notice and furthermore contained covenants releasing the City from any claims the company might have under Admin. Code title K. The company had sought damages for the value of its transmission lines acquired by the City in a condemned area, for value of its lines and property located outside of the condemned area which were to be cut off and rendered useless, for severance damages to the remainder of its system, and for damages for decrease in value of its established business. **Held:** The electric light company is entitled to an order under this Article 78 proceeding directing that its claims for compensation, other than for the lines on the demised premises be heard and determined.-Delaware County Co-op., Inc. v. City of New York, 304 N.Y. 196, 106 N.E. 2d 605 [1952].

¶ 4. Claimants owned a two-acre parcel of land upon which a $1^1/_2$-story house was erected. They also held an easement permitting them to go to a river some 1,600 feet away from the parcel of land. **Held:** In view of the fact that the land was located in a river resort area, the easement would be construed as giving the claimants the right to fish and swim in the river. Claimants were therefore entitled to an award.-Matter of Huie (Consolidated Neversink Riparian Section 1), 22 Misc. 2d 1028, 192 N.Y.S. 2d 620 [1959], aff'd 11 App. Div. 2d 837, 202 N.Y.S. 2d 954 [1960].

¶ 5. Claimants, who were in possession of a riparian parcel under contract of purchase at date of acquisition, were equitable owners and were entitled to an award, subject to rights of vendor and holders of mortgage.-Matter of Huie (Consolidated Neversink Riparian Sections), 22 Misc. 2d 1028, 192 N.Y.S. 2d 620 [1959], aff'd 11 App. Div. 2d 837, 202 N.Y.S. 2d 954 [1960].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-410

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-410 Compensation, fees, expenses and allowances.

The commissioners of appraisal appointed in pursuance of this subchapter shall receive as compensation such fees and expenses as may be taxed by the court upon notice to the corporation counsel who shall also furnish them with the necessary clerks, stenographers, surveyors and other employees. The corporation counsel shall, either in person, or by such assistants or other counsel as he or she shall designate for the purpose, appear for and protect the interests of the city in all proceedings in court under this subchapter including the taxation of fees, compensation and expenses and proceedings before the commissioners. The fees of the commissioners and the salaries and compensation of their employees, and their necessary traveling expenses, and all other necessary expenses, in and about the special proceedings provided by this subchapter to be had for acquiring title or extinguishing claims for damages to real estate, and such allowances for counsel fees as may be made by order of the court shall be paid by the comptroller out of the funds provided therefor. Such fees and expenses shall not be paid until they have been taxed before a justice of the supreme court in the judicial district in which the lands or some part thereof are situated upon eight days' notice to the corporation counsel. Such allowances shall in no case exceed the limits prescribed by section eight thousand three hundred three of the civil practice law and rules. The salaries and compensation of the persons employed, as provided for in this subchapter, to prepare the necessary surveys, plans and estimates and for other purposes and to direct, supervise and inspect the work required to be done under the provisions of this subchapter, and such other expenses in and about the same as are not herein required to be under contracts let after completion, shall be paid by the comptroller on the certification of the commissioner of environmental protection or of such person or persons as the commissioner

may designate. The compensation and expenses of such of the corporation counsel's assistants or other counsel as the corporation counsel may designate to represent and aid the commissioner in the performance of his or her duties under this subchapter shall also be paid out of the funds provided therefor, and upon the certificate of the corporation counsel who shall have power to appoint such assistants or other counsel, and to fix their compensation. The various sums of money growing due from time to time, under the terms of the several contracts, made for the doing of the work and furnishing the material required by this subchapter, shall be paid by the comptroller on the certification of the commissioner of environmental protection or such person or persons as the commissioner may from time to time designate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-33.0 added chap 929/1937 § 1

Amended chap 710/1943 § 578 (Part 3)

Renumbered chap 100/1963 § 1381

(formerly § K41-33.0)

CASE NOTES FROM FORMER SECTION

¶ 1. The Commissioners of Appraisal, in making an award for damages to the real estate and business of a claimant, and for witness fees, in connection with the acquisition of land by the City of New York for water supply purposes properly disallowed counsel fees. Counsel fees may be allowed upon such a condemnation only in "the taking" and not in "business damage" cases.-Matter of Huie, 10 Misc. 2d 766, 173 N.Y.S. 2d 640 [1958], aff'd 7 App. Div. 2d 24, 180 N.Y.S. 2d 449 [1958].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-418

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-418 Where acquired real estate taxable.

Real estate acquired under the provisions of this subchapter shall be taxable in the counties and taxation districts in which such real estate is situated.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-41.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1388

(formerly § K41-41.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Where riparian rights are severed from the land to which they are appurtenant and do not become appurtenant to other riparian land such rights in their severed state are not real property for real property tax purposes and thus real

property tax assessment levied by town assessors on value of such rights acquired by the City under this section in Town of Fallsberg were properly annulled.-Matter of City of N.Y. v. Schwartz, 36 A.D. 2d 402, 320 N.Y.S. 2d 983 [1971].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-423

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-423 Damage to value of real property; businesses, and employees thereof.

a. The owner of any real estate not taken by virtue of this subchapter and article fifteen of the environmental conservation law or of any established business on the first day of June, nineteen hundred five, except as hereinafter provided, and situate in the counties of Ulster, Albany or Greene, directly or indirectly decreased in value by reason of the acquiring of land by the city for an additional water supply or by reason of the execution of any plans for such additional water supply by the city under the provisions of this subchapter and article fifteen of the environmental conservation law, his or her heirs, assigns or personal representatives shall have a right to damages for such decrease in value. The owner of any real estate not taken by virtue of this subchapter or of any established business on the first day of December, nineteen hundred fourteen, except as hereinafter provided, situate in the counties of Ulster, Greene, Delaware or Schoharie, directly or indirectly decreased in value by reason of the acquisition, after the passage of this subchapter of land by the city for an additional water supply from the Schoharie watershed, or by reason of the execution of any plans for such additional water supply from such watershed, under the provisions of this subchapter, his or her assigns or personal representatives, shall have a right to damages for such decrease in value. The owner of any real estate, not taken, situate in any one or more of the counties of Ulster, Delaware, Orange or Sullivan, or of any established business, directly or indirectly decreased in value by reason of the execution of any plans for or by the acquisition of land by the city for a water supply from the Rondout and Delaware watersheds except that portion of the Delaware watershed of the west branch of the Delaware river within such counties, or any of them, and the owner of any real estate, not taken, situate in any one or more of such counties or situate in the corporate limits of the village of

Deposit in the county of Broome existing on the first day of April, nineteen hundred fifty-nine, or of any established business, which business was established on or prior to the first day of April, nineteen hundred fifty-nine which is directly or indirectly decreased in value by reason of the execution of any plans for or by the acquistion*3 of land by the city for a water supply from the watershed of the west branch of the Delaware river, pursuant to law, his or her or its assigns, or personal representatives in any such case shall have a right to damages for such decrease in value, from the time of the beginning of such decrease in value, provided, however, that in the case of an established business, the recovery of or award made to any claimant shall not include any business that may have resulted by reason of the execution of any plans for such water supply. The commissioner of environmental protection may agree with such person as to the amount of such damages, and if such agreement can not be made such damages, if any, shall be determined in the manner herein provided for the ascertaining and determining the value of real estate taken under the provisions of this subchapter, and the commissioners shall not be limited in the reception of evidence to the rules regulating the proof of direct damages. They may also recommend such sums, if any, as shall seem to them proper to be allowed to parties appearing in the proceeding, as expenses and disbursements, including reasonable compensation for witnesses. The amount of such damages so agreed upon as aforesaid or determined as aforesaid shall be payable and collectible in the same manner as is herein provided in the case of awards made through the confirmation of a report of commissioners of appraisal.

b. A person employed in a manufacturing establishment, or in an established business, or upon any lands, and who is not an owner or part owner thereof or of any interest therein, in the counties of Ulster, Delaware, Orange and Sullivan, which manufacturing establishment, established business or lands is injured or destroyed because of the acquisition by the city of an additional water supply from any watershed within such counties, except the watershed tributary to the west branch of the Delaware river, or which lands are taken or acquired for like purpose by the city and a person who was employed in a manufacturing establishment or in an established business or upon any lands within such counties or in the corporate limits of the village of Deposit in the county of Broome and who is not an owner or part owner thereof or of any interest therein, which manufacturing establishment or established business or lands is injured or destroyed because of an acquisition by the city of an additional water supply from the watershed of the west branch of the Delaware river, or which lands are taken or acquired for like purpose by the city, and who in any such case has been so employed continuously for six months prior to, and who continues in such employment up to the time of such injury, destruction, taking or acquisition, shall have a claim for damages against the city equal to the salary paid such employee for the six months immediately preceding such injury, destruction, taking or acquisition. Such damages may be determined by agreement with the commissioner of environmental protection. In case such agreement can not be made such employee may maintain an action against the city in the supreme court to recover such damages, not, however, to exceed the sum of wages paid the employee for the six months preceding such injury, destruction, taking or acquisition.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-44.0 added chap 929/1937 § 1

Subs a, c amended chap 424/1956 § 1

Renumbered chap 100/1963 § 1393

(formerly § K41-44.0)

Sub amended chap 100/1963 § 1393

Sub a, c amended chap 812/1970 § 1

(amendments by chap 100/1963 were overlooked)

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § K41-44.0 applies only to properties in certain designated counties, not including Westchester County.-In re Schiff (Gold), 176 Misc. 119, 26 N.Y.S. 2d 392 [1941].

¶ 2. Petitioner, who claimed that a well on his property in Westchester County was dried up and permanently made useless as result of blasting operations conducted by City of New York in construction of its water supply system on other property in the vicinity, might not seek compensation in the condemnation proceeding, since no land of petitioner had been taken by the City, there was no clear statutory authority for a hearing of his claim, and the claim might involve a difficult question as to causal relationship between the City's construction work and the damage to the well. However, petitioner might have a cause of action at law for trespass.-Id.

¶ 2.1. Where gross income and net profit of two doctors increased their business damages claims should have been dismissed and business damage claims of a soda fountain and candy store owner should have been dismissed where his net income increased.-Matter of Ford (Dosseff) 36 App. Div. 2d 352, 320 N.Y.S. 2d 543 [1971].

¶ 3. Gas and electric corporation which was prevented from proceeding with proposed hydro-electric development on land owned by it along the Neversink River because of the City's Delaware water project, **held** entitled presently to file a claim for damages with the City pursuant to Admin. Code § K41-44.0 for loss sustained by diminishment of the value of the water power site and of the value of the one hydro-electric plant already existing, since it was possible that the project would never be finished or would at least be held in abeyance for the duration of the war, and, since plaintiff was entitled to damages from the time when its damages accrued and Commissioners had already been appointed, the three-year Statute of Limitations was presently running and the corporation might be precluded from presenting its claim should the City delay cutting off the water from the river for many years. If the City actually diverted the water, damages presently recoverable on account of reduced value would be deductible from the total damage suffered.-Rockland Light and Power Co. v. City of N.Y., 263 App. Div. 284, 33 N.Y.S. 2d 258 [1942], aff'd 289 N.Y. 45, 43 N.E. 2d 803 [1942] on ground the complaint in a declaratory judgment action should not be dismissed as matter of law where the facts alleged show existence of a controversy concerning rights and legal relations and it appears that the discretionary and extraordinary power of the court has been invoked for sufficient reason, and that in the immediate case the Appellate Division order had merely sustained the sufficiency of the complaint as a matter of pleading. Whether plaintiff had suffered present legal injury and damages would not be decided.

¶ 4. Order awarding only nominal damages to Westchester County property owners for the acquisition by the City of subterranean easements for construction and maintenance of a subsurface tunnel 390 to 510 feet below the surface, was aff'd without opinion.-In re Gillespie (Iselin), 285 N.Y. 771, 34 N.E. 2d 915 [1941].

¶ 5. Where the tunnel to be constructed as an aqueduct would be 470 to 500 feet below the surface, the nominal award made by the Commissioners for taking of a sub-surface easement would be sustained, as the existence of such an easement was not a substantial encumbrance.-In re Gillespie (Del. Section, 1-3), 103 (8) N.Y.L.J. (1-10-40) 154, Col. 5 F, at 6 T, aff'd without opinion, 259 App. Div. 1045, 22 N.Y.S. 2d 127 [1940], aff'd 285 N.Y. 771, 34 N.E. 2d 915 [1941].

¶ 6. Gas and electric corporation which, as result of the City's acquisition of electric light and power lines within the reservoir basin of the Rondout Reservoir, had been obliged to relocate its lines over a substitute hilly route through wooded terrain, **held** entitled to compensation representing the excess of cost of operating and maintaining the lines on the substituted route over cost of operating and maintaining the lines within the reservoir area. Admin. Code § K41-26.0 permitted the acquisition of the lines only upon providing a substitute route and upon the City bearing the expense or loss by reason of changing the route, and §§ K41-12.0 and K41-13.0 confirmed the broad legislative intent that the City should pay for all damage reasonably traceable to its exercise of the power of condemnation. That the

corporation had waived any claim under § K41-44.0, which allows business damage claims, did not amount to a waiver as to the claimed items, particularly since the claim for increased cost of maintenance was not the same as a claim for decrease in value of an established business or the consequential damage to real estate not taken.-Petition of Gillespie (Central Hudson Gas & Elec. Corp.), 263 App. Div. 175, 32 N.Y.S. 2d 96 [1942], aff'd without opinion, 288 N.Y. 514, 41 N.E. 2d 926 [1942].

¶ 7. Awards made by Commissioners of Appraisal to each of five claimants after extensive hearings and after viewing the premises, would not be disturbed, notwithstanding there was conflicting evidence as to value. Order of Special Term rejecting the Commissioners' report unless the claimants stipulated to accept the lesser sums fixed by the Court, was reversed.-Application of Huie, 282 App. Div. 819, 122 N.Y.S. 2d 477 [1953], aff'd 306 N.Y. 951, 120 N.E. 2d 221 [1954].

¶ 8. Awards for indirect business and real property damage made to six claimants who were dairy farmers and a seventh who operated a seasonal farm boarding-house, for increased operating costs for shopping, hauling feed, obtaining gravel, hauling milk and obtaining seasonal help, and in the case of the boarding-house keeper for loss of boarders, as result of construction of vast reservoir which would destroy a hamlet which was formerly a shopping center for claimants and would require them to travel an additional six and a half miles to the nearest shopping center, **held** not so unreasonable as to be rejected. The Commissioners were on the ground, they viewed the terrain and were familiar with the roads obliterated and those replaced.-Application of Huie, 282 App. Div. 819, 123 N.Y.S. 2d 12 [1953], aff'd 306 N.Y. 951, 120 N.E. 2d 221 [1954].

¶ 9. Award for business damage to claimant who conducted a wholesale and retail feed business of approximately twice the total of annual cash losses was adequate. Matter of Huie (Crawford Brothers, Inc.), 26 App. Div. 2d 746, 272 N.Y.S. 2d 236 [1966].

¶ 9.1. Damages are payable under this section only to a business or profession which was organized, established or purchased before it was known that the condemnation proceeding would be instituted.-In re Delaware Sections etc., 18 App. Div. 2d 270, 239 N.Y.S. 2d 178 [1963] and in re Delaware Sections etc., 18 App. Div. 2d 437, 239 N.Y.S. 2d 939 [1963].

¶ 10. The claimant operated a boarding house near Honk Lake, whose waters were depleted when the City diverted Rondout Creek. Her land was close to but not adjacent to either the creek or the lake. She had the right to water farm stock from the creek and keep a rowboat in it. Her guests had customarily used the lake for swimming, boating, and fishing for many years. As a result of the City's activities, the lake became a murky pond, with hundreds of feet of muddy bottom separating claimant's property from the water. Mosquitoes multiplied, and an odor of dead fish prevailed. Claimant asserts a decrease in value of over $12,000, but the Commissioner made an award of $1,000. An order of the Special Term setting aside this award as wholly inadequate is hereby affirmed.-Matter of Huie (Geiselhart), 2 A.D. 2d 785, 154 N.Y.S. 2d 240 [1956].

¶ 11. Award of $400 for parcel consisting of 2.3 acres of unimproved land as to which by oversight no award had been made in 1909 when title vested in the City, **held** not inadequate, in view of considerations that at time of the taking the parcel was assessed at only $115 by the town which was now claiming the award, and the parcel had been repeatedly sold for taxes without any outside purchasers being interested.-In re Gillespie, 107 (82) N.Y.L.J. (4-9-42) 1502, Col. 3 F.

¶ 12. In proceeding to ascertain damages sustained by claimant by reason of induction of waters of the Schoharie Reservoir into the Esopus Creek and the compensation to be awarded claimant for acquisition by City of a right of perpetuity to increase the flow of Esopus Creek, order of Special Term confirming awards made by the Commissioners of Appraisal would be affirmed, notwithstanding the claim that the damages were grossly inadequate, where only questions of facts were involved and under the proof the Court was not justified in substituting its judgment for that of the Commissioners.-Application of Gillespie, 266 App. Div. 761, 41 N.Y.S. 2d 369 [1943].

¶ 13. Where the record indicated wide variances in the estimates of value and damages of witnesses for the City and landowners, respectively, the determination as to the amount of the awards to be made for lands appropriated by the City was primarily the province of the Commissioners of Appraisal, and there appeared no justification for a substitution of the Court's judgment for that of the Commissioners who had the opportunity for careful view of the premises, comparison of the several parcels, and opportunity of evaluating the testimony.-Application of Huie, 283 App. Div. 678, 127 N.Y.S. 2d 214 [1954].

¶ 14. Claim of property owner for temporary damages occasioned by work of construction of reservoir pipe line might not be sustained under Laws of 1905, ch. 724, § 19 and ch. 725, § 8.-In re Gillespie (Del. Section, 1-3), 103 (8) N.Y.L.J. (1-10-40) 154, Col. 5 F, at 6 T, aff'd without opinion, 259 App. Div. 1045, 22 N.Y.S. 2d 127 and 34 N.E. 2d 915.

¶ 15. Claim for damage by reason of proximity of the taking, and the change in character of the neighborhood due to uncertainty of use to which the parcel acquired would be put, could not be sustained under the statutes, since in absence of clear language imposing such liability statutes providing for compensation for property damaged or affected by a public improvement are not intended to embrace every species of loss or depreciation, even though such loss or depreciation may be due directly to the improvement.-Id.

¶ 16. With respect to indirect damage to the property and business of a milk plant, claimant said it lost 108 milk producers, but it appeared that only 16 of them were taken over by the City, the remainder shifting their business to other plants of the claimant and its competitors. In view of the fact that a cooperative does not make ordinary business profits, the award made was not deemed unreasonable. Claimant was not entitled to counsel fees or interest in the computation of the award.-Matter of Huie (Dairymen's League), 7 App. Div. 2d 24, 180 N.Y.S. 2d 449 [1958].

¶ 17. The property of the claimants was located near pools in Neversink River. Claimants and their guests walked along Route 42 for a distance of 150 feet and then through a field of less than 50 feet to a pool. The City in resisting the claims contended that the claimants were trespassers. **Held:** The claimants were licensees. Furthermore, the Legislature, in enacting this section, intended that claimants should have the right to be compensated in damages by reason of the decrease in value of their land due to acts of the City in diverting the waters of the river. However, claimants were not entitled to interest on their awards from the date of the report of the commissioners.-Matter of Huie (Consolidated Neversink Riparian Section 1), 22 Misc. 2d 1028, 192 N.Y.S. 2d 620 [1959], aff'd 11 App. Div. 2d 837, 202 N.Y.S. 2d 954 [1960].

¶ 18. Claimant, a milk dealer, established a dairy route in a hamlet known as Arena with knowledge that the city was planning a reservoir in that area and that the hamlet might eventually be taken as part of the reservoir area. This section, which permits compensation for the decrease in value of an "established business" did not permit recovery by claimant. A business could not be established within the intent of this section when it was known it was just a question of time before the property would be converted.-Matter of Huie v. White, 14 N.Y. 2d 692, 249 N.Y.S. 2d 887, 198 N.E. 2d 916 [1964], cert. den., 381 U.S. 920.

¶ 19. Petitioner owned a parcel of property on a branch of the Delaware River. When the City diverted water from the river, it caused variations in the depth, temperature and flow of the water and this damaged the swimming and fishing in the area. **Held:** petitioner was entitled to damages for the diversion of the water and the consequent damage to his property. However, petitioner was not entitled to damages for an adjacent piece of property which he purchased about six weeks after the City took the diversion rights. As to this property, petitioner's claim was not within the ambit of this section.-Matter of Ford, 18 App. Div. 2d 855, 236 N.Y.S. 2d 591 [1962].

¶ 20. Provisions of statute authorizing compensation to owners of property "affected" or "damaged" would seem not to contemplate compensation unless the property were physically affected or the owner disturbed in the enjoyment of some right which he was entitled to make use of in connection with his property, and loss or depreciation arising from mere proximity of the work or improvement, or from its unsightly nature, or its incongruity with the uses to which

neighboring property was put, might not be recovered.-Id.

¶ 21. It was reversible error to permit the jury to consider in mitigation of damages an increase in salary obtained by the plaintiff immediately upon the City acquiring the business in which plaintiff had theretofore been employed.-Eckert v. City of N.Y., 270 App. Div. 642, 62 N.Y.S. 2d 220 [1946], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 22. Admin. Code, § 394a-1.0, requiring that the complaint in an action against the City must allege that at least 30 days have elapsed since the demand upon which the action was founded was presented to the Comptroller, was not applicable to an action based on § K41-44.0, providing for the payment of damages to an employee of an established business which is injured or destroyed in the acquisition of an additional water supply. The Water Supply Act is a special statute, is complete in itself, and takes precedence over § 394a-1.0, which deals with claims generally.-Eckert v. City of New York, 268 App. Div. 46, 48 N.Y.S. 2d 590 [1944], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 23. Contention that the Water Supply Act does not contemplate claims by railroad employees under § K41-44.0, was rejected. Furthermore, it was not necessary that the claimants allege that they had been otherwise damaged to entitle them to recover the six months salary provided for by § K41-44.0.-Id.

¶ 24. While the statute does not provide for liquidated damages in any specific amount, they may be considered as liquidated subject to proof of the amount of salary for the six months' period prior to the time claimant was compelled to quit his position because of the acquisition by the city of the railroad business which employed him.-Terry v. City of N.Y., 270 App. Div. 642, 62 N.Y.S. 2d 220 [1946], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 25. The Commissioners of Appraisal, in making awards for damages to the real estate and business of a certain claimant, properly disallowed interest from the time of filing by the City of their "taking" maps. Despite the language of this section interest may not be granted on an award in such a "business damage" case.-Matter of Huie, 10 Misc. 2d 766, 173 N.Y.S. 2d 640 [1958], aff'd 7 A.D. 2d 24, 180 N.Y.S. 2d 449 [1958].

¶ 26. Plaintiffs were entitled to interest on an award under § K41-44.0 of the Code from the date of confirmation of the award.-Hartman v. City of New York, 29 Misc. 2d 578, 218 N.Y.S. 2d 404 [1961].

¶ 27. On application by the Board of Water Supply to acquire real estate, an award to the operator of a hardware store for indirect losses resulting from the acquisition of lands on which customers were located was excessive and would be reduced unless the parties stipulated to reduce the award.-Application of Huie, 14 A.D. 2d 627, 218 N.Y.S. 2d 370 [1961].

¶ 28. On appeal by the City from an order confirming awards for damages on account of the diversion of the Neversink River the Court found that one claim had not been filed within the statutory three-year period and that other awards were excessive.-Application of Huie, 14 A.D. 2d 627, 218 N.Y.S. 2d 791 [1961].

¶ 29. A milk company which extended its business into a territory which it knew the City had acquired for construction of a water system was not entitled to an award for loss of business when the City converted the land to its intended use.-Id.

¶ 30. Bank had no right to damages for loss of potential business based on speculation as to the farm loan business that might have been done by bank had one hundred fourteen farms that were acquired for the Pepactin Reservoir remained in area. The word "indirectly" in statute does not mean "potentially" and an actual loss of business must be proved.-Matter of Ford (First Nat. Bank of Downsville), 28 App. Div. 2d 634, 280 N.Y.S. 2d 316 [1967], aff'd 22 N.Y. 2d 834, 239 N.E. 2d 731, 293 N.Y.S. 2d 101 [1968].

¶ 31. In a proceeding for an order directing the Board of Water Supply to accept petitioner's claim which was not timely filed, petitioner contended that due process had been violated and the statute of limitations was ineffective. The

Court found that the provisions of the Water Supply Act providing for constructive notice did not deny due process.-Application of Huie, 28 Misc. 2d 708, 221 N.Y.S. 2d 689 [1956].

¶ 32. Owners of property in Delaware County acquiring title subsequent to January 1, 1956 may properly assert damage claims as to real estate "existing on" such prior date and as to businesses "established on or prior to" such date.-Matter of Ford (Tompkins), 25 App. Div. 2d 694, 268 N.Y.S. 2d 39 [1966], aff'd 20 N.Y. 2d 887, 285 N.Y.S. 2d 859, 232 N.E. 2d 855.

¶ 33. Private consultation between chairman of the appraisal commission and experts to aid Commissioner in understanding of accounting and economic theories and methods employed in the evaluation of business and business damage although "irregular" did not require reversal absent an indication that the determination of the Commissioner was influenced by such consultation.-Ford v. Siska, 24 App. Div. 14, 262 N.Y.S. 2d 35 [1965].

¶ 34. Cut-off date with respect to damages under this section which is silent as to that date is the date of the execution of any plans for requisition of land for the particular project.-Matter of Ford (Arens), 26 App. Div. 2d 408, 274 N.Y.S. 2d 753 [1966].

¶ 35. When Legislature in 1970 amended this section so as to change the cut-off date for a claim for damages upon the owner of real estate not taken from January 1, 1956 to April 1, 1959, claimants who purchased real property and/or business on December 1, 1958 had right to compel hearing on their claims.-Matter of Ford (Tompkins) 31 N.Y. 2d 932, 293 N.E. 2d 94, 340 N.Y.S. 2d 926 [1972], aff'g 38 A.D. 2d 641, 326 N.Y.S. 2d 884 [1971].

FOOTNOTES

3

[Footnote 3]: * So in original. (Word misspelled.)

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NYC Administrative Code 5-424

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-424 Certain acts not to be affected.

This subchapter shall not be construed to repeal, affect or modify chapter nine hundred forty-two of the laws of eighteen hundred ninety-six, nor chapter seven hundred fifty-two of the laws of nineteen hundred four.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-45.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 1394

(formerly § K41-45.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-426

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-426 Approval of maps and plans by the New York state department of environmental conservation.

The city shall have no power to acquire, take or condemn lands under this subchapter unless maps and plans covering the work contemplated by this subchapter shall have been submitted to and approved by the New York state department of environmental conservation or any of its predecessors. All amendments or modification of such maps and plans thereafter made shall be in like manner submitted to and approved by such department, and when so approved, shall have the same force and effect as the original plans filed therewith.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-47.0 added chap 929/1937 § 1

Amended chap 460/1938 § 6

Renumbered and amended chap 100/1963 § 1396

(formerly § K41-47.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-429

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 3-A WATER SUPPLY

§ 5-429 Former board of water supply.

Any reference to the former board of water supply occurring in any law, code, contract or document shall be deemed to refer to and mean the commissioner of environmental protection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K51-1.0 added chap 542/1978 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Where property taken by City for water supply purposes consisted of farm property with buildings, previously used by the owners as a dairy farm and for accommodating paying summer guests, fishermen and hunters, and after the taking but before the hearings and award substantial quantities of bluestone and flagstone were discovered under the surface of the property and such stone was actually used in construction of the water supply project, the Commissioners in making their award should have considered the value of the stone deposits in addition to the value of the property as a farm unit.-Huie v. Campbell, 281 App. Div. 275, 121 N.Y.S. 2d 86 [1953].

¶ 2. The Board of Water Supply was not an entity, independent of the City, with powers similar to those of the Board of Education. Hence, the City had the right to audit a claim and withhold payment due to a contractor under a contract with the Board of Water Supply. The contract provided that the City shall not be estopped from showing the true value of the work done.-Matter of Frazier Davis Construction Co., 6 A.D. 2d 112, 175 N.Y.S. 2d 765 [1958].

¶ 3. A milk company which extended its business into a territory which it knew the City had acquired for construction of a water system was not entitled to an award for loss of business when the City converted the land to its intended use.-Application of Huie, 13 App. Div. 2d 596, 212 N.Y.S. 2d 925 [1961]; aff'd 14 N.Y. 2d 692, 249 N.Y.S. 2d 887, 198 N.E. 2d 915.

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NYC Administrative Code 5-430

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-430 Definitions.

As used in this subchapter unless otherwise expressly stated, or unless the context or subject-matter otherwise requires, the following terms shall mean:

1. "The court", "the supreme court": A special term of the supreme court held in a county within the judicial district in which the real property involved in any proceeding under this subchapter is situated.

2. "Days": Calendar days, exclusive of Sundays and full legal holidays.

3. "Owner": A person having an estate, interest or easement or lien, charge or encumbrance on any real property affected by proceedings under this subchapter.

4. "Street": Includes the surface, subsurface and air space over any street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct and every class of road, square and place, or part thereof, but only such as are public, and does not include marginal street or wharf or state arterial highways except those sections of such state arterial highways enumerated in section 5-432.

5. "Real property": Includes all surface and subsurface structures within closed streets and all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal and equitable, in lands, and every

right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of judgment, mortgage or otherwise.

6. "Capital project proceeding": A condemnation proceeding pursuant to the provisions of this subchapter for capital project purposes, authorized pursuant to chapter nine of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-1.0 added chap 929/1937 § 1

Sub 4 amended LL 50/1942 § 30

Sub 6 repealed chap 100/1963 § 279

Sub 6 renumbered chap 100/1963 § 279

(formerly sub 7)

Sub 4 amended chap 1002/1971 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Inasmuch as the City of New York in closing a certain public street was acquiring the fee of the street for the purpose of erecting thereon a garage and bus depot in connection with its operation of the transit system, a proprietary activity, it could not escape its liability to compensate gas and electric corporations for appropriation of their facilities located under the surface of the street under the common law rule that a utility must bear the burden of changes required in the regulation or improvement of a highway. Moreover, Admin. Code § E15-1.0, subd. 5, specifically provides that compensation must be paid for property such as that owned by the utilities and affected by the proceeding. The compensation was measured by cost to the utilities of relocating their respective facilities.-In re City of N.Y. (Gillen Place), 195 Misc. 685, 90 N.Y.S. 2d 641 [1949], aff'd 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951] which aff'd 304 N.Y. 215, 106 N.E. 2d 897 [1952].

¶ 2. Where city condemned areas in which pipes of a public utility were laid for a slum clearance project which is a governmental function it was not required to recompense utility for cost of relocation. The definition of real property contained in this section does not abrogate this common law rule.-Matter of Consolidated Edison Co. v. Lindsay, 24 N.Y. 2d 309, 300 N.Y.S. 2d 321, 248 N.E. 2d 150 [1969].

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NYC Administrative Code 5-431

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Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-431 Effect upon prior street closings.

This subchapter, or any part thereof, shall not apply to any street heretofore closed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 280

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NYC Administrative Code 5-432

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-432 Authority to close streets and to acquire any right, title or interest therein.

a. The city may authorize the closing or discontinuance of the surface, subsurface or air space over such streets therein, in whole or in part, upon the determination that (1) such closing or discontinuance will further the health, safety, pedestrian or vehicular circulation, housing, economic development or general welfare of the city and (2) in the case of a partial closing or discontinuance of the subsurface or air space over such streets, will not substantially interfere with pedestrian or vehicular use of such streets. In connection with the closing or discontinuance of the subsurface or air space over such streets, the city may authorize the closing or discontinuance of so much of such streets, in whole or in part, for easements and such other rights as may be necessary or desirable in order to effect the construction and support of any improvements in the closed or discontinued air space over or the subsurface of such streets. Any such closing or discontinuance shall be effected as a capital project. In connection with any such closing or discontinuance, the city may acquire any right, title or interest in the closed or discontinued streets or the closed or discontinued portions thereof, including the surface or subsurface of or the air space over such streets as a capital project, whenever it may deem that such acquisition will more effectually secure the actual discontinuance and closing of streets, in whole or in part, which may be legally discontinued and closed pursuant to this subchapter. The provisions of this subchapter which refer to land or lands within or lying within a closed or discontinued street or within a street to be closed or discontinued shall be deemed to refer to the surface and subsurface of and air space over such street or any part of the surface or subsurface of or air space over such street. The provisions of this subchapter which refer to fee title shall be deemed to refer to any right, title or interest acquired or to be acquired by the city.

b. Compensation and recompense shall be made to the respective owners of the real property affected or damaged by reason of any such closing and to the respective owners of the fee title to the land within the closed street for the damages caused by the taking by the city of such fee title.

c. Notwithstanding the provisions of any general, special or local law, the provisions of chapter one of title four and subchapter four of chapter three of this title shall be applicable to the following sections of the state arterial highway system located within the city of New York provided that with regard to such sections all requirements imposed by federal and state law shall be complied with, including requirements relating to the construction and support of improvements in such sections: Franklin D. Roosevelt drive from and including the Brooklyn Battery crossing to the easterly prolongation of the northerly line of Robert F. Wagner, Senior place.

d. Where the whole or a part of the subsurface of a street has been closed or discontinued pursuant to this section, public utility facilities in such subsurface or part thereof may be maintained in place, or, if the proposed use of such subsurface requires the relocation of utility facilities, the owner of such facilities may relocate such facilities elsewhere within or without such subsurface, provided, however, that any maintenance in place or relocation of such facilities shall be authorized by the city pursuant to subdivision one-a of section 5-433 of this subchapter. Nothing in this section, however, shall be deemed to create any liability arising from the cost of public utility facility relocation not recognized at common law or otherwise created by statute.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-3.0 added chap 929/1937 § 1

Amended chap 100/1963 § 281

Amended chap 1002/1971 § 2

Sub d added chap 915/1972 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Land consisting of street area under the viaduct running around Grand Central Terminal did not cease to be a public street so as to allow City to grant a permit for its private use, unless it were closed pursuant to Admin. Code § E15-3.0. Section 383 of the Charter does not override such provision of the Admin. Code.-City of N.Y. v. Aviation Distributors, Inc., 84 N.Y.S. 2d 84 [1948].

¶ 2. Street closing statutes have as their primary purpose the securing and preservation of the "regularity and uniformity of the streets." Such a purpose is governmental, and the act of closing a street is to that extent a sovereign one.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951] which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 3. Closing of public street for purpose of erecting thereon a garage and bus depot in connection with the operation by the City of the Transit System **held** to have been for a proprietary purpose, rather than a governmental purpose, and gas and electric corporations which were forced to abandon their installations located under the surface of the street and to reconstruct them elsewhere and for a much greater distance were entitled to be compensated for their loss.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951] which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 4. Where the City closes part of a street producing a dead end or cul-de-sac street with access only in one

direction, property owners whose property fronts on the unobstructed portion of the street are nonetheless "affected or damaged" within the meaning of this section. Such property owners are entitled to consequential damages for the extinguishment of their private easements of access. However, where the evidence showed that there was no diminution in the property values, only nominal damages were awarded. In deciding the consequential damages, the Court took into consideration the fact that a school erected on the closed road would increase the value of the property.-Matter of City of New York (East 5th St.), 1 Misc. 2d 977, 146 N.Y.S. 2d 794 [1955].

¶ 5. A brewery company owned all the land on both sides of a public street for one block. It negotiated with the City to close the street to the end that it might use it for the parking of its vehicles. A taxpayer's complaint showed that this was not a case of public necessity or of the preservation of the regularity and uniformity of the streets. Order dismissing complaint reversed.-Stahl Soap Corp. v. City of N.Y., 4 A.D. 2d 957, 167 N.Y.S. 2d 717 [1957], aff'd 5 N.Y. 2d 200, 182 N.Y.S. 2d 808, 156 N.E. 2d 443 [1959].

¶ 6. Plaintiff, a taxpayer, charged in a complaint that the City could not close a designated street, since the closing was not due to public necessity. **Held:** The City could not assert, as affirmative defenses to the action that, the plaintiff failed to appear at a public hearing relative to the closing of the street or that the plaintiff was guilty of laches in sitting by idle while the City delivered a deed to the street to the other defendant. Furthermore, the other defendant could not assert as an affirmative defense that the plaintiff had brought the present action due to a private grievance.-Stahl Soap Corporation v. The City of New York, 19 Misc. 2d 142, 187 N.Y.S. 2d 90 [1959], aff'd 9 A.D. 2d 964, 195 N.Y.S. 2d 812 [1959].

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NYC Administrative Code 5-433

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-433 Resolution authorizing the closing or discontinuance of a street; contents of.

Whenever the closing or discontinuance of a street has been authorized as a capital project, the resolution of the board of estimate, providing for the institution of proceedings for the closing or discontinuance of such street, shall:

1. Specify and describe by courses and distances the part or section of such street which it is proposed to discontinue and close and the date upon which such street shall become and be closed, which date shall not be prior to the date upon which the map, showing the street or such part thereof proposed to be closed, shall be filed as provided in section 5-435 of this subchapter, nor subsequent to the date of the entry of the final decree of the court.

1-a. In the case of the closing or discontinuance of the subsurface of a street, in whole or in part, specify if public utility facilities within the subsurface of such street shall be maintained in place or relocated within or without such subsurface so that the maintenance in place or proposed relocation of such facilities is consistent with the proposed use of the closed portion of such subsurface and the requirements of other facilities located therein.

2. State whether the effectual closing of such street, or other public necessity, requires the acquisition of the fee title to the whole or any portion of the land within the street to be closed, and in case it shall state that such acquisition is necessary, shall further request the mayor to provide for such acquisition simultaneously with the closing of such street, and shall specify and describe the part of the lands within the closed street, fee title to which should be acquired.

3. Adopt three similar maps or plans, prepared by the agency requesting such closing and acquisition, showing the street discontinued and closed, the nature and extent of such discontinuance and closing and the location of the immediately adjacent or intersecting open or established public streets of the city, sufficient for the identification and location thereof.

4. Authorize and direct the corporation counsel to make application to the supreme court to have such court without a jury ascertain and determine the compensation which justly should be made to the respective owners of the real property affected, damaged, extinguished or destroyed by such closing.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-4.0 added chap 929/1937 § 1

Amended chap 100/1963 § 282

Sub 1-a added chap 915/1972 § 2

Administrative Code of the City of New York

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NYC Administrative Code 5-434

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-434 Acquisition of street being closed or discontinued.

Whenever the closing or discontinuance of a street requires the acquisition of the fee title to the whole or any portion of the land within the street to be closed, the order of the mayor directing such acquisition shall:

1. Approve three maps, prepared by the agency requesting the street closing and acquisition, showing the land in such closed street the fee title to which is to be acquired.

2. Authorize and direct the corporation counsel to make application to the supreme court to have such court without a jury ascertain and determine the compensation which ought justly be made to the respective owners of the fee title to the land within such closed street.

3. Specify the date upon which the city shall acquire fee title which date shall be the same as that specified in the resolution of the board of estimate as the date upon which the street proposed to be discontinued or closed, shall become and be closed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-4.1 added chap 100/1963 § 283

Administrative Code of the City of New York

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NYC Administrative Code 5-435

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-435 Street closing and acquisition maps; certification and filing of.

a. When the maps described in subdivision three of section 5433 of this subchapter shall have been adopted, as therein provided, such maps shall be certified in the manner provided by law for the certification of similar maps adopted by the board of estimate. One of the maps so certified shall be filed by the agency requesting the discontinuance or closing, and shall remain of record in its office. The second map so certified shall be filed by such agency in the office of the corporation counsel. The third map shall be filed by such agency, and remain of record in the office in which instruments affecting real property in the county in which the closed street may be situated are required to be recorded. Such map shall be final and conclusive upon the city and upon all persons whomsoever.

b. When the maps described in subdivision one of section 5-434 of this subchapter shall have been approved and certified, such maps shall be filed by the agency requesting the acquisition in the same offices specified in subdivision a of this section.

c. Street closing and acquisition maps required to be filed in the office in which instruments affecting real property in the county in which the street to be closed and acquired may be situated shall be filed on the same date.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-5.0 added chap 929/1937 § 1

Amended chap 100/1963 § 284

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NYC Administrative Code 5-436

Administrative Code of the City of New York

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CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-436 Order to expedite.

At any time after the date of the filing of such street closing and acquisition maps, the corporation counsel, or any owner may apply to the court for an order directing any owner or owners, or the corporation counsel, as the case may be, to show cause why further proceedings under this subchapter on the part of such owner or owners or of the corporation counsel should not be expedited. Upon the hearing directed by such an order to show cause, the court, in its discretion, may make an order directing that such proceedings should be expedited in the manner stated therein and also making such further directions with respect to the particulars shown upon the application as shall be just and proper in the premises.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-6.0 added chap 929/1937 § 1

Amended chap 100/1963 § 285

Administrative Code of the City of New York

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NYC Administrative Code 5-437

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-437 Release to owners.

In any case where any street which has been conveyed or ceded to the city without compensation, shall be discontinued and closed and the person or persons who have made such grant or conveyance, or his, hers or their heirs, devisees, executors or successors, are the owners and have retained title to the property fronting thereon, the board of estimate is authorized, on behalf of the city, to release and convey without compensation or upon such terms as may appear to such board to be just and equitable, to such owner or owners, his, hers or their heirs, devisees, executors or successors, all the right, title and interest which the city may have so acquired in and to the part of such street, in consideration of the release by such owner or owners of any and all claims for damages or compensation for and on account of the discontinuance or closing thereof. In such case no proceeding shall be had to estimate such loss and damage as provided in this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-7.0 added chap 929/1937 § 1

Administrative Code of the City of New York

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NYC Administrative Code 5-438

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-438 Closing of street; vesting of title.

Upon the date specified in the resolution of the board of estimate as the date upon which the street, proposed to be discontinued or closed, shall become and be closed, all easements, in and over the land within such closed street, of every nature whatsoever, whether in favor of the public or in favor of the owners of the real property abutting thereon, shall become and be extinguished and destroyed, and ever after such date, such former street shall cease to be or remain for any purpose whatever, a street. In all cases where the city, at the time of such closing, shall acquire the fee title to the whole or any part of the land within such closed street, the city shall acquire and become and be vested with the fee title thereto, simultaneously with the closing thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-8.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. A person whose property fronted on the unobstructed portion of a street which, as a result of a legal closing of

a part of the street, became a dead end or cul-de-sac with access only in one direction, was entitled to compensation where he had acquired a private easement of access in both directions by a grant originating prior to the City's acquisition of the bed of the street. Inasmuch as no actual damage was established, only nominal damages were awarded.-Matter of City of New York (East 5th St.), 1 Misc. 2d 977, 146 N.Y.S. 2d 794 [1955].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-439

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-439 Closing of street; effect on real property contracts.

In all cases where any part of any lot or parcel of land or other premises, under lease or other contract, shall be contiguous to any street after the closing thereof, all the covenants, contracts and agreements between landlord and tenant or any other contracting parties, touching the same or any part thereof, shall, upon the date of the closing thereof, respectively cease and determine and be absolutely discharged.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-9.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-440

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-440 Notice of application to court.

Whenever the maps shall have been filed pursuant to section 5-435 of this subchapter, the corporation counsel shall institute a proceeding to ascertain and determine the compensation which justly should be made to the respective owners of the real property affected or damaged by the closing of the street and to the respective owners of the fee title to the land in such closed street, the acquisition of which may be provided for in the order of the mayor. Such corporation counsel shall cause a notice of the application to the supreme court to have such court, without a jury, ascertain and determine such compensation, to be published in the City Record for ten days prior to the making of such application, and shall state the time and place when and where such application shall be made. Such notice shall specify and describe the closed street by means of the description contained in the resolution which provided for the closing thereof. It shall also specify what portion, if any, of the land in the closed street the acquisition of fee title to which is provided for in such order.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-10.0 added chap 929/1937 § 1

Amended chap 100/1963 § 286

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-441

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-441 Application to court; contents of petition.

Upon the day stated in such notice, or upon such further day to which the court may for good cause adjourn such application, the corporation counsel shall present a petition, signed by him or her on behalf of the city:

1. Setting forth briefly the proceedings had in relation to such discontinuance or closing.

2. Showing the nature and extent thereof.

3. Indicating the real property affected thereby, and to what portion, if any, of the land within the closed street the city has acquired or is authorized to acquire the fee title, by reference to the maps which shall have been filed as provided in section 5-435 of this subchapter. A copy of each map shall be attached to the petition.

4. Praying that the compensation which justly should be made to the respective owners of the real property affected or damaged by reason of such closing and also, in a proper case, the compensation which justly should be made to the respective owners of the fee title to the land within the closed street, acquired or to be acquired in the proceeding, be ascertained and determined by the supreme court without a jury.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-11.0 added chap 929/1937 § 1

Sub 5 repealed chap 100/1963 § 287

Sub 3 amended chap 100/1963 § 287

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-442

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-442 Order granting application; filing thereof.

Upon due proof to its satisfaction of the publication of the required notice and upon the filing of the required petition, the court shall enter an order granting the application, which order shall be filed in the office of the clerk of each county in which the closed street and the property affected or damaged by the closing thereof or any part of either may be situated.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-12.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-443

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-443 Filing of damage map; notice to file claims.

a. Thereupon the corporation counsel shall file in the office of the clerk of each county in which the closed street and the real property affected or damaged by the closing thereof or any part of either may be situated, a survey or map showing such real property subdivided into parcels corresponding with the separate ownerships of the land within the closed street acquired by the city and of the real property affected or damaged by the closing thereof, as nearly as the same has been ascertained.

b. The corporation counsel shall also cause to be published in the City Record a notice containing:

1. The same description of the closed street which was contained in the resolution closing the same and a general description of the real property affected or damaged by the closing of such street, and the land in the closed street acquired or to be acquired in such proceeding by the city.

2. A statement that the survey or map thereof has been filed and requiring that all claimants, on or before a date therein specified, shall file with the clerk of each county in which such closed street and the real property affected or damaged by the closing or taking thereof, or any part of either, may be situated, a written claim or demand, duly verified, in the manner provided by law for the verification of pleadings in an action, setting forth the real property owned by the claimant, and the claimant's post office address.

c. The claimant or his or her attorney, within the same time, shall serve on the corporation counsel a copy of such verified claim.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-13.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-444

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-444 Proof of ownership.

a. The proof of title to real property for which damages caused by the closing of the street are claimed, and proof of title to real property taken or damaged by reason of the acquisition by the city of the fee title to the land within the closed street, in all cases where the title thereto is undisputed, together with proof of liens, encumbrances or burdens thereon, shall be submitted by the claimant to the corporation counsel, or to such assistant as the corporation counsel shall designate. The corporation counsel shall serve upon all parties or their attorneys who have served on the corporation counsel a copy of their verified claims, a notice of the time and place at which he or she will receive such proof of title. In all cases where the title of a claimant is disputed, it shall be the duty of the court to determine the ownership of such real property, or the right to damages thereto, upon the proof submitted to the court during the trial of the proceeding.

b. The court shall also have power to determine all questions of title and right to damages, incident to the trial of the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-14.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-445

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-445 Note of issue of the proceeding.

After all parties who have filed verified claims have proved their title, or have failed to do so after being notified by the corporation counsel of the time and place when and where such proof of title would be received by the corporation counsel, such corporation counsel shall serve upon all parties or their attorneys who have appeared in the proceeding, a note of issue thereof and shall file the same with the clerk of the court of the county in which the trial is to be had. The trial shall be had in such county within the judicial district in which the real property affected by the proceeding is situated as the corporation counsel in the note of issue shall designate. Such note of issue shall be served at least ten days before, and shall be filed at least eight days before the date for which the proceeding is noticed for trial. The note of issue shall briefly state:

1. The title of the proceeding.

2. The date and entry of the order granting the application to have the compensation for damages caused by the closing ascertained and determined.

3. The names and addresses of the parties who have filed claims, and the names and addresses of their respective attorneys.

4. A brief statement as to the extent of the street which has been closed and discontinued and the part thereof to

be acquired by the city. The clerk of the court must thereupon enter the proceeding upon the proper calendar, according to the date of the entry of the order granting such application. When the note of issue has been served and filed, the proceeding must remain on the calendar until finally disposed of.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-15.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-446

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-446 View by court.

It shall be the duty of the justice trying the proceeding to view the real property affected by the closing.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-16.0 added chap 929/1937 § 1

Amended chap 100/1963 § 288

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-447

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-447 Decision of the court.

The court, after hearing such testimony and considering such proofs as may be offered, shall ascertain and estimate the compensation which ought justly to be made by the city to the respective owners of the real property affected and damaged by any street closing, and shall also ascertain and determine the compensation to be made to the respective owners of the fee title to the land within the closed street for damages sustained by reason of the acquisition by the city of the fee title thereto. The court shall also ascertain and estimate the value of the city's interest in the respective parcels of the closed street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-17.0 added chap 929/1937 § 1

Amended chap 100/1963 § 289

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-448

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-448 Corporation counsel to furnish clerks; agencies to furnish maps.

a. It shall be the duty of the corporation counsel to furnish to the court in the proceeding to discontinue and close any street and to acquire title thereto, such necessary clerks and other employees, and to provide such suitable offices as they may require to enable them to fully and satisfactorily discharge the duties imposed upon the court by this subchapter.

b. The board of estimate may require any agency of the city to furnish any surveys or maps required in connection with the closing of any street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-18.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-449

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-449 Amendment of street closing proceeding to include acquisition of fee title to closed street.

Where a street has been closed pursuant to the provisions of this subchapter, and the compensation to be made for the damages caused by the closing thereof is to be ascertained and determined by the supreme court without a jury, and the city is not the owner of the fee title to the land within such closed street and the effectual closing of such street or part thereof, or other public necessity, requires that such city should acquire the fee title to the whole or part of the land within the closed street, the city shall be authorized to acquire the fee title thereto for the purposes provided by this subchapter. Such acquisition may be authorized before or after the institution of a proceeding to have the supreme court without a jury ascertain and determine the compensation to be made for the damages caused by the closing of such street, but the order of the mayor instituting the proceeding for the acquisition shall be approved prior to the filing of the tentative decree in any street closing proceeding. The mayor, in issuing such order, shall comply with the provisions of section 5-434 of this subchapter. Such order shall authorize and direct the corporation counsel to apply to the supreme court in the proper judicial district to have such court without a jury ascertain and determine the compensation which justly should be made to the respective owners of the fee title to the land within the closed street for the damages sustained by such owners on account of the acquisition by the city of the fee title thereto. Such order shall specify the date upon which the fee title to the land within the closed street shall become and be vested in the city, in accordance with the provisions of subdivision three of section 5-434, which date shall not be prior to the entry of the order authorizing the court to ascertain and determine the compensation to be made therefor nor subsequent to the entry of the final decree of the court in such proceeding. Upon the date so fixed, the fee title to the land within the closed street shall

become and be vested in the city. Upon the issuance of such order the corporation counsel shall give notice by publication for ten days in the City Record that he or she will apply to the supreme court, stating the time and place when and where such application will be made, to have such court without a jury ascertain and determine the compensation which justly should be made to the respective owners of the fee title to the land within the closed street. Upon such application the corporation counsel shall present to the court a petition signed and verified by him or her, setting forth the action had by the mayor, and indicating the land within the closed street, the fee title to which is to be acquired by the city, by a precise description with courses and distances, having reference to the city map, an extract from which shall be attached, and praying that the compensation to be made therefor shall be ascertained and determined by such court without a jury. At the time and place specified in such notice, unless the court shall adjourn such application to a subsequent day, and, in that event, at the time and place to which the same may be adjourned, upon due proof to its satisfaction of the publication of such notice and upon the filing of such petition, the court shall enter an order granting the application, which order shall be filed in the office of the clerk of the county in which the closed street is situated. Awards for damages, due to the acquisition of the fee title to the land within the closed street, shall be made as provided in any proceeding instituted pursuant to this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-19.0 added chap 929/1937 § 1

Amended chap 100/1963 § 290

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-450

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-450 Agreements with owners.

a. It shall also be lawful for the board of estimate, with respect to a street closing, and the mayor, with respect to acquisition, either before of after the institution of a proceeding under this subchapter, to agree with the owners of the real property that will be affected by such closing, for and about the cession to the city of other real property included within the boundaries of any established street shown on the city map, in lieu of the real property comprised within the lines of the closed street, or to agree for and about the compensation to be made to such owners for the same or for and about the value of real property to be ceded in lieu of such discontinued or closed portion or portions of such street.

b. In case of any such agreement or agreements with part only of the owners entitled to and interested in the same real property so affected, for the purpose of making any such discontinuance or closing, or cession in lieu of such closing, the same shall be valid and binding upon the parties thereto, and the court shall nevertheless enter upon and make or proceed with its estimate, and tentative and final decrees as to the residue of such real property affected by the closing, concerning which the owners thereof shall not agree.

c. The final decree of the court shall be of like force and effect in regard to the matters comprised therein, as if no such agreement as to the part of the premises had been made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-20.0 added chap 929/1937 § 1

Amended chap 100/1963 § 291

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-451

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-451 Tentative decree; preparation, contents and filing of.

a. The court shall instruct the corporation counsel to prepare tabular abstracts of its estimated damage due to the closing, and of the damage due to the acquisition by the city of fee title to the land within the closed street and of the value of the city's interest in the respective parcels of the closed street. The tabular abstract of estimated damage due to the closing of the street shall set forth:

1. The amount of loss and damage to each and every parcel of real property affected by the proceeding.

2. The name of the respective owners of each and every parcel of real property affected thereby, as far as the same shall be ascertained.

3. A sufficient designation or description of the respective lots or parcels of real property damaged by the closing of the street or by the acquisition of the fee title to the lands in the closed street, by reference to numbers of the respective parcels indicated upon the surveys, diagrams, maps or plans which shall be attached to such tabular abstracts.

b. The court shall appraise and determine and separately set forth and state in the tabular abstract, the value of the right, title and interest of the city in and to the fee of the land within the closed street.

c. Such tabular abstracts shall be signed by the justice trying the proceedings and filed with the clerk of each

county in which the closed street and the real property abutting thereon or any part of either may be situated and when so filed shall constitute the tentative decree of the court as to awards for damages and as to the value of the city's interest in the respective parcels of land within the closed street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-21.0 added chap 929/1937 § 1

Amended chap 100/1963 § 292

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-452

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-452 Notice to file objections; hearing thereon.

a. Upon the filing of the tentative decree, the corporation counsel shall give notice, by advertisement to be published for fifteen days in the City Record, of the filing of such tentative decree, and that the city and all other parties to such proceeding or in any way interested in the real property affected thereby, having any objections thereto, shall file such objections, in writing, duly verified in the manner required by law for the verification of pleadings in an action, and setting forth the real property owned by the objector and his or her post office address, with such clerk within twenty days after the first publication of such notice, and that the corporation counsel, on a date specified in the notice, will apply to the justice who made the tentative decree to fix a time when the justice will hear the parties so objecting. Similar notice for at least ten days shall be given of the filing of any new, supplemental or amended tentative decree and for the filing of objections thereto. Every party so objecting or such party's attorney shall, within the same time, serve on the corporation counsel a copy of such verified objections.

b. Upon such application, the justice shall fix the time when he or she will hear the parties so objecting and desiring to be heard. At the time fixed, the justice shall hear the person or persons who have objected to the tentative decree or to the new, supplemental or amended tentative decree, and who may then and there appear, and shall have the power to adjourn, from time to time, until all parties who have filed objections and who desire to be heard shall have been fully heard.

c. After the filing of the tentative decree or of any new, or supplemental, or amended tentative decree, no award

for damages shall be diminished without notice to the owner of the real property affected or the owner's attorney appearing in the proceeding, and an opportunity given for a hearing in regard thereto, before the signing of the final decree.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-22.0 added chap 929/1937 § 1

Sub c amended chap 100/1963 § 293

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-453

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-453 Correction of defects.

The court shall have power at any time to correct any pleading or any defect or informality, in any special proceeding authorized by this subchapter, that may be necessary, or to amend any description, or cause other real property to be included therein or real property included therein to be excluded therefrom, or to permit any person having an interest therein to be made a party thereto, or to relieve from any default, mistake, or irregularity or to direct such further notice to be given to any party in interest as it shall deem proper.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-23.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-454

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-454 Final decree; preparation, contents and filing of.

a. After considering the objections, if any, and making any correction or alteration in the tentative decree as to any award or as to any matter in the tentative decree which the court shall consider just and proper, the justice trying the proceeding shall give instructions to the corporation counsel as to the preparation of the final decree. Such decree shall consist of the tentative decree, and shall have:

1. The final awards for damages due to the closing as determined by the court set opposite the respective damage parcel numbers in a column headed "final awards for closing damages" in the tabular abstract of awards.

2. The final awards for damages due to the acquisition of the fee title in the land within the closed street set opposite the respective parcels of the closed street in the column headed "final awards for land in closed street" in the tabular abstract of awards.

3. The value of the city's interest in the land within the respective parcels of the closed street in a column headed "value of city's interest in respective parcels of closed street."

b. Such final decree shall contain a statement:

1. Of the facts conferring on the court jurisdiction of the proceeding.

2. Of such other matters as the court shall require to be set forth.

3. That the amounts set opposite the respective damage parcel numbers in the column headed "final awards for closing damages" in the tabular abstract of awards constitute and are the just compensation which the respective owners are entitled to receive from the city for damages caused by the closing of the street.

4. That the amounts set opposite the respective parcels of the closed street in the column headed "final awards for land in closed street" in the tabular abstract of awards, constitute and are the just compensation which the respective owners are entitled to receive from the city for damages caused by the acquisition by the city of the fee title to the land within the closed street.

5. That the amounts set opposite the respective parcels of the closed street in the column headed "value of city's interest in the respective parcels of the closed street" in such tabular abstract constitute the sums of money to be paid to the city for a conveyance of the city's interest therein by the parties entitled to a conveyance thereof.

c. Such final decree shall also set forth:

1. The several parcels damaged by the closing of the street and the several parcels of the closed street and the several parcels outside of the closed street, by reference to the numbers of such parcels on the respective maps, survey, diagrams, or plans attached thereto, duly corrected, when necessary, and it shall not be necessary to describe any parcels by a description by metes and bounds.

2. The names of the respective owners of the several parcels damaged by the closing of such street, as far as the same shall have been ascertained, provided that in all cases where the owners are unknown or not fully known to the court, it shall be sufficient to set forth and state in general terms in the decree the respective sums to be allowed and paid to or by the owners of the respective parcels for loss or damage, without specifying their names or their estates or interests therein, and in such cases the owners may be specified as unknown.

d. The final decree, together with all of the affidavits and proofs upon which the same is based, shall be filed in the office of the clerk of each county in which the closed street and the real property damaged by the closing thereof or any part of either may be situated. The final decree, unless set aside or reversed on appeal, shall be final and conclusive as well upon the city as upon the owners of the real property mentioned therein, and also upon all other persons whomsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-24.0 added chap 929/1937 § 1

Amended chap 100/1963 § 294

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-455

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-455 Appeals to appellate division and court of appeals.

a. The city, or any party or person affected by the proceeding and aggrieved by the final decree of the court therein, may appeal to the appellate division of the court. An appeal from the final decree of the court must be taken within thirty days after notice of the filing of such final decree. Such appeal shall be taken and heard in the manner provided by the civil practice law and rules and the rules and practice of the court in relation to appeals in special proceedings. Such appeal shall be heard and determined by the appellate division upon the merits, both as to the questions of law and fact. The determination of the appellate division shall be in the form of an order. The taking of an appeal by any person or persons shall not operate to stay the proceedings under this subchapter, except as to the particular parcel of real property with which the appeal is concerned. The final decree of the court shall be deemed to be final and conclusive upon all parties and persons affected thereby, who have not appealed. Such appeal shall be heard upon the evidence taken before the court, or such part or portion thereof, as the justice at special term, who made the decree appealed from, may certify, or the parties to such appeal may agree upon as sufficient to present the merits of the questions in respect to which such appeal shall be had.

b. The city, or any party or person affected by the proceeding and aggrieved by the order of the appellate division entered on any such appeal, may appeal to the court of appeals from such order. Such appeal shall be taken and heard in the manner provided by the civil practice law and rules and the rules and practice of the court of appeals in relation to appeals from orders in special proceedings. The court of appeals may affirm or reverse the order appealed from and may make such order or direction as shall be appropriate to the case.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-25.0 added chap 929/1937 § 1

Sub c repealed chap 100/1963 § 295

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-456

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-456 Taxation of costs, charges and expenses.

a. The costs or charges of any agency of the city, or others, which shall be required by law to be taxed, shall not be paid or allowed for any service performed under this subchapter, unless the same shall be taxed by the court. A bill of such costs, charges and expenses shall be filed in the office of the clerk of the court in the county in which the land is situated at least ten days before the same shall be presented for taxation, and there shall be annexed thereto a statement of the amounts, if any, previously taxed, to whom the same were payable and the date of such taxation. A notice shall be published in the City Record, for ten days, of the time and place of taxing such costs, charges and expenses, which shall be thereupon taxed by a justice of the supreme court, or by a referee under his or her special order.

b. All such costs and expenses or disbursements shall be stated in detail in the bill of costs, charges and expenses, and shall be accompanied by such proof of the reasonableness and necessity thereof as is now required by law and the practice of the court upon taxation of costs and disbursements in other special proceedings or actions in such court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-26.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-457

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-457 Awards and costs; when, how and to whom paid.

a. All damages awarded by the court, and all costs and expenses which may be taxed in the proceeding, shall be paid by the city to the respective persons mentioned or referred to in the final decree of the court or in whose favor such costs and expenses shall be taxed. In a capital project proceeding, such costs and expenses shall be deemed part of the cost of the acquisition of land or permanent rights in land and may be financed in the same manner as the acquisition of land or permanent rights in land.

b. Whenever the amount of damages awarded in any final decree, together with the costs which shall have been taxed in the proceeding, shall exceed the balance remaining in the fund, from which such amounts are payable, after deducting all outstanding claims against such balance, the court, upon proper application of an owner or other person entitled to such excess, shall require the city to issue and sell serial bonds the proceeds of which shall be paid into such fund to meet such deficiency.

c. In default of payment, in a capital project proceeding, the owners, or other persons entitled to be paid, may at any time after application first made to the comptroller therefor, sue for and recover the amount due, with lawful interest and the costs of suit.

d. Except when any sum or sums of money shall in the final decree be made to "unknown owners", the supreme court, upon the application of the city or of any person entitled to or claiming to be interested in the lands, tenements or

hereditaments for which such awards have been made, or any part thereof, shall either direct the same to be retained by the comptroller, or to be paid into the supreme court until the title thereto or the respective interests and estates of all parties therein shall be determined by the court. Upon such application the court may take the proofs and testimony of the claimant or claimants or parties interested in the lands for which the awards have been made or refer the matter to a referee for such purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-27.0 added chap 929/1937 § 1

Subs a, b amended chap 710/1943 § 573 (Part 3)

Amended chap 100/1963 § 296

CASE NOTES FROM FORMER SECTION

¶ 1. Claimant in street closing proceeding was entitled to interest upon the award at six percent from date upon which a certified property of the order directing payment of the award was served on the Comptoller until July 1, 1939, and thereafter at four percent until date of payment.-Crossin v. McGoldrick, 264 App. Div. 115, 34 N.Y.S. 2d 618 [1942], aff'd 289 N.Y. 763, 46 N.E. 2d 363 [1943].

¶ 2. Where the City Comptroller in 1920 had prepared a warrant for payment of certain awards in a street closing proceeding, but delay in payment had been occasioned by petitioner and not by the City, petitioner **held** not entitled to interest on the awards from 1920, since the awards were made in a street closing proceeding and there was no provision in the Charter compelling the City in such a proceeding to deposit the award in the Supreme Court, and the delay in payment had not been caused by any act of the City. Greater New York Charter § 983, which would have obligated the deposit of the amount of the award with the Supreme Court, does not apply to a street closing proceeding (142 App. Div. 785, 202 N.Y. 602).-In re Crossin (Walton Ave.), 107 (10) N.Y.L.J. (1-13-42) 176, Col. 7 T.

¶ 3. Owners of property abutting street which had been closed to permit construction of incinerator and garage covering several blocks, were entitled to damages resulting from loss of easements of light, air, access and frontage on the closed street, but in the street closing proceeding such damages might be awarded only from date when such proceeding took effect and not from date when the Board of Estimate and Apportionment, pursuant to N.Y.C. Charter § 442, adopted a resolution changing the City map so as to discontinue the portion of the street in question, since § 442 is not a street closing act and action taken thereunder was not a legal closing. However, the alleged wrong to the property owners was in the nature of a tort or trespass upon their private easements apart from the street closing proceeding which the owners might pursue in a proper forum.-In re City of N.Y. (12th Ave., W. 55th St. to W. 57th St.), 105 (103) N.Y.L.J. (5-3-41) 1979, Col. 2 F.

¶ 4. The damages might not be offset by any charge for cost of a pavement not actually completed, as the Court must value the property as it was on the closing date, and possible improvements at expense of the property might not be considered.-Id.

¶ 5. Even assuming that the street closing proceeding was instituted to secure uniformity of the City street system, in the exercise of governmental power, still the utilities were entitled to compensation by reason of the statute which designated the proceeding as a condemnation proceeding and not merely a regulatory proceeding, and provided for compensation to owners of the real property affected and defined real property as including all surface and subsurface structures within closed streets and all easements and hereditaments, corporeal or incorporeal, and every right, interest,

privilege, easement and franchise relating to the same.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951], which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 6. The loss to the utilities was properly measured not merely by the intrinsic value of the pipes and conduits in the soil, but by the actual loss to claimants of the right to unobstructed passage through the street in question. The trial court had the right to deem a certain six-inch main "antiquated" and abandoned and of no value.-In re Gillen Place, Borough of Brooklyn, 304 N.Y. 215 [1952], aff'g 278 App. Div. 779, 104 N.Y.S. 2d 62 [1951], which aff'd 195 Misc. 685, 90 N.Y.S. 2d 641 [1949].

¶ 7. An abutting property owner held to have been damaged in the sum of $17,750 representing $5,000 direct damage to lots which became interior lots and flow of traffic had been affected by streets becoming deadened, and $12,750 for consequential damages to remainder of property where the City condemned nine square blocks and closed certain streets for a slum clearance project.-Matter of City of New York (Ryerson Street), 145 (21) N.Y.L.J. (1-31-61) 15, Col. 6 F.

¶ 8. Public utility who owned gas, electric and steam utility facilities in certain streets to which the City had acquired fee title in connection with an urban renewal project was entitled to compensation for closing and discontinuance of streets.-Matter of Consolidated Edison Co., 157 (49) N.Y.L.J. (3-14-67) 15, Col. 6 M aff'd 30 A.D. 2d 392, 292 N.Y.S. 2d 12 [1968].

¶ 9. In condemnation proceeding to build a public school City is not required to institute a street closing proceeding in which a utility is compensated for the removal and relocation of sub-surface installations. The building of a school is a proper governmental function and as such the removal and relocation of the property of the utility is subject to the common law rule against compensation for such expenses.-Matter of City of N.Y., 157 (72) N.Y.L.J. (4-14-67) 18, Col. 5 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-458

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-458 Awards; deposits of; payment of, to persons not entitled thereto.

a. Whenever the owner, in whose favor any awards shall be made, shall be a minor or incompetent or absent from the city, and also in all cases where the name of the owner shall not be set forth or mentioned in the final decree, or where such owner, being named therein, cannot be found, or where there are adverse or conflicting claims to the money awarded as compensation, it shall be lawful for the comptroller to pay such awards made in the final decree into the supreme court, to be invested, secured, disposed of and paid out as such court shall direct. Such payment shall be as valid and effectual in all respects as if made to such owners according to their just rights, if they had been known and had all been present, of full age and competent.

b. In all cases, however, where any such award, which shall be made in the final decree in favor of any person whether named or not named in the final decree of the court, shall be paid to any person or persons whomsoever, when the same shall of right belong, and ought to have been paid to some other person or persons, it shall be lawful for the person or persons, to whom the same ought to have been paid, to sue for and recover the same, with lawful interest and costs of suit, from the person or persons, to whom the same shall have been paid, as so much money had and received to the use of the plaintiff or plaintiffs, by the person or persons, respectively, to whom the same shall have been so paid, and the final decree of the court, with proof of payment, shall be conclusive evidence of such payment in such suit.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-28.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-459

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 3 CONDEMNATION PROCEDURES

SUBCHAPTER 4 STREET CLOSING CONDEMNATION PROCEDURE

§ 5-459 Purchase of awards by the city.

The provisions of section 5-329 of this subchapter shall be construed to have application to and to be incorporated into this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E15-29.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-501

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-501 Director of management and budget; access to agencies.

The director of management and budget shall have access, at all reasonable times, to the offices of any agency for the purpose of carrying out the duties imposed upon him or her by law. The powers and duties of the director as to private institutions shall extend only to the moneys received from the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 111b-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 148

(formerly § 113-1.0)

Amended LL 54/1977 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-502

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-502 Departmental estimates; duplicates.

The director of management and budget, upon receipt of departmental estimates submitted to him or her, shall forward copies thereof to the council, to the board of estimate and each community board and borough board.

If the departmental estimate submitted by an agency contains budget requests for programs related to criminal justice, the director of management and budget shall also forward a copy of such budget requests to the coordinator of criminal justice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 150

(formerly § 114-1.0)

Amended LL 54/1977 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-503

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-503 Departmental estimates; preparation.

To assist in the preparation of departmental estimates, the head of each agency shall designate an official or employee thereof as budget officer who shall, in each year under the direction of such head, prepare the departmental estimate for such agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 151

(formerly § 114-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-504

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-504 Departmental estimates; necessity for funds requested.

a. The departmental estimates shall contain statements and other data showing the necessity for the funds requested and such supporting data as may be required by the director of management and budget.

b. The departmental estimates shall include particularly and in detail the reasons for all individual increases or decreases compared with the budget as modified for the prior year.

c. Departmental estimates for any agency that has local service districts within community districts and boroughs shall contain where practicable a statement of proposed direct expenses in each such service district for each requested unit of appropriation prepared according to the requirements specified in subdivision d of section one hundred twelve of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 152

(formerly § 114-3.0)

Amended LL 54/1977 § 6

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-505

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-505 When the director of management and budget is to prepare departmental estimate.

If a departmental estimate is not submitted on such date as the mayor may direct, the director of management and budget shall cause to be prepared such estimate and data necessary to include departmental estimate in the budget for such agency for the following fiscal year. In no event later than the fifteenth day of January, or such earlier date as the mayor may direct, the director of management and budget will forward copies of such estimate to the secretary of the board of estimate, the council and each community board and borough boards.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-4.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 153

(formerly § 114-4.0)

Amended LL 54/1977 § 7

Amended LL 6/1979 § 26

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-506

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-506 Departmental estimates; form of.

The classification of such estimates shall be as nearly uniform as possible and, as far as practicable, shall exhibit clearly the functions performed by each agency and the purpose of appropriations made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 112-5.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 154

(formerly § 114-5.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-507

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-507 The budget; details.

In addition to the requirements set out in the charter, the proposed budget and the preliminary budget shall be prepared in such detail as to the titles of appropriations, the terms and conditions under which the same may be expended and the aggregate sum allowed to each agency, as the mayor shall deem advisable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 164

(formerly § 119-1.0)

Amended LL 54/1977 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-508

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-508 The budget; miscellaneous revenues appropriated for specific purposes.

The budget and preliminary budget shall include the several items and amounts payable from funds other than those derived from taxation which are specifically provided by law to be so expended and which, in the judgment of the director of management and budget, are deemed necessary for the proper conduct of the various agencies, either in whole or in part as a supplement to the fund obtainable from taxation, and shall show the aggregate sum allowed to each agency and the total of all allowances contained in the budget to be obtained from taxation or other funds.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a7-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 165

(formerly § 119-2.0)

Amended LL 54/1977 § 11

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-509

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-509 Items to be included in annual budget.

There may annually be included in the budget:

1. A sum not exceeding eight thousand dollars to be paid to the trustees of the seventh regiment armory building, as an equivalent and in lieu of the rental of an armory for such regiment, to be applied to the preservation, maintenance and improvement of the armory building, such sum to be paid in the month of January in each year.

2. The amount necessary for the maintenance of the buildings, instruments and equipment of:

a. The meteorological and astronomical observatory.

b. The American museum of natural history.

c. The metropolitan museum of art, not exceeding ninety-five thousand dollars.

d. The Brooklyn institute of arts and sciences.

3. Such sums to any hospitals, charitable, eleemosynary, correctional or reformatory institution, wholly or partly under private control for the care, support and maintenance of its inmates, and for the care, support, maintenance and secular education of inmates of orphan asylums, protectories, homes for dependent children or correctional institutions and any other sum or sums which may heretofore have been duly authorized by law to be paid within the city of New York or any part thereof for the education and support of the blind, the deaf and dumb and juvenile delinquents and such sums other than salaries for reimbursement to any duly incorporated charitable institution or society employed by

the commissioner of welfare in the placing out, supervision and transfer of children who are public charges; such payments to be made only for such inmates as are received and retained therein pursuant to rules established by the state board of social welfare. The city may in any year, and from time to time, increase or diminish, the sum authorized to be paid to any such institution, association, corporation or society. The final estimate shall specify each institution by its corporate name and the sum to be paid thereto, with a reference to the laws authorizing the appropriation, and the comptroller is authorized to pay the sum to such institution upon its appearing to his or her satisfaction in such manner as he or she shall prescribe that the expenditure thereof by the institution is lawful and proper. Appropriations shall be made under this section to any corporation only if the mayor, or the president of the borough in which the chief office of such corporation is situated, is notified of all meetings of its board of management, and is empowered to attend the same or designate in writing some person to do so in his or her behalf; but this shall not be construed as impairing any existing powers of visitation vested in the supreme court or the state board of social welfare, or any provisions of law requiring statements by such corporations as to their affairs.

4. A sum for the due observance of Memorial day to be expended for such purpose.

5. A sum as may be necessary to pay the salaries of county officers within the counties of New York, Kings, Bronx, Queens and Richmond, and likewise all other expenses within such counties and each of them which are county as distinguished from city charges and expenses.

6. A sum sufficient, as determined by the council and the board of estimate, to maintain the rates of fare of the New York city transit authority existing on January first, nineteen hundred sixty-six.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a10-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 160

(formerly § 117(7)-1.0)

Sub 6 added LL 26/1966 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The codification and restatement of old Charter § 230 and Laws of 1893, ch. 518, in Admin. Code § 117a10-1.0 to provide that "the Board of Estimate, in its discretion," should include annually in its budget a sum not exceeding $8,000 for maintenance of the Seventh Regiment armory building, **held,** as respects the change from the mandatory inclusion required by the old law to a discretionary inclusion, to have been written in through "inadvertence or error", and consequently did not have effect of repealing § 230 or Laws of 1893, ch. 518, in view of stated purpose of the Code to be to codify and restate existing statutes (§§ 1-0.0; 982-1.0), that no existing right or remedy should be lost or impaired (§ 963-1.0), and that insofar as the Code continued or restated provisions of existing law such provisions should be deemed unchanged in substance and any new provision should be deemed an inadvertence or error (§ 982-1.0).-Tobin v. LaGuardia, 259 App. Div. 191, 18 N.Y.S. 2d 267 [1940], aff'd without opinion, 283 N.Y. 678, 28 N.E. 2d 403 [1940].

¶ 2. Charge of $8,000 for maintenance of Seventh Regiment Armory Building for the year 1943, and of $8,000 for year 1944, **held** not to have been made state charges by the 1942 revision of Military Law, Art. 9, and hence trustees of the Armory building were entitled to an order directing amendment of City budget to include such items [276 N.Y. 34;

283 N.Y. 678; Report of Attorney-General, (1944) pp. 102-105].-In re Tobin (O'Dwyer), 187 Misc. 476, 62 N.Y.S. 2d 462 [1946], aff'd without opinion, 270 App. Div. 994, 63 N.Y.S. 2d 826 [1946], 296 N.Y. 733, 70 N.E. 2d 544 [1946].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-510

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 4 EXPENSE BUDGET

§ 5-510 Payment of certain moneys from general fund

For the purpose of adjusting the reductions heretofore or hereafter made in the amount of taxes receivable by reason of the operation of the provisions of the tax law providing for the deduction from special franchise taxes of payments made in the nature of a tax, it shall be lawful for the comptroller and commissioner of finance to transfer at any time from the moneys in the general fund to the credit of the appropriate account or accounts, a sum or sums equivalent to but not exceeding such deductions.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 126-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 168

(formerly § 130-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-601

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-601 Criminal Justice Account.

There shall be within the general fund of the city a special accounting of the revenues and expenditures included in the safe streets-safe city omnibus criminal justice program. Such accounting shall be known as the "Criminal Justice Account."

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

5

[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

Section one. Declaration of legislative findings. The Council hereby finds and declares that the rise in crimes against persons and property in New York City, compounded by an increased randomness of violence, has created a public safety emergency that requires an extraordinary governmental response.

In recognition of this emergency, the Council and the Mayor have formulated and agreed to fund an ambitious, but necessary, initiative known as the Safe Streets-Safe City Omnibus Criminal Justice Program.

The program addresses the needs of the criminal justice system, first and foremost through the addition of over 8,000 police officers to the streets of the City. This will be accomplished through a reorganization of the Police Department that will enable the men and women of the combined police forces to police the streets of the City. Workload sharing with other city departments and the civilianization of the Department will add 2,924 officers to patrol strength. Over the next six years, it is the intent of this program to hire an additional 2,873 officers to bring the number of uniformed positions in the New York City Police Department to 31,351. Additionally, funds will be provided to the New York City Transit Authority Police Department to civilianize the Department and add officers so that by 1994 there will be a police officer on every train in this City between the hours of 8 p.m. and 4 a.m. Finally, the force of the New York City Housing Authority Police Department with the addition of 208 officers will rise to its all-time high.

The Safe Streets-Safe City Program will do much more. While more police officers will be hired, other needs of the criminal justice system will be addressed, including: enhancing prosecution capabilities, expanding jail capacity, improving probation services, and increasing funding for legal aid and alternatives to incarceration.

The program also addresses the need for initiatives that will prevent crime and protect those most vulnerable to crime. The Council finds that the expansion of school security and after school programs in schools and libraries will provide protection and alternatives for young people. The expansion of employment training programs and senior citizen services are also integral components of a comprehensive solution to crime on our streets.

It is the declared intent of the Council that the funds dedicated to the Safe Streets-Safe City Omnibus Criminal Justice Program be used for the purposes outlined in section 5603 of the administrative code of the city of New York, as added by section two of this local law. To ensure that this goal is realized, the Council, through this legislation, is requiring an accounting of revenues and expenditures associated with this program and a public reporting as to the status of the implementation of the Safe Streets-Safe City Program.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-602

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-602 Revenues.

There is hereby established within the general fund of the city, a special accounting of revenues, composed of the following revenue sources, dedicated for the purposes identified in the safe streets-safe city omnibus criminal justice program: 1. a designated portion of the real property tax (to the extent not required for debt service);

2. the special anti-crime lottery within the city established and operated by the New York state division of the lottery:

3. the city personal income tax surcharge, to the extent required to be credited to the criminal justice account by subdivision (d) of section 11-1704 of the code; and

4. such other sources as may be credited or transferred to the criminal justice account.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-603

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-603 Dedication.

a. Except as otherwise provided in this chapter, the revenues identified pursuant to section 5-602 of this chapter shall be used for criminal justice purposes, including hiring of police officers, correction officers, probation officers, attorneys and ancillary personnel; funding public safety, education, youth services and community anti-crime programs; increasing capacity in the correction area; and engaging in such other efforts as are designed to protect public safety and deter crime in the city.

b. There shall be a separate accounting by the city within the general fund of the proceeds of the anti-crime lottery established and operated within the city by the New York state division of the lottery. Such proceeds shall be used exclusively for educational programs, including, but not limited to, increased security in elementary schools, special education sites and after school activities; increasing the number of community schools; providing academic and non-academic evening school activities for high school students; providing support services to students at risk of dropping out of school; strengthening basic skills of children in kindergarten through fourth grade; and providing additional after-school educational opportunities in the municipal library system.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

5

[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

Section one. Declaration of legislative findings. The Council hereby finds and declares that the rise in crimes against persons and property in New York City, compounded by an increased randomness of violence, has created a public safety emergency that requires an extraordinary governmental response.

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The Safe Streets-Safe City Program will do much more. While more police officers will be hired, other needs of the criminal justice system will be addressed, including: enhancing prosecution capabilities, expanding jail capacity, improving probation services, and increasing funding for legal aid and alternatives to incarceration.

The program also addresses the need for initiatives that will prevent crime and protect those most vulnerable to crime. The Council finds that the expansion of school security and after school programs in schools and libraries will provide protection and alternatives for young people. The expansion of employment training programs and senior citizen services are also integral components of a comprehensive solution to crime on our streets.

It is the declared intent of the Council that the funds dedicated to the Safe Streets-Safe City Omnibus Criminal Justice Program be used for the purposes outlined in section 5603 of the administrative code of the city of New York, as added by section two of this local law. To ensure that this goal is realized, the Council, through this legislation, is requiring an accounting of revenues and expenditures associated with this program and a public reporting as to the status of the implementation of the Safe Streets-Safe City Program.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-604

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-604 Expenditures.

a. No monies included in the revenue sources established pursuant to section 5-602 shall be available for appropriation unless a schedule for the proposed uses of the total projected amount of such revenue sources shall be set forth as a supporting schedule to the preliminary budget required to be presented by the mayor pursuant to charter section two hundred thirty-six, and as a supporting schedule to the executive budget required to be presented by the mayor pursuant to charter section two hundred thirty-six, and as a supporting schedule to the executive budget required to be presented by the mayor pursuant to charter section two hundred fifty. Such schedule shall indicate each agency and unit of appropriation to which amounts are proposed to be appropriated, and shall indicate by unit of appropriation the intended uses of such amounts and the objectives to be met.

b. The monies so available for appropriation shall be spent only in accordance with applicable state law and charter sections two hundred fifty-four, two hundred fifty-five, and two hundred fifty-six, or in accordance with charter sections one hundred seven or two hundred sixteen. If any source within the account accrues revenues in excess of the amount projected in the adopted budget to be received from such source, such excess revenues may not be expended except in accordance with such charter sections, and for the purpose of section one hundred seven of the charter shall be deemed new revenues pursuant to subdivision e of section one hundred seven of the charter.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

Subd c repealed L.L. 17/1991 § 1, eff. Feb. 25, 1991

FOOTNOTES

5

[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

Section one. Declaration of legislative findings. The Council hereby finds and declares that the rise in crimes against persons and property in New York City, compounded by an increased randomness of violence, has created a public safety emergency that requires an extraordinary governmental response.

In recognition of this emergency, the Council and the Mayor have formulated and agreed to fund an ambitious, but necessary, initiative known as the Safe Streets-Safe City Omnibus Criminal Justice Program.

The program addresses the needs of the criminal justice system, first and foremost through the addition of over 8,000 police officers to the streets of the City. This will be accomplished through a reorganization of the Police Department that will enable the men and women of the combined police forces to police the streets of the City. Workload sharing with other city departments and the civilianization of the Department will add 2,924 officers to patrol strength. Over the next six years, it is the intent of this program to hire an additional 2,873 officers to bring the number of uniformed positions in the New York City Police Department to 31,351. Additionally, funds will be provided to the New York City Transit Authority Police Department to civilianize the Department and add officers so that by 1994 there will be a police officer on every train in this City between the hours of 8 p.m. and 4 a.m. Finally, the force of the New York City Housing Authority Police Department with the addition of 208 officers will rise to its all-time high.

The Safe Streets-Safe City Program will do much more. While more police officers will be hired, other needs of the criminal justice system will be addressed, including: enhancing prosecution capabilities, expanding jail capacity, improving probation services, and increasing funding for legal aid and alternatives to incarceration.

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It is the declared intent of the Council that the funds dedicated to the Safe Streets-Safe City Omnibus Criminal Justice Program be used for the purposes outlined in section 5603 of the administrative code of the city of New York, as added by section two of this local law. To ensure that this goal is realized, the Council, through this legislation, is requiring an accounting of revenues and expenditures associated with this program and a public reporting as to the status of the implementation of the Safe Streets-Safe City Program.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 5-605

Administrative Code of the City of New York

Title 5 Budget; Capital Projects

CHAPTER 5*5 CRIMINAL JUSTICE ACCOUNT

§ 5-605 Reporting requirement.

The director of the office of management and budget, in consultation with the police commissioner and the heads of appropriate city agencies, shall make a year-end annual report specifying the actual year end spending for each of the purposes identified in the schedule required by subdivision a of section 5-604, updated to reflect changes, if any, made at adoption, to the chairpersons of the finance and public safety committees of the council on the allocation of funds from the criminal justice account and the status of implementation of the safe streets-safe city omnibus criminal justice program. Such report shall include a schedule of new hires for all police forces and criminal justice agencies; a status report on civilianization and workload sharing efforts of the police departments; the level of patrol strength in all borough commands of the city; status of the implementation and operation of youth, employment and senior citizen programs; and the status of programs funded through the education portion of the criminal justice account.

HISTORICAL NOTE

Section added L.L. 11/1991 § 2, eff. Feb. 7, 1991

FOOTNOTES

5

[Footnote 5]: * Note provisions of L.L. 11/1991 eff. Feb. 7, 1991:

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-101

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-101 Contracts; certificate of comptroller.

a. Any contract, except as otherwise provided in this section, shall not be binding or of any force, unless the comptroller shall indorse thereon the comptroller's certificate that there remains unexpended and unapplied a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract, as certified by the officer making the same.

b. In contracts for the purchase of food supplies, forage, fuel, printing, stationery, books and other supplies required for daily or continuous use, or of supplies, materials and equipment needed for use immediately after the beginning of the next succeeding fiscal year, to be delivered within a period of one year from the date thereof, the comptroller shall indorse thereon the comptroller's certificate that there remains unexpended and unapplied a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract in so far as the same is to be executed during the current fiscal year, as certified by the officer making the same. Upon the first of the following fiscal year the comptroller shall certify by indorsement upon such contract as to the portion of such contract then unexecuted, and such certification by the comptroller shall make any such contract binding and of full force.

c. It shall be the duty of the comptroller to make such indorsement upon every contract so presented to him or her, if there remains unapplied and unexpended the amount so specified by the officer making the contract, and thereafter to hold and retain such sum to pay the expense incurred until such contract shall be fully performed. Such indorsement shall be sufficient evidence of such appropriation or fund in any action.

d. The provisions of this section shall not apply to supplies, materials and equipment purchased directly by any

agency pursuant to subdivisions (c) and (d) of section three hundred forty-four of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93c-3.0 added chap 929/1937 § 1

Sub d amended chap 852/1949 § 3

Subs b, d amended LL 54/1977 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Provision of Greater New York Charter § 149 that no contract not to be paid by assessments upon property benefited should be binding unless the Comptroller should indorse his certificate that there was a sufficient unexpended and unapplied balance of an appropriation or fund applicable, was without application to a contract with the City for construction of sewers, where the situation was controlled by provisions of the New York City Grade Crossing Elimination Act which specially authorized the work.-Remo Engineering Corp. v. City of New York, 260 App. Div. 587, 23 N.Y.S. 2d 314 [1940], aff'd without opinion, 286 N.Y. 657, 36 N.E. 2d 695 [1941].

¶ 2. Claimant was not forever precluded from recovery merely because the Comptroller had rejected his claim (dist'g 139 N.Y. 543).-Tyroler v. City of New York, 108 (124) N.Y.L.J. (11-28-42) 1651, Col. 7 T.

¶ 3. In action against City of New York to recover sum due from City for work performed by plaintiffs' assignor, defense alleging the filing in the Comptroller's office of various claims and injunctions restraining payment of the money demanded by plaintiff and asserting that the filing of such instruments made the claimants necessary parties, **held** insufficient, as plaintiffs were merely seeking to collect an indebtedness and not to recover a specific fund, and if the presence of the other claims made payment by the City hazardous, the City should have interpleaded the claimants.-Grossman v. City of New York, 188 Misc. 256, 66 N.Y.S. 2d 363 [1946].

¶ 4. Lien, which arose on November 2, 1944, of the United States against a contractor for unpaid taxes, **held** not superior to a mechanics lien filed on November 21, 1944 against the contractor which had moneys due it from the City of New York, where the Collector of Internal Revenue did not serve upon the City Treasurer-Comptroller a notice of levy for taxes until July 16, 1945. The lienor was in position of an assignee by operation of the lien statute, and assignees in such a situation are to be treated as purchasers under the exceptions in Internal Revenue Code § 3672 and they are protected unless and until the lien of the government is recorded.-Cranford Co. v. L. Leopold & Co., 117 (76) N.Y.L.J. (4-2-47) 1282, Col. 7 M.

¶ 5. Notwithstanding the defendant Board of Education of the City of New York had audited plaintiff's bill for an amount including that sought to be recovered in the present action, plaintiff was not entitled to summary judgment in view of issue raised as to non-performance of the contract. However, ordinarily when the Board of Education audits a claim the Comptroller may not arbitrarily refuse to pay, in the absence of illegality, fraud or manifest mathematical error.-In re Milgram (Board of Education), 120 (92) N.Y.L.J. (11-12-48) 1123, Col. 1 M.

¶ 6. Comptroller, who refused to pay on the ground that he was not certain that the Board of Education had conducted a proper audit was directed to make payment pursuant to voucher of Board of Education for services rendered pursuant to contract. Comptroller is merely the custodian of school funds and in the absence of illegality, fraud or manifest mathematical error the audit of the Board of Education prevails.-In re the Service Bureau Corp. (Proccacino), 158 (104) N.Y.L.J. (11-30-67) 16, Col. 7 T.

¶ 7. Proceeding under C.P.A. Art. 78 for order directing respondent City officials to issue and sign warrants in amounts which petitioner claimed were due for coal delivered pursuant to contracts with the City of New York through various departments and agencies of the City, was denied, where an investigation was presently being conducted into an alleged failure of petitioner to deliver the required quantities and quality of coal, and the Comptroller had determined that certain payments and gifts had been made to a City employee in connection with the performance of the contract and the Comptroller had certified to the Department of Purchase that he had exercised his discretion to declare void and forfeit the contract. Petitioner thus failed to show any clear legal right to the relief sought.-A.R. Fuels, Inc. v. Joseph, 125 (67) N.Y.L.J. (4-6-51) 1251, Col. 5 M.

¶ 8. Plaintiff-contractor's acceptance of final payment under a public works contract with the City of New York which provided that acceptance by the contractor of the amount certified for payment under the final certificate as audited by the Comptroller should operate as a release to the City for all claims of the contractor, **held** to preclude the contractor from suing the City for expenditures of moneys and cost of labor which allegedly were not contemplated by the contract.-Lyn Boro Const. Corp. v. City of New York 131 (32) N.Y.L.J. (2-17-54) 11, Col. 3 M.

¶ 9. The Board of Education advertised for bids for general construction of a school building including plumbing, heating and electrical work. The plaintiffs won the contract for the electrical work but because other contracts for the construction of the building were not awarded until some time later, the plaintiffs sustained additional costs for which they sought to recover on the ground that the Board impliedly misrepresented that all construction contracts would be awarded at once. All awards were not made at the same time because the total bids exceeded the City's appropriation for the project. The City Comptroller had endorsed on plaintiff's contract that there remained unapplied and unexpended a balance of the appropriation sufficient to pay the estimated expense of executing the same. In permitting plaintiff to recover his additional costs, the Court held that under all the circumstances, the plaintiffs were not required to know that the Board of Estimate had failed to appropriate the necessary funds for the advertised plumbing and heating contracts.-Bank v. Board of Education, 305 N.Y. 119, 111 N.E. 2d 238 [1953].

¶ 10. The provisions of this section requiring the endorsement of the Comptroller did not prevent the plaintiff from recovering for legal services furnished to a special committee of the City Council investigating unemployment relief even though there was no appropriation for this expense. Charter § 891 permits recovery even where there is no appropriation if the expenses are "otherwise authorized".-Barry v. City of New York, 175 Misc. 712, 25 N.Y.S. 2d 27, aff'd 261 App. Div. 957, 27 N.Y.S. 2d 425 [1941].

¶ 11. Petitioner, a demolition contractor, was granted an order directing the Comptroller to process bills and invoices submitted by him pursuant to a written contract even though the City contended that it should not pay until an investigation was completed to determine whether petitioner had purchased or distributed counterfeit construction waste dump tickets in the value of $390 where the city could be protected by the posting of a bond by the petitioner.-In re Abato (Comptroller), 165 (93) N.Y.L.J. (5-14-71) 18, Col. 5 M.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-102

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-102 Performance of contracts.

a. Each agency shall require and enforce the faithful performance of every contract made by it.

b. If the contractor or contractors shall fail in any respect to fulfill the contract within the time limited for its performance, then the agency in charge thereof shall complete the same in the manner provided for in the contract. The cost of such completion shall be a charge against such delinquent contractor or contractors.

c. If any work shall be abandoned by any contractor, the appropriate agency, if the best interest of the city be thereby served, and subject to the approval of the board of estimate, may adopt all subcontracts made by such contractor for such work. All subcontractors shall be bound by such adoption. The agency shall readvertise and relet the work specified in the original contract, exclusive of so much thereof as shall be provided for in the subcontracts so adopted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-1.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where the City withheld part of the contract price pending the determination of a claim filed against a

contract, which was withdrawn, the contractor was entitled to interest upon the amount withheld from the date when the Department of Finance received notice from the Bureau of Law and Adjustment of the cancellation of the claim. The City was justified in withholding sums to cover any claim of its own, notwithstanding the contractor's financial responsibility and the filing of a performance bond.-Atlas Tile & Marble Works, Inc. v. City of New York, 135 (44) N.Y.L.J. (3-6-56) 7, Col. 1 T.

¶ 2. The petitioner entered into a contract with the City. A provision of the contract provided that the Comptroller could withhold any money due in the event that a claim should be made by any corporation against the City. A co-contractor threatened suit against the City due to delay of petitioner in completing his contract. **Held:** The petitioner could not maintain an Art. 78 proceeding to compel the Comptroller to pay the balance due under the contract, but was relegated to a plenary suit where the City could, pursuant to §§ 193- and 264 of the C.P.A., obtain a complete determination of the opposing claims of all interested parties.-Matter of Five Boro Construction Corporation, 9 App. Div. 2d 360, 193 N.Y.S. 2d 888 [1959].

CASE NOTES

¶ 1. After a general contractor defaulted on its obligations to both the City and plaintiff subcontractor, the City issued a guarantee letter under which the City agreed to pay for the subcontractor's material in the event that the general contractor failed to pay. The court held that the after a default in an existing contract occurred, the City was authorized to complete the contract without replicating the procedures required for the initial formation of a contract. In other words, the requirements for making an initial contract did not apply to the guarantee letter. The purpose of statutory requirement of certification by the Comptroller is to ensure that funds are available for a project. Once the funds are allocated to the project, there is no need for recertification during the middle of the contract. Thus, the court held that the subcontractor's claim under the guarantee letter stated a cause of action. Bolt Electric, Inc. v. City of New York, 53 F.3d 465 (2nd Cir. 1995).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-103

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-103 Extension of time for performance.

The board of estimate, by a unanimous vote, may extend the time for the performance of any contract.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-2.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-104

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-104 Release from fines.

a. It shall be unlawful for the comptroller to release any contractor from any fine or penalty incurred under a contract, except upon the unanimous recommendation of the board of estimate.

b. The board of estimate may, by resolution, authorize the comptroller to dispose of such cases without reference to or further action by the board where the sum released does not exceed five hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-3.0 added chap 929/1937 § 1

Amended LL 34/1939 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-105

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-105 Vouchers.

The comptroller shall issue warrants for work done or supplies furnished only upon proper vouchers rendered by the head of the appropriate agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-4.0 added chap 929/1937 § 1

Sub b repealed LL 54/1977 § 18

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 343-4.0, which applies to a contract for purchase of supplies, such as the City's contract for purchase of an anti-freeze solution, does not require any final certificate.-Compound Products Corp. v. City of New York, 265 App. Div. 511, 39 N.Y.S. 2d 862 [1943].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-106

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-106 Certificate of completion.

Within five days after his or her acceptance of any work under contract, the head of an agency shall file with the comptroller a final certificate of the completion and acceptance thereof, signed by the chief engineer or head of such agency. The filing of such certificate shall be presumptive evidence that such work has been completed according to contract.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-6.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where the Commissioner of Public Works failed to comply with the requirements of Admin. Code §§ 343-5.0 and 6.0 in that his certificate of completion of plaintiff's work under its contract with the City was not furnished until nearly a year after actual completion and acceptance of the work and was not filed until nearly two weeks later, whereas the statute required it to be filed within five days after completion and acceptance, and moreover the contractor had never been given notice of such filing of the certificate in the Comptroller's office, the commencement of an action by the plaintiff against the City nearly a year after filing of the certificate, **held** to have been timely notwithstanding the

provision in the contract that any action thereon should be commenced within six months after filing of the final certificate.-Hauer Const. Co. v. City of New York, 193 Misc. 747, 85 N.Y.S. 2d 42 [1948], aff'd, on ground that under all the facts and circumstances disclosed in the record, including the City's failure to comply with § 343-6.0, and the long ensuing delay thereafter, the City should have given plaintiff notice of the filing when the certificate finally was filed, 276 App. Div. 841, 93 N.Y.S. 2d 915 [1949].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-107

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-107 Warrants upon vouchers.

a. All warrants upon vouchers for payment of amounts due under contracts, duly audited and approved, shall refer by number or other description to the voucher, the fund and the contract upon which the payment is to be made. All checks issued by the commissioner of finance on warrants duly approved and executed pursuant to law, as payments on contracts, may be mailed or delivered to the contractor or the contractor's authorized representative.

b. The indorsement by the contractor upon a check attached to such a warrant, which has been paid by the bank or depository upon which the same has been drawn, shall be considered as a receipt for the amount of such check.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-7.0 added chap 929/1937 § 1

Sub a amended chap 100/1963 § 215

Sub a amended LL 54/1977 § 20

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-107.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-107.1 Payments to city contractors to be made by electronic funds transfer.

a. Definitions. For purposes of this section:

(1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in an amount greater than twenty-five thousand dollars in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing;

(2) "Contractor" means any business, individual, partnership, corporation, firm, company, or other form of doing business to which a contract has been awarded; and

(3) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

b. Notwithstanding any other provision of law, except as otherwise provided in this section all payments made by the city of New York to any contractor of the city shall be paid by electronic funds transfer.

c. Each contractor shall, prior to the first payment made under a contract to which this law applies, designate one financial institution or other authorized payment agent and provide the commissioner of finance information necessary for the contractor to receive electronic funds transfer payments through the financial institution or other authorized payment agent so designated.

d. (1) The commissioner of finance and the comptroller may jointly issue standards pursuant to which contracting agencies may waive the application of this section to payments: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the city.

(2) In addition, an agency head may waive the application of this section to payments on contracts entered into pursuant to section three hundred fifteen of the city charter and any rules promulgated thereunder.

e. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by a contractor under this section shall constitute full satisfaction by the city of New York for the amount of the payment.

f. The department of finance shall assure the confidentiality of information supplied by contractors in effecting electronic funds transfers to the full extent provided by law.

g. This section shall apply to any payments made by the city of New York on contracts entered into on or after January first, two thousand eight to a contractor of the city. Further, this section shall apply to any payments made by the city of New York on contracts entered into prior to January first, two thousand eight, provided that where a contractor refuses to supply some portion of the required information necessary to effect payment by electronic funds transfer, the agency head may waive the application of this section where the need for the goods, services or construction is such that it is in the interest of the city to exempt the contractor from the requirements of this section.

HISTORICAL NOTE

Section added L.L. 43/2007 § 1, eff. Oct. 20, 2007.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-108

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-108 Discrimination in employment.

a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the city, or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the city to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

b. It shall be unlawful for any person or any servant, agent or employee of any person described in subdivision a to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

c. The wording of subdivisions a and b of this section shall appear on all contracts entered into by the city, and disobedience thereto shall be deemed a violation of a material provision of the contract.

d. Any person, or the employee, manager or owner of or officer of a firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-8.0 added LL 44/1942 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Class action by negroes alleged that unions in construction industry maintained discriminatory practices which barred them from admittance and that city was spending public monies on five construction contracts. Action in equity which sought, among other things, to direct city officials to enforce the provisions of this section as to said contracts was dismissed, without prejudice. The complaint did not sufficiently show an "illegal official act * * * or * * * waste or injury" (General Municipal Law § 51). Moreover, the requested extent of judicial supervision of union activities was beyond the scope of judicial competence.-Gaynor v. Rockefeller, 21 App. Div. 2d 92, 248 N.Y.S. 2d 792 [1964], aff'd 15 N.Y. 2d 120, 256 N.Y.S. 2d 504, 204 N.E. 2d 627 [1965].

¶ 2. Deputy mayor, city administrator lacked power to mandate by regulation affirmative action in the form of meeting prescribed minority percentages of employment by construction contractors with city since the regulations exceeded existing authorized legislation and are beyond the executive power.-Matter of Broderick v. Lindsay, 39 N.Y. 2d 641 [1976].

¶ 3. Regulations promulgated by deputy mayor which compelled construction contractors working on city and city assisted programs to submit a program of affirmative action for minorities and women were unenforceable since they did not merely increase the pool of those eligible for employment but compelled employment of a quota.-Fullilone v. Beame, 177 (65) N.Y.L.J. (4-5-77) 6, Col. 4 T.

NYC Administrative Code 6-108.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-108.1 Locally based enterprises.

a. Definitions. As used in this section, the following terms have the following meanings:

(1) "Contract" means any written agreement whereby the city is committed to expend or does expend funds in connection with any construction project, except the term "contract" shall not include:

(a) contracts for financial or other assistance between the city and a government or government agency; or

(b) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the city, or consisting thereof; or

(c) any other types of contracts, to be designated in rules and regulations, to which the mayor determines that application of the provisions of this section is inappropriate.

(2) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(3) "Construction project" means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by a contracting agency.

(4) "Economic development area" means an area of the city designated as eligible for participation in the

community development block grant program of the United States department of housing and urban development and any other area designated by the mayor by the adoption of a rule or regulation, after consultation with the council, upon a determination that such area has a special need for development of business and jobs in construction.

(5) "Economically disadvantaged person" means a person who, at the time of hiring by a locally based enterprise if such hiring occurred not more than three tax years prior to the time of such business's application for certification, or at the time of such application, is:

(a) a resident in a single person household who receives (i) wages not in excess of seventy percent of the lower-level "urban family budget" for the city as determined by the United States department of labor bureau of labor statistics; or (ii) cash welfare payments under a federal, state or local welfare program; or

(b) a member of a family which (i) has a family income less than seventy percent of the lower-level "urban family budget" for the city as determined by the United States department of labor, bureau of labor statistics, or (ii) receives cash welfare payments under a federal, state or local welfare program; or

(c) a Vietnam era veteran as defined by applicable federal law who has been unable to obtain non-government subsidized employment since discharge from the armed services; or

(d) a displaced homemaker who has not been in the labor force for five years but has during those years worked in the home providing unpaid services for family members and was (i) dependent on public assistance or the income of another family member but is no longer supported by that income, or (ii) receiving public assistance for dependent children in the home and that assistance will soon be terminated.

(6) "Locally based enterprise" means a business which:

(a) at the time of application for certification has received gross receipts in the last three tax years averaging no more than six hundred twenty-five thousand dollars or such higher amount as may have been established by regulation for the relevant category of locally based enterprise pursuant to subdivision g of this section; and

(b) in the tax year preceding such application, has

(i) earned at least twenty-five percent of its gross receipts from work performed in economic development areas, or

(ii) employed a workforce of which at least twenty-five percent were economically disadvantaged persons.

(7) "Mayor" means the mayor of the city of New York or the mayor's designee.

(8) "Graduate locally based enterprise" means a business which has been certified as a locally based enterprise and is not qualified for renewal of such certification because, during the three-year period immediately preceding its application for certification as a graduate locally based enterprise, its gross receipts averaged more than the amount established pursuant to subparagraph a of paragraph six of this subdivision, but not more than one million five hundred thousand dollars or such higher amount as may have been established by regulation for the relevant category of graduate locally based enterprise pursuant to subdivision g of this section.

b. Each contracting agency shall, consistent with the requirements of applicable city, state and federal law, including applicable competitive bidding requirements, seek to ensure that not less than ten percent of the total dollar amount of all contracts awarded for construction projects during each fiscal year shall be awarded to locally based enterprises or graduate locally based enterprises.

c. Each contracting agency shall, consistent with the requirements of applicable city, state and federal law, include in every contract to which it becomes a party such terms and conditions as may be required by regulation

promulgated pursuant to this section to provide that if any or all of the contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to locally based enterprises or graduate locally based enterprises; except that, where an amount less than such percentage is subcontracted, such lesser percentage shall be so awarded.

d. Consistent with the rules and regulations of the board of estimate, a full or partial waiver of performance and completion bonds may, with the approval of the corporation counsel, be granted by a contracting agency where such bonds are not deemed in the best interests of the city. Contractors shall not require performance and payment bonds from subcontractors which are locally based enterprises and graduate locally based enterprises.

e. The contracting agency may grant a full or partial waiver of the requirements of this section upon a finding that an emergency exists, or that no qualified locally based enterprise or graduate locally based enterprise is available to perform a subcontract on reasonable terms, or for other good cause. Any such finding shall be made in writing and shall set forth the reasons therefor. No waiver shall be granted without the approval of the mayor and timely written notification of such waiver to the council.

f. (1) The mayor shall establish a procedure for the certification of businesses which meet the requirements of this section and regulations promulgated hereunder as locally based enterprises or graduate locally based enterprises. Such procedure may provide for a business to be certified as a graduate locally based enterprise for a period not to exceed two years, to commence immediately after the expiration of its certification as a locally based enterprise. A business which has been in existence for less than one year prior to the date of application for certification, and which would otherwise qualify as a locally based enterprise except that it does not meet the criteria set forth in subparagraph (b) of paragraph six of subdivision a of this section, may nevertheless be certified as a locally based enterprise, provided however that such certification shall be rescinded unless the business meets the criteria set forth in such subparagraph within one year from the date of its certification. The mayor shall maintain a list of certified locally based enterprises and graduate locally based enterprises for each borough which identifies the companies which have performed work in such borough to qualify as a locally based enterprise or a graduate locally based enterprise. The contracting agency shall provide to contractors for their consideration the appropriate list of certified locally based enterprises and graduate locally based enterprises for the borough in which the construction contract on which they are bidding is located.

(2) The mayor may rescind the certification of a locally based enterprise or graduate locally based enterprise after providing notice and an opportunity to be heard to the business upon a finding that such business is not in compliance with the requirements of this section or the regulations promulgated hereunder.

g. The mayor shall promulgate such rules and regulations as may be necessary for the purpose of implementing the provisions of this section. Such regulations may increase the gross receipts limitation provided by subparagraph (a) of paragraph six of subdivision a of this section to an amount not to exceed two million dollars, and may increase the gross receipts limitation provided by paragraph eight of such subdivision to an amount not to exceed five million dollars, for all or specifically designated categories of locally based enterprises and graduate locally based enterprises, so as to effectuate the purposes of this section. By regulation, such gross receipts limitations may be further adjusted every two years to be higher than the amounts specified in this subdivision, as necessary to account for the effects of inflation as indicated by an appropriate index of costs in the construction industry, developed by the director of the office of construction, office of the mayor. Such regulations may also adjust upward the income limitation in paragraph five of subdivision a of this section to allow for increases in the cost of living. Any contractual terms and conditions for contractors and subcontractors provided for in any such regulation, including any sanctions to be imposed for failure to comply with this section, shall be approved as to form by the corporation counsel. All rules and regulations pursuant to and in furtherance of this section shall be adopted and amended in accordance with chapter forty-five of the charter.

h. The mayor shall submit an annual report to the council, on or before April first of each year, concerning the administration of the program established pursuant to this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd a par 6 subpar (a) amended LL 25/1989 § 1

Subd a par 8 added LL 25/1989 § 2

Subds b, c, d, e, f, g amended LL 25/1989 § 3

DERIVATION

Formerly § 343-8.1 added LL 49/1984 § 1

(Legislative findings; economically disadvantaged areas, business in, LL 49/1984 § 1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-108.2

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-108.2 6 Small business enterprises.

a. Definitions. For purposes of this section only, the following terms shall have the following meanings:

(1) "Base amount", for the time period commencing on the effective date of this paragraph and ending on December thirty-first, nineteen hundred eighty-nine, means the amount of seven hundred thousand dollars; for the year nineteen hundred ninety, means eight hundred fifty thousand dollars; for the year nineteen hundred ninety-one, means nine hundred thousand dollars; and for the time period commencing on January first, nineteen hundred ninety-two and ending on June thirtieth, nineteen hundred ninety-two, means nine hundred fifty thousand dollars.

(2) "Contract" means any contract, agreement, open market order, purchase order or any other means of procurement between a contracting agency and one or more parties: (a) for the purchase of goods for an amount in excess of five hundred dollars, or (b) for the performance of services.

(3) "Goods contract" means any contract for the purchase of goods of the categories specified by the mayor or mayor's designee pursuant to this section and the rules promulgated hereunder. Provided, however, that such term shall not include contracts which are awarded to the United States government and its instrumentalities, New York state, its political subdivisions and instrumentalities, and not-for-profit organizations which have not been certified as small business enterprises.

(4) "Professional services contract" means any contract for the performance of professional services of the categories specified by the mayor or mayor's designee pursuant to this section and the rules promulgated hereunder. Provided, however, that such term shall not include contracts which are awarded to the United States government and

its instrumentalities, New York state, its political subdivisions and instrumentalities, and not-for-profit organizations which have not been certified as small business enterprises.

(5) "Commercial services contract" means any contract for the performance of commercial services of the categories specified by the mayor or mayor's designee pursuant to this section and the rules promulgated hereunder. Provided, however, that such term shall not include contracts which are awarded to the United States government and its instrumentalities, New York state, its political subdivisions and instrumentalities, and not-for-profit organizations which have not been certified as small business enterprises.

(6) "Small business enterprise" means a small business enterprise vendor, a small professional services business enterprise or a small commercial services business enterprise.

(7) "Small commercial services business enterprise" means a business offering commercial services,

(a) in which annualized gross receipts for the performance of services did not exceed the base amount for the applicable year, as defined in paragraph one of this subdivision, in two of the three tax years immediately preceding the date of application for certification; provided, however, that a business which has been in existence for less than three tax years shall meet the requirements of this subparagraph for each tax year of its existence; and

(b) which has its principal place of business in the city as determined in accordance with rules promulgated pursuant to subdivision e of this section; and

(c) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(d) which has been operating for at least twelve months prior to the date of application for certification; and

(e) which has been certified according to the procedure provided for in subdivision d of this section.

(8) "Small business enterprise vendor" means a business supplying goods,

(a) in which, in two of the three tax years immediately preceding the date of application for certification, either:

(i) its annualized gross sales of goods were two million dollars or less, or

(ii) the difference between its annualized gross sales and its cost for goods sold was two hundred thousand dollars or less; provided, however, that a business which has been in existence for less than three tax years must meet the requirements of clause (i) or (ii) of this subparagraph for each year of its existence; and

(b) which has its principal place of business in the city as determined in accordance with rules promulgated pursuant to subdivision e of this section; and

(c) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(d) which has been operating for at least twelve months prior to the date of application for certification; and

(e) which has been certified according to the procedure provided for in subdivision d of this section.

(9) "Small professional services business enterprise" means a business offering professional services,

(a) in which annualized gross receipts for the performance of services did not exceed the base amount for the applicable year, as defined in paragraph one of this subdivision, in two of the three tax years immediately preceding the

date of application for certification; provided, however, that a business which has been in existence for less than three tax years shall meet the requirements of this subparagraph for each tax year of its existence; and

(b) which has its principal place of business in the city as determined in accordance with rules promulgated pursuant to subdivision e of this section; and

(c) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(d) which has been operating for at least twelve months prior to the date of application for certification; and

(e) which has been certified according to the procedure provided for in subdivision d of this section.

(10) "Not-for-profit organization" means an entity that is either: (a) incorporated as a not-for-profit corporation under the laws of the state of its incorporation; or

(b) exempt from federal income tax pursuant to subdivision c of section five hundred one of the internal revenue code of nineteen hundred eighty-six, as amended.

b. Goods contracts.

Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than twenty percent of the total dollar amount of all goods contracts awarded by such agency for an amount not more than ten thousand dollars during each fiscal year shall be awarded to small business enterprise vendors. The mayor or the mayor's designee shall promulgate rules pursuant to subdivision e of this section setting forth the contracts and the categories of goods which, because of the capacity of small business enterprises to provide such goods, and the appropriateness of contracting with such enterprises for the provision of such goods, shall be subject to the procedures set forth in this subdivision.

c. Professional and commercial services contracts.

(1) Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than ten percent of the total dollar amount of all professional services contracts awarded during each fiscal year shall be awarded to small professional services business enterprises. Contracting agencies shall seek to divide needed work into smaller units, if practicable and economically feasible, so that it may be bid on and successfully completed by small professional services business enterprises. The mayor or the mayor's designee shall promulgate rules pursuant to subdivision e of this section setting forth the contracts and the professional services which, because of the capacity of small business enterprises to provide such services, and the appropriateness of contracting with such enterprises for the provision of particular professional services, shall be subject to the procedures set forth in this subdivision.

(2) Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than ten percent of the total dollar amount of all commercial services contracts awarded during each fiscal year shall be awarded to small commercial services business enterprises. Contracting agencies shall seek to divide needed work into small units, if practicable and economically feasible, so that it may be bid on and successfully completed by small commercial services business enterprises. The mayor or the mayor's designee shall promulgate rules pursuant to subdivision e of this section setting forth the contracts and the commercial services which, because of the capacity of small business enterprises to provide such services, and the appropriateness of contracting with such enterprises for the provision of particular commercial services, shall be subject to the procedures set forth in this subdivision.

d. (1) The mayor or the mayor's designee shall establish a procedure for the certification of businesses which

meet the requirements of this section and rules promulgated hereunder as either small business enterprise vendors, small professional services business enterprises or small commercial services business enterprises. Such rules shall set forth criteria to ensure that any business certified as a small business enterprise is an independent business and not substantially owned or controlled by any other business entity which would not qualify as a small business enterprise. Such rules shall further require each business certified as a small business enterprise to submit periodic reports providing information as to its continuing qualification as a small business enterprise. Certification granted pursuant to this subdivision shall be valid for a period of three years.

(2) The mayor or the mayor's designee may rescind the certification of a small business enterprise after providing notice and an opportunity to be heard to the business upon a finding that such business is not in compliance with the requirements of this section or the rules promulgated hereunder.

e. The mayor or the mayor's designee shall promulgate such rules as may be necessary for the purpose of implementing the provisions of this section. Such rules shall require contracting agencies to submit monthly reports to the mayor or the mayor's designee concerning contract awards to small business enterprises. All rules pursuant to and in furtherance of this section shall be adopted and amended in accordance with the city administrative procedure act, chapter forty-five of the charter.

HISTORICAL NOTE

Section added L.L. 15/1986 § 2 [See Note 1]

Subd. a amended L.L. 107/1989 § 1 [See Note 3]

Subd. a amended L.L. 20/1988 § 1 [See Note 2]

Subd. b repealed and added L.L. 107/1989 § 2, eff. July 1, 1990 [See Note 3]

Subd. b par (3) subpar (d) amended L.L. 20/1988 § 2 [See Note 2]

Subd. c amended L.L. 107/1989 § 3 [See Note 3]

Subd. c amended L.L. 20/1988 § 3 [See Note 2]

Subd. d amended L.L. 107/1989 § 4 [See Note 3]

Subd. d par (1) amended L.L. 20/1988 § 4 [See Note 2]

Subd. e amended L.L. 107/1989 § 5 [See Note 3]

DERIVATION

Formerly § 343-8.2 added LL 15/1986 § 3

(Legislative findings, business with city, competing for contracts, LL 15/1986 § 1)

(Expiration, report, LL 15/1986 §§ 4, 6)

NOTE

1. L.L. 15/1986 §§ 1, 4-6 provide the following special provisions, legislative intent, amendment to the old code, and expiration date.

Section 1. Declaration of legislative intent. The council hereby finds and declares that small business enterprises, especially those which conduct business and provide employment within economically disadvantaged areas of the city, have generally provided a means for talented, innovative, diligent and dedicated individuals with limited financial backing to stimulate and contribute to the social and economic livelihood of themselves, their communities and their city. The council further finds that the costs of doing business in the city and the size of many contracts for goods and services awarded by the city have made it difficult for many small business enterprises to compete successfully for such contracts. The active encouragement of the development of small business enterprises benefits the people of the city of New York by providing jobs, economic opportunities, and a more diverse and accessible marketplace, as well as an expanded tax base. The development of such enterprises also serves the public interest in that a greater number of enterprises will be able to compete for city contracts, and this increased competition should lead to lower costs to the city. This local law authorizes the establishment of a two year pilot program to promote the opportunity for small business enterprises to bid successfully for city contracts for goods and services, without reducing the safeguards of the competitive bidding process, or in any way authorizing increased expenditures for, or diminished quality of, goods and services provided to the city. Before the end of the two year period the mayor shall report to the council concerning the effectiveness of this program, in order that it may be determined whether the program shall be continued, modified or allowed to expire.

Section 4. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to this section. Such report shall evaluate the effectiveness of the program and shall include recommendations as to whether the program should be extended or modified. Such a report shall also be made six months prior to the expiration of this local law.

Section 5. If any provision of this local law or the application thereof is held invalid, the remainder of this local law and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

Section 6. This local law shall take effect ninety days from the date it shall have become a law, and shall expire and be of no further force or effect on and after June 30, 1992. Actions necessary to prepare for the implementation of this local law may be taken prior to its effective date. (Section 6 amended L.L. 20/1988 § 6, L.L. 107/1989 § 7)

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on May 22, 1986 and approved by the Mayor on June 6, 1986.

CARLOS CUEVAS, City Clerk. Clerk of the Council

2. L.L. 20/1988 provisions

§ 5. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to this section including, but not limited to, the number of businesses which have been certified pursuant to this program and their business address, the number of firms which have been denied certification pursuant to this program and the number of small business enterprises which have been awarded contracts by each agency and the dollar amount of each contract. Such report shall also include recommendations as to whether the program should be extended or modified and how to improve the program, if applicable. Such a report shall also be made six months prior to the expiration of the law.

3. L.L. 107/1989 provisions

§ 6. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to section 6-108.2 of the administrative code of the city of New York as amended by this local law including, but not limited to, the number of businesses and firms which have been certified pursuant to this program and their business addresses, and the number of small business enterprises which have been awarded contracts by each agency and the dollar amount of each contract. Such report shall also include recommendations as to whether the program should be extended or modified and how to improve the program, if applicable. Such a report shall also be made six months prior to the expiration of this local law.

FOOTNOTES

6

[Footnote 6]: * Section expired 6/30/1992.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-109

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-109 [Living wage, prevailing wage and health benefits for certain city service contractors or subcontractors.]

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "City" means the City of New York.

(2) "Entity" or "Person" means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

(3) "Homecare Services" means the provision of homecare services under the city's Medicaid Personal Care/Home Attendant or Housekeeping Programs, including but not limited to the In-Home Services for the Elderly Programs administered by the Department for the Aging.

(4) "Building Services" means work performing any custodial, janitorial, groundskeeping or security guard services, including but not limited to, washing and waxing floors, cleaning windows, cleaning of curtains, rugs, or drapes, and disinfecting and exterminating services.

(5) "Day Care Services" means provision of day care services through the city's center-based day care program administered under contract with the city's administration for children's services. No other day care programs shall be covered, including family-based day care programs administered by city-contracted day care centers.

(6) "Head Start Services" means provision of head start services through the city's center-based head start program administered under contract with the city's administration for children's services. No other head start programs

shall be covered.

(7) "Services to Persons with Cerebral Palsy" means provision of services which enable persons with cerebral palsy and related disabilities to lead independent and productive lives through an agency that provides health care, education, employment, housing and technology resources to such persons under contract with the city or the department of education.

(8) "Food Services" means the work preparing and/or providing food. Such services shall include, but not be limited to, those as performed by workers employed under the titles as described in the federal dictionary of occupational titles for cook, kitchen helper, cafeteria attendant, and counter attendant. Any contracting agency letting a food services contract under which workers will be employed who do not fall within the foregoing definitions must request that the comptroller establish classifications and prevailing wage rates for such workers.

(9) "Temporary Services" means the provision of services pursuant to a contract with a temporary services, staffing or employment agency or other similar entity where the workers performing the services are not employees of the contracting agency. Such services shall include those performed by workers employed under the titles as described in the federal dictionary of occupational titles for secretary, word processing machine operator, data entry clerk, file clerk, and general clerk. Any contracting agency letting a temporary services contract under which workers will be employed who do not fall within the foregoing definitions must request the comptroller to establish classifications and prevailing wage rates for such workers.

(10) "City Service Contract" means any written agreement between any entity and a contracting agency whereby a contracting agency is committed to expend or does expend funds and the principle purpose of such agreement is to provide homecare services, building services, day care services, head start services, services to persons with cerebral palsy, food services or temporary services where the value of the agreement is greater than the city's small purchases limit pursuant to section 314 of the city charter. This definition shall not include contracts with not-for-profit organizations, provided however, that this exception shall not apply to not-for-profit organizations providing homecare, headstart, day care and services to persons with cerebral palsy. This definition shall also not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the city charter.

(11) "City Service Contractor" means any entity and/or person that enters into a city service contract with a contracting agency. An entity shall be deemed a city service contractor for the duration of the city service contract that it receives or performs.

(12) "City Service Subcontractor" means any entity and/or person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that is engaged by a city service contractor to assist in performing any of the services to be rendered pursuant to a city service contract. This definition does not include any contractor or subcontractor that merely provides goods relating to a city service contract or that provides services of a general nature (such as relating to general office operations) to a city service contractor which do not relate directly to performing the services to be rendered pursuant to the city service contract. An entity shall be deemed a city service contractor for the duration of the period during which it assists the city service subcontractor in performing the city service contract.

(13) "Contracting Agency" means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury or the department of education.

(14) "Covered Employer" means a city service contractor or a city service subcontractor.

(15) "Employee" means any person who performs work on a full-time, part-time, temporary, or seasonal basis and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. For

purposes of this definition and this section, "employ" means to maintain an employee, as defined in this section. For purposes of counting numbers of employees or employed persons when required by this section, full-time, part-time, temporary, or seasonal employees shall be counted as employees. Where an employer's work force fluctuates seasonally, it shall be deemed to employ the highest number of employees that it maintains for any three month period. However, in the case of city service contractors and city service subcontractors that provide day care services, independent contractors that are family-based day care providers shall not be deemed employees of the agencies and shall not be subject to the requirements of this section.

(16) "Covered Employee" means an employee entitled to be paid the living wage or the prevailing wage and/or health benefits as provided in subdivision b of this section.

(17) "Not-for-Profit Organization" means a corporation or entity having tax exempt status under section 501(c)(3) of the United States internal revenue code and incorporated under state not-for-profit law.

(18) "Prevailing Wage and Supplements" means the rate of wage and supplemental benefits per hour paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with the provisions of section 234 of the New York state labor law or, for titles not specifically enumerated in or covered by that law, determined by the comptroller at the request of a contracting agency or a covered employer in accordance with the procedures of section 234 of the New York state labor law. As provided under section 231 of the New York state labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the comptroller.

(19) "Living Wage" has the meaning provided in paragraph 2 of subdivision b of this section.

(20) "Health Benefits" has the meaning provided in paragraph 3 of subdivision b of this section.

(21) "Health Benefits Supplement Rate" has the meaning provided in subparagraph b of paragraph 3 of subdivision b of this section.

b. Living Wage, Prevailing Wage and Health Benefits. (1) Coverage. (a) A city service contractor or city service subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy must pay its covered employees that directly render such services in performance of the city service contract or subcontract no less than the living wage and must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. This requirement applies for each hour that the employee works performing the city service contract or subcontract.

(b) A city service contractor or city service subcontractor that provides building services, food services or temporary services must pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage or the prevailing wage, whichever is greater. Where the living wage is greater than the prevailing wage, the city service contractor or city service subcontractor must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or city service subcontractor must provide its employees the prevailing wage and supplements as provided in paragraph 18 of subdivision a of this section. These requirements apply for each hour that the employee works performing the city service contract or subcontract.

(2) The Living Wage. The living wage shall be an hourly wage rate of ten dollars per hour and will be phased in as provided below. Provided, however, that for homecare services under the Personal Care Services program, the wage and health rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section:

(a) As of the effective date of this section, $8.10 per hour;

(b) As of July 1, 2003, $8.60 per hour;

(c) As of July 1, 2004, $9.10 per hour;

(d) As of July 1, 2005, $9.60 per hour;

(e) As of July 1, 2006, $10.00 per hour.

(3) Health Benefits. (a) Health Benefits means receipt by a covered employee of a health care benefits package for the covered employee and/or a health care benefits package for the covered employee and such employee's family and/or dependents.

(b) The Health Benefits Supplement Rate shall be $1.50 per hour.

(c) For homecare services provided under the Personal Care Services program, the wage and health rates above shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section.

(d) In the case of city service contractors or subcontractors providing homecare services, the health benefits requirements of this section may be waived by the terms of a bona fide collective bargaining agreement with respect to employees who have never worked a minimum of eighty (80) hours per month for two consecutive months for that covered employer, but such provision may not be waived for any employees once they have achieved a minimum of eighty (80) hours for two consecutive months and no other provisions of this section may be so waived.

(4) Exemption for Employment Programs for the Disadvantaged. The following categories of employees shall not be subject to the requirements of this section:

(a) Any employee who is:

(i) Under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or

(ii) Employed as a trainee in a bona fide training program consistent with federal and state law where the training program has the goal that the employee advances into a permanent position; provided, however, that this exemption shall apply only when the trainee does not replace, displace or lower the wages or benefits of any covered employee, and the training does not exceed two years; and

(b) Any disabled employee, where such disabled employee:

(i) Is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or

(ii) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

(5) Retaliation and Discrimination Barred. It shall be unlawful for any covered employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any covered employee for reporting or asserting a violation of this section, for seeking or communicating information regarding rights conferred by this section, for exercising any other rights protected under this section, or for participating in any investigatory or court proceeding relating to this section. This protection shall also apply to any covered employee or his or her representative who in good faith alleges a violation of this section, or who seeks or

communicates information regarding rights conferred by this section in circumstances where he or she in good faith believes this section applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates this subsection may pursue administrative remedies or bring a civil action pursuant to subsection e of this section in a court of competent jurisdiction.

(6) Nothing in this section shall be construed to establish a wage or benefit pattern or otherwise affect the establishment of wages or benefits for city employees.

c. Obligations of Covered Employers. (1) A covered employer shall comply with the wage, benefits and other requirements of this section.

(2) Certification of Compliance. (a) Prior to the award or renewal of a city service contract, the applicant for award or renewal shall provide to the extent permitted by law the awarding contracting agency a certification containing the following information:

(i) The name, address, and telephone number of the chief executive officer of the applicant;

(ii) A statement that, if the city service contract is awarded or renewed, the applicant agrees to comply with the requirements of this section, and with all applicable federal, state and local laws;

(iii) The following workforce information concerning employees of the applicant that will be covered employees under the planned city service contract: (a) the absolute number of covered employees and the number of full-time equivalent covered employees; (b) for all categories of covered employees, the following information broken down by category: (1) job classifications of covered employees in each category; and (2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave). The applicant further agrees to require all of its city service subcontractors to provide the same workforce information as described herein;

(iv) To the extent permitted by law, a record of any instances during the preceding five years in which the applicant has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or to the extent permitted by law, in which any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and

(v) An acknowledgement that a finding by a contracting agency that the applicant has violated the requirements of this section may result in the cancellation or rescission of the city service contract.

The certification shall be signed under penalty of perjury by an officer of the applicant, and shall be annexed to and form a part of the city service contract. The certification (including updated certifications) and the city service contract shall be public documents and the contracting agency shall make them available to the public upon request for inspection and copying pursuant to the state freedom of information law.

(b) A city service contractor shall each year throughout the term of the city service contract submit to the contracting agency an updated certification, identifying any, if any exist, changes to the current certification.

(c) A covered employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are subject to the requirements of this section, and the wages paid and benefits provided for such hours worked. The covered employer shall maintain these records for the duration of the term of the city service contract and shall retain them for a period of four years after completion of the term of the city service contract. Failure to maintain such records as required shall create a rebuttable presumption that

the covered employer did not pay its covered employees the wages and benefits required under the section. Upon the request of the comptroller or the contracting agency, the covered employer shall provide a certified original payroll record.

(d) A city service contractor providing building services, food services or temporary services shall, as required by the predecessor version of this section, continue to submit copies of such payroll records, certified by the city service contractor under penalty of perjury to be true and accurate, to the contracting agency with every requisition for payment.

(e) A city service contractor providing homecare, day care, head start or services to persons with cerebral palsy may comply with the certification and other reporting requirements of this paragraph by submitting, as part of the contract proposal/contract and requests for payment categorical information about the wages, benefits and job classifications of covered employees of the city service contractor, and of any city service subcontractors, which shall be the substantial equivalent of the information required in clause iii of subparagraph (2)(a) of this paragraph.

(3) A city service contractor shall ensure that its city service subcontractors comply with the requirements of this section, and shall provide written notification to its city service subcontractors of those requirements, and include in any contract or agreement with its city service subcontractors a provision requiring them to comply with those requirements.

(4) No later than the day on which any work begins under a city service contract subject to the requirements of this section, the covered employer shall post in a prominent and accessible place at every work site and provide each covered employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under this section. Such notices shall be provided in english, spanish and other languages spoken by ten percent or more of a covered employer's covered employees. The comptroller shall provide contracting agencies with sample written notices explaining the rights of covered employees and covered employers' obligations under this section, and contracting agencies shall in turn provide those written notices to city service contractors, which shall in turn provide them to their subcontractors.

d. City Implementation and Reporting. (1) Coordination by the Comptroller. The comptroller shall monitor, investigate, and audit the compliance by all contracting agencies, and provide covered employers and employees with the information and assistance necessary to ensure that the section is implemented.

(a) The mayor or his or her designee shall promulgate implementing rules and regulations as appropriate and consistent with this section and may delegate such authority to the comptroller. The comptroller shall be responsible for publishing the living wage and for calculating and publishing all applicable prevailing wage and health benefits supplement rates. The comptroller shall annually publish the adjusted rates. The adjusted living wage and health benefits supplement rate shall take effect on July 1 of each year, and the adjusted prevailing wage rates shall take effect on whatever date revised prevailing wage rates determined under section 230 of the state labor law are made effective. At least 30 days prior to their effective date, the relevant contracting agencies, shall provide notice of the adjusted rates to city service contractors, which shall in turn provide written notification of the rate adjustments to each of their covered employees, and to any city service subcontractors, which shall in turn provide written notification to each of their covered employees. Covered employers shall make necessary wage and health benefits adjustments by the effective date of the adjusted rates.

(b) The comptroller and the mayor shall ensure that the information set forth in the certifications (including annual updated certifications and alternatives to certifications authorized for city service contractors providing homecare, day care, or head start services or services to persons with cerebral palsy) required to be submitted under paragraph 2 of subdivision c of this section is integrated into and contained in the city's contracting and financial management database established pursuant to section 6-116.2 of the administrative code. Such information shall to the extent permitted by law be made available to the public. Provided, however, that the comptroller and the mayor may agree to restrict from disclosure to the public any information from the certifications required under paragraph 2 of

subdivision c of this section that is of a personal nature.

(c) The comptroller shall submit annual reports to the mayor and the city council summarizing and assessing the implementation and enforcement of this section during the preceding year, and include such information in the summary report on contracts required under section 6-116.2 of the administrative code.

(2) Implementation by Contracting Agencies. (a) Contracting agencies shall comply with and enforce the requirements of this section. The requirements of this section shall be a term and condition of any city service contract. No contracting agency may expend city funds in connection with any city service contract that does not comply with the requirements of this section.

(b) Every city service contract shall have annexed to it the following materials which shall form a part of the specifications for and terms of the city service contract:

(i) A provision obligating the city service contractor to comply with all applicable requirements under this section;

(ii) The certification required under paragraph 2 of subdivision c of this section;

(iii) A schedule of the current living wage and health benefits supplement rates, a schedule of job classifications for which payment of the prevailing wage is required under this section together with the applicable prevailing wage rates for each job classification, as determined by the comptroller and notice that such rates are adjusted annually; and

(iv) A provision providing that: (a) Failure to comply with the requirements of this section may constitute a material breach by the city service contractor of the terms of the city service contract; (b) Such failure shall be determined by the contracting agency; and (c) If, within thirty days after or pursuant to the terms of the city service contract, whichever is longer, the city service contractor and/or subcontractor receives written notice of such a breach, the city service contractor fails to cure such breach, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract or under applicable law, including termination of the contract.

e. Monitoring, Investigation and Enforcement. (1) Enforcement. (a) Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from a covered employee, a former employee, an employee's representative, a labor union with an interest in the city service contract at issue, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the same investigatory, hearing, and other powers as are conferred on the comptroller by sections 234 and 235 of the state labor law. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by section 235.2 of the state labor law, instruct or, in the case of homecare services, day care services, head start services or services to persons with cerebral palsy, advise the relevant contracting agency to withhold any payment due the covered employer in order to safeguard the rights of the covered employees. Provided, however, that in the case of city service contractors providing services to persons with cerebral palsy, day care or head start services, no such withholding of payment may be ordered until such time as the comptroller or contracting agency, as applicable, has issued an order, determination or other disposition finding a violation of this section and the city service contractor has failed to cure the violation in a timely fashion. Based upon such investigation, hearing, and findings, the comptroller shall report the results of such investigation and hearing to the contracting agency, who shall issue such order, determination or other disposition. Such disposition may:

(i) Direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the worker, based on the rate of interest per year then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the state banking law, but in any event at a rate no less than six percent per year;

(ii) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(iii) Direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this section;

(iv) Direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due in violation of this section;

(v) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer; and

(vi) Declare a finding of non-responsibility and bar the covered employer from receiving city service contracts from the contracting agency for a prescribed period of time.

In assessing an appropriate remedy, a contracting agency shall give due consideration to the size of the employer's business, the employer's good faith, the gravity of the violation, the history of previous violations and the failure to comply with record-keeping, reporting, anti-retaliation or other non-wage requirements. Any civil penalty shall be deposited in the city general revenue fund.

(b) In circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a contracting agency may obtain from another source the required service as specified in the original contract, or any part thereof, and may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements, may assess any administrative charge established by the contracting agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

(c) Before issuing an order, determination or any other disposition, the comptroller or contracting agency, as applicable, shall give notice thereof together with a copy of the complaint, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person or covered employer affected thereby. The comptroller or contracting agency, as applicable, may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and disposition. Such person or covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

(d) In an investigation conducted under the provisions of this section, the inquiry of the comptroller or contracting agency, as applicable, shall not extend to work performed more than three years prior to the filing of the complaint, or the commencement of such investigation, whichever is earlier.

(e) When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the wage, benefits, anti-retaliation, record-keeping or reporting requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any city service contract for a period of five years from the date of the second disposition.

(f) When a final determination has been made in favor of a covered employee or other person and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the comptroller or contracting agency, as applicable, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the comptroller or contracting agency, as applicable, shall file a copy of such order containing the amount found to be due with the city clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof

who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the comptroller or contracting agency, as applicable, in the same manner and with like effect as that prescribed by the state civil practice law and rules for the enforcement of a money judgment.

(g) Before any further payment is made, or claim is permitted, of any sums or benefits due under any city service contract covered by this section, it shall be the duty of the contracting agency to require the covered employer, including each city service subcontractor of the covered employer, that has been found to have violated the law, to file a written statement certifying to the amounts then due and owing from each such covered employer to or on behalf of all covered employees, or the city for wages or benefits wrongly denied them, or for civil penalties assessed, and setting forth the names of the persons owed and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the covered employer under penalty of perjury. If any interested person shall have previously filed a protest in writing objecting to the payment to any covered employer on the ground that payment is owing to one or more employees of the covered employer for violations of this section, or if for any other reason it may be deemed advisable, the comptroller, a contracting agency or the city department of finance may deduct from the whole amount of any payment to the covered employer sums admitted by the covered employer in the verified statement or statements to be due and owing to any covered employee before making payment of the amount certified for payment, and may withhold the amount so deducted for the benefit of the employees or persons that are owed payment as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due them.

(h) The comptroller or any contracting agency shall be authorized to contract with non-governmental agencies to investigate possible violations of this section. Where a covered employer is found to have violated the requirements of this section, the covered employer shall be liable to the city for costs incurred in investigating and prosecuting the violation.

(2) Enforcement by Private Right of Action. (a) When a final determination has been made and such determination is in favor of a covered employee, such covered employee may, in addition to any other remedy provided by this section, institute an action in any court of appropriate jurisdiction against the covered employer found to have violated this section. For any violation of this section, including failure to pay applicable wages, provide required benefits, or comply with other requirements of this section, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity including, but not limited to, back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, reinstatement, injunctive relief and/or compensatory damages. The court shall award reasonable attorney's fees and costs to any complaining party who prevails in any such enforcement action.

(b) Notwithstanding any inconsistent provision of this section or of any other general, special or local law, ordinance, city charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this section because of the prior receipt by the employee without protest of wages or benefits paid, or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages or benefits received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages or benefits due the employee for the period covered by such payment.

(c) Such action must be commenced within three years of the date of the alleged violation, or within three years of the final disposition of any administrative complaint or action concerning the alleged violation or, if such a disposition is reviewed in a proceeding pursuant to article 78 of the state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

f. Other provisions. (1) Except where expressly provided otherwise in this section, the requirements of this section shall apply to city service contracts entered into after the effective date of this section, and shall not apply to any existing city service contract entered into prior to that date. Where a city service contract is renewed or extended after the effective date of this section, such renewal or extension shall be deemed new city service contracts and shall trigger coverage under this section if the terms of the renewed or extended city service contract, otherwise meet the requirements for coverage under this section. However, city service contractors and city service subcontractors that provide services to persons with cerebral palsy, day care services or head start services shall be subject to the requirements of this section only upon the award or renewal of city service contracts after the effective date of this section. City service contractors and city service subcontractors that provide homecare services shall be subject to the requirements of this section immediately upon the effective date of this section.

(2) Members of the public shall have a right of access to documents or information that is designated as public under article six of the public officers law. Such public documents or information as pursuant to the law shall be made available to the public for inspection and copying. The custodians of such documents or information may charge a reasonable fee, not to exceed twenty-five cents per page, for copying.

(3) Contracting agencies shall begin requiring city service contractors to supplement the information currently required to be submitted pursuant to section 6-116.2 of the administrative code with the additional information specified in clause iii of subparagraph a of paragraph 2 of subdivision c of this section. This information shall be compiled by the contracting agency and included in the computerized database jointly maintained by the mayor and the comptroller pursuant to section 6-116.2 of the administrative code.

(4) Nothing in this section shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement, that mandates the provision of higher or superior wages, benefits, or protections to covered employees. No requirement or provision of this section shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those specific applications or provisions of this section for which coverage would be preempted shall be construed as not applying.

(5) In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held invalid to any other person or circumstance.

HISTORICAL NOTE

Section repealed and added L.L. 38/2002 § 1, eff. Feb. 25, 2003.

Section repealed and added L.L. 79/1996 § 2, eff. Mar. 10, 1997.

[See Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-9.0 added LL 91/1961 § 1

Sub d amended chap 100/1963 § 216

Sub a par 1 amended LL 118/1967 § 1

Sub a par 1 amended LL 59/1969 § 1

NOTE

1. Provisions of L.L. 79/1996 §§ 1, 3, 4:

Section 1. Declaration of Legislative Findings and Intent. The Council finds that in several areas in which the city contracts for services there appears to be a trend toward paying low wages. This problem appears to be most egregious in the areas of security, temporary, cleaning and food services. Although the Council recognizes that this situation exists in other areas as well, it is an important first step to concentrate on these four industries where the problem is most blatant.

The city spends over $3 billion annually on personal service contracts, including approximately $200 million spent annually to purchase security, temporary, cleaning and food services. It is vital that the city receive the greatest level of service and economic return for its contractual expenditures. The Council, therefore, finds that it is in the best interest of the city to require as a condition of every contract for security, temporary, cleaning and food services that the contractor or subcontractor pay persons employed under such contract the applicable prevailing wage in the industry.

Recognizing that the not-for-profit sector is uniquely instrumental in the provision of services to the city's most vulnerable populations, such organizations are exempt from the requirements of this legislation. This is consistent with the state constitution's recognition that institutions whose mission is charity cannot be treated in the same manner as those organizations whose mission is profit-making.

§ 3. This local law shall take effect immediately for all contracts for the provision of security and cleaning services, and shall only apply to contract solicitations issued after its effective date.

§ 4. This local law shall take effect one hundred eighty days after it shall be enacted into law for all contracts for temporary and food services, and shall only apply to contract solicitations issued after its effective date. Actions to effectuate the implementation of this local law as it applies to contracts for temporary and food services, including, but not limited to, establishing the prevailing wage rates for the following occupations found in the federal dictionary of occupational titles: secretary; word processing machine operator; data entry clerk; file clerk; general clerk; cafeteria attendant; counter attendant; cook; and kitchen helper, shall begin immediately.

CASE NOTES FROM FORMER SECTION

¶ 1. Section 343-9.0 of the Code requires that public work contracts with the City contain an agreement by the contractor to pay a minimum wage of $1.50 per hour and to do the work in safe and sanitary surroundings. These provisions are valid, whether the contractor's employees are in or out of State. Section 220 of the Labor Law has not pre-empted the entire field. The provisions are not inconsistent with sections 27 or 343 of the Charter, or with the State Constitution.-McMillen v. Browne, 40 Misc. 2d 348, 243 N.Y.S. 2d 293 [1963], aff'd 20 App. Div. 2d 531, 244 N.Y.S. 2d 833 [1963], aff'd 14 N.Y. 2d 326, 251 N.Y.S. 2d 641, 200 N.E. 2d 546 [1964].

¶ 2. The minimum wage requirements of this section do not apply to the purchase of thermometers which were or will be manufactured in Japan. Application by bidder for order disqualifying lower bidders who did not pay minimum wage was denied. Minimum wage requirements do not apply to work performed outside the United States.-Matter of Kaye Thermometer Corp., 43 Misc. 2d 1026, 252 N.Y.S. 2d 639 [1964].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-110

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-110 Additional work.

Any contract for work or supplies may contain a provision to the effect that the head of the agency making the contract may order additional work to be done or supplies furnished for the purpose of completing such contract, at an expense not exceeding five per centum of the amount thereof; provided, however, that the board of estimate may by resolution adopt regulations providing that any contract for work or supplies may contain a provision to the effect that the head of the agency making the contract may order additional work to be done or supplies furnished for the purpose of completing such contract, at an expense not exceeding ten per centum of the amount thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343a-1.0 added chap 929/1937 § 1

Amended LL 60/1983 § 1

CASE NOTES

¶ 1. On the issue of extra work, § 6-110 limits a city agency when ordering additional work to not exceed an expense over 10% of the contract price. City will broadly interpret work requirements to claim as contract work what contractors would claim as additional work. Further action regarding claims is a matter of law. Chief engineer is not

final authority.-Crimmins v. City of New York, 138 App. Div. 2d 138 [1988].

¶ 2. Sanitation commissioner ordered the installation of concrete pads below underground fuel tanks pursuant to contract's disputed work provision. Contract provided a disputed work procedure to include postponing any claim for additional compensation until contract completion. The commissioner is prohibited from ordering extra work exceeding 10% of contract price by § 6-110 but commissioner does determine what work is required by the contract.-Kalisch-Jarcho Inc. v. City of New York, 72 N.Y. 2d 727 [1989].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-111

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111 Bids; opening of.

All bids shall be publicly opened by the officer or officers advertising therefor in the presence of the comptroller, or the comptroller's representative. The opening of such bids shall not be postponed if the comptroller or the comptroller's representative shall, after due notice, fail to attend.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343b-1.0 added chap 929/1937 § 1

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NYC Administrative Code 6-111.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111.1 [Electronic posting of requests for proposals.*]

All requests for[14] proposals and any other public notices of opportunities to contract with the city shall, simultaneously with their publication, be posted on the city's website in a location that is accessible by the public.

HISTORICAL NOTE

Section added L.L. 11/2004 § 1, eff. Oct. 1, 2004.

FOOTNOTES

[14]

[Footnote 14]: * [Section heading supplied by editor.

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NYC Administrative Code 6-111.2

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111.2 Client services contracts.

No request for proposal for new client services program contracts shall be released to the public unless at least 45 days prior to such release a concept report regarding such request for proposal is released to the public. Prior to the release of concept reports, the city shall publish a notification of the release in five consecutive editions of the city record and electronically on the city's website in a location that is accessible to the public, and upon release, concept reports shall be posted on the city's website in a location that is accessible by the public. For purposes of this subdivision, the term, "new client services program" shall mean any program that differs substantially in scope from an agency's current contractual client services programs, including, but not limited to, substantial differences in the number or types of clients, geographic areas, evaluation criteria, service design or price maximums or ranges per participant if applicable. For purposes of this subdivision, the term, "concept report", shall mean a document outlining the basic requirements of a request for proposal for client services contracts and shall include, but not be limited to, statements explaining:

(i) the purpose of the request for proposal;

(ii) the planned method of evaluating proposals;

(iii) the proposed term of the contract;

(iv) the procurement timeline, including, but not limited to, the expected start date for new contracts, expected request for proposal release date, approximate proposal submission deadline and expected award announcement date;

(v) funding information, including but not limited to, total funding available for the request for proposal and sources of funding, anticipated number of contracts to be awarded, average funding level of contracts, anticipated funding minimums, maximums or ranges per participant, if applicable, and funding match requirements;

(vi) program information, including, but not limited to, as applicable, proposed model or program parameters, site, service hours, participant population(s) to be served and participant minimums and/or maximums; and

(vii) proposed vendor performance reporting requirements.

b. Notwithstanding the issuance of a concept report, the agency may change the above-required information at any time after the issuance of such concept report. Non-compliance with this section shall not be grounds to invalidate a contract.

HISTORICAL NOTE

Section added (Subd. a designation omitted) L.L. 13/2004 § 2, eff. Oct.

1, 2004. [See Note 1]

NOTE

1. Provisions of 13/2004 §§ 1, 3:

Section 1. Legislative Findings and Intent. The Council hereby finds that the request for proposal process for human service contracts for vital services is long, inefficient and cumbersome. The Council further finds that currently, community input into requests for proposals is inadequate leading to amendments, long delays and sometimes the outright cancellation of requests for proposals for contracts in vital areas such as youth development and summer jobs. The Council finds that community-based organizations-those who provide human services and who will likely be responding to the requests for proposals-are important sources of information on best practices, program design and community needs and trends. Without such information and input the city cannot competently craft requests for proposals. The Council therefore finds and declares that it is the policy of the city to allow ample opportunity and notice regarding imminent requests for proposals for human services to provide input into the proposed content of such proposals and ensure more efficient and timely letting of human services contracts.

l§ 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-111.3

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-111.3 Online reverse auction pilot program.

a. The mayor may create a pilot program to determine the efficacy of online reverse auctions. The pilot program shall be for a period of twenty-four months during which period the mayor shall conduct at least six online reverse auctions for purchase contracts chosen by the mayor the combined value of which shall not be less than six million dollars. For purposes of this section the term, "online reverse auction," shall mean an auction for the purchase of goods by the city which is conducted online in electronic interactive format during which potential vendors bid against one another to provide goods for the city. The mayor may promulgate rules to implement the requirements of this section. The mayor shall submit a report to the Council and the Comptroller detailing the results of the online reverse auction pilot program no more than 60 days after the completion of such pilot program.

HISTORICAL NOTE

Section added (Subd. a only) L.L. 12/2004 § 1, eff. July 18, 2004.

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NYC Administrative Code 6-112

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-112 False statements.

Any person who makes or causes to be made a false, deceptive or fraudulent representation in any statement required by the board of estimate to set forth the financial condition, present plant and equipment, working organization, prior experience, and other information pertinent to the qualifications of any bidder, shall be guilty of an offense punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, by imprisonment for a period not exceeding six months, or both; and the person on whose behalf such false, deceptive or fraudulent representation was made, shall thenceforth be disqualified from bidding on any contracts for the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343b-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 218

(formerly § 343b-3.0)

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***** Current through December 2009 ****

NYC Administrative Code 6-113

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-113 Security.

Each bidder whose bid is accepted shall give security for the faithful performance of his or her contract in the manner prescribed in the regulations of the board of estimate. The adequacy and sufficiency of such security, as well as the justification and acknowledgment thereof, shall be subject to the approval of the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343c-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-114

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-114 Participation in an international boycott.

a. Every contract for or on behalf of the city for the manufacture, furnishing or purchasing of supplies, material or equipment or for the furnishing of work, labor or services, in an amount exceeding five thousand dollars, shall contain a stipulation, as a material condition of the contract, by which the contractor agrees that neither the contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the export administration act of nineteen hundred sixty-nine, as amended, or the regulations of the United States department of commerce promulgated thereunder.

b. Upon the final determination by the commerce department or any other agency of the United States as to, or conviction of any contractor or substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the export administration act of nineteen hundred sixty-nine, as amended, or the regulations promulgated thereunder, the comptroller may, at his or her option, render forfeit and void any contract containing the conditions specified in this section. In those instances where the comptroller determines that no action shall be taken pursuant to this section, the comptroller shall report the basis therefore to the city council.

c. Nothing contained herein shall operate to impair any existing contract, except that any renewal, amendment or modification of such contract occurring on or after the fourth of November, nineteen hundred seventy-eight shall be subject to the conditions specified in this section.

d. The comptroller shall have the power to issue rules and regulations pursuant to this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 343-10.0 added LL 27/1978 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 6-115

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-115 Anti-apartheid contract provisions. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 75/1993 § 4, eff. Sept. 24, 1993

(Legislative findings, build new South Africa)

Subd. a amended L.L. 81/1986 § 2

Subd. a open par amended L.L. 49/1990 § 4, eff. Sept. 1, 1990

(Legislative findings, progress made)

Subd. a par 1 amended L.L. 49/1990 § 5, eff. Sept. 1, 1990

Subd. a par 2 amended L.L. 49/1990 § 6, eff. Sept. 1, 1990

Subd. a par 3 amended L.L. 49/1990 § 6, eff. Sept. 1, 1990

Subd. a par 3 added L.L. 81/1986 § 5

Subd. a pars 4-8 added L.L. 49/1990 § 6, eff. Sept. 1, 1990

Subds. b, c amended L.L. 49/1990 § 7, eff. Sept. 1, 1990

Subd. d amended L.L. 49/1990 § 7, eff. Sept. 1, 1990

Subd. d amended L.L. 81/1986 § 3

(Legislative findings, strengthen anti-apartheid laws)

Subd. e amended L.L. 49/1990 § 8, eff. Sept. 1, 1990

Subd. e amended L.L. 81/1986 § 3

Subd. f amended L.L. 49/1990 § 9, eff. Sept. 1, 1990

Subd. g amended L.L. 49/1990 § 10, eff. July 25, 1990

Subd. g added L.L. 81/1986 § 4

Subds. h-j added L.L. 49/1990 § 11, eff. Sept. 1, 1990

DERIVATION

Formerly § 343-11.0 added LL 19/1985 § 3

(Legislative findings, apartheid repugnant, LL 19/1985 § 1)

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NYC Administrative Code 6-115

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-115 [City11 contracts with entities that do business in Burma.]**

a. With16 respect to contracts described in subdivisions b and c of this section, and in accordance with such provisions, no city agency shall contract for the supply of goods, services or construction with any person who does not agree to stipulate to the following as material conditions of the contract if there is another person who will contract to supply goods, services or construction of comparable quality at a comparable price:

(1) That the contractor and its affiliates shall not during the term of such contract sell or agree to sell goods or services to Burma, the Government of Burma, or to any entity owned or controlled by the Government of Burma; and

(2) In the case of a contract to supply goods, that none of the goods to be supplied to the city originated in Burma.

(3) The contractor and its affiliates do not do business in Burma or the contractor and its affiliates are actively engaged in the withdrawal of their operations from Burma and will have completed such withdrawal in six months, provided, however, that any such company that has withdrawn or is so engaged in withdrawing its operations from Burma that maintains a presence in Burma after such six month period solely for the purpose of liquidating its business shall not be ineligible for that reason to make the certification provided for in this paragraph.

(4) (a) It shall not make new investments in Burma.

(b) If at any time during the course of the contract the contractor acquires an entity which is doing business in Burma, the contractor shall initiate withdrawal of its acquisition's operations from Burma.

(c) It shall not enter into any new agreement with a Burmese entity allowing the use of its trademark, copyright or patent by such entity.

(5) In the case of a contract to supply motor vehicles, heavy equipment, electronic data processing equipment and software, copying machines or petroleum products, the contractor will, in addition to providing the certification described in this section with respect to itself and its affiliates, certify or provide a certification to the contracting agency from the manufacturer or refiner of the product to be supplied to the city that such manufacturer or refiner of the product to be supplied to the city that such manufacturer or refiner and its affiliates are in compliance with the terms set forth in this subdivision and subdivision d of this section. The commissioner of the department of citywide administrative services shall consider whether to designate other goods supplied to the city to be subject to the provisions of this paragraph, and by rule so designate any such goods as he or she determine appropriate based upon considerations including information that one or more manufacturers of such goods or affiliates of such manufacturers have not withdrawn operations from Burma, the effects on the city's procurement process, including the opportunities of small, minority and women owned business enterprises to compete for such contracts, and the recommendations of other agency heads.

(6) For the purposes of this subdivision, an entity shall be considered to have withdrawn its operations from Burma if:

(a) it does not maintain any office, plant or employee in Burma other than for the following purposes: (i) the activities of religious, educational or charitable organizations; (ii) activities intended to promote the exchange of information, including the publication or sale of newspapers, magazines, books, films, television programming, photographs, microfilm, microfiche, and similar materials; (iii) the gathering or dissemination of information by news media organizations; and (iv) the providing of telecommunications and mail services not involving the sale or leasing of equipment;

(b) it has no investments in Burma; and

(c) it does not provide goods or services to any Burmese entity pursuant to any non-equity agreement.

(7) The provisions of paragraphs four and six of this subdivision concerning investments, agreements concerning trademarks, copyrights and patents, and non-equity agreements shall not apply to the ownership or agreements with entities engaged in activities described in clauses, i, ii, iii and iv of subparagraph a of paragraph six.

(8) Notwithstanding the provisions of this section a city agency may purchase medical supplies intended to preserve or prolong life or to cure, prevent, or ameliorate diseases, including hospital, nutritional, diagnostic, pharmaceutical and non-prescription products specifically manufactured to satisfy identified health care needs, or for which there is no medical substitute. The determination of whether no medical substitute exists shall be made by the city agency requiring the supply, pursuant to general standards of good medical and professional practice. The city agency shall give notice to the city chief procurement officer in writing, certifying compliance with this exemption, said notice and certification being sufficient to allow the purchase of medical supplies under this exemption.

To the extent that a person doing business in Burma is providing only medical supplies, as described hereinabove, to persons in Burma, then the supply of goods or equipment to the city by said person shall also be exempt from the requirements of this section. This exemption from the requirements of this section shall not apply in any case in which the nature of any person's business dealings in Burma include both medical and non-medical supplies.

(9) For the purposes of this subdivision:

(a) "Affiliates" of a contractor means the parent company of the contractor, and any subsidiaries of the parent company, and any subsidiaries of the contractor.

(b) "Parent company" shall mean an entity that directly controls the contractor.

(c) "Subsidiary" shall mean an entity that is controlled directly or indirectly through one or more intermediaries, by a contractor or the contractor's parent company.

(d) "Control" shall mean holding five percent or more of the outstanding voting securities of a corporation, or having an interest of five percent or more in any other entity.

(e) "Entity" shall mean a sole proprietorship, partnership, association, joint venture, company, corporation or any other form of doing business.

(f) "Burmese entity" shall mean an entity organized in Burma, or a branch or office in Burma of an entity that is domiciled or organized outside Burma.

(g) "Investment" shall mean the beneficial ownership or control or a controlling interest in a Burmese entity, but shall not include the purchase of securities of a Burmese entity for a customer's account.

(h) "Non-equity agreement" shall mean a license, franchise, distribution or other written agreement pursuant to which an entity provides management, maintenance, or training services directly to a Burmese entity, or supplies goods directly to a Burmese entity for distribution by such Burmese entity, or for use as component parts in the manufacture of other goods by such Burmese entity. In addition, a non-equity agreement shall mean an original equipment manufacturer agreement, as defined pursuant to rules promulgated by the commissioner of the department of citywide administrative services, for equipment sold by a manufacturer of computers, copiers, or telecommunication equipment, which provides for or authorizes the sale of such equipment alone or part of a finished product, to a Burmese entity. Such commissioner shall consider whether to designate other equipment to be subject to this provision regarding original equipment manufacturer agreements, and by rule to so designate any such equipment as he or she determines appropriate based upon considerations including the effects on the city's procurement process, including the opportunities of small, minority and women owned business enterprises to compete for such city contracts.

b. In the case of contracts subject to competitive sealed bidding pursuant to section three hundred thirteen of the charter, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in subdivision a of this section and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting agency shall refer such bids to the mayor or such other official as may exercise such power pursuant to section three hundred ten of the charter, who, in accordance with subdivision b of section three hundred thirteen of the charter may determine that it is in the best interest of the city that the contract shall be awarded to other than the lowest responsible bidder.

c. In the case of contracts for goods, services or construction involving an expenditure of an amount greater than the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter, the contracting agency shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in subdivision a of this section unless the head of the agency seeking to use the goods, services or construction determines that the goods, services or construction supplied by such person are necessary for the agency to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price. Such determination shall be made in writing and shall be forwarded to the procurement policy board and the agency designated by the mayor pursuant to subdivision j of this section, and published in the City Record.

d. No city agency shall enter into a contract for an amount in excess of the amounts established pursuant to subdivisions b and c of section three hundred fourteen of the charter with any proposed contractor who does not agree to stipulate as a material condition of the contract that such entity and its affiliates have not within the twelve months prior to the award of such contract violated, and shall not during the period of such contract violate the provisions of section 138 of the U.S. customs and trade act of 1990 or any other sanctions imposed by the United States government with

regard to Burma.

e. Upon receiving information that a contractor, manufacturer or refiner who has agreed to the conditions set forth in subdivision a of this section is in violation thereof, the contracting agency shall review such information and offer the contractor and such other entity an opportunity to respond. If the contracting agency finds that a violation of such conditions has occurred, or if a final determination has been made by the commerce department or any other agency of the United States or a finding has been made by a court that any such entity has violated any provision of section 138 of the U.S. customs and trade act of 1990 or any other sanctions imposed by the United States government with regard to Burma, the contracting agency shall take such actions as may be appropriate and provided by law, rule or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages and declaring the contractor in default. The mayor shall designate an agency to maintain records of actions taken in such cases.

f. As used in this section, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to the emergency procurement procedure set forth in section three hundred fifteen of the charter, or contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, provided that agencies, shall consider the policies of this law when selecting a consultant to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

g. The provisions of this section shall not apply to contracts for which the city receives funds administered by the United States department of transportation, except to the extent congress has directed that the department of transportation, not to withhold funds from states and localities that implement Burmese embargo policies, or to the extent that such funds are not otherwise withheld by the department of transportation.

h. The department of the citywide administrative services and any other agency or agencies designated by the mayor shall conduct a study to develop recommendations concerning the application of the policies set forth in this section to procurement of goods, services or construction for amounts less than or equal to the amounts established pursuant to subdivisions b and c of section three hundred fourteen of this charter, and shall, on or before January first, nineteen hundred ninety-seven, submit a report to the mayor and the council containing such recommendations.

i. Nothing in this section shall be construed to limit the authority of a contracting agency or any official authorized by the charter to approve the selection of a contractor from taking into account, in making a determination to select or approve the selection of a contractor, in a manner consistent with applicable law and rules, any information concerning any direct or indirect relationship an entity may have related to business activities in Burma.

j. (1) The mayor shall designate an agency or agencies to collect information concerning entities doing business in Burma and to maintain records of contractors which have or have not agreed to the conditions set forth in subdivision a of this section. In October of each year, beginning in nineteen hundred ninety-seven, such agency or agencies shall submit a report to the mayor and the council setting forth information concerning contractors that have and have not agreed to such terms during the previous fiscal year, and the circumstances under which any contract subject to this section was awarded to a contractor who did not agree to such terms. The agency shall also report at such time on the efforts of public and quasi-public entities operating in the city to implement the Burmese embargo policies.

(2) The mayor shall designate an agency to collect information concerning whether entities withdrawing from Burma have given or agreed to give advance notification to their Burmese employees and representative trade unions (or other representative employee organizations if there are no appropriate unions) of the planned termination of investment not less than six months prior to such termination, and have engaged or agreed to engage in good faith negotiations with such representative unions or organizations regarding the terms of such termination, including but not limited to pension benefits; relocation of employees; continuation of existing union recognition agreements; severance pay; and acquisition of the terminated business or its assets by representative trade unions, union-sponsored workers trusts, other representative worker organizations or employees. Such agency shall inform such entities of, and offer

them an opportunity to respond to, any such information it collects. In October of each year, beginning in nineteen hundred ninety-seven, such agency shall submit a report to the mayor and the council on the information collected pursuant to this subdivision.

HISTORICAL NOTE

Section added L.L. 33/1997 § 4, eff. July 14, 1997. [See Note]

NOTE

Provisions of L.L. 33/1997:

Section 1. Declaration of Legislative findings and intent. In 1990, after a free election in Burma in which Nobel Peace Prize winner Aung Sam Suu Kyi's National League for Democracy (NLD) won 80% of the Parliamentary seats, the State Law and Order Restoration Council (SLORC) arrested, murdered and exiled such elected members of the NLD and annulled the election. Aung San Suu Kyi was placed under house-arrest. Since then, thousands of civilians have been killed, arrested, tortured or forced out of Burma as a result of Brutal government repression. The SLORC has conducted extensive military operations against ethnic groups within Burma. Additionally, the SLORC has refused to implement recommendations adopted by the United Nations General Assembly in December, 1993 and the United Nations Human Rights Commission in March, 1994.

The United States has already imposed a ban on new U.S. investment in Burma, suspended all economic and military aid to Burma, imposed an arms embargo against the country, ended some low tariffs that had applied to its products and blocked the international Monetary Fund and the World Bank from making loans to Burma.

The system of oppression by the SLORC is illegal and contrary to international laws and covenants. It being morally repugnant to the citizens of the City of New York and the New York City Council, the City of New York as an expression of moral outrage at the SLORC's continuing human rights violations in Burma does hereby set forth a municipal policy restricting its business with banks and companies doing business in Burma.

§ 5. If any provision of this local law or application thereof is held invalid, the remainder of this local law and the application thereof to the other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

§ 6. No bank shall be denied designation pursuant to section three of this local law because of any action taken prior to the effective date of this local law.

§ 7. This local law shall take effect forty-five days after its adoption and shall apply to contracts for which a request for bids or proposals is issued on and after the effective date.

FOOTNOTES

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[Footnote 11]: ** * New York City's "Burma Law" (Local Law No. 33 of 1997) No Longer to be Enforced. In light of the United States Supreme Court's decision in **Crosby v. National Foreign Trade Council,** 530 U.S. 363 (2000), the City has determined that New York City's Local Law No. 33 of 1997 (codified in Administrative Code § 6-115 and Charter § 1524), which restricts City business with banks and companies doing business in Burma, is unconstitutional. This is to advise, therefore, that the language relating to Burma contained in existing New York City contracts may not be enforced.

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[Footnote 16]: ** Section heading supplied by editor.

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NYC Administrative Code 6-115.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-115.1 Nondiscrimination in employment in Northern Ireland.

a. Definitions. For the purposes of this section "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to

train, upgrade and improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

b. 1. With respect to contracts described in paragraphs two and three of this subdivision, and in accordance with such paragraphs, no agency, elected official or the council shall contract for the supply of goods, services or construction with any contractor who does not agree to stipulate to the following, if there is another contractor who will contract to supply goods, services or construction of comparable quality at a comparable price: the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

2. In the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this section and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the mayor, the speaker or other official, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder.

3. In the case of contracts let by other than competitive sealed bidding for goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, the contracting entity shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in this section unless the entity seeking to use the goods, services or construction determines that the goods, services or construction are necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price. Such determination shall be made in writing and shall be filed in accordance with rules of the procurement policy board or any rules of the council relating to procurement, as appropriate, and shall be published in the City Record.

c. Upon receiving information that a contractor who has made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and offer the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor.

d. As used in this section, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to the emergency procurement procedure set forth in section three hundred fifteen of the charter or in rules of the procurement policy board or any rules of the council relating to procurement, as appropriate, or contracts, resolutions, indentures, declarations of trust or other instruments authorizing or relating to the authorization, issuance, award, sale or purchase of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, provided that the policies of this section shall be considered when selecting a contractor to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

e. The provisions of this section shall not apply to contracts for which the city receives funds administered by the United States department of transportation, except to the extent congress has directed that the department of transportation not withhold funds from states and localities that choose to implement selective purchasing policies based

on agreement to comply with the MacBride Principles, or to the extent that such funds are not otherwise withheld by the department of transportation.

HISTORICAL NOTE

Section added L.L. 34/1991 § 1, eff. Sept. 10, 1991

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NYC Administrative Code 6-116

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-116 Additional contract provisions.

a. Every contract shall contain a provision which permits the agency, in addition to any other right or remedy, to give notice to the contractor that the agency finds the contractor's performance to be improper, dilatory or otherwise not in compliance with the requirements of the contract.

b. The contract shall provide that if such notice is given, upon the termination of the contract the contractor may be declared not to be a responsible bidder for a period of time which shall not exceed three years, following notice and the opportunity for a hearing at which the contractor shall have the right to be represented by counsel.

c. The provisions of the contract and the procedure set forth therein for making the finding and declaration referred to in subdivisions a and b shall be consistent with applicable rules and regulations of the board of estimate.

HISTORICAL NOTE

Section added L.L. 94/1985 § 1, language juxtaposed per chap 907/1985

§ 14

DERIVATION

Formerly § 343-12.0 added LL 94/1985 § 1

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NYC Administrative Code 6-116.1

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-116.1 Information required to be kept on contractor performance.

All agencies letting contracts shall monitor the performance of every contractor. Information with respect to contractor performance shall be maintained by the city at a central location and shall be accessible to the members of the board of estimate, the members of the city council and city agencies upon request.

HISTORICAL NOTE

Section added L.L. 94/1985 § 2, language juxtaposed per chap 907/1985

§ 14

DERIVATION

Formerly § 343-13.0 added LL 94/1985 § 2

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Administrative Code of the City of New York

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NYC Administrative Code 6-116.2

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-116.2 [Reporting of contracted goods and services; computerized data base]*7

a. The comptroller and the mayor shall jointly maintain, at the financial information services agency, a computerized data base. Such data base shall contain information for every franchise and concession and every contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, entered into by an agency, New York city affiliated agency, elected official or the council, including, but not limited to:

(1) the name, address, and federal taxpayer's identification number of the contractor, franchisee or concessionaire where available in accordance with applicable law;

(2) the dollar amount of each contract including original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures;

(3) the type of goods or services to be provided pursuant to the contract;

(4) the term of the contract, or in the case of a construction contract the starting and scheduled completion date of the contract and the date final payment is authorized;

(5) the agency, New York city affiliated agency, elected official or the council that awarded the contract, franchise or concession and the contract registration number, if any, assigned by the comptroller;

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to,

in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure, and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selected without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder; and

(7) the date of any public hearing held with respect to the contract and the date and agenda number of action taken with respect to a concession or franchise by the franchise and concession review committee; and

(8) Reserved

(9) the contract budget category to which the contract is assigned, where applicable.

b. (i) The mayor and comptroller shall be responsible for the maintenance of a computerized data system which shall contain information for every contract, in the following manner: the mayor shall be responsible for operation of the system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system. In addition, the mayor and the comptroller shall jointly review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. This system shall have access to information stored on other computerized data systems maintained by agencies, which information shall collectively include, but not be limited to:

(1) the current addresses and telephone numbers of:

A. the contractor's principal executive offices and the contractor's primary place of business in the New York city metropolitan area, if different,

B. the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site,

C. any other names under which the contractor has conducted business within the prior five years, and

D. the addresses and telephone numbers of all principal places of business and primary places of business in the New York city metropolitan area, if different, where the contractor has conducted business within the prior five years;

(2) the dun & bradstreet number of the contractor, if any;

(3) the taxpayer identification numbers, employer identification numbers or social security numbers of the contractor or the division or branch of the contractor which is actually entering into the contract;

(4) the type of business entity of the contractor including, but not limited to, sole proprietorship, partnership, joint venture or corporation;

(5) the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and the other counties within New York State in which a certificate of incorporation, certificate of doing business, or the equivalent, has been filed within the prior five years;

(6) the principal owners and officers of the contractor, their dates of birth, taxpayer identification numbers, social security numbers and their current business addresses and telephone numbers;

(7) the names, current business addresses and telephone numbers, taxpayer identification numbers and employer identification numbers of affiliates of the contractors;

(8) the principal owners and officers of affiliates of the contractor and their current business addresses and telephone numbers;

(9) the principal owners and officers of every subcontractor;

(10) the type, amount and contract registration number of all other contracts awarded to the contractor, as reflected in the database maintained pursuant to subdivision a of this section;

(11) the contract sanction history of the contractor for the prior five years, including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon the contractor's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(12) the contract sanction history for the prior five years of affiliates of the contractor including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon such entity's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;
(13) the name and telephone number of the chief contracting officer or other employee of the agency, elected official or the council responsible for supervision of those charged with day-to-day management of the contract;

(14) judgments or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official or the council against the contractor with respect to a contract and any such judicial actions or proceedings that are pending;

(15) record of all sanctions imposed within the prior five years as a result of judicial or administrative disciplinary proceedings with respect to any professional licenses held by the contractor, or a principal owner or officer of the contractor;

(16) whether city of New York income tax returns, where required, have been filed for the past five years;

(17) outstanding tax warrants and unsatisfied tax liens, as reflected in the records of the city;

(18) information from public reports of the organized crime control bureau and the New York state organized crime task force which indicates involvement in criminal activity;

(19) criminal proceedings pending against the contractor and any principal owner or officer of such contractor;

(20) record of all criminal convictions of the contractor, any current principal owner or officer for any crime related to truthfulness or business conduct and for any other felony committed within the prior ten years, and of any former principal owner or officer, within the prior ten years, for any crime related to truthfulness or business conduct and for any other felony committed while he or she held such position or status;

(21) all pending bankruptcy proceedings and all bankruptcy proceedings initiated within the past seven years by or against the contractor and its affiliates;

(22) whether the contractor has certified that it was not founded or established or is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending;

(23) the name and main business address of anyone who the contractor retained, employed or designated to influence the preparation of contract specifications or the solicitation or award of this contract.

(ii) When personnel from any agency, elected officials or their staff, or members of the council or council staff learn that the certification required by subparagraph twenty-two of paragraph (i) may not be truthful, the appropriate law enforcement official shall be immediately informed of such fact and the fact of such notification shall be reflected in the data base, except when confidentiality is requested by the law enforcement official.

(iii) Information required from a contractor consisting of a contractor's social security number shall be obtained by the agency, elected official or the council entering into a contract as part of the administration of the taxes administered by the commissioner of finance for the purpose of establishing the identification of persons affected by such taxes.

(iv) In the event that procurement of goods, services or construction must be made on an emergency basis, as provided for in section three hundred fifteen of the charter, on an accelerated basis as provided for in section three hundred twenty-six of the charter, or expedited action is required due to urgent circumstances, or in such other circumstances as may be determined by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement, where it is not feasible to submit the information required by subdivision b prior to contract award, the required information may be submitted after award of the contract. However, all of the information required by subdivision b herein shall be submitted no later than thirty days from the date of the award. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on or otherwise be awarded a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(v) Where a contractor or subcontractor becomes obligated to submit information required by this subdivision by reason of having been awarded a contract or subcontract, the value of which, when aggregated with the value of all other contracts or subcontracts awarded to that contractor or subcontractor during the immediately preceding twelve-month period, is valued at one hundred thousand dollars, or more, such information shall be submitted no later than thirty days after registration of the contract which resulted in the obligation to submit such information. A contractor or subcontractor who fails to provide such information as required by this paragraph shall be ineligible to bid or propose on a contract or subcontract until such information is provided and shall be subject to such other penalties as may be prescribed by rule of the procurement policy board, where applicable, or any rule of the council relating to procurement.

(vi) For the calendar year commencing on January 1, 1992, subcontractors shall be required to provide the information required by subparagraph nine of paragraph i and on or after June 30, 1994, subcontractors shall be subject to paragraph i in its entirety.

(vii) This subdivision shall not apply to any New York city affiliated agency, except that such New York city affiliated agency shall report cautionary information and the name and telephone number of the employee responsible for responding to inquiries concerning such information.

c. The information maintained pursuant to subdivision b shall be made accessible to the computerized data system established pursuant to subdivision a of this section in a form or format agreed upon by the mayor and the comptroller. The information contained in these computerized data systems shall be made available to any other data retrieval system maintained by an agency, New York city affiliated agency, elected official or the council for the purpose of providing information regarding contracts, franchises and concessions awarded and the contractors, franchisees and concessionaires to which they were awarded. The information concerning the past performance of contractors that is contained in a computerized data base maintained pursuant to section 6-116.1 of this code for such purposes shall be made available to these data systems.

d. All of the information as required by subdivisions a and b contained in these computerized data bases shall be made available on-line in read-only form to personnel from any agency or New York city affiliated agency, elected

officials, members of the council and council staff, and shall be made available to members of the public, in accordance with sections three hundred thirty four and one thousand sixty four of the charter and article six of the public officers law.

e. No contract for goods or services involving the expenditure of more than ten thousand dollars or in the case of construction, repair, rehabilitation or alteration, the expenditure of more than fifteen thousand dollars, franchise or concession shall be let by an agency, elected official or the council, unless the contract manager or other person responsible for making the recommendation for award has certified that these computerized data bases and the information maintained pursuant to section 6-116.1 of this code have been examined. This shall be in addition to any certifications required by chapter thirteen of the charter, the rules of the procurement policy board, where applicable, or any rules of the council relating to procurement.

f. Not later than January thirtieth following the close of each fiscal year, the comptroller shall publish a summary report setting forth information derived from the data base maintained pursuant to subdivision a of this section and the following information for each franchise, concession or contract for goods or services having a value of more than ten thousand dollars or in the case of construction, having a value of more than fifteen thousand dollars, including, but not limited to:

(1) the types and dollar amount of each contract, franchise or concession entered into during the previous fiscal year;

(2) the registration number assigned by the comptroller, if any;

(3) the agency, New York city affiliated agency, elected official or the council entering into the contract, franchise or concession;

(4) the vendor entering into the contract, franchise or concession and the subcontractors engaged pursuant to each contract;

(5) the reason or reasons why the award of each such contract was deemed appropriate pursuant to subdivision a of section 312 of the charter, where applicable; and

(6) the manner in which the contractor, franchisee or concessionaire was selected, including, but not limited to, in the case of a contractor, whether the contractor was selected through public letting and if so, whether the contractor was the lowest responsible bidder; whether the contractor was selected through a request for proposal procedure and if so, whether the contractor's response to the request offered the lowest price option; whether the contractor was selcted without competition or as a sole source; whether the contractor was selected through the emergency procedure established in the charter or the general municipal law, where applicable; or whether the contractor was selected from a list of prequalified bidders, and if applicable, whether the contractor was the lowest responsible bidder. For franchises, this information shall also include whether the authorizing resolution of the council was complied with.

g. Nothing in this section shall be deemed to require the disclosure of information that is confidential or privileged or the disclosure of which would be contrary to law.

h. Except for submissions to elected officials or to the council, contractors or subcontractors may only be required to submit information required under subdivision b of this section to a single agency, and any such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. Any contractor or subcontractor that has submitted to any agency, elected official or the council, the information required to be provided in accordance with subdivision b of this section shall be required to update that information only at three-year intervals, and except as provided in paragraph iv or v of subdivision b, no contract or subcontract shall be awarded unless the contractor or subcontractor has certified that information previously submitted as to those requirements is correct as of the time of the award of the contract or subcontract. The contractor or

subcontractor may only be required to submit such updated information to a single agency and such submission shall be applicable to all contracts or subcontracts or bids for contracts or subcontracts of that contractor or subcontractor with any agency. The procurement policy board may, by rule, provide for exceptions to this subdivision.

i. Except as otherwise provided, for the purposes of subdivision b of this section,

(1) "affiliate" shall mean an entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty per cent of the voting stock;

(2) "cautionary information" shall mean, in regard to a contractor, any adverse action by any New York city affiliated agency, including but not limited to poor performance evaluation, default, non-responsibility determination, debarment, suspension, withdrawal of prequalified status, or denial of prequalified status;

(3) "contract" shall mean and include any agreement between an agency, New York city affiliated agency, elected official or the council and a contractor, or any agreement between such a contractor and a subcontractor, which (a) is for the provision of goods, services or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at one hundred thousand dollars or more; or (b) is for the provision of goods, services or construction, is awarded to a sole source and is valued at ten thousand dollars or more; or (c) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more; or (d) is a franchise. However, the amount provided for in clause a herein may be varied by rule of the procurement policy board, where applicable, or rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, as that amount applies to the information required by paragraphs 7, 8, 9 and 12 of subdivision b of this section, and the procurement policy board, where applicable, or the council, or, for franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section, but the rulemaking procedure required by chapter forty-five of the charter may not be initiated for such rule of the procurement policy board or franchise and concession review committee less than forty-five days after the submission by the procurement policy board or, for franchises and concessions, the franchise and concession review committee, to the council of a report stating the intention to promulgate such rule, the proposed text of such rule and the reasons therefor;

(4) "contractor" shall mean and include all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract, as defined in paragraph three herein, with an agency, New York city affiliated agency, elected official or the council;

(5) "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

(6) "New York city affiliated agency" shall mean any entity the expenses of which are paid in whole or in part from the city treasury and the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, but shall not include any entity established under the New York city charter, this code or by executive order, any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility;

(7) "parent" shall mean an individual, partnership, joint venture or corporation which owns more than fifty percent of the voting stock of a contractor;

(8) "principal owner" shall mean an individual, partnership, joint venture or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor;

(9) "subcontract" shall mean any contract, as defined in paragraph three herein, between a subcontractor and a contractor; and

(10) "subcontractor" shall mean an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a contractor pursuant to a contract, as defined in paragraph three herein.

j. Notwithstanding any other provisions of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be submitted in a form or format and on a schedule to be determined by the mayor and the comptroller. In no event shall New York city affiliated agencies be required to submit such information prior to the award of any contract.

k. Notwithstanding any other provision of this section, the information required to be submitted by New York city affiliated agencies pursuant to this section shall be required only as to contracts funded in whole or in part with city funds, although nothing shall preclude New York city affiliated agencies from submitting information on contracts funded by other than city funds.

HISTORICAL NOTE

Section added L.L. 52/1987 § 2 [See Note 2]

Subd. a amended L.L. 44/1992 § 2, eff. Oct. 5, 1992 [See Note 1]

Subd. a par (7) separately amended L.L. 34/1992 § 1, eff. June

16, 1992

Subd. a par (9) added L.L. 34/1992 § 1, eff. June 16, 1992

Subd. b added L.L. 5/1991 § 2, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4

Subd. b par (i) open par amended L.L. 44/1992 § 3, eff. Oct. 5, 1992 [See Note 1]

Subd. b par (i) open par amended L.L. 13/1991 § 1, eff. Feb. 7, 1991

Subd. b par (i) subpar (1) amended L.L. 21/1992 § 1, eff. Mar. 27, 1992

Subd. b par (i) subpar (22) amended L.L. 49/1992 § 1 eff. July 16, 1992, amended L.L. 13/1991 § 2, eff. Feb. 7, 1991

Subd. b par (i) subpar (23) added L.L. 49/1992 § 1 eff. July 16, 1992

Subd. b pars (ii), (iv), (v) amended L.L. 13/1991 § 3, eff. Feb. 7, 1991

Subd. b par (vi) amended L.L. 64/1993 retro. to Dec. 31, 1992

Subd. b par (vi) added L.L. 13/1991 § 3, eff. Feb. 7, 1991

Subd. b par (vii) added L.L. 44/1992 § 4, eff. Oct. 5, 1992 [See Note 2]

Subd. c amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. c relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. b)

Subd. d amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. d relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. c)

Subd. e amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. e relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. d)

Subd. f amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. f relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. e)

Subd. g relettered and amended L.L. 5/1991 §§ 1, 3, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4. (formerly subd. f)

Subd. h amended L.L. 22/2004 § 1, eff. July 28, 2004.

Subd. h amended L.L. 44/1992 § 5, eff. Oct. 5, 1992 [See Note 2]

Subd. h added L.L. 5/1991 § 5, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4

Subd. h repealed after relettering L.L. 5/1991 §§ 1, 4, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4, (formerly subd. g)

Subd. i amended L.L. 44/1992 § 6, eff. Oct. 5, 1992 [See Note 2]

Subd. i added L.L. 5/1991 § 6, eff. Jan. 1, 1992 as per L.L. 13/1991 § 4

Subds. j, k added L.L. 44/1992 § 7, eff. Oct. 5, 1992 [See Note 2]

NOTE

1. L.L. 44/1992 provisions

Section 1. Legislative intent. In 1987, the council enacted Local Law 52 to require the mayor and the comptroller to jointly establish a computerized data base containing information about contracts, franchises and concessions entered into by mayoral and non-mayoral agencies. Local Laws 5 and 13 of 1991 created the complement to this data base and require the mayor and the comptroller to be jointly responsible for the maintenance of a computerized data system that contains information about people and companies with whom the city does business. These legislative initiatives were pressed because of the council's concern that contracts go only to honest and capable vendors and that the city obtain the highest quality and quantity of goods and services for the approximately six billion dollars in city funds that are spent each year through procurement. Much of this money consists of funds allocated in the New York city budget to public benefit corporations and similar entities, such as the Health and Hospitals Corporation and the Economic Development Corporation.

It is the intent of this legislation to make clear that public benefit corporations and similar entities that receive city funds are responsible for reporting contractual expenditures to the taxpayers who supply those funds.

2. L.L. 52/1987 provisions

Section one. Legislative Intent. The Council hereby finds that approximately 22% of the City's annual budget is spent on contracted goods and services. However, information pertaining to these contracts is not kept in one central location. It is the intent of this legislation to create a computerized contract registry which would streamline City contract information and make this information accessible to City government officials and employees and members of the public. The Council recognizes the monumental effort necessary to create a central computerized repository for tracking the $5 billion spent annually on City contracts. Therefore, this legislation mandates that the financial information services agency begin to establish this data base immediately and provides for a period of up to two years

for the establishment of this computerized data base.

FOOTNOTES

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[Footnote 7]: * Section heading supplied by editor.

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Administrative Code of the City of New York

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NYC Administrative Code 6-117

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-117 Purchases; statement of.

The department of citywide administrative services shall furnish each agency for which it has purchased supplies, materials and equipment with a monthly statement of such purchases, with details of the quantities and prices paid, showing the quantities delivered for the account of such agency.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 46, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 782a-1.0 added chap 929/1937 § 1

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NYC Administrative Code 6-118

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-118 Printing and stationery.

The department of citywide administrative services shall purchase all printing and stationery for all agencies.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 47, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 782a-3.0 added chap 929/1937 § 1

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NYC Administrative Code 6-119

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-119 Copies; printing of.

It shall be unlawful to print, apart from the City Record, more than two thousand copies of any message of the mayor or report of the head of any agency, or more than one thousand copies of any report of a committee of the council.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 782a-4.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-120

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-120 Standards and specifications.

The commissioner of citywide administrative services shall have power to use the laboratory and engineering facilities of any agency, together with the technical staff thereof, in connection with work of preparing and adopting standards and written specifications. The commissioner shall consult freely with the heads and other officials of the various agencies to determine their precise requirements, and shall endeavor to prescribe those standards which meet the needs of the majority of such agencies. After adoption , each standard specification shall, until revised or rescinded, apply alike in terms and effect to every future purchase and contract for the commodity described in such specification. The commissioner of citywide administrative services, however, may exempt any such agency from the use of the commodity described in such standard specification.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 48, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 783-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 586

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-121

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-121 Purchase of low-emission motor vehicles.

a. As used in this section, the terms "as defined" and "as specified" shall mean as defined and as specified from time to time in the relevant regulations of the administrator of the United States environmental protection agency.

b. As used in this section, the term "low-emission motor vehicle" shall mean a self-propelling light duty vehicle, as defined which is certified in accordance with the terms of subdivision d of this section.

c. Low-emission motor vehicles which meet the standards prescribed by subdivision e of this section, and which have been determined by the department of citywide administrative services to be suitable for use as a substitute for a class or model of motor vehicles presently in use by the city of New York, shall be purchased by the city for use by the city government in lieu of other vehicles, provided that the commissioner of citywide administrative services shall first determine that such low-emission motor vehicles have procurement and maintenance costs not substantially greater than those of the class or model of motor vehicles for which they are to be substituted.

d. The commissioner of environmental protection of the city of New York shall, upon request of the commissioner of citywide administrative services, and after such tests as he or she may deem appropriate, certify as a low-emission motor vehicle any particular class or model of motor vehicles that:

1. meets either (i) the hydrocarbon and carbon monoxide exhaust emission standards as defined and as specified for nineteen hundred seventy-five model year vehicles and the oxides of nitrogen exhaust emission standard as defined and as specified for the then current model year or (ii) the oxides of nitrogen exhaust emission standard as defined and as specified for nineteen hundred seventy-six model year vehicles and the hydrocarbon and carbon monoxide exhaust

emission standards as defined and as specified for the then current model year; and

2. meets the crankcase emission standard as defined and as specified and the fuel evaporative emission standard as defined and as specified; and

3. will not emit an air contaminant not emitted by the class or model of motor vehicle presently in use in the city of New York unless the commissioner of environmental protection determines that such air contaminant will not cause significant detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or damage to property or business.

4. After conducting such tests the commissioner of environmental protection shall advise the commissioner of citywide administrative services whether such class or model of motor vehicles has been so certified. Any such certification shall be valid until the end of the then current model year unless sooner revoked by the commissioner of environmental protection.

e. The commissioner of environmental protection of the city of New York shall, upon request of the commissioner of citywide administrative services, and after such tests as he or she may deem appropriate, advise the commissioner of citywide administrative services, as to any class or model of low-emission motor vehicle, with respect to:

(1) the safety of the vehicle;

(2) its performance characteristics;

(3) its reliability potential; and

(4) its fuel availability.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. c, d, e amended L.L. 59/1996 § 49, eff. Aug. 8, 1996

DERIVATION

Formerly § 784-1.0 added LL 32/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-122

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-122 Purchase of18 recycled paper products.

a. When purchasing paper products made with and without significant recycled content, recovered from materials otherwise destined for disposal, the department of citywide administrative services shall, wherever the price is reasonably competitive and the quality adequate for the purpose intended, purchase the recycled product. For the purpose of this section the term "recycled paper" shall mean any paper products which have been manufactured from materials otherwise destined for the waste stream including, but not limited to, old newspapers, magazines, paperboard, boxes, tabulating cards, mixed waste, used fibrous materials such as rags and overstock or obsolete inventories from distributors, wholesalers, printers and other companies as defined in rules and regulations promulgated by the commissioner provided that the term "recycled paper" does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process. "Reasonably competitive" shall mean a comparable recycled product with a cost premium of no greater than ten percent.

b. The department of citywide administrative services shall review its own paper product procurement specifications and consider those of the State of New York in order to establish realistic recycled content standards and to eliminate, wherever feasible, discrimination against the procurement of products manufactured with recovered materials. The department of general services shall submit a report on recycled paper procurement activities to the mayor and the city council eighteen months after the effective date of this section.

HISTORICAL NOTE

Section repealed L.L. 121/2005 § 2, eff. Jan. 1, 2007. Section transferred

to Title 6 Subchapter 4.

Section amended L.L. 59/1996 § 50, eff. Aug. 8, 1996

Section added L.L. 20/1987 § 1

NOTE

L.L. 20/1987 provisions:

§ 2. This local law shall take effect one hundred and twenty days from the date it shall have become law, but all actions necessary to prepare for the implementation of this local law may be taken prior to its effective date. This local law shall expire twenty four months after its effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 23, 1987, and approved by the Mayor on May 4, 1987.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

FOOTNOTES

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[Footnote 18]: * Section repealed Jan. 1, 2007.

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NYC Administrative Code 6-123

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-123 Contractor human rights compliance.

a. For purposes of this section only, the following terms shall have the following meanings: (1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(a) For purposes of this section only, unless otherwise required by law, the term "contract" shall include any city grant, loan, guarantee or other city assistance for a construction project.

(b) The term "contract" shall not include: (i) contracts for financial or other assistance between the city and a government or government agency; or

(ii) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes or other fiscal obligations of the city, or consisting thereof.

(2) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(3) "Contractor" means a person who is a party or a proposed party to a contract with a contracting agency as those terms are defined herein.

b. All contractors doing business with the city without regard to the dollar amount shall not engage in any unlawful discriminatory practice as defined and pursuant to the terms of title viii of the administrative code. Every contract in excess of $50,000 shall contain a provision or provisions detailing the requirements of this section.

c. The contractor will not engage in any unlawful discriminatory practice as defined in title viii of the administrative code. In the case of a contract for supplies or services, the contractor shall include a provision in any agreement with a first-level subcontractor for an amount in excess of $50,000 that such subcontractor shall not engage in such an unlawful discriminatory practice. In the case of a contract for construction, the contractor shall include a provision in all subcontracts in excess of $50,000 that the subcontractor shall not engage in such an unlawful discriminatory practice.

d. Enforcement, remedies, and sanctions. Upon receiving a complaint or at his or her own instance, the commissioner of business services, acting pursuant to section 1305 of the charter, may conduct such investigation as may be necessary to determine whether contractors and subcontractors are in compliance with the equal employment opportunity requirements of federal, state and local laws and executive orders. If the commissioner has reason to believe that a contractor or subcontractor is not in compliance with the provisions of this section, or where there has been a final adjudication by the human rights commission or a court of competent jurisdiction that a contractor has violated one or more of the provisions of title viii of the administrative code, as to its work subject to the contract with the contracting agency, the commissioner of business services shall seek the contractor's or subcontractor's agreement to adopt and adhere to an employment program designed to ensure equal employment opportunity, including but not limited to measures designed to remedy underutilization of minorities and women in the contractor's or subcontractor's workforce, and may, in addition, recommend to the contracting agency that payments to the contractor be suspended pending a determination of the contractor's or subcontractor's compliance with such requirements. If the contractor or subcontractor does not agree to adopt or does not adhere to such a program, the commissioner shall make a determination as to whether the contractor or subcontractor is in compliance with the provisions of this section, and shall notify the head of the contracting agency of such determination and any sanctions, including the withholding of payment, imposition of an employment program, finding the contractor to be in default, cancellation of the contract, or other sanction or remedy provided by law or by contract, which the commissioner believes should be imposed. The head of the contracting agency shall impose such sanction unless he or she notifies the commissioner in writing that the agency head does not agree with the recommendation, in which case the commissioner and the head of the contracting agency shall jointly determine any sanction to be imposed. If the agency head and the commissioner do not agree on the sanction to be imposed, the matter shall be referred to the mayor, who shall determine any sanction to be imposed.

e. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

HISTORICAL NOTE

Section added L.L. 15/2001 § 1, eff. May 12, 2001.

CASE NOTES

¶ 1. The New York City Transit Authority (TA) is not a City contractor within the meaning of the statute. Although the TA is fiscally interdependent with the City, it is an entity separate and distinct from the City. Reilly v. Transport Workers' Union, N.Y.L.J., Jan. 2, 2003, page 18, col. 5 (Sup.Ct. New York Co.).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-124

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-124 [Apparel and textile services procurement by city.]

a. For purposes of this section only, the following terms shall have the following meanings:

(1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(2) "Responsible manufacturer" means that the manufacturer of apparel and textiles is able to demonstrate current compliance with all applicable wage, health, labor, environmental and safety laws, building and fire codes and any laws relating to discrimination in hiring, promotion or compensation on the basis of race, disability, national origin, gender, sexual orientation or affiliation with any political, non-governmental or civic group except when federal or state law precludes the city from attaching the procurement conditions provided herein. A responsible manufacturer for the purposes of this section shall not engage in any abuse of its employees except where federal or state law precludes the city from attaching the conditions provided herein. A responsible manufacturer for the purposes of this section shall pay a non-poverty wage as defined herein, and shall not contract with any subcontractor operating in violation of any provision of this section.

(3) "Contracting agency" means a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, that purchases, leases, or contracts for the purchase or lease of goods or services financed in whole or in part from the city treasury, except where partial federal or state funding precludes the city from attaching the procurement conditions provided herein.

(4) "Contractor" means any supplier, by sale or lease, of apparel or textiles to a contracting agency, including suppliers of uniforms for purchase by city employees through any uniform or voucher system, and any provider of laundering or other services to a contracting agency for the cleansing, repair, or maintenance of apparel or textiles.

(5) "Subcontractor" means any person or enterprise who contracts with a contractor, either directly or through other intermediary subcontractors, for the manufacture or supply in whole or in part or for the laundering or other servicing of apparel or textiles. Subcontractor shall include beneficiaries of bankruptcies, assignment, transfer, sales of operations, or other successorship intended to evade liability or responsibility for any of the wrongful conduct enumerated in this section.

(6) "Apparel or textiles" means all articles of clothing, cloth, or goods produced by weaving, knitting, or felting, or any similar goods.

(7) "Non-Poverty wage" means the nationwide hourly wage and health benefit level sufficient to raise a family of three out of poverty.

(8) "Relative national standard of living index" means a ratio of the standard of living in a given country to the standard of living in the United States, when standard of living is defined as real per capita income multiplied by the percentage of gross domestic product used for non-military consumption.

(9) "Incentive pay" means any pay system contingent on performance.

b. A contracting agency shall only enter into a contract to purchase or obtain for any purpose any apparel or textiles from a responsible manufacturer. The provisions of this section shall apply to every contract in excess of $2,500.

c. All contractors and subcontractors in the performance of a contract with a contracting agency shall pay their employees a non-poverty wage. The comptroller shall determine, and, if deemed necessary, annually adjust the precise level of the non-poverty wage, and shall ensure that it is no less than the level of wages and health benefits earned by a full-time worker that is sufficient to ensure that a family of three does not live in poverty as measured by the nationwide poverty guidelines issued annually by the United States department of health and human services in the federal register, and, in any event, no less than $8.75 an hour, of which $7.50 must be paid in hourly wages; and, as applied to employees of contractors and subcontractors outside of the United States, a comparable nationwide wage and benefit level, adjusted to reflect that country's level of economic development using a factor such as the relative national standard of living index in order to raise a family of three out of poverty. The comptroller shall have the authority to promulgate such rules as deemed necessary for determining a non-poverty wage. For contractors or subcontractors that pay employees on an incentive pay basis, it shall be sufficient for the purposes of this section for the contractor or subcontractor to ensure that average pay for the lowest paid class of those employees engaged in the performance of a contract with a contracting agency exceeds the non-poverty wage.

d. A contracting agency shall not enter into a contract to purchase or obtain for any purpose any apparel or textiles from a contractor unable to provide certified documentation in writing:

(1) that such apparel and textiles are manufactured in accordance with the requirements that constitute responsibly manufactured as defined in this section;

(2) listing the names and addresses of each subcontractor to be utilized in the performance of the contract;

(3) listing each manufacturing, processing, distributing, storing, servicing, shipping or other facility or operation of the contractor and its subcontractors for performance of the contract, and the location of each such facility;

(4) listing the wages and health benefits by job classification provided to all employees engaged in the

manufacture, distribution or servicing of apparel and textiles for contracting services at each such facility.

The contracting agency must maintain this information in the agency contract file and make it available for public inspection. Such information shall also be made available to the comptroller's office.

e. A contracting agency shall not contract for apparel and textiles with any contractor who does not agree to permit independent monitoring at the request of the contracting agency or the comptroller of their compliance with the requirements of this section. The contractor shall be responsible for ensuring that subcontractors comply with the independent monitoring requirements of this subdivision. If through independent monitoring it is determined that the contractor or subcontractor has failed to comply with the provisions of this section, the costs associated with the independent monitoring to the city shall be reimbursed by the contractor or subcontractor.

f. The comptroller shall collect and maintain information concerning the city's apparel and textile contracts that have been awarded and shall ensure that the information listed in subdivision d of this section be made available to the public. The comptroller shall allow interested third parties an opportunity to submit information relating to the apparel and textile industry and shall review and consider such submissions as they become available. In October of each year, beginning one year after the enactment of this section, the comptroller shall submit a report to the mayor and the council on the information collected pursuant to this subdivision.

g. Upon information and belief that a contractor or subcontractor may be in violation of this section, the comptroller shall review such information and offer the contractor or subcontractor an opportunity to respond. If the comptroller finds that a violation has occurred, it shall present evidence of such violation to the contracting agency. Where such evidence indicates a violation of the subcontractor, the contractor shall be responsible for such violation. It shall be the duty of the contracting agency to take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor or subcontractor. In circumstances where a contractor or subcontractor fails to perform in accordance with any of the requirements of this section, and there is a continued need for the service, a contracting agency may obtain the required service as specified in the original contract, or any part thereof, by issuing a new solicitation, and charging the non-performing contractor or subcontractor for any difference in price resulting from the new solicitation, any administrative charge established by the contracting agency, and shall, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

h. A contractor shall be liable for a civil penalty of not less than $5,000 upon a determination that a contractor or subcontractor has been found, through litigation or arbitration, to have made a false claim under the provisions of this section with the contracting agency.

i. Every contract for or on behalf of all contracting agencies for the supply and service of textiles and apparels shall contain a provision or provisions detailing the requirements of this section.

j. In an investigation conducted under the provisions of this section, the inquiry of the comptroller shall not extend to work performed more than three years prior to: (i) the filing of a complaint of any provision of this section; or (ii) the commencement of the investigation of the comptroller's own volition, whichever is earlier.

k. Notwithstanding any inconsistent provision of this law or of any other general, special or local law, ordinance, charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee because of the prior receipt by the employee without the protest of wages paid or on account of the employee's failure to state orally or in writing upon any payroll or receipt of which the employee is required to sign that the wages received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages due to the employee for the period covered by such payment.

l. The requirements of this section shall be waived in writing under the following circumstances:

(1) there is only one prospective contractor willing to enter into a contract, where it is determined that all bidders to a contract are deemed ineligible for purposes of this section; or

(2) where it is available from a sole source and the prospective contractor is not currently disqualified from doing business with the city; or

(3) the contract is necessary in order to respond to an emergency which endangers the public health and safety and no entity which complies with the requirements of this section capable of responding to the emergency is immediately available; or

(4) where inclusion or application of such provisions will violate or be inconsistent with the terms and conditions of a grant, subvention or contract of the United States government or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

m. All waivers shall become part of the contract file of the contracting agency. Notwithstanding any waiver, the contracting agency shall take every reasonable measure to contract with a contractor who best satisfies the requirements of this section.

n. This section shall not apply to any contract with a contracting agency entered into prior to the effective date of this local law, except that renewal, amendment or modification of such contract occurring on or after the effective date shall be subject to the conditions specified in this section.

o. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

p. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

HISTORICAL NOTE

Section added L.L. 20/2001 § 2, eff. Jan. 20, 2002. [See Note]

NOTE

Provisions of L.L. 20/2001:

Section 1. Declaration of Legislative Findings and Intent. The Council of the City of New York finds that it is in the City's best interest to procure items of apparel and textiles from responsible contractors that provide quality and service at the lowest responsible price and provide a safe work environment for their employees. The Council finds that, after almost a century of progress in the struggle against sweatshops in the apparel and textile sectors, there has been a recent resurgence of such exploitative and abusive workplaces in New York, the United States, and around the world. The City should not spend its citizens' money in ways that shock the conscience of a vast majority. Acting with the discretion allowed any private participant in the market, the City should choose to allocate its purchasing dollars in order to enhance, rather than degrade, the economic and social wellbeing of people, while at the same time assure the public that the City is acquiring the maximum quality for the lowest possible cost. Furthermore, it is essential to the public interest that the City require manufacturers, who contract to provide the City with apparel and textile goods, to submit information necessary for the determination of responsibility. Accordingly, the Council finds that it is in the best

interests of the city of New York to procure apparel and textile goods from responsible contractors and subcontractors that provide a safe, non-discriminatory work environment and compensate their employees with a non-poverty wage.

CASE NOTES

¶ 1. The statute, which sought to prevent the City from purchasing uniforms manufactured in sweatshops (those in New York, or other states or countries) violates City Charter § 335, which vests in the Mayor the power to determine the qualifications of bidders on City contracts. In other words, the statute impermissibly encroaches on the Mayor's function and the discretion of the agencies vested with the duty to determine whether a bidder is responsible. The statute runs afoul of the doctrine of separation of powers. The only way to curtail the power of the Mayor over City contracts would be by means of a public referendum pursuant to City Charter § 38(5). The court further held that, pursuant to State Finance Law § 162, the state pre-empted the field in terms of regulation of contracts between municipalities and alleged sweatshops. Mayor of City of New York v. Council of City of New York, 6 Misc.3d 533, 789 N.Y.S.2d 860 (Sup.Ct. New York Co. 2004).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-125

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§6-125 [Emergency contraception to rape victims in hospital emergency department.]*

a. For the13 purposes of this section only, the following terms shall have the following meanings:

(1) "City agency" means a city, county, borough, administration, department, division bureau, board or commission, or a corporation, institution or agency of government the expenses of which are paid in whole or in part from the city treasury, but shall not include the health and hospitals corporation.

(2) "Covered agreement" means any agreement, including but not limited to, memoranda of understanding, and excluding contracts, entered into on or after the effective date of the local law that added this section, between a hospital and a city agency.

(3) "Covered contract" means any contract entered into on or after the effective date of the local law that added this section, between a hospital and a city agency.

(4) "Emergency contraception" shall mean one or more prescription drugs, used separately or in combination, to be administered to or self-administered by a patient in a dosage and manner intended to prevent pregnancy when used within a medically recommended amount of time following sexual intercourse and dispensed for that purpose in accordance with professional standards of practice, and which has been found safe and effective for such use by the United States food and drug administration.

(5) "Hospital" means any facility operating pursuant to article 28 of the public health law which provides emergency medical care.

(6) "Rape victim" means any female person who alleges or is alleged to have been raped and presents to a hospital.

b. No city agency shall enter into a covered agreement or covered contract with any hospital that does not contain a provision whereby such hospital agrees to inform rape victims presenting to its emergency department of the availability of emergency contraception and, if requested, to administer, if medically appropriate, such contraception in a timely manner.

c. No city agency shall enter into a covered agreement or covered contract with any hospital that does not contain a provision whereby such hospital agrees to provide the department of health and mental hygiene, on an annual basis, a report indicating the following information with respect to each reporting period: i) the number of rape victims treated in such hospital's emergency department; ii) the number of rape victims treated in such hospital's emergency department which were offered emergency contraception; iii) the number of rape victims treated in such hospital's emergency department for whom the administration of emergency contraception was not medically indicated and a brief explanation of the contraindication; and iv) the number of times emergency contraception was accepted or declined by a rape victim treated in such hospital's emergency department.

d. No city agency shall enter into a covered agreement or covered contract with any hospital that does not contain a provision whereby such hospital agrees to provide the department of health and mental hygiene with a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to section 405.19 of title 10 of the codes, rules and regulations of the state of New York; provided however, that such hospital shall be required to provide such protocol upon amendment or renewal of a covered agreement or covered contract only if such protocol has been amended since the date such hospital initially entered into such covered agreement or covered contract.

e. A hospital shall be liable for a civil penalty of not less than five thousand dollars upon a determination that such hospital has been found, through litigation or arbitration, to have made a false claim with respect to its provision of information to rape victims regarding the availability of emergency contraception or its provision of emergency contraception, if medically indicated, to rape victims in a timely manner.

HISTORICAL NOTE

Section added L.L. 26/2003 § 2, eff. May 24, 2003. [See Note 1]

NOTE 1. Local Law 26/2003 was vetoed Mar. 21, 2003 overridden Apr. 9, 2003 and effective May 24, 2003. Note provisions of L.L. 26/2003: Section 1. Legislative history and intent. In 2002, 2,013 rapes were reported to the New York City Police Department. Public health and public safety advocates alike acknowledge that the number of rapes reported to authorities constitute only a fraction of the number of rapes that actually occur. Alarmingly, between one and five percent of all rapes end in pregnancy (Holmes, et al., **Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women,**American Journal of Obstetrics and Gynecology, 175:2, 1996). Over half of these pregnancies will end in abortion. Emergency contraception (EC) is a safe and effective way to prevent unintended pregnancy. Approved by the United States Food and Drug Administration in 1997, EC works to prevent pregnancy by delaying ovulation or preventing fertilization. If taken within 72 hours of unprotected intercourse, EC reduces the risk of unintended pregnancy by as much as 89 percent. EC is frequently and erroneously confused with mifepristone and methotrexate, drugs used in medical abortion. EC differs from these drugs by working to prevent pregnancy from occurring instead of terminating an established pregnancy. The provision of EC to rape victims is considered to be the accepted standard of care for treatment of rape victims by the New York State Department of Health, as well as health professional organizations, including the American College of Obstetricians and Gynecologists, the American Medical Association and the American College of Emergency Physicians. Surveys on the provision of EC in emergency departments in New York City hospitals reveal that approximately half of New York City emergency departments do not provide rape victims with EC. Significantly, these surveys also reveal that

emergency departments operated by the New York City Health and Hospitals Corporation do in fact provide EC. The Council finds that the provision of EC to a rape victim when medically appropriate aids to reduce the trauma already inflicted on the victim by preventing an unwanted pregnancy from resulting from that rape. The City Council further finds that the prevention of unintended pregnancies resulting from rape avoids costs associated with unwanted pregnancy, including medical care and foster care, some of which are ultimately borne by the City. Therefore, the Council declares that New York City should contract only with hospitals which provide rape victims with the accepted standard of care for treatment of such patients, including the administration of emergency contraception. . . . . .

§ 3. Severability. If any subsection, sentence, clause, phrase or other portion of the local law that added this section is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect. § 4. Effective date. This section shall take effect forty five days after its enactment; provided, however, that any rules consistent with this local law and necessary to its implementation may be promulgated prior to such effective date.

FOOTNOTES

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[Footnote 13]: * Supplied by editor

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***** Current through December 2009 ****

NYC Administrative Code 6-126

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-126 [Equal employment benefits to the employees of city contractors.*]

a. This section15 shall be known and may be cited as the "Equal Benefits Law."

b. For purposes of this section only, the following terms shall have the following meanings:

(1) "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for an interest in real property, work, labor, services, supplies, equipment, materials, construction, construction related service or any combination of the foregoing.

(2) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(3) "Contractor" means any individual, sole proprietorship, partnership, joint venture, corporation or other form of doing business.

(4) "Covered contract" means a contract between a contracting agency and a contractor which by itself or when aggregated with all contracts awarded to such contractor by any contracting agency during the immediately preceding twelve months has a value of one hundred thousand dollars or more.

(5) "Domestic partners" means persons who are domestic partners as defined in section 3-240(a) of the administrative code, or who have registered as domestic partners with a contractor pursuant to subdivision n of this

section.

(6) "Employee" means a person employed by a contractor.

(7) "Employment benefits" means benefits including, but not limited to, health insurance, pension, retirement, disability and life insurance, family, medical, parental, bereavement and other leave policies, tuition reimbursement, legal assistance, adoption assistance, dependent care insurance, moving and other relocation expenses, membership or membership discounts, and travel benefits provided by a contractor to its employees.

(8) "Equal benefits" means employment benefits equal to those provided to employees with spouses and to their spouses.

(9) "Household member coverage" means the provision of equal benefits to an employee and to one designated member of such employee's household provided that such household member is eighteen years of age or older, lives permanently with the employee, is unmarried, is not a dependent of any other person and is not the tenant or landlord of the employee.

(10) "Implementing agency" means the city chief procurement officer or any agency or officer that the mayor designates.

c. (1) No contracting agency shall enter into or renew any covered contract with a contractor that discriminates in the provision of employment benefits between employees with spouses and employees with domestic partners and/or between the domestic partners and spouses of such employees; and unless the contractor certifies that:

(a)(i) it offers equal benefits to employees with domestic partners; or

(ii) if the contractor is a religious or denominational institution or organization, or an organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization, and the certification required in subsection c(1)(a)(i) of this section would, in the opinion of such contractor, be inconsistent with the religious principles for which such organization was established or maintained, it offers household member coverage to its employees, provided that such employees shall not be required to disclose to the contractor information concerning the nature of their relationship with a designated household member beyond that which such contractor deems necessary to determine eligibility for household member coverage; and

(b) it will not retaliate against an employee in the terms and conditions of employment in the event that such employee requests equal benefits or informs the city that such contractor has failed to provide equal benefits in violation of this section.

(2) Such certification shall be in writing and shall be signed by an authorized officer of the contractor and delivered, along with a description of the contractor's employee benefits plan or plans, to the contracting agency and to the implementing agency prior to entering into a covered contract. The implementing agency shall reject a contractor's certification if it determines that such contractor discriminates in the provision of employment benefits in violation of this section, or if the implementing agency determines that the contractor was created, or is being used, for the purpose of evading the requirements of this section.

d. Every covered contract shall contain a provision detailing the contractor's obligations pursuant to this section, which shall be a material provision of such contract.

e. The requirements of subdivision c shall apply to the employees of a contractor who, during the term of such contract, work within the city of New York, and to those employees of a contractor who work outside of the city of New York and who work directly on fulfilling the terms of a covered contract.

f. In the event that a contractor's actual cost of providing an equal benefit or benefits exceeds that of providing the equivalent spousal benefit or benefits, such contractor shall not be deemed to have discriminated in the provision of employment benefits if such contractor conditions the provision of such equal benefit or benefits upon the employee agreeing to pay the excess costs.

g. Nothing in this section shall be construed to require a contractor to pay income tax liabilities incurred through the provision of equal benefits as required under this section.

h. (1) In the event a contractor is unable to provide a particular equal benefit or benefits as required pursuant to this section despite taking all reasonable measures to do so, such contractor shall not be deemed to have discriminated in the provision of employment benefits for failure to provide such employment benefit or benefits if such contractor provides the cash equivalent of such employment benefit or benefits to the affected employee(s). The contractor shall provide the implementing agency with sufficient proof of such inability to provide such benefit or benefits, which shall include the measures taken to provide such benefit or benefits and the cash equivalent proposed, along with the certification required pursuant to subdivision c of this section. The implementing agency shall, based on submitted evidence, determine whether the contractor's failure to provide such employment benefit or benefits precludes such contractor from entering into a covered contract pursuant to the requirements of this section.

(2) In the event that a contractor is unable to provide a particular equal benefit or benefits as required pursuant to this section because it would require administrative action that would delay the provision of such equal benefit or benefits, then the contractor may request an extension of time to take such administrative action which shall not exceed three months. Applications for such extensions of time shall be submitted to the implementing agency, which shall have the discretion to grant such applications. A contractor may, if necessary, request an additional extension of time to provide the delayed equal benefit or benefits. Applications for such additional extensions of time shall be submitted to the implementing agency, which shall have the discretion to grant such applications provided that the contractor provides the cash equivalent of any delayed equal benefit or benefits to the affected employee(s) during the additional extension period. The implementing agency shall monitor contracting agencies to which it grants extensions of time to ensure compliance with the requirements of this section within such extension periods.

i. Every contractor shall, to the extent permitted by law, provide the contracting agency and the implementing agency access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this section, and upon request shall provide evidence that the contractor is in compliance with the provisions of this section.

j. If during the term of a covered contract a contractor fails to provide equal benefits as required pursuant to this section, or if a contractor retaliates against an employee in the terms and conditions of employment for requesting equal benefits or for informing the city that such contractor has failed to provide equal benefits, such failure and/or retaliation shall be deemed a material breach of such contract. Upon receiving information that a contractor has failed to provide equal benefits as required pursuant to this section and/or retaliated against an employee in violation of this section, the implementing agency shall review such information, notify the contractor of such information and offer the contractor an opportunity to respond. If it is found that a violation has occurred, the implementing agency shall take such action as may be appropriate and provided by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking a finding that the contractor is not a responsible contractor pursuant to section 335 of the charter. Nothing in this subdivision shall be construed to limit the remedies a contractor's employee or the domestic partner of such employee may seek in law or equity in the event of such contractor's non-compliance.

k. (1) The requirements of this section may be waived by the implementing agency upon application by a contracting agency under the following circumstances:

(i) for sole source contracts entered into pursuant to section 321 of the charter, where the sole source is

unwilling to comply with the requirements of this section; or

(ii) for emergency contracts entered into pursuant to section 315 of the charter and for which no entity which complies with the requirements of this section and which is capable of fulfilling such contract is immediately available; or

(iii) where compliance with the requirements of this section would violate or be inconsistent with the terms or conditions of a grant, subvention or contract with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract; or

(iv) where there are no prospective bidders for a contract that are willing to comply with the requirements of this section and it is essential for the city to enter into such contract.

(2) All applications for waivers pursuant to this subdivision shall be made in writing. The implementing agency shall, within a reasonable period of time, determine whether to grant such waiver applications. All decisions regarding waivers shall be issued in writing and shall include the reason for the granting or denial of such application. All decisions granting waivers shall become part of the relevant contract file.

(3) Beginning twelve months after the effective date of the local law that added this section and annually thereafter, the implementing agency shall report to the council regarding the twelve month period immediately preceding the report, the number and total dollar value of waivers for which it received applications disaggregated by type of waiver and contracting agency; the number and total dollar value of waivers granted disaggregated by type of waiver and contracting agency; and the number and total dollar value of waivers denied or withdrawn disaggregated by type of waiver and contracting agency.

l. The requirements of this section shall not apply to contracts relating to the investment of assets held in trust by the city or to the investment of city monies.

m. The comptroller shall conduct annual investigations, on a sample basis, to measure contractor compliance with the requirements of this section. Contractors shall make such information available as is necessary to conduct such investigations. Beginning twelve months after the effective date of the local law that added this section and annually thereafter, the comptroller shall report the results of such investigations to the mayor and the council.

n. A contractor may institute an internal registry to allow for the provision of equal benefits to employees with domestic partners who are not domestic partners as defined in section 3-240(a) of the administrative code, or who are located in a jurisdiction where no such governmental domestic partnership registry exists; provided, however, that a contractor that institutes such a registry shall not impose criteria for registration that are more stringent than those required for domestic partnership registration by the city of New York. A contractor may also verify the existence of a domestic partnership or marriage to the extent such verification is undertaken equally for employees with domestic partners and employees with spouses.

o. Nothing in this section shall be construed to limit the city's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or to otherwise deny a person or entity city business.

p. This section shall only apply to contracts entered into or renewed on or after the effective date of the local law that added this section.

q. The procurement policy board may promulgate rules to implement the requirements of this section.

HISTORICAL NOTE

Section added L.L. 27/2004 § 1, eff. Oct. 26, 2004. [See Note 1]

NOTE

1. Provisions of 27/2004 § 2:

§ 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

FOOTNOTES

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[Footnote 15]: * [Section heading supplied by editor.

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NYC Administrative Code 6-127

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-127 Procurement of19 energy-using products.

a. For purposes of this section only, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "ENERGY STAR label" means a designation indicating that a product meets the energy efficiency standards set forth by the United States environmental protection agency for compliance with its ENERGY STAR program.

b. In any solicitation by an agency for the purchase or lease of energy-using products, the agency shall include a specification that such products be ENERGY STAR labeled, provided that there are at least six manufacturers that produce such products with the ENERGY STAR label. Nothing herein shall preclude an agency from including a specification in a solicitation for energy-using products requiring that such products be ENERGY STAR labeled if there are fewer than six manufacturers that produce such products with the ENERGY STAR label.

c. In any solicitation by an agency for the purchase or lease of energy-using products which are not available in a form that meets the specifications and criteria of subdivision b of this section, the agency shall include a specification that the product be energy efficient.

d. This section shall not apply to procurements:

(1) where federal or state funding precludes the city from imposing the requirements of this section;

(2) that are emergency procurements pursuant to section three hundred fifteen of the charter; or

(3) where the contracting agency finds that the inclusion of a specification otherwise required by this section would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that such finding by the contracting agency shall, to the extent practicable, be based upon analysis of life-cycle cost-effectiveness.

e. The mayor shall designate an agency or office to develop and implement a plan for fulfilling the requirements of this section.

f. On or before May 1, 2004, the agency or office that the mayor designates pursuant to subdivision e of this section shall submit a report to the city council and the comptroller detailing the city's progress in meeting the goals and requirements of this local law. Such report shall not be required to detail or summarize small purchases pursuant to section three hundred fourteen of the charter.

HISTORICAL NOTE

Section redesignated to be § 6-306 and amended L.L. 119/2005 §§ 2, 3,

eff. Jan. 1, 2007.

Section amended L.L. 30/2003 § 1, eff. May 26, 2003.

Section added L.L. 37/2002 § 2, eff. Nov. 20, 2002. [See Note 1]

NOTE

Provisions of L.L. 37/2002:

Section 1. Declaration of Legislative Findings and Intent. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The ENERGY STAR labeling program tags products that meet energy efficient criteria, and as a result, reduce overall energy use, lessening the amount of fossil fuel being burned by power plants, and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the ENERGY STAR program, manufacturers and retailers sign voluntary agreements allowing them to place ENERGY STAR labels on products that meet or exceed energy-efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers may also use the label in product packaging, promotions and advertising for qualified products. Most ENERGY STAR labeled products have the same or better performance, features, reliability, and price as conventional models.

ENERGY STAR labeled office equipment saves energy by automatically entering a low-power mode when not in use. The energy-efficient models have all of the performance features of standard office equipment, but help to eliminate energy waste through special power management features. ENERGY STAR labeled office products use about half as much electricity as conventional office equipment, thereby significantly reducing energy costs.

The Council finds that the potential benefits associated with the procurement and use of ENERGY STAR products are enormous and easily achievable. On June 10, 2001, the Governor issued an executive order requiring that "State agencies and other affected entities shall select ENERGY STAR energy-efficient products when acquiring new energy-using products or replacing existing equipment." Executive Order No. 111, Section III, June 10, 2001. Given the

cost savings alone, it makes fiscal sense for the City to do the same.

The Council finds that the City of New York should join New York State and lead other municipalities and New Yorkers by example in promoting the use of energy efficient products. Accordingly, the City in its role of market participant should, whenever possible, exercise its purchasing power to ensure that ENERGY STAR and other energy efficient products are acquired.

FOOTNOTES

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[Footnote 19]: * Effective until Jan. 1, 2007. Pursuant to L.L. 119/2005 § 6-127 is redesignated and amended to be § 6-306 on that date.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-128

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-128 [Home loans; predatory lending practices prohibited.]

a. Definitions. For purposes of this section only, the following terms shall have the following meanings:

(1) "Affiliate" means any person that controls, is controlled by, or is under common control with another person, incluing any successors in interest. Control shall mean ownership of ten percent or more of any class of outstanding stock of a company or the power to direct or cause the direction of the management and policies of a person.

(2) "Annual Percentage Rate" means the annual percentage rate for a home loan calculated according to the provisions of the federal truth in lending act, as amended by the home ownership and equity protection act of 1994 (15 U.S.C. §1601, et seq.), and its implementing regulations, as said statute or regulations may be amended from time to time.

(3) "Bona Fide Loan Discount Points" means discount points knowingly paid by the borrower, funded through any source, for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided that the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices.

(4) "City Agency" means a city, county, borough, or other office, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(5) "Compliance Worksheet" means a form or forms contained in each file of a high-cost home loan as defined

by this section provided by each lender certifying as to the presence or absence of each fact or circumstance that could give rise to the classification of the loan as a high-cost home loan, or a predatory home loan, including, without limitation, underwriter judgments as to the credit worthiness of the borrower for the loan and the tangible benefits to the borrower, the compensation paid directly or indirectly to the mortgage broker for the loan, if any, whether the high-cost home loan refinances a special mortgage and whether the high-cost home loan refinances another high-cost home loan made by the same lender or an affiliate of the lender.

(6) "Financial Institution" means a bank, savings and loan association, thrift, credit union, investment company, mortgage banker, mortgage broker, trust company, savings bank, securities broker, municipal securities broker, securities dealer, municipal securities dealer, securities underwriter, municipal securities underwriter, investment trust, bank holding company, finance company or financial services holding company.

(7) "First-Lien Home Loan" means a home loan secured by a first lien on residential real property, a condominium unit or cooperative shares.

(8) "High-Cost Home Loan" means a home loan that meets or exceeds the threshold set forth in either subparagraph a or b of this definition:

(a) the total points and fees on the loan exceed four percent of the total loan amount if the total loan amount is fifty thousand dollars or more; or the greater of five percent of the total loan or one thousand five hundred dollars, if the total loan amount is less than fifty thousand dollars; provided that up to and including four bona fide loan discount points payable by the borrower in connection with the loan transaction shall be excluded from the calculation of the total points and fees payable by the borrower, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the federal national mortgage association or the federal home loan mortgage corporation, whichever is greater; or

(b) for a first-lien home loan, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds six percentage points over the yield on United States treasury securities having comparable periods of maturity to the loan maturity, measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender; or for a junior-lien home loan, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds eight percentage points over the yield on United States treasury securities having comparable periods of maturity to the loan maturity, measured as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the lender. For purposes of subparagraph b of this definition, if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate that is calculated and disclosed on the initial disclosure statement required under section 226.6 of title 12 of the code of federal regulations for the period after the initial or introductory period.

(9) "Home Loan" means a residential mortgage, other than a reverse mortgage transaction, but including an open-end line of credit, in which:

(a) the borrower is a natural person;

(b) the loan is secured by a mortgage on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy by from one to four families, or by a residential condominium or by a cooperative unit, or shares issued in respect thereof, which is or will be occupied by the borrower as the borrower's principal residence;

(c) the property is located in the city of New York;

(d) the principal amount of the loan does not exceed the greater of:

(i) the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association; or

(ii) three hundred thousand dollars;

(e) the loan is primarily for personal, family or household purposes; and

(f) the loan is entered into on or after the date this section takes effect.

(10) "Junior-Lien Home Loan" means a home loan secured by a lien on residential real property, condominium unit or cooperative shares that is junior in priority to a first-lien home loan with respect to such property.

(11) "Lender" means any person that extends, purchases or invests in, directly or indirectly, including through collective investment or securitization entities, one or more home loans, or any person that arranges, directly or indirectly, including through collective investment or securitization, for the extension, purchase of or investment in one or more home loans, including, but not limited to, the securities trust trustee and underwriter, and any mortgage broker with respect to home loans. However, for purposes of this definition, a lender shall not be deemed to be:

(a) collective investment entities, including, without limitation, investment companies as defined under the Investment Company Act of 1940, hedge funds, bank collective trust funds, offshore funds and similar entities that are not created to and do not acquire pools of mortgage loans, or issue securities based on and backed by pools of mortgage loans, and any passive investor in the interests created therein that exercises no discretion regarding such interests other than to buy, hold or sell them;

(b) purchasers of mortgage loans or mortgage related securities where the seller is obligated by written agreement and, in fact, intends to repurchase all the loans or securities within 180 days of such sale;

(c) lenders whose interest in high-cost home loans is limited to a security interest or who acquire title as a result of the foreclosure of such security interest, except that such lenders shall not extend credit to a person found to be a predatory lender as defined by this section;

(d) securities broker dealers that trade in but otherwise are not involved in any material respect in the securitization of the underlying mortgages; or

(e) any passive investor in securities or interests in securities based on or backed by a pool of high-cost home loans that exercises no discretion regarding the securities other than to buy, hold or sell them.

(12) "Mortgage Broker" means any person engaged in the business of soliciting, processing, placing, or negotiating home loans who functions as an intermediary for compensation, paid directly or indirectly, between the borrower and the lender in the making of a home loan.

(13) "Person" means any natural person, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture or unincorporated association, or other like organization, engaged in a business or commercial enterprise.

(14) "Points and Fees" means:

(a) all items listed in 15 U.S.C. sections 1605(a)(1) through (4), except interest or the time-price differential;

(b) all charges for items listed under section 226.4(c)(7) of title 12 of the code of federal regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the

charge is paid to an affiliate of the lender;

(c) all compensation not otherwise specified in this definition paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of funds and subsequently assigns the home loan to the person advancing the funds;

(d) the premium of any single-premium credit life, credit disability, credit property, credit unemployment or other life or health insurance, including any payments for debt cancellation or suspension, except that insurance premiums calculated and paid on a monthly basis shall not be included; and

(e) all prepayment fees or penalties that are charged to the borrower if the loan refinances a prior loan made by the same lender or an affiliate of the lender.

(15) "Predatory Lender" means:

(a) a lender that, in the aggregate for such lender and its affiliates, extends, purchases or invests in, during a twelve-month period, the lesser of:

(i) ten individual predatory loans, or

(ii) any number of predatory loans constituting five percent of the total number of home loans made, purchased or invested in during such twelve-month period by such lender and its affiliates.

(b) Notwithstanding subparagraph a of this definition, any lender shall not be a predatory lender if:

(i) the lender obtains the approval of the comptroller of the city of New York for a plan to discontinue the practice of making, purchasing or otherwise investing in predatory loans by the lender and its affiliates, and the lender and its affiliates then completely cease making, purchasing or otherwise investing in predatory loans within 60 days after the plan is approved by the comptroller; and

(ii) the lender and its affiliates remain in compliance with such plan; provided that no more than one plan may be submitted to the comptroller on behalf of any lender, except a subsequent plan may be submitted to the comptroller:

(A) if ten or more years have passed since the same lender submitted a prior plan pursuant to this section; or

(B) by a person solely in connection with the acquisition of a predatory lender after the date of submission of a prior plan if such plan will discontinue the practice of making, purchasing or otherwise investing in predatory loans by the acquired predatory lender within 90 days of such acquisition; or

(iii) when directly or indirectly purchasing or investing in high-cost home loans, or arranging for the purchase or investment in high-cost home loans by collective investment or securitization, the lender reasonably believes, after reasonable investigation, conducted by or on behalf of such lender, based upon reasonable procedures consistent with industry practice for the review of the terms and other characteristics of home loans in connection with the purchase or securitization of, or investment in, high-cost home loans generally, that the home loans purchased or invested in do not constitute predatory loans as defined by this section. For purposes of this clause iii, "procedures consistent with industry practice" shall include, but not be limited to, a random statistical sample of not less than ten percent of the home loans for real property located in the city of New York included in the home loan pool to be securitized or purchased, except that if the lender has an established business relationship with the originator or wholesaler of the home loans being purchased or securitized, as demonstrated by the lender having completed not less than four transactions with said entity during the preceding two years, the lender may conuct a random statistical sample of not less than five percent of the home loans described above. Furthermore, for purposes of this clause, the lender may rely on a complete Compliance Worksheet, as defined in this section, to establish a reasonable belief that a high-cost home loan is not a predatory loan

as defined in subparagraphs a, b, d (only with respect to the lender or an affiliate not having advised or recommended that the borrower obtain a waiver of home loan counseling), o, p and q of paragraph 16 of this subdivision; or

(iv) the lender is an exempt organization qualified under section 501(c)(3) of the internal revenue code, and operates to remediate predatory loans with the approval of, or in association with, a city, state or federal agency.

(16) "Predatory Loan" means any high-cost home loan with one or more of the following characteristics:

(a) Proceeds of the high-cost home loan are used to pay all or part of an existing home loan and the borrower does not receive a reasonable and tangible benefit from the new home loan considering all the circumstances, including the terms of both the new and existing home loan and any other debt being refinanced by the new loan, the cost of the new home loan, and the borrower's circumstances. For purposes of this subparagraph, there shall be a presumption that the borrower has received a reasonable and tangible benefit if, at the time the refinance loan is made, any of the following is true:

(i) as a result of the refinance there is a net reduction in the borrower's total monthly payments on all debts consolidated into the new home loan, and this reduction will continue for at least thirty-six months after the refinance;

(ii) as a result of the refinance there is a reduction in the borrower's blended interest rate on all debts consolidated into the new home loan, and it will not take more than five years for the borrower to recoup the points and fees charged for the refinance; or

(iii) the refinance loan is necessary to prevent default under an existing home loan or other secured debt of the borrower, provided that the lender for the refinanced loan is not the same as or an affiliate of the lender for the existing home loan or other secured debt.

(b) The lender does not reasonably believe at the time it makes the high-cost home loan that the borrower will be able to make the scheduled payments, based upon a consideration of the borrower's current and expected income, current obligations, employment status, and other financial resources (other than equity in the home being financed). There shall be a presumption that the borrower is able to make the scheduled payments if, at the time the loan is made:

(i) the scheduled monthly payments (after giving effect to any index adjustments with respect to the loan) on the loan (including principal, interest, taxes, insurance, assessments, condominium fees, cooperative maintenance expenses) combined with the scheduled payments for all other debt, do not exceed fifty percent of the borrower's documented and verified monthly gross income; and

(ii) the borrower has sufficient residual income as defined in the guidelines established in section 36.4337(e) of title 38 of the code of federal regulations and United States department of veteran administration form 26-6393 to pay essential monthly expenses after paying the scheduled monthly payments and any additional debt; or

(iii) if clauses (i) or (ii) of this subparagraph do not apply, the home loan shall be a predatory loan unless the lender determines and documents prior to the closing of the loan that the making of the loan is justified based upon specific compensating factors, such as the borrower's long-term credit history, the borrower's demonstrated ability to make payments under comparable or greater debt obligations to income ratios, the conservative use of credit standards, the borrower's significant liquid assets or other reasonable factors.

(c) The lender finances points and fees, as defined in paragraph 14 of subdivision a of this section, in an amount that exceeds four percent of the total loan amount for a closed-end high-cost home loan or four percent of the maximum line of credit amount for an open-end line of credit.

(d) Prior to making the high-cost home loan, the lender does not receive a written certification from an independent housing or credit counselor, approved by the United States department of housing and urban development,

that the borrower received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower, or waived the loan counseling. Provided that a borrower may waive the loan counseling required pursuant to this subparagraph only by contacting such an independent housing or credit counselor by personal meeting or live telephone conversation at least three days prior to the closing of the home loan and certifying in a notarized written statement to the counselor that he or she has elected to waive the loan counseling, and no such waiver shall be valid if the lender or any of its affiliates has recommended or advised the borrower to make such waiver.

(e) More than two periodic payments required under the high-cost home loan are consolidated and paid in advance from the loan proceeds provided to the borrower other than a loan issued by or guaranteed by an instrumentality of the United States or of any state or any city agency, such as loan products offered by the United States department of veterans administration, fair housing administration or state of New York mortgage agency.

(f) Default by the borrower triggers an interest rate increase. This provision does not apply to periodic interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan agreement, provided the change in the interest rate is not occasioned by the event of a default or the acceleration of the indebtedness.

(g) The lender, at its sole discretion, may accelerate the indebtedness and demand repayment of the entire outstanding balance of a high-cost home loan. This prohibition does not apply when repayment of the loan has been accelerated by bona fide default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan agreement unrelated to the payment schedule, such as bankruptcy or receivership.

(h) The payment schedule for the high-cost home loan requires regular periodic payments that cause the principal balance to increase, except as a result of a temporary forbearance sought by the borrower.

(i) There is a required scheduled payment that is twice as large as the average of the earlier scheduled payments, unless such increases are justified by a reamortization as a result of a new withdrawal in an open-ended line of credit. This provision does not apply:

(i) when the payment schedule is adjusted to the seasonal or irregular income of the borrower; or

(ii) if the purpose of the loan is a construction bridge loan connected with the construction of a dwelling intended to become the borrower's principal residence.

(j) The loan agreement imposes a penalty or fee on the borrower in violation of section 5-501(3)(b) of the general obligations law or section 393(2) of the banking law for paying the balance of the loan, in whole or in part.

(k) The loan agreement contains a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of the borrower.

(l) Any of the proceeds of the high-cost home loan are paid to either a home improvement contractor that is an affiliate of the lender or any home improvement contractor other than:

(i) by an instrument payable solely to the borrower; or

(ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to the disbursement.

(m) The high-cost home loan finances any credit life, credit disability, credit property, credit unemployment, health or life linsurance, or proceeds of the loan are used to make payments pursuant to debt cancellation or suspension agreements. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the home loan.

(n) The borrower is charged any fees or other charges to modify, renew, extend or amend a high-cost home loan

or to defer any payment due under the terms of the loan if, after the modification, renewal, extension or amendment, the loan is still a high-cost home loan or, if no longer a high-cost home loan, the annual percentage rate has not been decreased by at least two percentage points. For purposes of this subparagraph, fees shall not include interest that is otherwise payable and consistent with the provisions of the loan documents. This subparagraph shall not apply to a home loan where the lender is charging points and fees in connection with any additional proceeds received by the borrower in connection with the modification, renewal, extension or amendment (over and above the current principal balance of the existing high-cost home loan) provided that the points and fees charged on the additional sum must reflect the lender's typical point and fee structure for high-cost home loans.

(o) The high-cost home loan refinances an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears either a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower would lose one or more of the benefits of the special mortgage, unless the lender is provided prior to the loan closing documentation by an independent housing or credit counselor, approved by the United States department of housing and urban development, or the lender who originally made the special mortgage, that a borrower has received home loan counseling on the advantages and disadvantages of the refinancing. There shall be no waiver of the home loan counseling requirement of this subparagraph.

(p) The lender charges points and fees on a high-cost home loan that refinances a prior high-cost home loan extended by the same lender or an affiliate of the lender and the refinancing occurs within five years of the extension of the prior home loan.

(q) The home loan is secured as a result of fraudulent or deceptive marketing or sales efforts.

(r) The home loan violates any applicable provision of the federal truth in lending act, as amended by the home ownership and equity protection act of 1994 (15 U.S.C. §1601, et seq.), the federal real estate settlement procedures act of 1974 (12 U.S.C. §2601, et seq.), or any regulations implementing these statutes, or the restrictions and limitations on high-cost home loans in the general regulations of the New York state banking board (3 NYCRR Part 41), as these statutes and these regulations may be amended from time to time.

b. City Financial Assistance. (1) No city agency shall approve, grant, award, pay, distribute or issue any city financial assistance to a financial institution where the financial institution or an affiliate of the financial institution is a predatory lender as defined by this section.

(2) As a condition to receiving any form of financial assistance from a city agency, a financial institution shall provide a statement to the city agency certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution, or the designee of any such person, and shall be made a part of the award, grant or assistance agreement. A violation of any provision of the certified statement shall constitute a material violation of the conditions of the award, grant or assistance agreement.

(3) After the approval or issuance of an award, grant, or any other financial assistance, the comptroller may conduct an investigation pursuant to subdivision f of this section to determine whether a financial institution or any of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the city agency that approved or issued the financial assistance that the financial institution or its affiliate is a predatory lender and request in writing that the city agency take the appropriate actions to rescind or otherwise void the award, grant or assistance. Upon receipt of the comptroller's request, the city agency shall then make a finding whether or not the

financial institution or its affiliate is a predatory lender in violation of this section. Upon making a finding of violation, the city agency shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to: declaring the financial institution in default of the award, grant or financial assistance agreement; imposing sanctions; recovering the funds advanced; or requiring repayment of any taxes or interest abated or deferred. Within sixty days of receiving notification from the comptroller, the city agency shall place a written explanation in the financial institution's file regarding any action the city agency has taken pursuant to this section, or the reasons no action was taken. Copies of the written explanation shall be immediately forwarded to the comptroller and to the city council. Nothing in this paragraph shall preclude a city agency, in the absence of a request from the comptroller, from investigating and making a determination whether or not a financial institution or its affiliate is a predatory lender in violation of this section.

(4) For the purposes of this section, city financial assistance shall include, but not be limited to, tax abatements (including, but not limited to, abatements of property, sales or mortgage recording taxes), cash payments or grants.

(5) Nothing in this section shall operate to impair any contract or agreement regarding financial assistance in effect on the date this section takes effect, except that renewal, amendment or modification of such contract or agreement occurring on or after the enactment of this section shall be subject to all conditions specified in this section.

(6) Notwithstanding any city laws, rules or regulations to the contrary, any financial institution or its affiliate that has been found by a city agency to be a predatory lender shall be prohibited from applying for or receiving any city financial assistance from any city agency for a period of three years from the date of the last disbursement or approval of an award, grant or other financial assistance, or from the date of the finding, whichever is later.

c. City Contracts. (1) No city agency shall enter into a contract for goods or services with a financial institution or an affiliate of a financial institution where either the financial institution or its affiliate is a predatory lender as defined by this section.

(2) As a condition of contracting with a city agency, the financial institution or its affiliate shall provide a statement to the city agency certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution or affiliate, or the designee of any such person, and shall be made a part of the contract or agreement. A violation of any provision of the certified statement shall constitute a material breach of the contract.

(3) During the period of a city contract, the comptroller may conduct an investigation pursuant to subdivision f of this section to determine whether a financial institution or one of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the city agency that issued the contract that the financial institution or its affiliate is a predatory lender and request in writing that the city agency take the appropriate actions to rescind or otherwise void the contract. Upon receipt of the comptroller's request, the city agency that issued the contract shall then make a finding whether or not the financial institution or its affiliate is a predatory lender in violation of this section. Upon making a finding of violation, the city agency shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to: declaring the financial institution or the affiliate in default; arranging for the alternate procurement of the goods or services to which such contract relates in such manner as to prevent any loss to the city agency that otherwise might result from the immediate cessation of the contract; imposing sanctions; or recovering damages. Within sixty days of receiving notification from the comptroller, the city agency shall place a written explanation in the financial institution's or affiliate's contract file regarding any action the city agency has taken pursuant to this section, or the reasons no action was taken. Copies of the written explanation shall be immediately forwarded to the comptroller and to the city council. Nothing in this paragraph shall preclude a city agency, in the absence of a request from the comptroller, from investigating and making a determination whether or not a financial institution or its affiliate is a predatory lender in violation of this section.

(4) This subdivision shall not apply to any contract evidencing or establishing the terms of any debt obligations issued by or on behalf of the city agency, but shall apply to contracts with respect to agency, underwriting and other services provided in connection with any issuance thereof.

(5) Nothing in this section shall operate to impair any contract in effect on the date this section takes effect, except that renewal, amendment or modification of such contract occurring on or after the enactment of this section shall be subject to all conditions specified in this section.

(6) Nothing in this section shall be construed to limit the authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification, or otherwise deny a person or entity city business.

(7) Notwithstanding any city laws, rules or regulations to the contrary, any financial institution or affiliate that has been found by a city agency to be a predatory lender shall be prohibited from contracting with any city agency for a period of three years from the termination date of the contract or the date of the finding, whichever is later.

d. Deposits. (1) A financial institution that is a predatory lender as defined by this section, or that has affiliates that are predatory lenders, shall not be a depository for the funds of any city agency.

(2) As a condition for being a depository of city agency funds, the financial institution shall provide a statement to the city banking commission certifying that neither the financial institution nor any of its affiliates is or will become a predatory lender. The statement shall be certified by the chief executive or chief financial officer of the institution, or the designee of any such person, and shall constitute a material provision of the deposit contract or agreement.

(3) The comptroller shall have the authority to investigate a financial institution that is a depository for city funds or its affiliates pursuant to subdivision f of this section to determine whether the financial institution or any of its affiliates is a predatory lender as defined by this section. Upon determining that the financial institution or its affiliate is a predatory lender, and where no cure is effected or corrective plan filed pursuant to subparagraph b of paragraph three of subdivision f of this section and approved by the comptroller, the comptroller shall provide evidence to the banking commission that the financial institution or its affiliate is a predatory lender and request that the banking commission revoke the designation of the financial institution as a depository pursuant to section 1524 of the city charter. The banking commission shall then make a finding whether the financial institution or its affiliate is a predatory lender pursuant to this section and is in violation of its certification pursuant to section 1524(2)(a)(4) of the city charter. Upon making a finding of violation, the banking commission shall take appropriate action to revoke the financial institution's or affiliate's designation as a depository of the funds of any city agency.

e. Investments. (1) The comptroller may, in his or her discretion, recommend that city moneys or funds not be invested or permitted to remain invested in the stocks, securities or other obligations of any financial institution that is a predatory lender or of an affiliate of a predatory lender.

(2) The comptroller, when investing city funds in a financial institution or an affiliate of the financial institution, may consider the institution or affiliate's compliance with federal, state and local laws or regulations governing predatory lending. The comptroller, in his or her discretion and in accordance with his or her sound investment judgment, may remove investments with financial institutions or their affiliates that fail to comply with such federal, state or local laws or regulation. Provided that in cases where the comptroller decides, in the exercise of his or her discretion and sound investment judgment, not to remove investments in a financial institution or its affiliate that is a predatory lender as defined by this section, the comptroller shall immediately place a written explanation in the financial institution or affiliate's file regarding the reasons for his or her decision not to remove the investments, and forward a copy of the written explanation to the city council.

f. Enforcement. (1) The comptroller shall have the authority to investigate whether financial institutions or their affiliates are predatory lenders as defined in this section.

(2) Whenever the comptroller has reason to believe that a financial institution or its affiliate has violated any provisions of this section, or upon a verified complaint in writing by an aggrieved borrower, the comptroller may conduct an investigation to determine whether a violation has occurred. The verified complaint shall, at a minimum, describe the violation and contain a release signed by the borrower authorizing the comptroller to obtain or otherwise gain access to all loan documents pertaining to the complaint and to any other records, files or information deemed necessary by the comptroller to conduct the investigation. An investigation by the comptroller may include, but is not limited to, reviewing information from regulatory or oversight agencies regarding lending or other activities of a financial institution as it relates to high-cost home loans, and investigating verified complaints from borrowers that a financial institution has engaged in predatory lending practices.

(3) (a) Upon the commencement of an investigation, the comptroller shall notify the financial institution or affiliate in writing, and allow the financial institution or affiliate an opportunity to respond. If the financial institution or affiliate denies the allegations or fails to respond within thirty days of the receipt of written notice, the comptroller shall determine whether the financial institution has violated the provisions of this section.

(b) If the financial institution or affiliate has been found to have violated the provisions of this section, the financial institution or affiliate shall have thirty days to cure the violation or to submit to the comptroller for his or her approval a corrective plan to discontinue the predatory lending practices according to clauses i and ii of subparagraph b of paragraph fifteen of subdivision a of this section. Upon good cause shown, the comptroller may extend the initial thirty-day period up to an additional thirty days.

(c) If the financial institution or affiliate fails to cure the violation within the thirty days or to submit and obtain the comptroller's approval for a corrective plan pursuant to this section, the comptroller shall inform the appropriate city agency or the banking commission, as applicable, and request that it take action pursuant to either paragraph 3 of subdivision b, paragraph 3 of subdivision c, or paragraph 3 of subdivision d of this section. Until the comptroller gives notice to the applicable city agency or banking commission pursuant to this subparagraph, the comptroller shall hold confidential any information he receives, gathers, produces, collects or generates as a result of any investigation pursuant to this section. However, nothing herein shall restrict the comptroller from exchanging information with government agencies in the furtherance of an investigation pursuant to this section.

(4) Any person found to have made a false statement in a certification required under this section shall be liable to the city for a civil penalty of not less than $25,000 in addition to the other remedies that the city agency may have under this local law.

HISTORICAL NOTE

Section added L.L. 36/2002 § 2, eff. Feb. 18, 2003. [See Note 1]

NOTE

1. Provisions of L.L. 36/2002:

Section 1. Declaration of legislative findings and intent. The subprime lending industry has grown rapidly in the last few years, increasing almost tenfold since 1993. Assisted by unscrupulous mortgage brokers and home improvement contractors, some abusive subprime lenders aggressively market high-cost home loans that borrowers are unable to repay, and engage in other unfair or fraudulent credit practices that are stripping families and communities of the equity they have in their homes. These practices are commonly referred to as "predatory lending."

Predatory lending practices, as documented by the United States Departments of Housing and Urban Development and Treasury Task Force and other commentators, include, among other things: repeated refinancing of a loan without any tangible benefit to the borrower; charging excessive prepayment penalties; financing single-premium credit insurance; encouraging a borrower to default on his or her other debts; failing to comply with federal

requirements with respect to the disclosure of loan terms and loan settlements; making a loan for more than the borrower can repay; financing excessive points and fees; requiring advance payments; charging fees to modify a loan or to defer payments; permitting acceleration of loans at lenders' discretion; and increasing interest rates upon default.

These practices can lock borrowers into high-rate loans even when they qualify for lower rates; strip equity from borrowers' homes; lead to impoverishment as borrowers pay thousands and tens of thousands of dollars in excessive costs, while owning less and less of their homes; and lead to increased foreclosures with profoundly damaging consequences for both families and neighborhoods.

Because of increased property values and home equity, some New York residents in low-income areas are "asset rich and cash poor" and are thus prime targets for predatory lending practices. In particular, it has been documented that subprime lending is heavily concentrated in lower-income and minority areas of the City of New York, which can lead to a significant economic drain on lower-income families and communities throughout the City.

The Council of the City of New York finds that the City should not encourage or support predatory lending, which damages the economic health of our City and its residents, by doing business with institutions that engage, directly or indirectly, in predatory lending practices. The Council finds that the City should not do business with institutions that adversely impact City revenues by siphoning resources from communities, thereby decreasing City sales and property tax revenues, and that increase City expenditures necessary to assist residents that are impoverished by predatory lending. The Council further finds that the City should not permit home improvement contractors to steer borrowers to specific lenders.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-129

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 1 CONTRACTS AND PURCHASES

§ 6-129 Participation by minority-owned and women-owned business enterprises and emerging business enterprises in city procurement.

a. Programs established. There are hereby established a program, to be administered by the department of small business services in accordance with the provisions of this section, designed to enhance participation by minority-owned and women-owned business enterprises in city procurement and a program, also to be administered by such department in accordance with the provisions of this section, designed to enhance participation by emerging business enterprises in city procurement.

b. Policy. It is the policy of the city to seek to ensure fair participation in city procurement; and in furtherance of such policy to fully and vigorously enforce all laws prohibiting discrimination, and to promote equal opportunity in city procurement by vigorously enforcing the city's contractual rights and pursuing its contractual remedies. The program established pursuant to this section is intended to address the impact of discrimination on the city's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for city business, and lowering contract costs.

c. Definitions. For purposes of this section, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the person to whom an agency head has delegated authority to

organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women or persons who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

(i) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

(ii) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

(iii) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services.

(10) "Construction contract" means any agreement with an agency for or in connection with the construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services, architectural and engineering services, or construction.

(12) "Contractor" means a person who has been awarded a contract.

(13) "Directory" means a list prepared by the division of firms certified pursuant to section 1304 of the charter.

(14) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(15) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

(16) "Goal" means a numerical target.

(17) "Graduate MBE," "graduate WBE" or "graduate EBE" means an MBE, WBE or EBE which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars.

(18) "Industry classification" means one of the following classifications:

(i) construction;

(ii) professional services;

(iii) standard services; and

(iv) goods.

(19) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.

(20) "MBE" means a minority-owned business enterprise certified in accordance with section 1304 of the charter.

(21) "Minority group" means Black Americans; Asian Americans, and Hispanic Americans, provided that the commissioner shall be authorized to add additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by persons in such a group and the utilization of such firms in city procurement.

(22) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

(23) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

(24) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs, and/or EBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit.

(25) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

(26) "Standard services" means services other than professional services.

(27) "Subcontractor" means a person who has entered into an agreement with a contractor to provide something that is required pursuant to a contract.

(28) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, minorities, or persons who are socially and economically disadvantaged, respectively, in one or more industry classifications.

(29) "WBE" means a women-owned business enterprise certified in accordance with section 1304 of the charter.

(30) "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.

d. Citywide goals. (1) The citywide contracting participation goals for MBEs, WBEs and EBEs shall be as follows:

For construction contracts under one million dollars:

Category:	Participation goal:
Black Americans	12.63% of total annual agency expenditures on such contracts
Hispanic Americans	9.06% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For professional services contracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	9% of total annual agency expenditures on such contracts
Hispanic Americans	5% of total annual agency expenditures on such contracts
Caucasian females	16.5% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For standard services contracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	9.23% of total annual agency expenditures on such contracts
Hispanic Americans	5.14% of total annual agency expenditures on such contracts
Caucasian females	10.45% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For goods contracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	7.47% of total annual agency expenditures on such contracts
Asian Americans	5.19% of total annual agency expenditures on such contracts
Hispanic Americans	4.99% of total annual agency expenditures on such contracts
Caucasian females	17.87% of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For construction subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 12.63% of total annual agency expenditures on such subcontracts

Asian Americans 9.47% of total annual agency expenditures on such subcontracts

Hispanic Americans 9.06% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

For professional services subcontracts under one million dollars:

Race/gender group: Participation goal:

Black Americans 9% of total annual agency expenditures on such subcontracts

Hispanic Americans 5% of total annual agency expenditures on such contracts

Caucasian females 16.5% of total annual agency expenditures on such subcontracts

Emerging 6% of total annual agency expenditures on such contracts

(2) Agencies shall develop agency utilization plans pursuant to subdivision g of this section. Agencies shall seek to ensure substantial progress toward the attainment of each of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in subdivision i of this section, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals.

(4)(A) Beginning twelve months after the effective date of the local law that added this section and every two years thereafter, the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. In making such revision, the commissioner shall consider the extent to which discrimination continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals.

(B) Beginning twelve months after the effective date of the local law that added this section and every two years thereafter, the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses.

e. Responsibilities of the division. (1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs, and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs, and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs, and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBES,* and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBES,*26 and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBES,* and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE and EBE officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBES,* and EBEs and other contractors designed to enhance participation of MBEs, WBES,* and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBES, and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBES,* and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all contracts for which utilization plans are established in accordance with subdivision i of this section and 5% of all contracts awarded to MBEs, WBES,* and EBEs to assess compliance with this section. All solicitations for contracts for which utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBES,*27 and EBEs.

f. Responsibilities of agency M/WBE officers. Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section. The duties of the M/WBE officer shall include, but not be limited to:

(i) creating the agency's utilization plan in accordance with subdivision g of this section;

(ii) acting as the agency's liaison with the division;

(iii) acting as a liaison with organizations and/or associations of MBEs, WBEs, and EBEs, informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

(iv) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs, and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

(v) referring MBEs, WBEs, and EBEs to technical assistance services available from agencies and other organizations;

(vi) reviewing requests for waivers of target subcontracting percentages and/or modifications of participation

goals and contractor utilization plans in accordance with paragraphs 11 and/or 12 of subdivision i of this section; (vii) working with the division and city chief procurement officer in creating directories as required pursuant to subdivision k of this section. In fulfilling this duty, the agency M/WBE officer shall track and record each contractor that is an MBE, WBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE or EBE, and shall share such information with the commissioner and the city chief procurement officer;

(viii) for contracts for which utilization goals have been established pursuant to subdivision i of this section, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

(ix) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan; and

(x) providing to the city chief procurement officer information for the reports required in subdivision l of this section and providing any other plans and/or reports required pursuant to this section or requested by the city chief procurement officer.

g. Agency utilization plans. (1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which has made procurements in excess of five million dollars during the fiscal year which ended on June 30 of the preceding calendar year shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

(i) the agency's participation goals for MBEs, WBEs and EBEs for the year;

(ii) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to subdivision d of this section;

(iii) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

(iv) methods and relevant activities proposed for achieving the agency's participation goals; and

(v) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan may be amended from time to time to reflect changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

h. Achieving agency participation goals. (1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

(i) Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs and/or EBEs for all types of goods, services and construction they procure.

(ii) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs and EBEs and

inclusion in the directories of MBEs, WBEs and EBEs. Agencies shall also encourage MBEs, WBEs and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations, and send written notice of specific procurement opportunities to minority and women's business organ- izations.

(iii) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs and EBEs prepared by the division.

(iv) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs and EBEs.

(v) For construction contracts, agencies shall consider whether to enter into separate prime contracts for construction support services including, but not limited to, trucking, landscaping, demolition, site clearing, surveying and site security.

(vi) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs and EBEs and other potential bidders or proposers. If the city chief procurement officer determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts, then he or she shall direct the agency to do so.

(vii) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement.

(viii) Agency M/WBE officers shall, in accordance with guidelines established by the city chief procurement officer, establish a process for quarterly meetings with MBEs, WBEs and EBEs to discuss what the agency looks for in evaluating bids and proposals.

(ix) Agencies shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.

i. Participation goals for construction and professional services contracts. (1) Prior to issuing the solicitation of bids or proposals for individual construction and professional services contracts, agencies shall establish a target subcontracting percentage for the contract and participation goals for MBEs, WBEs and EBEs. The "target subcontracting percentage" for the contract shall represent the percentage of the total contract which the agency anticipates a typical prime contractor in the relevant industry would in the normal course of business award to one or more subcontractors for amounts under one million dollars. The participation goals established for a contract shall represent a percentage of the total dollar value of all subcontracts for amounts under one million dollars pursuant to the award. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to subdivision d of this section. In determining the participation goals for a particular contract, an agency shall consider the following factors:

(i) the scope of work;

(ii) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

(iii) the extent to which the type of work involved in the contract presents subcontracting opportunities for amounts under one million dollars;

(iv) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

(v) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals (i) for procurements described in subdivision q of this section; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars, the contractor shall be subject to participation goals unless such goals are modified by the agency in accordance with this section.

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials, a referral to the directories prepared by the division pursuant to this section.

(5) For each contract for which participation goals are established the contractor shall be required to submit with its bid or proposal, a utilization plan indicating the percentage of the work it intends to subcontract, and the percentage of work it intends to award to subcontractors for amounts under one million dollars, and, in cases where the contractor intends to award subcontracts for amounts under one million dollars, a description of the type and dollar value of work designated for participation by MBEs, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end. When the utilization plan indicates that the bidder or proposer does not intend to award the target subcontracting percentage, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award waiver pursuant to paragraph 11 of this subdivision.

(6) For each contract for which a utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time to propose alternate subcontractors.

(7) For each contract for which a utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); the names, addresses and contact numbers of each MBE, WBE or EBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE, WBE or EBE. The contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs, WBEs or EBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE or EBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

(8) If payments made to, or work performed by, MBEs, WBEs or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with subdivision o of this section, unless the contractor has obtained a modification of its utilization plan pursuant to paragraph 12 of this subdivision.

(9) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to

participation goals for MBEs, WBEs and/or EBEs.

(10) In the event that a contractor with a contract that includes a utilization plan submits a request for a change order the value of which exceeds ten percent of such contract, the agency shall establish participation goals as if for a new contract for the work to be performed pursuant to such change order.

(11) Pre-award waiver. (i) Subject to subparagraph (ii) of this paragraph, the contracting agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors which shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract. Within thirty days of the registration of a contract, the city chief contracting officer shall notify the council of any such waiver granted with respect to the contract.

(ii) The agency M/WBE officer shall provide written notice of requests for a full or partial waiver of the target subcontracting percentage to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer shall notify the speaker of the council in writing within thirty days of the registration of a contract for which a request for a full or partial waiver of a target subcontracting percentage was granted, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of contractor, the original target subcontracting percentage, the waiver request, including all documentation, and an explanation for the approval of such request.

(12) Modification of utilization plans. (i) A contractor may request modification of its utilization plan after the award of a contract. Subject to subparagraph (ii) of this paragraph, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by the agency for the contract. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(A) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(B) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;

(C) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs or EBEs that their interest in the contract was solicited;

(D) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs, WBEs or EBEs; (E) The contractor held meetings with MBEs, WBEs and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(F) The contractor made efforts to negotiate with MBEs, WBEs and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(G) Timely written requests for assistance made by the contractor to the agency M/WBE liaison officer and to the division;

(H) Description of how recommendations made by the division and the contracting agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs and/or EBEs.

(ii) The agency M/WBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer, shall notify the speaker of the council in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

(iii) The agency M/WBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(13) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to section 333 of the charter.

j. Determining credit for MBE, WBE and EBE participation. (1) An agency's achievement of its annual goals shall be calculated as follows:

(i) The total dollar amount that an agency has paid or is obligated to pay to a prime contractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(ii) The total dollar amount that a prime contractor has paid or is obligated to pay to a subcontractor which is an MBE, WBE or EBE may be credited toward the relevant goal.

(iii) For requirements contracts, credit may be given for the actual dollar amount paid under the contract.

(iv) Where one or more MBEs, WBEs or EBEs is participating in a qualified joint venture, the dollar amount of the percentage of total profit to which MBEs, WBEs or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal.

(v) No credit shall be given for participation in a contract by an MBE, WBE or EBE that does not perform a commercially useful function.

(vi) No credit shall be given for the participation in a contract by any company that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

(vii) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the

contract.

(viii) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE or EBE.

(ix) The participation of a certified company shall not be credited toward more than one participation goal.

(2) A contractor's achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision; provided that no credit shall be given to the contractor for the participation of a company that is not certified in accordance with section 1304 of the charter before the date that the agency approves the subcontractor.

k. Small purchases. (1) Each agency shall, consistent with the participation goals established in subdivision d of this section and such agency's utilization plan, establish goals for purchases valued at or below five thousand dollars which shall be made from MBEs, WBEs and/or EBEs.

(2) Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs and EBEs it solicited, which shall become part of the contract file.

l. Compliance reporting. (1) The city chief procurement officer, in consultation with the division shall prepare and submit semiannual reports to the speaker of the council as described in this section. A preliminary report containing information for the fiscal year in progress shall be submitted to the speaker of the council by April 1, 2007, and annually thereafter, and a final report containing information for the preceding fiscal year shall be submitted to the speaker of the council by October 1, 2007 and annually thereafter. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

(i) the number and total dollar value of contracts awarded, disaggregated by industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(ii) the number and total dollar value of contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(iii) the total number and total dollar value of contracts awarded valued at less than five thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group;

(iv) the total number and total dollar value of contracts awarded valued at between five thousand and one hundred thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(v) the total number and total dollar value of contracts awarded valued at between one hundred thousand dollars and one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vi) the total number and total dollar value of contracts awarded valued at over one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vii) for those contracts for which an agency set participation goals in accordance with subdivision i of this section:

A. The number and total dollar amount of such contracts disaggregated by industry classification;

B. the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE or EBE joint venture partners, disaggregated by minority and gender group and industry classification;

C. The number and total dollar value of subcontracts entered into pursuant to such contracts and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification; and

D. a list of the full or partial waivers of target subcontracting percentages granted for such contracts pursuant to paragraph 11 of subdivision i of this section, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classification; E. a list of the requests for modification of participation requirements for such contracts made pursuant to paragraph 12 of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such modifications were granted, disaggregated by industry classification;

(viii) a detailed list of each complaint received pursuant to paragraph 1 of subdivision o of this section which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of subdivision o of this section were invoked and the remedies applied;

(ix) a detailed list of all non-compliance findings made pursuant to paragraph 4 of subdivision o of this section and actions taken in response to such findings;

(x) the number of firms certified or recertified in accordance with section 1304 of the charter during the six months immediately preceding such report;

(xi) the number and percentage of contracts audited pursuant to section paragraph 10 of subdivision e of this section and a summary of the results of each audit.

(xii) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of subdivision e of this section;

(xiii) A list of all solicitations submitted to the city chief procurement officer pursuant to subparagraph vi of paragraph 2 of subdivision h of this section and a summary of the determination made regarding each such submission; and

(xiv) any other information as may be required by the commissioner.

(2) The annual reports submitted in October shall, in addition, contain a determination made by the commissioner, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to subdivision d of this section. The first three annual reports shall also include detailed information about steps that agencies have taken to initiate and ramp up their efforts to comply with the requirements this section.

(3) The data that provide the basis for the reports required by this subdivision shall be made available electronically to the council at the time the reports are submitted.

m. Agency compliance. (1) The agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her report as required in subdivision l of this section. The commissioner and the city chief procurement officer shall review each agency's submissions and whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the commissioner and the city chief procurement officer shall act to improve

such agency's performance, and may take any of the following actions:

(i) require the agency to submit more frequent reports about its procurement activity;

(ii) require the agency to notify the commissioner and the city chief procurement officer, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

(iii) reduce or rescind contract processing authority delegated by the mayor pursuant to sections 317 and 318 of the charter; and

(iv) any other action the city chief procurement officer or the commissioner deem appropriate.

(2) Noncompliance. Whenever the city chief procurement officer or the commissioner finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. In the event that the agency fails to remedy its noncompliance after such informal efforts, the city chief procurement officer shall submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by the division or the city chief procurement officer, in accordance with this section, including but not limited to the utilization plan required pursuant to subdivision g of this section, shall be deemed noncompliance.

n. Pre-qualification. An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

o. Enforcement. (1) Any person who believes that a violation of the requirements of this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section or such rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. Such complaint shall be signed and dated. The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on, the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award. (i) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to this section, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

(ii) Whenever a contracting agency has determined that a bidder or proposer has violated this section, or rules promulgated pursuant to its provisions, the agency may disqualify such bidder or proposer from competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration. (i) Whenever an agency believes that a contractor or a subcontractor is not in compliance with this section, rules promulgated pursuant to its provisions or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

(ii) In the event that a contractor has been found to have violated this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

(A) enter an agreement with the contractor allowing the contractor to cure the violation;

(B) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

(C) make a finding that the contractor is in default of the contract;

(D) terminate the contract;

(E) declare the contractor to be in breach of contract;

(F) withhold payment or reimbursement;

(G) determine not to renew the contract;

(H) assess actual and consequential damages;

(I) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

(J) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or

(K) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to this section. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of this section, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to a contracting agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

p. Procurements by elected officials and the council. (1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by the city chief procurement

officer, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by the city chief procurement officer, such action shall instead be taken by the speaker of the council.

q. Applicability. Agencies shall not be required to apply participation requirements to the following types of contracts:

(i) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subdivision;

(ii) those subject to federal or state law participation requirements for MBEs, WBEs and/or EBEs;

(iii) contracts between agencies;

(iv) procurements made through the United States general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

(v) emergency procurements pursuant to section three hundred fifteen of the charter;

(vi) sole source procurements pursuant to section three hundred twenty-one of the charter;

(vii) small purchases as defined pursuant to section three hundred fourteen of the charter; and

(viii) contracts awarded to not-for-profit organizations.

r. Comptroller. The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential comptroller examinations.

HISTORICAL NOTE

Section added L.L. 129/2005 § 3, eff. Apr. 28, 2006, except that subd. g

effective Dec. 29, 2005. [See Note 1]

Section heading amended L.L. 12/2006 § 3, eff. May 23, 2006. [See

Note 2]

Subd. a amended L.L. 12/2006 § 3, eff. May 23, 2006. [See Note 2]

Subd. c amended L.L. 12/2006 § 3, eff. May 23, 2006. [See Note 2]

Subd. d amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. e amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. f amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. g amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. h amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. i amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. j amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. k amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. l amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. n amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. o amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

Subd. q amended L.L. 12/2006 § 4, eff. Nov. 19, 2006. [See Note 2]

NOTE

1. Provisions of L.L. 129/2005:

§ 4. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. Effective date. a. Sections 1 and 2 of this local law shall take effect upon enactment [Dec. 29, 2005]. Section 3 of this local law shall take effect 120 days after enactment except for subdivision g of section 6-129 which shall be effective upon enactment and further provided that any agency, including, but not limited to, the procurement policy board, may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

b. The council shall review the annual reports prepared pursuant to this local law and take action to repeal provisions for participation goals upon finding that such provisions are no longer necessary to address the impact of discrimination on the city's procurement.

2. Provisions of L.L. 12/2006:

§ 5. Severability. If any section, subsection, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. Effective date. a. Sections 1, 2, 3 and 5 of this local law shall take effect immediately [May 23, 2006], and section 4 of this local law shall take effect 180 days after the date of enactment of this local law; provided that any agency, including, but not limited to, the procurement policy board, may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

b. The council shall review the annual reports prepared pursuant to this local law and take action to repeal provisions for participation goals upon finding that such provisions are no longer necessary to address the impact of discrimination on the city's procurement.

FOOTNOTES

26

[Footnote 26]: * Should be "WBEs".

27

[Footnote 27]: * Should be "WBEs".

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-201

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-201 Definition.

The term "the streets of the city" as used in this chapter shall include streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers and public grounds or waters within or belonging to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 361-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 219

CASE NOTES FROM FORMER SECTION

¶ 1. City's duty with respect to maintenance of order on public pier at West 132nd Street and the Hudson River was merely the public duty of police protection and not the duty that a railroad would be required to exercise for the protection of passengers in a station, as the City was not conducting any business on the pier or operating boats or excursions therefrom, but merely possessed the status of owner of the pier, which was an extension of a street and under the Admin. Code is treated as a street (Admin. Code § 361-1.0).-Murrain v. Wilson Line, Inc., 270 App. Div. 372, 59 N.Y.S. 2d [1946], aff'd 296 N.Y. 845, 72 N.E. 2d 29 [1947].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-202

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-202 Stage and omnibus routes forbidden until franchise obtained.

It shall be unlawful for any omnibus route or routes for public use, or any alteration or extension thereof, or any alteration or extension of any existing stage or omnibus route to be operated in or upon any street within the city until and unless a franchise or right therefor shall be obtained from the board of estimate in like manner as, and subject to the limitations and conditions relating to, franchises or rights provided and imposed by the charter and the code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-1.0 added chap 929/1937 § 1

Amended LL 50/1942 § 25

CASE NOTES FROM FORMER SECTION

¶ 1. Taxicab owners and others who, on discontinuance of Westchester branch of railroad, had undertaken to employ their automobiles to carry commuters to and from New York City and Westchester County points at a fixed rate of fare, a taxicab owners' association having been formed, and waiting rooms being established at fixed locations and fixed routes and fares being set up and tickets being sold in connection therewith, **held** to be engaging in a regular omnibus service within meaning of Public Service Law § 63d, Transportation Corporation Law § 65, and Admin.

Code § 362-1.0, and since such conduct was illegal it would be enjoined on suit of the railroad company.-Palmer v. Royal Cadillac Service, Inc., 171 Misc. 575, 13 N.Y.S. 2d 140 [1939].

¶ 2. City **held** entitled to injunction pendente lite restraining defendant bus line from operating its buses in certain portions of Queens County, where such bus line had no franchise from the City authorities as required by Admin. Code § 362-1.0, nor certificates of convenience and necessity from the State Transit Commission.-City of New York v. Bee Line, Inc. 101 (127) N.Y.L.J. (6-2-39) 2547, Col. 6 T.

¶ 3. Railroad company **held** not entitled to temporary injunction enjoining defendant taxicab drivers from operating an omnibus line between New York and New Rochelle without complying with the Transportation Corporation Law and the Public Service Law, where it appeared that although defendants had been constantly carrying passengers for hire between such termini the operation of the taxicabs between the termini was not regular and defendants were always ready to transport passengers anywhere within Westchester County or New York City, there was no showing that they were holding themselves out to the public as maintaining a service on schedule at a fixed rate between fixed termini or that they were associated together or were in conspiracy to violate the law.-Westchester Elec. RR v. Sica, 104 (77) N.Y.L.J. (9-30-40) 865, Col. 3 M.

¶ 4. A corporation which under written contracts with owners of apartment houses located in a certain area provided bus service to tenants of the houses between their homes and a certain subway station, and also carried the tenants to some thirteen regular bus stops along the route, thus serving some 678 families for a compensation paid by the apartment house owners totalling almost $1,000 monthly, **held** to be operating an omnibus line for the use and convenience of the public. Such operation without a franchise from the City of New York or a certificate of convenience or necessity from the Public Service Commission, was unauthorized and would be enjoined on suit of a duly authorized omnibus corporation with which the defendant was in competition.-Surface Transp. Corp. v. Reservoir Bus Lines, 271 App. Div. 556, 67 N.Y.S. 2d 135 [1946].

¶ 5. Respondents who had been operating their buses from fixed termini in New York City to the nearby race tracks, **held** required to obtain a certificate of public convenience under Transportation Corporation Law §§ 65 and 66 and Public Service Law § 63d, as well as a franchise from the City of New York. Contention that the buses were sight-seeing buses and as such came within the applicable provisions of the Admin. Code relating to such buses, was rejected.-Maltbie v. Veterans Bus Corp., 119 (122) N.Y.L.J. (6-24-48) 2376, Col. 1 F.

¶ 6. Petitioners who operated omnibuses carrying school children along stated and regular routes on stated and regular schedules with stated termini at a ten-cent fare, **held** to be operating omnibus lines within meaning of Public Service Law, § 2, subd. 28, and also to be common carriers under provisions of Transportation Corporation Law §§ 65 and 66, even though the buses did not traverse any routes served by the Board of Transportation of the City and there was no alternative transportation. Such operation without a certificate of public convenience and necessity and a franchise from the City, was illegal. That defendants merely transported students did not prevent them from being classed as common carriers. That petitioners were operating in good faith and in the belief that a certificate of convenience and necessity was not necessary, and that they had been operating for years without such a certificate, did not alter the situation. However, the Court would suspend enforcement of the injunctions issued, to the end of the present school year to prevent hardship upon the students.-Public Service Commission v. Columbo, 118 N.Y.S. 2d 873 [1952].

¶ 7. Operator of an omnibus route transporting passengers from two airports to locations in Nassau and Suffolk counties, which had a certificate of public convenience and necessity issued by the State Transportation Commissioner, was enjoined from operating its omnibus line over the streets of New York City absent a valid city franchise since approval of both the State Commissioner of Transportation and of the City of New York is required.-City of N.Y. v. L.I. Airports Limousine Service.-68 App. Div. 2d 37 [1979].

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Administrative Code of the City of New York

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NYC Administrative Code 6-203

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-203 Long Island railroad.

a. No freight or passenger car detached from an engine of the Long Island railroad company shall remain longer than ten minutes in any street. Bituminous coal shall not be used on any engine running upon such railroad. Whenever platforms are placed in the streets for accommodation of passengers, such company shall at its own expense keep the entire street between the platform and the curb in a cleanly and passable condition and this provision shall be construed to apply to each station and each platform wherever erected by such company within the city.

b. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this section, or who shall permit same to be violated, shall be liable to a penalty of one hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-10.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 362-10.0, providing that bituminous coal should not be used by the Long Island Railroad on any engine running upon such railroad, was not limited to Brooklyn, but prohibited the Long Island Railroad from burning soft coal anywhere in the City of New York.-People (Greene) v. Long Island Railroad Co., 31 N.Y.S. 2d 537

[1941].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-204

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-204 Grade crossings; gates and attendants.

a. The Bronx.

1. Every person operating or controlling any railroad in the borough of the Bronx, upon which cars are drawn by locomotive engines, other than those known as "dummies", shall erect and maintain suitable and substantial gates or doors on either side of such railroad, at every point in such borough at which its roads or tracks cross any public street, at the grade thereof. Such gates or doors shall be kept well painted and in good repair, and shall be attended at all times during the approach and passage of cars or trains by sober, careful and experienced persons, whose duty it shall be to keep the tracks clear of all horses, cattle and vehicles, to warn all the persons against crossing the tracks during the approach of any train, locomotive or car, and to close the gates or doors at least one minute before the passage of any locomotive, engine or car over such public street. No person operating or controlling any railroad in the borough of the Bronx, shall run or allow to be run any locomotive or locomotive tender without cars across any public street in such borough, unless the gates or doors at such crossing are closed or down.

2. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this subdivision, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars.

b. Brooklyn. 1. At each street crossing between Linwood street and Flatbush avenue, in the borough of Brooklyn, persons shall be constantly stationed, at all hours of the night and day when trains are in motion, and all crosswalks between such street crossings shall be properly guarded by strong, heavy gates at least twenty feet in width, at each street crossing, which shall be closed before the passage of any engine or train.

2. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this subdivision, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars.

c. Disregard of closed gates. 1. It shall be unlawful to attempt to cross the tracks of any railroad at any street crossing, while the gates for the protection of such crossings are closed or being closed.

2. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this subdivision, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars. Violation of the provisions of this subdivision by a person, other than a railroad, or the manager or agent or employee thereof, shall be punishable by a fine of not exceeding ten dollars or by imprisonment not exceeding ten days, or by both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-11.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-205

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-205 Obstruction of streets; penalty.

a. No train of cars, nor any part thereof, including the locomotive and tender, shall remain or be left across or upon any street or sidewalk, so as to obstruct or prevent free travel thereon for a longer period than five minutes, during any period or during any hour, unless the same shall be unavoidable.

b. Any railroad, or the manager or agent or employee thereof, who shall violate any provision of this section, or who shall permit the same to be violated, shall be liable to a penalty of one hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-12.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-206

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-206 Railroads from Long Island to East river to have unobstructed right-of-way.

a. Any railroad running from any part of Long Island to the East river shall have unobstructed right to run to the East river with their locomotives and cars, but shall furnish suitable guards or signals at the street crossings, for the proper protection of the public.

b. Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not more than twentyfive dollars, or imprisonment for thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-13.0 added chap 929/1937 § 1

Amended LL 172/1939 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-207

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-207 Release of certain railroad obligations.

The board of estimate shall be without power to compromise or release any liability or obligation to the city which may be compromised or released pursuant to section one hundred seventy-three, railroad law, but such liabilities and obligations shall be and remain inviolable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 362-14.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 25

(formerly § 70-1.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-208

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 2 FRANCHISES

§ 6-208 Copies of franchise resolutions and contracts to be filed in certain offices and to be public records.

Within five days after the final execution of any contract made pursuant to chapter fourteen of the charter, a copy of such contract, together with the resolution authorizing the same, duly attested by the secretary of the board of estimate, shall be transmitted to each of the following: the comptroller, the commissioner of finance, the corporation counsel, the city clerk, the commissioner of transportation and the public service commission, to be preserved by them in the archives of their departments or offices. All such certified copies shall be deemed to be public records.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 363-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 221

CASE NOTES FROM FORMER SECTION

¶ 1. The defendants were convicted of conspiracy to violate this section in that they charged a fee in excess of $1.00 for the purchase and resale of railroad tickets and accommodations. Over defendants' contention that the section was not within the scope of the legislative power of cities, the conviction was affirmed.-People v. Cooper, 294 N.Y. 797, 62 N.E. 2d 236 [1945].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-301

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 1 GENERAL PROVISIONS

§ 6-301 Definitions.

a. For the purposes of this chapter only, the following terms shall have the following meaning:

(1) "Agricultural wastes" means materials that remain after the harvesting or production of annual crops, including but not limited to rice, flax, wheat and rye.

(2) "Architectural coatings" means any coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. This term shall not include the following: marine-based paints and coatings; coatings or materials to be applied to metal structures, such as bridges; or coatings or materials labeled and formulated for application in roadway maintenance activities.

(3) "Capital project" means a capital project as defined in section 210 of the charter that is paid for in whole or in part from the city treasury.

(4) "Carpet" means any fabric used as a floor covering, but such term shall not include artificial turf.

(5) "Carpet adhesive" means any substance used to adhere carpet to a floor by surface attachment.

(6) "Carpet cushion" means any kind of material placed under carpet to provide softness when it is walked upon.

(7) "Cathode ray tube" means any vacuum tube, typically found in computer monitors, televisions and oscilloscopes, in which a beam of electrons is projected on a phosphorescent screen.

(8) "City's environmental purchasing standards" or "city environmental purchasing standard" means any standards set forth in this chapter and any directives, guidelines or rules promulgated by the director.

(9) "Composite wood or agrifiber products" means plywood, particleboard, chipboard, medium density fiberboard, standard fiberboard, orient strand board, glu-lams, wheatboard or strawboard.

(10) "Construction work" means any work or operations necessary or incidental to the erection, demolition, assembling or alteration of any building, but such term shall not include minor repairs.

(11) "Contractor" means any person or entity that enters into a contract with any agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such contract.

(12) "Copier" means any device that makes paper copies of text or graphic material.

(13) "Covered electronic device" means: (i) any cathode ray tube, any product containing a cathode ray tube, any liquid crystal display (LCD), plasma screen or other flat panel television or computer monitor or similar video display product, any battery containing lead, cadmium, lithium or silver, any computer central processing unit that contains one or more circuit boards and includes any desktop computer or any laptop computer, any computer peripherals including, but not limited to, any keyboard, mouse and other pointing device, printer, scanner, facsimile machine and card reader, and any copier, but not including any automobile, household appliance, large piece of commercial or industrial equipment containing a cathode ray tube, a cathode ray tube product, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or any device used by emergency response personnel; or (ii) any other electronic device designated by the director.

(14) "CPG" means the Comprehensive Procurement Guideline for Products Containing Recovered Materials, as set forth in part 247 of title 40 of the United States code of federal regulations.

(15) "Desktop computer" means any personal computer or workstation designed to operate only on alternating current power and to reside on or under a desktop.

(16) "Desktop-derived server" means any computer designed to provide services to other computers on a network and that contains an EPS12V or EPS1U form factor power supply.

(17) "Director" means the director of citywide environmental purchasing.

(18) "Electronic product environmental assessment tool" means a tool for evaluating the environmental performance of electronic products throughout their life cycle developed by the federal government and other stakeholders.

(19) "End-of-life management" means promoting the recycling or reuse of a product through features of the product or materials from which the product is manufactured.

(20) "ENERGY STAR labeled" means a designation indicating that a product meets the energy efficiency standards set forth by the United States environmental protection agency and the United States department of energy for compliance with the ENERGY STAR program.

(21) "Flow rate" means the volume, mass, or weight of water flowing past a given point per unit of time.

(22) "Green cleaning product" means any environmentally preferable cleaning product whose use has been

determined to be feasible through the pilot program established pursuant to the local law that added subchapter 6 of this chapter or through any other testing and evaluation conducted by the director.

(23) "Hazardous substance" means any substance that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(24) "Incandescent lamp" means any lamp in which a filament is heated to incandescence by an electric current to produce visible light.

(25) "Lamp" means any glass envelope with a gas, coating, or filament that produces visible light when electricity is applied, but such term shall not include automotive light bulbs.

(26) "Local area network" means any two or more computers and associated devices that share a common communications line or wireless link and typically share the resources of a single processor or server within a small geographic area.

(27) "Minor repairs" means replacement of any part of a building for which a permit issued by the department of buildings is not required by law, where the purpose and effect of such work or replacement is to correct any deterioration or decay of or damage to such building or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

(28) "Persistent, bioaccumulative and toxic chemicals" means those chemicals that are toxic to living organisms, persist in the environment and build up in the food chain. This definition shall include any substance on the United States environmental protection agency's list of priority chemicals published under the national partnership for environmental priorities, as well as hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers.

(29) "Postconsumer material" means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is a part of the broader category of recovered materials.

(30) "Power supply" means any device intended to convert line voltage alternating current to one or more lower voltages of direct current.

(31) "Printer" means any device that prints the text or graphics output of a computer onto paper.

(32) "Reasonably competitive" means at a cost not exceeding that permissible under section 104-a of the general municipal law.

(33) "Recovered material" means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. For purposes of purchasing paper and paper products, "recovered material" includes "post-consumer recovered paper" and "recovered materials, for purposes of purchasing paper and paper products", as those terms are defined in the CPG.

(34) "Recycled product" shall mean recycled product as defined in section 104-a of the general municipal law.

(35) "Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, as specified in part 51.100 of chapter 40 of the United States code of federal regulations.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-302

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 1 GENERAL PROVISIONS

§ 6-302 Applicability.

a. Except where otherwise provided, the provisions of this chapter shall apply to any product:

(1) purchased or leased by any agency;

(2) purchased or leased by any contractor pursuant to any contract with any agency where the director has designated such contract as one subject to this chapter in whole or in part; or

(3) purchased or leased by any contractor pursuant to any contract with any agency for construction work in any building; provided that this paragraph shall only require that such contractors meet the requirements of subdivisions a, b and c of section 6-313 and subdivisions a and b of section 6-306 of this chapter. Notwithstanding the foregoing, except when otherwise determined by the director, this paragraph shall not apply to any such contract:

(i) subject to green building standards pursuant to subdivision b of section 224.1 of the charter;

(ii) subject to energy efficiency standards pursuant to subdivision c of section 224.1 of the charter; provided, however, that this exception shall only apply to the purchase of energy using products and to the extent the purchase or lease of any such products is necessary for compliance with such subdivision;

(iii) subject to water efficiency standards pursuant to subdivision d of section 224.1 of the charter; provided,

however, that this exception shall only apply to the purchase of water using products;

(iv) where construction work is for a portion of a building that is less than fifteen thousand (15,000) square feet;

(v) where construction work is in any building or portion of a building leased by the city; provided, however, that this subparagraph shall not apply to any product purchased or leased by any contractor pursuant to any contract with any agency for construction work that (1) is a capital project and (2) is in a building or portion of a building that is leased for the use of a single agency where such single agency's lease is for more than fifty thousand (50,000) square feet of space; or

(vi) where the commissioner of the department of citywide administrative services determines that the requirements of this paragraph will result in significant difficulty in finding a suitable site for an agency facility and that such a circumstance could materially adversely affect the health, safety, or welfare of city residents.

b. Notwithstanding subparagraph (v) of paragraph 3 of subdivision a of this section, for any building where any single agency leases less than fifty thousand (50,000) but more than fifteen thousand (15,000) square feet of space, the contracting agency shall nonetheless make good faith efforts to apply subdivisions a, b and c of section 6-306 and subdivisions a and b of section 6-313 of this chapter to any capital construction work.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment

by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

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Administrative Code of the City of New York

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NYC Administrative Code 6-303

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 1 GENERAL PROVISIONS

§ 6-303 Exemptions and waivers.

a. This chapter shall not apply:

(1) to any product purchased or leased before the effective date of the local law that added this chapter;

(2) to any procurement where federal or state funding restrictions precludes the city from imposing the requirements of this chapter;

(3) to small purchases pursuant to section three hundred fourteen of the charter;

(4) to emergency procurements pursuant to section three hundred fifteen of the charter;

(5) to intergovernmental purchases pursuant to section three hundred sixteen of the charter;

(6) where compliance with the city's environmental purchasing standards would conflict with the purpose of chapter 3 of title 25 of this code; (7) to any product if there are fewer than three manufacturers that produce such product meeting the city's environmental purchasing standards and that are capable of producing any such product in a quantity and within a time period that are adequate for the city's needs;

(8) where the contracting agency finds that the inclusion of a specification otherwise required by sections 6-306

or 6-310 of this chapter would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that in making any such finding the contracting agency shall consider life-cycle cost-effectiveness; and

(9) where the contracting agency finds that the inclusion of a specification otherwise required by subchapters 5 or 6 of this chapter would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that in making any such finding the contracting agency shall consider the health and safety benefits of such specification.

b. The city's environmental purchasing standards may be waived by the director upon application by any agency:

(1) where compliance with the city's environmental purchasing standards would conflict with any consumer, health or safety:

(i) regulation of any agency; or

(ii) requirement of the federal government or state of New York or any nationally recognized testing laboratory designated by the director; or

(2) for any product if there are fewer than five manufacturers that produce such product meeting the city's environmental purchasing standards and that are capable of producing any such product in a quantity and within a time period that are adequate for the city's needs.

c. Any application for any waiver pursuant to this section shall be made in writing by the applying agency. The director shall, within a reasonable period of time, issue a written determination on whether to grant any such waiver application and shall include an explanation of any such deter- mination.

d. Except as otherwise provided in this chapter, the director may exempt from the provisions of this chapter up to the following total dollar amounts, provided such amounts shall be indexed to inflation beginning in the second year after the effective date of this local law, of contracts for goods or construction work in the following fiscal years if in his or her judgment such exemption is in the best interests of the city:

(1) for fiscal years 2007 and 2008, one hundred million dollars ($100,000,000);

(2) for fiscal year 2009, seventy-five million dollars ($75,000,000); and

(3) for fiscal year 2010 and any fiscal year thereafter, fifty million dollars ($50,000,000).

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-304

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 2 OVERSIGHT OF ENVIRONMENTAL PURCHASING

§ 6-304 Director of citywide environmental purchasing.

There shall be a director of citywide environmental purchasing who shall:

a. develop, establish, as appropriate, by promulgation of rules and implement environmental purchasing standards, in addition to those set forth in this chapter, the purpose of which shall be to: conserve energy and water; increase the use of recycled and reused materials; reduce hazardous substances, with an emphasis on persistent, bioaccumulative and toxic chemicals; decrease greenhouse gas emissions; improve indoor air quality; promote end-of-life management; and reduce waste;

b. at least once every two years, review and, if necessary, update or revise the city's environmental purchasing standards;

c. when promulgating any rules pursuant to this chapter, consider, as appropriate, any available scientific evidence, or specifications, guidelines or rules of other governmental agencies or organizations supporting the establishment of environmental purchasing standards, as well as the electronic product environmental assessment tool;

d. partner, as appropriate, with other levels of government or jurisdictions to establish joint environmental purchasing standards, including working with and encouraging state agencies that supervise contracts from which the city purchases goods pursuant to paragraph five of subdivision a of section 6-303 of this chapter to meet or exceed any

relevant city environmental purchasing standard;

e. monitor agency compliance with the city's environmental purchasing standards; and

f. submit an annual report to the speaker of the council and the mayor by October 1 of each year detailing the city's progress in meeting the purposes of this chapter, as specified in subdivision a of this section, and the city's environmental purchasing standards, which report shall at a minimum include:

(1) the total value of goods contracts entered into by any agency that comply with one or more city environmental purchasing standards;

(2) a list of all solicitations that include any product that is subject to this chapter with an indication of the environmental purchasing specifications in each such solicitation and the city environmental purchasing standard that is applicable to any such product specified in such solicitation;

(3) a list and the aggregate dollar value of contracts exempted pursuant to subdivision a of section 6-303 of this chapter according to each type of exemption;

(4) a list and the aggregate dollar value of contracts for which a waiver has been issued pursuant to subdivision b of section 6-303 of this chapter according to each type of waiver with an explanation of the director's basis for granting each such waiver;

(5) any material changes to the city's environmental purchasing standards since the last publication of such report, including any new, updated or revised rules established or determinations made by the director;

(6) an identification of any product for which new or additional environmental purchasing standards are necessary;

(7) beginning January 1, 2008, an explanation of any determination pursuant to subdivision b of section 6-308 of this chapter not to require compliance with the CPG;

(8) a list of products considered in implementing subdivision c of section 6-308 of this chapter, including an indication of whether any such products were determined to be of inadequate quality, unavailable within a reasonable period of time, at a price that does not exceed a cost premium of seven percent (7%) above the cost of a comparable product that is not a recycled product or at a price that does not exceed a cost premium of five percent (5%) above the cost that would apply pursuant to subdivision a of section 6-308;

(9) beginning January 1, 2008, an explanation of any determination pursuant to subdivision c or d of section 6-306 of this chapter not to require compliance with the federal energy management program;

(10) a description of the good faith efforts required pursuant to subdivision b of section 6-302 of this chapter;

(11) a description of the director's efforts pursuant to subdivision d of this section;

(12) until October 12, 2012, a report on the implementation of section 6-307, section 6-309 and subdivision b of section 6-310 of this chapter; and

(13) for the annual report required in 2008, and every fourth year thereafter, for each product subject to the provisions of this chapter, the total dollar value of such products purchased or leased by any agency and the portion of such purchases that comply with the city's environmental purchasing standards; and, to the extent practicable, the total value of such products purchased or leased by any contractor pursuant to any contract with any agency, including any such contract for construction work in any building, that is subject to this chapter and the portion of such purchases that comply with the city's environmental purchasing standards.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

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The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New

York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-305

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 2 OVERSIGHT OF ENVIRONMENTAL PURCHASING

§ 6-305 Agency implementation.

a. Each agency shall designate an environmental purchasing officer who shall:

(1) coordinate with the director to ensure agency compliance with the city's environmental purchasing standards; and

(2) submit an annual report as required by the director detailing such compliance.

b. The department of education shall submit an annual report to the speaker of the council and the mayor by October 1 of each year detailing the department's procurement activities that are consistent with the city's environmental purchasing standards.

HISTORICAL NOTE

Section added L.L. 118/2005 § 2, eff. Jan. 1, 2007. [See Chapter 3

footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-306

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 3 ENERGY EFFICIENCY*21

§ 6-306 Energy efficiency standards.

a. Any energy-using product purchased or leased by any agency for which the United States environmental protection agency and the United States department of energy have developed energy efficiency standards for compliance with the Energy Star program shall be ENERGY STAR labeled.

b. Any faucet, showerhead, toilet, urinal, fluorescent tube lamp, fluorescent ballast, industrial HID luminaire, downlight luminaire, fluorescent luminaire or compact fluorescent lamp that is purchased or leased by any agency for which the federal energy management program of the United States department of energy has issued product energy efficiency recommendations shall achieve no less energy efficiency or flow rate than the minimum recommended in such recommendations.

c. Unless the director makes a determination otherwise for any particular contract, any air-cooled chiller or water-cooled chiller that is purchased or leased by any agency for which the federal energy management program of the United States department of energy has issued product energy efficiency recommendations shall achieve no less energy efficiency or flow rate than the minimum recommended in such recommendations.

d. Beginning January 1, 2008, the director shall make a determination whether or not any product not specified in subdivisions a or b of this section that is purchased or leased by any agency for which the federal energy management program of the United States department of energy has issued product energy efficiency recommendations shall achieve

no less energy efficiency or flow rate than the minimum recommended in such recommendations. The director shall review any such determination not to require compliance with the federal energy management program for any product at least once every two years.

e. Beginning January 1, 2008, unless prior to such date the director determines that products that would comply with this subdivision are not available in sufficient quantities and upon reasonable terms, the minimum energy efficiency of the power supply of any desktop computer or desktop-derived server purchased or leased by any agency containing an internally mounted power supply shall be 80% at 20%, 50% and 100% of rated power supply output, when tested according to a proportional allocation method of loading the power supply. The director shall investigate the feasibility of purchasing such products prior to such date. In the event that this subdivision does not apply after January 1, 2008 as a result of any determination of the director, the director shall annually reconsider any such determination and, where applicable as a result of any such reconsideration, the requirement in this subdivision shall take effect as soon as practicable thereafter.

f. No lamp purchased or leased by any agency shall be an incandescent lamp if a more energy efficient lamp is available that provides sufficient lumens and is of an appropriate size for the intended application.

HISTORICAL NOTE

Section redesignated (former § 6-127) and amended L.L. 119/2005

§§ 2, 3, eff. Jan. 1, 2007. [See Subchapter 3 footnote]

Section amended L.L. 30/2003 § 1, eff. May 26, 2003.

Section added L.L. 37/2002 § 2, eff. Nov. 20, 2002. [See Note 1]

NOTE

1. Provisions of L.L. 37/2002:

Section 1. Declaration of Legislative Findings and Intent. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The ENERGY STAR labeling program tags products that meet energy efficient criteria, and as a result, reduce overall energy use, lessening the amount of fossil fuel being burned by power plants, and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the ENERGY STAR program, manufacturers and retailers sign voluntary agreements allowing them to place ENERGY STAR labels on products that meet or exceed energy-efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers may also use the label in product packaging, promotions and advertising for qualified products. Most ENERGY STAR labeled products have the same or better performance, features, reliability, and price as conventional models.

ENERGY STAR labeled office equipment saves energy by automatically entering a low-power mode when not in use. The energy-efficient models have all of the performance features of standard office equipment, but help to eliminate energy waste through special power management features. ENERGY STAR labeled office products use about half as much electricity as conventional office equipment, thereby significantly reducing energy costs.

The Council finds that the potential benefits associated with the procurement and use of ENERGY STAR products are enormous and easily achievable. On June 10, 2001, the Governor issued an executive order requiring that "State agencies and other affected entities shall select ENERGY STAR energy-efficient products when acquiring new

energy-using products or replacing existing equipment." Executive Order No. 111, Section III, June 10, 2001. Given the cost savings alone, it makes fiscal sense for the City to do the same.

The Council finds that the City of New York should join New York State and lead other municipalities and New Yorkers by example in promoting the use of energy efficient products. Accordingly, the City in its role of market participant should, whenever possible, exercise its purchasing power to ensure that ENERGY STAR and other energy efficient products are acquired.

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to

repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
21

[Footnote 21]: * Subchapter 3 added L.L. 119/2005 §§ 2, 3, eff. Jan. 1, 2007. Note provisions of L.L. 119/2005:

Section 1. Statement of findings and purpose. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The Energy Star labeling program certifies products that meet energy efficient criteria, and as a result, reduces energy use, lessening the amount of fossil fuel being burned by power plants and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the Energy Star program, manufacturers and retailers sign voluntary agreements allowing them to place Energy Star labels on products that meet or exceed energy efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers also can use the label in product packaging, promotions and advertising for qualified products. Most Energy Star labeled products have the same or better performance, features, reliability, and price as conventional models.

Federal buyers are directed by Federal Acquisition Regulation Part 23 and Executive Orders 13123 and 13221 to purchase, where life-cycle cost-effective, products that are Energy Star labeled or products that are designated to be in the upper 25% of energy efficiency in their class, as well as products with low standby power. Federal agencies are also required to reduce their energy use by 35% by 2010 in comparison to 1985 levels. In addition, the DOE established the Federal Energy Management Program (FEMP), which provides federal agencies with energy efficiency recommendations that exceed the scope of Energy Star by addressing commercial-sized products and water-using products. Under the Energy Policy Act of 2005, the FEMP standards became mandatory for all federal agencies, subject to certain exemptions.

Accordingly, the Council declares it is reasonable and necessary to require the purchase of energy efficient products.

. . . . . § 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective

Jan. 1, 2007].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-307

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 3 ENERGY EFFICIENCY*21

§ 6-307 Office equipment energy use reduction.

a. Notwithstanding section 6-302 of this chapter, this section shall apply to any computer, printer, facsimile machine or photocopy machine owned or leased by any agency.

b. The power management software options of any computer, printer, facsimile machine or photocopy machine that contains such software shall be calibrated to achieve the highest energy savings practicable.

c. For any computer that contains power management software, the computer monitor and central processing unit shall be set to enter into a low power mode after the shortest practicable period of inactivity. Any screensaver or other computer program that directly interferes with the proper functioning of the low power mode of any computer monitor or central processing unit, shall be disabled.

d. Any agency need not comply with the provisions of this section if compliance would interfere with any mission of such agency or cause instability in any computer system.

HISTORICAL NOTE

Section added L.L. 119/2005 § 3, eff. Jan. 1, 2007. [See Subchapter 3

footnote]

FOOTNOTES

20

[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

21

[Footnote 21]: * Subchapter 3 added L.L. 119/2005 §§ 2, 3, eff. Jan. 1, 2007. Note provisions of L.L. 119/2005:

Section 1. Statement of findings and purpose. Recognizing the need for energy efficiency, the United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) decided in 1992 to promote the purchase of energy efficient products through an innovative labeling program. The Energy Star labeling program certifies products that meet energy efficient criteria, and as a result, reduces energy use, lessening the amount of fossil fuel being burned by power plants and the amount of greenhouse gases and other pollutants emitted into the atmosphere.

Through the Energy Star program, manufacturers and retailers sign voluntary agreements allowing them to place Energy Star labels on products that meet or exceed energy efficiency guidelines set by the EPA and the DOE. Manufacturers and retailers also can use the label in product packaging, promotions and advertising for qualified products. Most Energy Star labeled products have the same or better performance, features, reliability, and price as conventional models.

Federal buyers are directed by Federal Acquisition Regulation Part 23 and Executive Orders 13123 and 13221 to purchase, where life-cycle cost-effective, products that are Energy Star labeled or products that are designated to be in the upper 25% of energy efficiency in their class, as well as products with low standby power. Federal agencies are also required to reduce their energy use by 35% by 2010 in comparison to 1985 levels. In addition, the DOE established the Federal Energy Management Program (FEMP), which provides federal agencies with energy efficiency recommendations that exceed the scope of Energy Star by addressing commercial-sized products and water-using products. Under the Energy Policy Act of 2005, the FEMP standards became mandatory for all federal agencies, subject to certain exemptions.

Accordingly, the Council declares it is reasonable and necessary to require the purchase of energy efficient products.

. . . . . § 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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NYC Administrative Code 6-308

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 4 RECYCLED MATERIALS*22

§ 6-308 Minimum recycled material content.

a. Any reprographic paper, tablet paper, envelope paper, file folder, commercial/industrial sanitary tissue, rock wool or fiberglass building insulation, polyester carpet, flowable fill, steel shower or restroom divider/partition, traffic cone, plastic fencing, plastic park bench, hydraulic mulch, garden or soaker hose, plastic trash bag, office recycling container, office waste receptacle, mat, signage or pallet, as such terms are utilized in the CPG: (i) purchased or leased by any agency; (ii) that can be procured at a reasonably competitive price; and (iii) that is listed in the CPG, for which the United States environmental protection agency has issued a recovered materials advisory notice, shall contain no less recovered material and postconsumer material than the minimum amount recommended in the most recent such notice, or, with respect to any paper or paper product, may, at the discretion of the director, contain no less than fifty percent agricultural wastes.

b. Beginning January 1, 2008, the director shall make a determination whether or not any product: (i) purchased or leased by any agency; (ii) that can be procured at a reasonably competitive price; (iii) in any category listed in the CPG, but not specified in subdivision a of this section, for which the United States environmental protection agency has issued a recovered materials advisory notice, shall contain no less recovered material and postconsumer material than the minimum amount recommended in the most recent such notice. The director shall review any such determination not to require compliance with the CPG for any product at least once every two years.

c. In addition to the requirements of subdivision a of this section, any reprographic paper product purchased or

leased by any agency shall contain the highest recovered material content available, to the extent any such product: (i) can be procured at a price that does not exceed a cost premium of seven percent (7%) above the cost of a comparable product that is not a recycled product; (ii) can be procured at a price that does not exceed a cost premium of five percent (5%) above the cost that would apply pursuant to subdivision a of this section; (iii) is of adequate quality for the intended use; and (iv) is available within a reasonable period of time, as determined by the director.

HISTORICAL NOTE

Section added L.L. 121/2005 § 4, eff. Jan. 1, 2007. [See Subchapter 4

footnote]

FOOTNOTES

20

[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a

proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
22

[Footnote 22]: * Subchapter 4 added L.L. 121/2005 § 4, eff. Jan. 1, 2007. Derived from § 6-122 added L.L. 20/1987, amended L.L. 59/1996 § 50 and § 16-322 added L.L. 19/1989, amended L.L. 59/1996 § 77. Note provisions of L.L. 121/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between copy paper with no recycled content and copy paper with thirty percent post-consumer recycled content.

Pursuant to section 6002 of the Resource Conservation and Recovery Act, the United States Environmental Protection Agency (EPA) has developed recommended guidelines on the minimum recovered materials content of items purchased by federal agencies and other levels of government that apply more than $10,000 in federal funding towards a purchase. These guidelines apply to products in the following categories: paper; vehicular; construction; transportation; park and recreation; landscaping; non-paper office; and miscellaneous. The minimum percentage of recovered materials recommended for products in these categories is determined and updated periodically through the Federal Register in the form of Recovered Materials Advisory Notices. The EPA conducts an extensive consultation process in setting recovered materials standards.

The Council finds that the purchase of recycled products will protect the environment and improve the welfare of New York City residents and workers. Accordingly, the Council declares that it is reasonable and necessary to require the purchase of products with recycled content.

. . . . . § 5. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A , a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 4 RECYCLED MATERIALS*22

§ 6-309 Printing on recycled paper.

a. Any document or graphic material prepared or printed for any agency pursuant to any contract with such agency, which can be procured at a reasonably competitive price and is of adequate quality for the intended use, shall be printed on paper with no less recovered material and postconsumer material, or agricultural wastes, than the minimum amount required pursuant to subdivision a of section 6-308 of this chapter and, where practicable, shall be printed double-sided.

b. Any solicitation of any agency shall request that any response to such solicitation be printed double-sided and on paper with no less recovered material and postconsumer material than the minimum required pursuant to subdivision a of section 6-308 of this chapter, and shall require that such response indicate whether such requests have been met; provided, however, that nothing in this subdivision shall be construed as requiring a finding of non-responsiveness.

c. Any pre-printed paper or publication, including any letterhead or report, purchased or leased by any agency that has been printed on paper that contains the minimum percentage of postconsumer recycled fiber required pursuant to subdivision a of section 6-308 of this chapter, shall include a statement and/or symbol indicating the minimum percentage of postconsumer recycled material contained in such paper, consistent with section 104-a of the general municipal law.

HISTORICAL NOTE

Section added L.L. 121/2005 § 4, eff. Jan. 1, 2007. [See Subchapter 4 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

22

[Footnote 22]: * Subchapter 4 added L.L. 121/2005 § 4, eff. Jan. 1, 2007. Derived from § 6-122 added L.L. 20/1987, amended L.L. 59/1996 § 50 and § 16-322 added L.L. 19/1989, amended L.L. 59/1996 § 77. Note provisions of L.L. 121/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between copy paper with no recycled content and copy paper with thirty percent post-consumer recycled content.

Pursuant to section 6002 of the Resource Conservation and Recovery Act, the United States Environmental Protection Agency (EPA) has developed recommended guidelines on the minimum recovered materials content of items purchased by federal agencies and other levels of government that apply more than $10,000 in federal funding towards a purchase. These guidelines apply to products in the following categories: paper; vehicular; construction; transportation; park and recreation; landscaping; non-paper office; and miscellaneous. The minimum percentage of recovered materials recommended for products in these categories is determined and updated periodically through the Federal Register in the form of Recovered Materials Advisory Notices. The EPA conducts an extensive consultation process in setting recovered materials standards.

The Council finds that the purchase of recycled products will protect the environment and improve the welfare of New York City residents and workers. Accordingly, the Council declares that it is reasonable and necessary to require the purchase of products with recycled content.

. . . . . § 5. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A , a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007].

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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 4 RECYCLED MATERIALS*22

§ 6-310 Paper waste reduction.

a. Any printer purchased or leased by any agency that can print at a rate of twenty pages or faster per minute or that is considered a local area network printer shall have the capacity to print double-sided. Any copier purchased or leased by any agency that can print at a rate of twenty pages or faster per minute shall have the capacity to print double-sided and shall perform equally well with paper containing postconsumer material as with paper containing no postconsumer material.

b. Notwithstanding section 6-302 of this chapter, this subdivision shall apply to any printer or copier purchased or leased by any agency after January 1, 2007 and, to the extent practicable, to any printer or copier

purchased or leased by any agency before such date. The default parameters of any printer with the capacity to print double-sided, and any computer that utilizes such printer, shall be set to duplex mode, such that the printer prints double-sided pages. The default parameters of any copier with the capacity to print double-sided for which the default parameters can be adjusted, shall be set to duplex mode, such that the copier places images on both sides of a copy sheet, performing one-sided to two-sided copying, and two-sided to two-sided copying.

HISTORICAL NOTE

Section added L.L. 121/2005 § 4, eff. Jan. 1, 2007. [See Subchapter 4

footnote]

FOOTNOTES

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Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]

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The Council finds that the purchase of recycled products will protect the environment and improve the welfare of New York City residents and workers. Accordingly, the Council declares that it is reasonable and necessary to require the purchase of products with recycled content.

. . . . . § 5. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-311 Reuse or recycling of electronic devices.

By January 1, 2008, unless otherwise directed by a subsequent local law, the city shall develop a plan for the reuse or recycling of any covered electronic device purchased or leased by any agency.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

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The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
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[Footnote 23]: * Subchapter 5 added L.L. 120/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 120/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option.

Many common consumer products contain hazardous materials. Some of these materials, like lead and mercury, which can be found in computers and other electronic goods, are persistent bioaccumulative toxins. When these products are improperly stored or disposed of they can contaminate the soil, groundwater and air. Likewise, many products used in office building improvements, including carpeting materials and paints, have

environmentally preferable alternatives. In response to the damage posed by hazardous products, governments, industry, healthcare professionals and non-profit organizations have supported the establishment of environmental purchasing standards.

The Council finds that environmentally preferable products should be purchased by the City.

. . . . . § 3. The director shall investigate and report to the speaker of the council and the mayor by October 1, 2007, on the environmental effect of the city's use of road de-icing products and the potential for reducing the use of such products that contain high levels of chlorides and urea.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-312 Hazardous content of electronic devices.

a. No new covered electronic device purchased or leased by any agency shall contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers, except as provided by rules promulgated by the director.

b. No new covered electronic device purchased or leased by any agency shall contain any hazardous substance in any amount exceeding that proscribed by the director through rulemaking. In developing such rules, the director shall consider European Union directive 2002/95/EC and any subsequent material directive issued by the European Parliament and the Council of the European Union.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

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The Council finds that environmentally preferable products should be purchased by the City.

. . . . . § 3. The director shall investigate and report to the speaker of the council and the mayor by October 1, 2007, on the environmental effect of the city's use of road de-icing products and the potential for reducing the use of such products that contain high levels of chlorides and urea.

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CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-313 Volatile organic compounds and other airborne hazards.

a. (1) No carpet, carpet cushion or carpet adhesive purchased or leased by any agency shall contain the following volatile organic compounds in any concentration exceeding that specified by the director through rulemaking: (i) for carpets, 4-phenylcyclohexene, formaldehyde or styrene;

(ii) for carpet cushions, butylated hydroxytoluene, formaldehyde or 4-phenylcyclohexene; and

(iii) for carpet adhesives, formaldehyde or 2-ethyl-1-hexanol.

(2) In developing such rules, the director shall consider any widely accepted industry recommendations for reduced volatile organic compounds in carpeting products.

b. No architectural coating purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified by the director through rulemaking. In developing such rules, the director shall consider rule 1113 of the south coast air quality management district.

c. No construction or furnishing materials purchased or leased by any agency, other than any product covered by subdivisions a or b of this section, shall contain any chemical compound in any concentration exceeding that specified by the director through rulemaking. In developing such rules, the director shall consider section 01350 of the reference

specifications for energy and resource efficiency of the California energy commission.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
23

[Footnote 23]: * Subchapter 5 added L.L. 120/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 120/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option.

Many common consumer products contain hazardous materials. Some of these materials, like lead and mercury, which can be found in computers and other electronic goods, are persistent bioaccumulative toxins. When these products are improperly stored or disposed of they can contaminate the soil, groundwater and air. Likewise, many products used in office building improvements, including carpeting materials and paints, have environmentally preferable alternatives. In response to the damage posed by hazardous products, governments, industry, healthcare professionals and non-profit organizations have supported the establishment of environmental purchasing standards.

The Council finds that environmentally preferable products should be purchased by the City.

. . . . . § 3. The director shall investigate and report to the speaker of the council and the mayor by October 1, 2007, on the environmental effect of the city's use of road de-icing products and the potential for reducing the use of such products that contain high levels of chlorides and urea.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect January 1, 2007, except that the director of citywide environmental purchasing as appointed by the mayor shall take all actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal section 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007]; and Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of section 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007].

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NYC Administrative Code 6-314

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-314 Mercury-added lamps.

Any mercury-added lamp purchased or leased by any agency shall achieve no less energy efficiency than the minimum required by the director through rulemaking and, among lamps meeting such energy efficiency requirements, shall contain the lowest amount of mercury per rated hour.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

20

[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
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Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 5 HAZARDOUS SUBSTANCES*23

§ 6-315 Miscellaneous.

a. By January 1, 2008, the director shall promulgate rules to reduce the city's purchase or lease of materials whose combustion may lead to the formation of dioxin or dioxin-like compounds.

b. The director shall investigate the environmental and health effects of composite wood or agrifiber products that contain added urea-formaldehyde resins and, by January 1, 2008, where practicable, shall promulgate rules to reduce the city's purchase or lease of such products.

HISTORICAL NOTE

Section added L.L. 120/2005 § 2, eff. Jan. 1, 2007. [See Subchapter 5 footnote]

FOOTNOTES

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[Footnote 20]: * Chapter 3 added L.L. 118/2005 § 2, eff. Jan. 1, 2007. Note provisions of L.L. 118/2005:

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Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 6-316

Administrative Code of the City of New York

Title 6 Contracts, Purchases and Franchises

CHAPTER 3 ENVIRONMENTAL PURCHASING*20

SUBCHAPTER 6 CLEANING PRODUCTS*24

§ 6-316 Green cleaning products.

a. Beginning June 1, 2009, the city shall purchase and use green cleaning products to the extent and in the manner that such use is determined to be feasible through the pilot program established pursuant to the local law that added subchapter 6 of this chapter or through any other testing and evaluation conducted by the director. Such green cleaning products shall meet the health and environmental criteria for the relevant product category as established by the director under the pilot program or any such criteria as updated or revised by the director.

b. No later than June 1, 2009, the director shall publish a list of green cleaning products that may be purchased by the city to comply with this section. At least once annually, such list shall be reviewed and revised, if necessary.

HISTORICAL NOTE

Section added L.L. 123/2005 § 5, eff. June 1, 2009. [See Note 1]

NOTE

1. Provisions of L.L. 123/2005:

Section 1. Statement of findings and purpose. The Council finds that there are environmentally preferable alternatives to the products that we commonly use for routine tasks, such as cleaning and maintaining interior building

finishes. Such alternatives are most beneficial to those who apply them and those who occupy buildings where such products are used. In addition to the federal government, a number of state and local jurisdictions have taken steps to purchase environmentally preferable or "green" cleaning products.

The Council finds that the purchase and use of many such environmentally preferable cleaning alternatives will result in improved indoor air quality and enhanced environmental health.

§ 2. This law shall be known and may be cited as the "Greening Our Cleaning Act".

§ 3. Green cleaning product pilot program. a. For the purpose of this section and section four of this local law, the following terms shall have the following meanings:

(1) "Air freshener" means any product including, but not limited to, sprays, wicks, powders, blocks, gels and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air. This term shall not include products that are used on the human body, products that function primarily as cleaning products or disinfectant products claiming to deodorize by killing germs on surfaces.

(2) "Bathroom cleaner" means any product used to clean hard surfaces in a bathroom, such as counters, walls, floors, fixtures, basins, tubs and tile. This term may include products that are required to be registered under the federal insecticide, fungicide, and rodenticide act, such as disinfectants and sanitizers, but shall not include products specifically intended to clean toilet bowls.

(3) "Carpet cleaner" means any product used for the routine cleaning of carpets and rugs. This term shall include, but not be limited to, products used in cleaning by means of extraction, shampooing, dry foam, bonnet or absorbent compound, but shall not include products intended primarily for spot removal or any products required to be registered under the federal insecticide, fungicide, and rodenticide act, such as those making claims as sterilizers, disinfectants or sanitizers.

(4) "Degreaser" means any product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from interior or exterior building surfaces.

(5) "Director" means the director of citywide environmental purchasing.

(6) "Disinfectant" means any United States environmental protection agency-registered agent that is used to destroy or irreversibly inactivate infectious fungi, viruses and bacteria, but not necessarily their spores.

(7) "Floor finish" means any product designed to polish, protect or enhance floor surfaces by leaving a protective wax, polymer or resin coating that is designed to be periodically removed and reapplied.

(8) "Floor stripper" means any product designed to remove floor finish through breakdown of the finish polymers, or by dissolving or emulsifying the finish, polish or wax. This term shall not include general-purpose cleaners that can be used to clean floors, floor sealers, spray buffing products or products or equipment designed to remove floor wax solely through abrasion.

(9) "General-purpose cleaner" means any product used for routine cleaning of hard surfaces, including impervious flooring, such as concrete or tile. This term shall not include any cleaner intended primarily for the removal of rust, mineral deposits or odors; any product intended primarily to strip, polish or wax floors; any cleaner intended primarily for cleaning toilet bowls, dishes, laundry, glass, carpets, upholstery, wood or polished surfaces; or any product required to be registered under the federal insecticide, fungicide, and rodenticide act, such as those making claims as sterilizers, disinfectants or sanitizers.

(10) "Glass cleaner" means any product used to clean windows, glass and polished surfaces. This term shall not

include any product required to be registered under the federal insecticide, fungicide, and rodenticide act, such as those making claims as sterilizers, disinfectants or sanitizers.

(11) "Green Seal" means the independent, non-profit organization that sets standards for environmentally responsible products.

(12) "Metal cleaner" means any product designed primarily to improve, by physical or chemical action, the appearance of finished metal, metallic, or metallized furniture or interior or exterior building surfaces, including, but not limited to fittings and decorative ornamentation. This term shall not include any product designed primarily to remove grease, grime and oil.

(13) "Sanitizer" means any United States environmental protection agency-registered agent that is used to reduce, but not necessarily eliminate microorganisms to levels considered safe by public health codes or regulations.

b. A pilot program, which the director shall administer, is hereby established to study the feasibility of using green cleaning products in city facilities.

c. The director shall develop a list of cleaning products currently used in large quantities by agencies and shall select cleaning product categories currently used by agencies that are suitable for inclusion in the pilot program. At a minimum, general-purpose cleaners, bathroom cleaners, glass cleaners, carpet cleaners, floor finishes, floor strippers and air fresheners shall be included in the pilot program if used by the city and disinfectants, sanitizers, graffiti removers, metal cleaners, furniture polishes and degreasers shall be considered for inclusion in such program.

d. For each product category included in the pilot program, the director shall establish health and environmental criteria for selecting products to be tested and evaluated in the pilot program. The following may be considered in establishing such criteria:

(1) any available scientific evidence;

(2) any specifications, guidelines or rules of other governmental agencies or jurisdictions, or organizations supporting the establishment of environmental purchasing standards;

(3) whether such products contain any known respiratory irritants, mutagens or petrochemical-based fragrances, are produced from bio-based materials, or are sold in containers that reduce worker exposure to the chemicals contained therein; and

(4) any other matter determined by the director to be relevant to determining such health and environmental criteria.

e. The director shall select environmentally preferable cleaning products in each product category for inclusion in the pilot program that meet the criteria established pursuant to subdivision d of this section. Where the director selects a product for testing and evaluation in a product category for which an applicable Green Seal standard exists, the director shall, to the extent practicable, direct that the product, at a minimum, meet such Green Seal standard, with the exception of product packaging and concentrate requirements.

f. The director shall select an appropriate, representative sample of facilities, or portions thereof, owned by the city within which to implement the pilot program.

g. No later than one year after the date of enactment of this local law, the director shall develop and publish a pilot program plan for the testing and evaluation of environmentally preferable cleaning products, which shall include: the list of products in each category to be tested and evaluated in the pilot program; testing and evaluation guidelines for such products; the facilities, or portions thereof, designated for inclusion in such pilot program; and any other

information relating to the pilot program that the director deems appropriate. Immediately upon its publication, such plan shall be distributed to all agencies participating in the pilot program, in addition to the mayor and the speaker of the council. Any update or modification to such plan shall immediately be distributed as described above.

h. The testing and evaluation process of the pilot program shall assess products selected for the program based upon effectiveness, health and safety, costs and savings.

i. No later than three years after the enactment of this local law, the director shall submit a report to the mayor and the speaker of the council, which shall detail the results of the pilot program. Such report shall include, but not be limited to, the following:

(1) a list of the products that were tested and evaluated in each product category;

(2) a description of the pilot program process and how each product category and product was selected for inclusion in the program and tested and evaluated, as applicable;

(3) the health and environmental criteria established for each product category and, where the director has not directed that tested and evaluated products, at a minimum, meet the applicable Green Seal standard for the relevant product category where such a standard exists, with the exception of product packaging and concentrate requirements, an explanation as to why the director has not done so;

(4) the facilities, or portions thereof, in which the pilot program was implemented;

(5) the agencies whose facilities or employees were included in the pilot program;

(6) the list of cleaning products developed pursuant to subdivision c of this section, the amount of each such product purchased during the fiscal year beginning July 1, 2007, and whether or not these products meet the health and environmental criteria established by the director pursuant to the pilot program;

(7) an analysis and conclusion regarding the testing and evaluation of each product with respect to effectiveness, health and safety, and anticipated costs or savings and how such results compare to an assessment of such characteristics for the standard cleaning product used for the same purpose; and

(8) a determination as to the feasibility of using environmentally preferable cleaning products in each of the product categories included in the pilot program citywide in facilities, or portions thereof, owned and/or leased by the city, based upon effectiveness, health and safety, costs and savings of the products in such category. For any facility type or specific application for which the director determines that the use of such products in a specific product category is not feasible, the reasons for such lack of feasibility and all efforts made to successfully use such products in such facility type or application shall be described.

j. The director may, on an ongoing basis, test and evaluate environmentally preferable cleaning products, not limited to the product categories included in the pilot program, to determine the feasibility of using such products by the city.

§ 4. Green cleaning technical advisory committee. a. A green cleaning technical advisory committee shall be established, which shall provide advice and recommendations to the director for the duration of its term on the green cleaning product pilot program established pursuant to section three of this local law, regarding:

(1) the scope and implementation of the pilot program, including the product categories, products, facilities, or portions thereof, and agencies included in the program;

(2) for each program category, the health and environmental criteria that products shall meet;

(3) the testing and evaluation of products;

(4) a determination as to the feasibility of using environmentally preferable cleaning products citywide in facilities, or portions thereof, owned and/or leased by the city; and

(5) any other recommendations to improve upon or make the pilot program more effective, including regarding end-user outreach and training and the experience of other jurisdictions.

b. Such advisory committee shall be comprised of seven members, two of whom shall be appointed by the speaker of the council and five by the mayor. The members, who shall serve without compensation, shall have technical, scientific or other relevant experience regarding the procurement or use of green cleaning products and shall be appointed no later than March 3, 2006. A chairperson shall be elected from amongst the members. Members shall serve at the pleasure of the appointing official and any vacancy shall be filled in the same manner as the original appointment. The director may provide staff to assist the advisory committee.

c. The advisory committee shall continue to exist until three years after the enactment of this local law, after which time the committee shall cease to exist.

. . . . . .

§ 6. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect. § 7. This local law shall take effect immediately [Dec. 29, 2005], except that section five of this local law shall take effect June 1, 2009. Provided, however, that this local law shall take effect only in the event that: Int. No. 534-A, a proposed local law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of environmental purchasing, takes effect [Int. 534-A became L.L. 118/2005 effective Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivision a, c, d, e and f of section 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 effective Jan. 1, 2007]; Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 effective Jan. 1, 2007]; and Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal section 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 effective Jan. 1, 2007].

FOOTNOTES

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The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of environmental purchasing.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal § 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect [Int. 545-A became L.L. 121/2005 eff. Jan. 1, 2007]; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of § 6-127 of such code, takes effect [Int. 536-A became L.L. 119/2005 eff. Jan. 1, 2007]; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect [Int. 544-A became L.L. 120/2005 eff. Jan. 1, 2007]
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[Footnote 24]: * Subchapter 6 added L.L. 123/2005 § 5, eff. June 1, 2009.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-101

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-101 Bond to be executed by corporation counsel.

The corporation counsel shall execute a bond to the city, in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties of that office. Such bond shall contain one or more sureties, who shall be approved by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 391-1.0 added chap 929/1937 § 1

65 of 158 DOCUMENTS

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-102

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-102 Law department relieved from payment of fees to city, county or other officers.

a. It shall be unlawful for any salaried officer of the city or of the counties within the city or of any court exercising jurisdiction within the limits thereof, or for any public officer who is required by law to deposit the fees collected by his or her office in the city treasury, to receive from the law department or from any bureau thereof, any fee for levy, service or return of executions or other mandate or order, or for entering, filing, docketing, registering, recording or issuing any paper, record, mandate, precept or document required by law to be filed in or issued out of his or her office.

b. Every such officer must, upon application therefor, furnish to the law department or any bureau thereof, a certified or photostatic copy, extract or transcript of any paper, record, mandate, precept or document on file in his or her office, or of the return upon an execution, mandate or order, without receiving therefor the fee prescribed by law.

c. The law department or any bureau thereof shall file its notice of trial or note of issue or demand for a jury trial in any court in the city without being required to pay a trial or jury fee to any court clerk thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-3.0 added chap 929/1937 § 1

66 of 158 DOCUMENTS

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-103

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-103 Corporation counsel.

It shall be unlawful for the corporation counsel or any of the corporation counsel's assistants to appear as attorney or counsel in any action or litigation except in the discharge of his or her official duties, or to accept an appointment as referee or receiver in any action or proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-4.0 added chap 929/1937 § 1

Amended LL 50/1942 § 31

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-104

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-104 Legislative bills; local laws.

The corporation counsel shall prepare the draft of any bill to be presented by the city to the legislature for enactment, with a proper memorial for the passage thereof, and shall prepare such local laws as may be required by the council or any committee thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-5.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-105

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-105 Actions and proceedings for recovery of penalties.

The assistant corporation counsel in charge of the recovery of penalties, subject only to the approval of the corporation counsel, may settle, compromise, adjust or discontinue any action brought to recover a penalty in the name of the city or any agency thereof, provided that the penalty sued for does not exceed the sum of two hundred fifty dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394c-1.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-106

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-106 Collection of debts.

The comptroller shall direct legal proceedings to be taken when necessary to enforce payment of debts due to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-11.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-107

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-107 Register of actions.

The corporation counsel shall keep in proper books, to be provided for that purpose, a register of all actions prosecuted or defended by the corporation counsel, and all proceedings had therein.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394c-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-108

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-108 Bond or other security on behalf of city; by whom executed.

In all actions or proceedings, in either the state or United States courts, in which the city or any department thereof shall be a party, an undertaking, bond, security, or stipulation which is required of the city as a condition to the obtaining of any legal remedy or process, or to the perfecting of an appeal or the stay of execution or other writ in the nature thereof, may be executed on behalf of the city by the comptroller, upon the advice of the corporation counsel that it should be executed, and in such form or manner as he or she may approve or advise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394c-3.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The Commissioner of Welfare obtained a judgment against a debtor who had a bank savings account in his name as trustee for another. The debtor signed a paper directing the bank to pay the account to the Sheriff. The bank's by-law provided that payment would not be made without the passbook except upon a surety company indemnity bond. **Held:** the City itself could execute by its Comptroller a suitable indemnity bond to the bank and the bank would then be required to make payment to the Commissioner.-Dumpson v. Taylor, 38 Misc. 2d 118, 237 N.Y.S. 2d 871 [1963].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-109

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-109 Corporation counsel; when the corporation counsel may appear for officer, subordinate, or employee of an agency.

The corporation counsel, in his or her discretion may appear, or direct any of his or her assistants to appear, in any action or proceeding, whether criminal or civil, which may be brought against any officer, subordinate or employee in the service of the city, or of any of the counties contained therein, by reason of any acts done or omitted by such officer, subordinate or employee, while in the performance of his or her duty, whenever such appearance is requested by the head of the agency in which such officer, subordinate or employee is employed or whenever the interests of the city require the appearance of the corporation counsel. The head of the agency in which such officer, subordinate or employee is employed shall submit all pertinent papers and other documents to the corporation counsel.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 395-1.0 added chap 929/1937 § 1

Amended LL 77/1960 § 1

(amended as § 395-1.10)

Renumbered chap 100/1963 § 315

(formerly § 395-1.10)

CASE NOTES FROM FORMER SECTION

¶ 1. Corporation Counsel could appear for real estate commissioner in private defamation action based on words allegedly spoken by commissioner while acting as advisor during Board of Estimate meeting.-Ungar v. Lazarus, 45 Misc. 2d 889, 258 N.Y.S. 2d 40 [1964].

¶ 2. The Corporation Counsel had authority to represent co-employees of plaintiff in the Department of Social Services who had been witnesses in hearings against plaintiff which resulted in his dismissal in a subsequent action brought by plaintiff against the co-employees.-Boshnack v. Meyer, 161 (121) N.Y.L.J. (6-23-69) 2, Col. 2 M.

¶ 3. The Corporation Counsel has discretion to reject a request by an employee for representation in a suit against the employee and action of Corporation Counsel in rejecting representation of petitioner as defendant in action for false arrest was not arbitrary where petition failed to indicate in what respect petitioner was performing services for the city at the time of the occurrence in question or any other relevant fact that would indicate arbitrariness by the Corporation Counsel.-In re Ward (Dept. of Correction), 174 (67) N.Y.L.J. (10-3-75) 5, Col. 3 T.

¶ 4. The Corporation Counsel is the proper representative to appear for the property clerk division of the police department and for the district attorney as defendants and not the district attorney per se or the Assistant Commissioner for Civil Matter of Police Department.-Killen v. Property Clerk Division Police Department of City of New York, 109 Misc. 2d 529 [1981].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-110

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 1 CORPORATION COUNSEL

§ 7-110 Corporation counsel; representation and indemnification of district attorneys.

The district attorney and the employees of his or her office in each of the counties within the city shall be entitled to legal representation by the corporation counsel and indemnification by the city pursuant to the provisions of, and subject to the conditions, procedures and limitations contained in section fifty-k of the general municipal law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 395-2.0 added LL 36/1983 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-201

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-201 Actions against the city.

a. In every action or special proceeding prosecuted or maintained against the city, the complaint or necessary moving papers shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims, upon which such action or special proceeding is founded, were presented to the comptroller for adjustment, and that the comptroller has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment, except that in every action or special proceeding in relation to excise or non-property taxes, such complaint or necessary moving papers shall contain an allegation that such demand, claim or claims upon which the action or special proceeding is founded, were presented to the commissioner of finance for adjustment and that the commissioner has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.

b. An action against the city, for damages for injuries to real or personal property, or for the destruction thereof, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the city, or any agency thereof, shall be commenced within one year after the cause of action therefor shall have accrued, provided that a notice of the intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed, and the value thereof, shall have been filed with the comptroller within six months after such cause of action shall have accrued.

c. 1. As used in this subdivision:

(a) The term "street" shall include the curbstone, an avenue, underpass, road, alley, lane, boulevard, concourse, parkway, road or path within a park, park approach, driveway, thoroughfare, public way, public square, public place,

and public parking area.

(b) The term "sidewalk" shall include a boardwalk, underpass, pedestrian walk or path, step and stairway.

(c) The term "bridge" shall include a viaduct and an overpass.

2. No civil action shall be maintained against the city for damage to property or injury to person or death sustained in consequence of any street, highway, bridge, wharf, culvert, sidewalk or crosswalk, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto, being out of repair, unsafe, dangerous or obstructed, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, was actually given to the commissioner of transportation or any person or department authorized by the commissioner to receive such notice, or where there was previous injury to person or property as a result of the existence of the defective, unsafe, dangerous or obstructed condition, and written notice thereof was given to a city agency, or there was written acknowledgement from the city of the defective, unsafe, dangerous or obstructed condition, and there was a failure or neglect within fifteen days after the receipt of such notice to repair or remove the defect, danger or obstruction complained of, or the place otherwise made reasonably safe.

3. The commissioner of transportation shall keep an indexed record in a separate book of all written notices which the city receives and acknowledgement of which the city gives of the existence of such defective, unsafe, dangerous or obstructed conditions, which record shall state the date of receipt of each such notice, the nature and location of the condition stated to exist and the name and address of the person from whom the notice is received. This record shall be a public record. The record of each notice shall be maintained in the department of transportation for a period of three years after the date on which it is received and shall be preserved in the municipal archives for a period of not less than ten years.

4. Written acknowledgement shall be given by the department of transportation of all notices received by it.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-1.0 added chap 929/1937 § 1

Sub a amended chap 829/1965 § 1

(special provision chap 829/1965 § 2)

Sub d added LL 82/1979 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. A notice served upon the City of New York pursuant to Admin. Code § 394a-1.0, which omitted the date of the accident, was fatally defective.-Jablon v. City of N.Y., 177 Misc. 838, 31 N.Y.S. 2d 764 [1941], aff'd 268 App. Div. 859, 51 N.Y.S. 2d 82 [1944].

¶ 2. Notice which was served upon the City Comptroller without the date of the alleged accident was so defective that no amendment could cure it, and hence motion to amend nunc pro tunc by inserting the date, was denied.-Francis v. City of N.Y., 127 (109) N.Y.L.J. (6-5-52) 2247, Col. 6 F.

¶ 3. A notice of claim which stated that the accident occurred "on or about" a given date at a specified subway station was sufficient although it did not identify the particular part of the platform where the accident occurred and did

not state the date of the accident with exactness and certainty.-Attamian v. City of New York, 297 N.Y. 640, 75 N.E. 2d 748 [1947], aff'g 271 App. Div. 1001, 69 N.Y.S. 2d 322 [1947].

¶ 4. Omission of date of accident in notice of claim filed with the City of New York prior to commencement of death action was fatal, and the Court was without power to permit amendment of the claim nunc pro tunc. The insufficiency was not waived by the City's retention of the notice.-Rossi v. City of N.Y., 107 (57) N.Y.L.J. (3-11-42) 1065, Col. 6 M.

¶ 5. An acknowledged but unverified notice of claim did not constitute compliance with Admin. Code § 394a-1.0.-Tannenbaum v. City of N.Y., 182 Misc. 109, 50 N.Y.S. 2d 122 [1944], aff'd 268 App. Div. 1062, 52 N.Y.S. 2d 600 [1945].

¶ 6. An acknowledged but unverified notice of claim does not constitute compliance with this section which requires the service of a notice of intention to sue together with a verified statement showing in detail the property alleged to have been damaged or destroyed.-Tannenbaum v. City of New York, 182 Misc. 109, 50 N.Y.S. 2d 122 [1944], aff'd 268 App. Div. 1062, 52 N.Y.S. 2d 600 [1945].

¶ 7. Notices filed with Comptroller and Corporation Counsel which were copies containing the typewritten names of plaintiff and of the notary, were not verified as required by Admin. Code § 394a-1.0 and 394b-1.0, and hence the complaint in the action would be dismissed (282 N.Y. 17; 282 N.Y. 607; etc.; dist'g 59 N.Y.S. 2d 700).-Chambers Carting Co. v. Dept. of Sanitation, 115 (71) N.Y.L.J. (3-27-46) 1197, Col. 5 T.

¶ 8. Complaint should be dismissed where the notice of claim was neither verified, as required by Admin. Code § 394a-1.0, subd. b, nor sworn to.-Berner v. City of N.Y., 276 App. Div. 1069, 96 N.Y.S. 2d 492 [1950].

¶ 9. Defendant bus company's letter to City Comptroller merely informing him that it had applied to the Board of Estimate for return of deposit theretofore made by it, did not constitute the presentment of a claim or demand within meaning of Admin. Code § 394a-1.0.-City of N.Y. v. N.Y.C. Omnibus Corp., 120 (106) N.Y.L.J. (12-3-48) 1385, Col. 4 F.

¶ 10. Notice of claim served upon City by plaintiff, which merely stated that plaintiff had sustained personal injuries by reason of the City's negligence "in permitting a portion of the sidewalk at or about the intersection of West 29th Street and Eighth Avenue in the Borough of Manhattan" to be in an unsafe condition, with result that plaintiff caught her foot in a depression in the sidewalk, **held** insufficient, and required the setting aside of a verdict for plaintiff, since the location of the defective condition was too indefinite, and furthermore it was doubtful that the notice unmistakably pointed out that the defect was on any of the corners, as "at or about the intersection" are words purely correlative.-Todd v. City of N.Y., 23 N.Y.S. 2d 884 [1940].

¶ 11. Notice of claim which placed the alleged foot-trap hole "at and about the sidewalk curb on the public street, where Watson Avenue and Manor Avenue have their intersection, at about and near such corner of the intersection of Watson Avenue and Manor Avenue, as is located a store bearing number 1570 Watson Avenue . . . and to my belief, is the northwest corner of Watson Avenue and Manor Avenue", **held** indefinite and confusing, and a verdict for plaintiff would be set aside and the complaint dismissed where on the trial the place of accident was fixed as in front of a candy store numbered 1571 Watson Avenue, which was at or near the northwesterly corner of the two avenues, and it appeared that number 1570 was in fact on the southerly side of that avenue, about 90 feet from the corner, and such latter place was the one investigated and photographed by defendant.-Kantor v. City of N.Y., 34 N.Y.S. 2d 652 [1942].

¶ 12. Notice of claim which described the point between the express train and a specified side of a specified platform where plaintiff's injuries were allegedly sustained, sufficiently located the place of accident within meaning of Admin. Code § 394a-1.0.-Abramowitz v. City of N.Y., 33 N.Y.S. 2d 416 [1942].

¶ 13. Notice of claim against City of New York which merely charged that the City had been negligent "in failing

to remove snow and ice from the public sidewalk on Fifty-first Street, several feet from the intersection of Fifty-first Street and Thirtieth Avenue", in the Borough of Brooklyn, **held** insufficient. However, a different ruling might have been required if it were not an accident resulting from snow and ice on the sidewalk, or if the description of the place of accident were coupled with an identifying reference to a fixed and continuing object, obstruction or defect.-Meiner v. City of N.Y., 105 (69) N.Y.L.J. (3-25-41) 1331, Col. 3 T.

¶ 14. Notice of intention to sue with respect to accident which happened at the southwest corner of Vanderbilt & St. Marks Avenue, Brooklyn, **held** sufficient, under Admin. Code § 394a-1.0, notwithstanding the unnecessary and erroneous reference to premises on St. Marks Avenue. In view of the small area covered by the places mentioned in the notice, the notice, when reasonably construed, accomplished the purpose of the statute to give the City the opportunity to investigate the claim.-Freligh v. City of New York, 265 App. Div. 967, 38 N.Y.S. 2d 960 [1942].

¶ 15. Where the plaintiff contended in her pleading and in her oral testimony that the accident happened at the Grand Central end of the subway shuttle service, but a police officer and station guard testified that the accident occurred at the Times Square station of the shuttle and the hospital showed first aid was there given by the ambulance doctor, the complaint was dismissed because of the great disparity between the place set forth in the notice of claim as the situs of the accident and that found in the special verdict, to effect that the accident occurred at the Times Square station.-McQueen v. City of N.Y., 110 (90) N.Y.L.J. (10-16-43) 960, Col. 3 M.

¶ 16. Notice of intention to sue the City because of a subway accident, which specified that the accident occurred on a Manhattan-bound train at the "17th Street Station of the Fourth Avenue Line" in Brooklyn, was not fatally defective because the subway station located there was known as the "Prospect Avenue" station. The sufficiency of the notice as to specification of the place of the accident was demonstrated by the fact that the City actually produced upon the trial an eye witness who was an agent at that station and who testified as to the facts in issue.-De Luca v. City of N.Y., 182 Misc. 583, 52 N.Y.S. 2d 260 [1944].

¶ 17. Where concededly there was no hole, as stated in the notice of claim, "in front of and adjacent to" the premises 1827-31 65th Street, and there was no particular description of the hole which would tell the City where else there was a hole which plaintiff claimed was the place of accident, the notice of claim was defective and the action was dismissed.-Berkowitz v. City of N.Y., 115 (24) N.Y.L.J. (1-29-46) 390, Col. 3 F.

¶ 18. Notice of claim, served pursuant to Laws of 1886, ch. 572, was fatally defective where it stated that the claimed pavement defect which caused plaintiff's injury existed "near the intersection of Eastern Parkway and Rochester Avenue", without specifying in which of the three roadways on Eastern Parkway or the roadway of Rochester Avenue the claimed defect existed, or near which of the several corners the accident happened.-Belzer v. City of New York, 269 App. Div. 987, 58 N.Y.S. (2d) 278 [1945].

¶ 19. In action to recover for injuries sustained when plaintiff slipped on an icy crosswalk at a street intersection, notice of claim which failed to recite at which of the four crosswalks at Bushwick Avenue and Scheffer Street, Brooklyn, the accident occurred, was fatally defective.-Smith v. City of N.Y., 270 App. Div. 905, 61 N.Y.S. 2d 744 [1946], aff'd without opinion, 296 N.Y. 921, 73 N.E. 2d 39 [1947].

¶ 20. Where plaintiff's original notice of claim served on City to recover for injuries sustained as result of alleged sidewalk defect, described the place of the accident as "at or near the **South East** corner of Unionport Road and East Tremont Avenue", it was error to grant plaintiff's motion, made over a year later, to amend the notice of claim to designate the "**South West** corner of Unionport Road and East Tremont Avenue".-Balding v. Park Plains Corp., 70 N.Y.S. 2d 181 [1947].

¶ 21. Notice which fixed place at which plaintiff was injured as the "east side of Troy Avenue between Prospect Place and Park Place", Brooklyn, was vague, and the notice of intention to sue was therefore fatally defective and the right to sue the City terminated six months after happening of the accident. The remedy was not revived thereafter so as

to enable plaintiffs to amend the notice, by reason of enactment of Laws of 1945, ch. 694.-Rozell v. City of New York, 271 App. Div. 832, 65 N.Y.S. 2d 864 [1946].

¶ 22. Notice of claim which consisted of a diagram containing an "X" mark allegedly indicating the place where plaintiff fell, was sufficient. Cohen v. City of N.Y., 296 N.Y. 814, 72 N.E. 2d 11 [1947], reversing 270 App. Div. 1017, 62 N.Y.S. 2d 455 [1946] which held that since the mark indicated the accident at a place approximately 100 feet westerly of the actual place of the accident as testified to by the plaintiff upon the trial, there was a fatal variance precluding any recovery.

¶ 23. Where plaintiff, suing City to recover for fall sustained because of alleged defect in fifth step of a certain stairway, inadvertently referred to the step as the third, she would be permitted to amend her notice of claim to specify the fifth step, notwithstanding City's claim of prejudice because the step had been repaired and it could not ascertain its condition as of time of the accident. It appeared that the City had repaired the step immediately after the occurrence so that the evidence no longer existed when the original notice was served.-In re Nash (City of N.Y.), 117 (98) N.Y.L.J. (4-28-47) 1656, Col. 5 M.

¶ 24. In action to recover for personal injuries allegedly sustained by plaintiff in fall through space between a subway station platform and a subway train car, a notice of claim which stated that the city negligently permitted an "unusually wide and dangerous opening" between the edge of the platform and the subway car to exist "at or about Canal Street Station", without further specification of the place, although the Canal Street Station consists of three separate and distinct train levels, each level with platforms to accommodate the trains operated in two directions, running under different streets, with the distance from one station to another being almost three blocks, **held** insufficient.-Marino V. City of N.Y., 277 App. Div. 1003, 100 N.Y.S. 2d 173 [1950].

¶ 25. The plaintiff was injured on a ferry boat crossing from Staten Island to New York when, as the boat neared the New York side it hit pilings causing the plaintiff to be thrown to the deck. The notice of claim filed by the plaintiff was held sufficient although it did not state the name of the ferry boat, the time it left Staten Island, or the place of the accident.-Badaracco v. City of New York, 297 N.Y. 657, 76 N.E. 2d 322 [1947].

¶ 26. The notice served on the Comptroller with respect to plaintiff's claim for damages to his property as result of construction of subway adjacent thereto, was not defective because it set forth his relation to the building as "owner and/or lessee." The alleged defect could not have resulted in prejudice to the City, as it was immaterial whether claimant was the owner or lessee as he would have a cause of action in either case, and in any event his exact legal status could have been ascertained at the hearing held by the City.-Felder v. George R. Flinn Corp., 181 Misc. 119, 45 N.Y.S. 2d 439 [1943].

¶ 27. Notice of claim presented to Comptroller by pedestrian injured when a truck came into contact with the visors of the lighting section of a traffic light pole and caused the top section of the pole to fall upon him, **held** not insufficient for failure to disclose that the act of negligence of a third party was in any way responsible for the injuries, and that the traffic light signal which caused the injuries was affixed to a stanchion which inclined toward the curb so that a portion extended over the roadway. The notice was in substantial compliance with the statute and set forth a time when and place where the accident occurred, and described the claim insofar as it related to the City of New York, which information was sufficient to enable the City to investigate the claim.-Kamnitzer v. City of New York, 265 App. Div. 636, 40 N.Y.S. 2d 139 [1943].

¶ 28. The notice served on the Comptroller with respect to the plaintiff's claim for damages to his property as the result of the construction of a subway adjacent thereto was not defective for failure to set forth the acts or omissions causing the damage, as there is no requirement that the cause be specified. Even if a statement of cause were required, the notice disclosed that the cause was undermining of the building due to carelessness in subway construction. The specification of the date of injury was sufficient, as it was stated that the condition of the complaint was caused by "undermining," and that the subway construction occurred in 1941 and 1942 and was still continuing.-Felder v. George

R. Flinn Corp., 181 Misc. 119, 45 N.Y.S. 2d 439 [1943].

¶ 29. The notice of claim was not defective for failure to allege that it was the City or an agent thereof which brought about the alleged injuries to the building. The Admin. Code does not require such an allegation.-Id.

¶ 30. Notice of claim which specified that the damage was to a "Fruehauf Semi-Trailer No. 49876" and that the damage amounted to $156.28, sufficiently complied with Admin. Code § 394a-1.0(b) in that it showed "in detail the property alleged to have been damaged or destroyed, and the value thereof".-Reich Bros. L. I. Motor Freight v. City of N.Y., 101 (40) N.Y.L.J. (2-18-39) 795, Col. 7 M.

¶ 31. In action against City of New York to recover for property damage, notice which specified that the damage was to an automobile owned by the plaintiff and identified as "a 1941 Chrysler Royal bearing registration No. 1K1337," and that the damage amounted to "the sum of $247.25," **held** sufficiently to comply with Admin. Code § 394a-1.0(b), as it showed in detail the property alleged to have been damaged or destroyed and the value thereof.-Chasnov v. City of N.Y., 181 Misc. 367, 47 N.Y.S. 2d 418 [1943].

¶ 32. The computation of the time in which service of the notice must be made upon the City of New York under Admin. Code § 394a-1.0 is governed by General Construction Law § 30, and not § 20, inasmuch as Admin. Code § 394a-1.0 specifies the period for service in months, and not in days.-Jablon v. City of N.Y., 177 Misc. 838, 31 N.Y.S. 2d 764 [1941], aff'd 268 App. Div. 859, 58 N.Y.S. 2d 82 [1944].

¶ 33. Where the last day of the six-month period for service of a notice upon the City pursuant to Admin. Code § 394a-1.0 fell upon a Sunday, the service of the notice on the following day was ineffective, since the computation of days was governed by General Construction Law § 30, and this section contained no reservation excluding Sundays and public holidays in the computation of time.-Id.

¶ 34. Under provisions of the Soldiers and Sailors Civil Relief Act, plaintiff, who was in military service at time of the occurrence and for the entire six months during which the notice required by Admin. Code § 394a-1.0c should have been served, was relieved of the necessity of serving the notice within the statutory time.-Calderon v. City of N.Y., 184 Misc. 1057, 55 N.Y. Supp. 2d 674 [1945].

¶ 35. In action against City of New York to recover damages for personal injuries arising out of City's alleged negligence, a verdict for plaintiff was set aside and the complaint dismissed for failure to file the notice of claim and intention to sue until July 19, 1943, although the last date to file the notice was June 14 under Admin. Code § 394a-1.0. A finding that plaintiff was physically and mentally incapable of complying with the statute was against the weight of evidence, where plaintiff had been confined to his bed and home for three weks but thereafter visited his doctor's office about 18 times, the doctor testified he was normal mentally and able to use the telephone, for approximately three months he was able to perform light duties as porter and doorman, and he testified he did not engage a lawyer until July, 1943, because he was waiting for the City to send an agent to see him about his claim.-Bertha v. City of N.Y., 114 (120) N.Y.L.J. (12-24-45) 1435, Col. 5 T.

¶ 36. Provisions of General Municipal Law § 50-e requiring a notice of claim to be given within 60 days after the claim arises, did not apply to plaintiff who was injured in a subway accident on July 28, 1945, as § 50-e did not take effect until September 1, 1945. Admin. Code § 394a-1.0, subd. c, provides for a six months' period in which to serve a notice of claim.-Everett v. City of New York, 186 Misc. 39, 58 N.Y. Supp. (2d) 463 [1945].

¶ 37. Where the accident occurred on August 11, the service of a notice of claim upon the City on October 11, was timely.-In re Nash (City of N.Y.), 117 (98) N.Y.L.J. (4-28-47) 1656, Col. 5 M.

¶ 38. Failure of five-year-old infant to serve notice of intention to sue the Board of Education within six months after the cause of action accrued, did not bar his cause of action, since provision of the statute that the action must be commenced within one year after the cause accrued is not in the nature of a Statute of Limitations, which runs during

infancy.-Tilinsky v. City of New York, 255 App. Div. 815, 7 N.Y.S. 2d 402 [1938].

¶ 39. Failure of plaintiff, within six months after his alleged injury, to serve upon the Corporation Counsel and Comptroller of the City of New York a notice of his intention to sue the City, **held** not to preclude the maintenance of his action against the city, where the plaintiff was a boy 13 years of age at the time, and after examination and cross-examination of him the Court was of the opinion that during such six-month period he did not have sufficient understanding or experience to appreciate the requirements of law as to service of the intention to sue, and the notice was in fact served eight months after the accident.-Cloyd v. City of N.Y., 101 (103) N.Y.L.J. (5-4-39) 2064, Col. 2 T.

¶ 40. Russo v. City of New York (258 N.Y. 344), is authority for a statement that in some instances an infant is not to be held to strict compliance with Admin. Code § 394a-1.0, subd. c, but it is not authority for a statement that the provisions of the Admin. Code may be totally disregarded in any case simply because plaintiff is an infant or that no notice of claim and intention to sue need be served where the plaintiff is an infant.-White v. Bd. of Education of City of N.Y., 109 (25) N.Y.L.J. (1-30-43) 422, Col. 2 M.

¶ 41. Where plaintiffs filed with the Comptroller and Corporation Counsel of the City of New York original and carbon copies of the intention to commence the action, together with a verified statement showing in detail the property damaged or destroyed and the value thereof, and both the Comptroller and Corporation Counsel stamped on the original copies the statement that they had been received, but for some reason each office retained the carbon copies and returned the originals to the plaintiffs, there was nevertheless a sufficient filing within meaning of the statute.-D'Angelo v. City of N.Y., 107 (101) N.Y.L.J. (5-1-42) 1848, Col. 3 M.

¶ 42. Where an original and true copy of the claim against the City were tendered at the proper offices and the copy was retained in each office, and a stamped endorsement admitting such receipt was endorsed on the original, this constituted a sufficient filing within meaning of the statute, and a motion to permit plaintiff to substitute the original notices of claim in lieu of the copies, was unnecessary.-Abrami v. City of N.Y., 117 (69) N.Y.L.J. (3-25-47) 1164, Col. 4 F.

¶ 43. Admin. Code § 349a-1.0 now requires that notice of intention to sue the City be served upon the Corporation Counsel in like manner as the service of a summons in the Supreme Court, although prior to 1933 notice of intention to sue was required merely to be filed with, or in some way received by, the Corporation Counsel.-Byrnes v. City of N.Y., 188 Misc. 85, 69 N.Y.S. 2d 375 [1945].

¶ 44. Plaintiff-wife's failure to serve a notice of intention to sue on the Corporation Counsel was not fatal to her cause of action, where the notice of claim served, containing a notice of intention to sue, was transmitted by the Comptroller, upon whom it was served, to the Corporation Counsel, to whom it was directed, and an examination of the plaintiff was thereon conducted.-Zimmerman v. City of N.Y., 183 Misc. 298, 53 N.Y.S. 2d 434 [1944].

¶ 45. However, the husband was barred from recovery, in his action for medical expenses and loss of his wife's services, by his own unexplained failure to appear for examination by the Comptroller on the day set therefor. That the wife had recovered in her action was immaterial, as the husband's action was distinct and severable from hers. That the wife in her examination was questioned concerning medical expenses, was also immaterial.-Id.

¶ 46. In view of provisions of General Municipal Law § 50-e, service of notice of claim and notice of intention to sue upon the Corporation Counsel of the City of New York was sufficient without service on the Comptroller in addition thereto. Provisions of the Admin. Code, § 394a-1.0, requiring duplicate service, are no longer applicable.-Ferrara v. City of N.Y., 187 Misc. 478, 65 N.Y.S. 2d 327 [1946].

¶ 47. In action against City to recover for personal injuries, court had power to permit plaintiff to amend his notice of claim and the complaint so as to increase the amount sued for (97 N.Y. 620; Gen. Mun. Law § 50-e, subd. 6).-Kidziak v. City of N.Y., 114 (107) N.Y.L.J. (11-7-45) 1213, Col. 1 M.

¶ 48. Plaintiff **held** entitled to serve amended notice of claim upon City of New York.-In re Primscott (City of N.Y.), 115 (84) N.Y.L.J. (4-11-46) 1434, Col. 3 M.

¶ 49. A written notice of intention to sue served upon the City within six months after the happening of the accident on November 13, 1941, if defective, could not be rendered valid by means of amendment as of June, 1946, under Laws of 1945, ch. 694, effective September 1, 1945.-Marino v. City of N.Y., 272 App. Div. 822, 70 N.Y.S. 2d 189 [1947].

¶ 50. Where notice of claim had been timely asserted by wife for personal injuries, by husband for loss of her services and medical expenses and by the infant daughter for her personal injuries, a motion now made by the husband four years after the accident to amend the notice to include therein his claim for loss of the services of his daughter and for medical expense incurred by him in her behalf, was denied, as an entirely new claim was sought to be interposed and not an amendment of a mere technical or formal nature. Moreover, the failure to include the claim did not appear to have been inadvertent, and the assertion of a new claim was also barred by Statute of Limitations.-Fanelli v. City of N.Y., 130 (59) N.Y.L.J. (9-22-53) 509, Col. 3 F.

¶ 51. That the City had retained the notice and examined the plaintiff, **held** not to constitute a waiver of defects in the notice as served, notwithstanding that on the examination plaintiff, in response to a question, stated that she was injured at the curb of the southwest corner of 29th Street and Eighth Avenue.-Todd v. City of New York, 23 N.Y.S. 2d 884 [1940].

¶ 52. That claimant in action against City to recover damages for injuries sustained in fall upon an icy sidewalk, and for loss of services, had been examined by the City as to the details of his claim, did not relieve him of the necessity of complying with the statute requiring the giving of notice to officers of the municipality.-Meiner v. City of N.Y., 262 App. Div. 970, 30 N.Y.S. 2d 177 [1941].

¶ 53. Failure to serve a notice of intention to sue upon the Corporation Counsel with respect to accident occurring in October, 1940, was not cured by the examination of plaintiff by a representative of the Corporation Counsel's office on behalf of the Comptroller. Furthermore, General Municipal Law § 50-e, subd. 6, permitting amendments, applies only to mistakes, omissions and defects pertaining "to the manner or time of service" of the notice of claim. Accordingly, plaintiff would not be permitted to serve a notice of intention to commence the action upon the Corporation Counsel nunc pro tunc, and to amend the complaint.-Lerner v. City of N.Y., 119 (19) N.Y.L.J. (1-28-48) 354, Col. 3 F.

¶ 54. Sixty days was to be added to the three-month period prescribed by General Municipal Law § 71 for the commencement of an action to recover for damages to property sustained as a result of a Harlem riot, inasmuch as plaintiff was not free to commence an action during such 60-day period by reason of the provision of New York City Admin. Code § 394a-1.0.-Butchers' Mutual Casualty Co. v. City of N.Y., 182 Misc. 809, 52 N.Y.S. 2d 121 [1944].

¶ 55. A cause of action automatically assigned to an insurance carrier on December 19 by virtue of the provisions of § 29 of the Workmen's Compensation Law accrued on that date. Therefore an action by the carrier against the City was timely where it was commenced on the following February 24, that date being within one year from the time when the cause of action accrued.-Aetna Casualty and Surety Co. v. City of New York, 5 Misc. 2d 110, 160 N.Y.S. 2d 365 [1956].

¶ 56. An action for negligence based upon injuries sustained by the plaintiff while riding on a City subway train is subject to a one-year statute of limitations under Admin. Code § 394a-1.0, subd. c, or General Municipal Law, §§ 50-b, 50-c, and not to the three-year statute under C.P.A. § 49, subd. 6, which is applicable to negligence actions generally. Plaintiff's contention that the short statute applies only to actions involving governmental functions of the City and that actions relative to "proprietary" functions are governed by the longer statute is rejected. These short statutes are a concomitant of the State's waiver of immunity from civil suit in tort, with the sovereign's right to attach

conditions thereto. While the whole question of artificial classification of governmental functions may well stand reappraisal, the Court is not here called upon to characterize the operation of a subway system. The power of the Legislature to lay down a short statute of limitations as to all litigation against a municipality is beyond dispute.-McGuire v. City of New York, 3 Misc. 2d 569, 153 N.Y.S. 2d 368 [1956].

¶ 57. The Board of Estimate passed a resolution that a certain street was to be widened. Letters were sent to property owners directing them to remove all encroachments on the sidewalks which were to be narrowed. Plaintiff complied with this directive at a cost of $275. Thereafter, the City resolved that the roadway would not be widened. **Held:** plaintiff was not entitled to judgment against the City for the expense of removing the encroachments when the second resolution did not rescind or abrogate the first resolution.-Rubin v. City of New York, 42 Misc. 2d 598, 252 N.Y.S. 2d 1016 [1964].

¶ 58. The 30-day period following the service of notice of claim upon the Comptroller, during which period the plaintiff is stayed from bringing an action, is to be excluded in computing the time within which an action against the City must be begun, but the additional period during which by stipulation the time for giving of evidence of the claim before the Comptroller was adjourned and during which period it was agreed that no action shall be brought, might not be excluded from the computation of time. Although the Comptroller had power to adjourn the examination and to impose the condition that despite the adjournment he should have 30 days after completion of examination within which to determine whether he would settle the claim, the Comptroller did not have the further power to extend beyond six years and 30 days the time for commencing an action against the City.-Woodcrest Const. Co. v. City of New York, 185 Misc. 18, 57 N.Y.S. 2d 498 [1945], aff'd 273 App. Div. 752, 75 N.Y.S. 2d 299 [1947].

¶ 59. Complaint, in action against City of New York, was dismissed where it was not begun until 15 months and 10 days after the accident. The cause of action accrued on the date of the accident although plaintiff could not have commenced an action until 30 days after she presented her claim to the Comptroller. Such 30 day limitation for bringing the action under C.P.A. § 24, merely extended the one-year limitation for the additional thirty days. Contention that the cause of action accrued when written notice of claim was presented to the Comptroller, was rejected.-Javet v. City of N.Y., 187 Misc. 841, 65 N.Y.S. 2d 6 [1946], aff'd 272 App. Div. 795, 71 N.Y.S. 2d 925 [1947].

¶ 60. Where written notice of claim against City for personal injuries was duly served upon the City Comptroller and the claimant was subpoenaed to appear at his office for examination on a certain date but, due to the claimant's physical inability to attend, adjournments were granted and claimant died during the period of an adjournment, the administratrix of the claimant might institute an action against the City for injuries and death without awaiting the expiration of the period of time prescribed during which the Comptroller may decide whether to pay the claim.-Sharkey v. City of N.Y., 80 N.Y.S. 2d 284 [1948].

¶ 61. The necessity for service upon City of a notice of claim and demand for payment in connection with a claim for compensation allegedly due City employees, with a consequent stay of action for 30 days thereafter, had the effect of tolling the Statute of Limitations for a like period.-In re McGinnis (O'Dwyer), 121 (20) N.Y.L.J. (1-28-49) 351, Col. 2 F. For prior opinion, see 120 (72) N.Y.L.J. (1-13-48) 765, Col. 4 F.

¶ 62. Provision of Civil Practice Act § 24, that where commencement of action has been stayed by a statutory prohibition the period of the stay is not a part of the time limited for commencement of the action, resulted in the exclusion of the 30-day stay of action in Admin. Code § 394a-1.0 from the one-year limitation contained in a paving contract with the City of New York for the commencement of an action thereon. A distinction might not be made between cases where § 394a-1.0 becomes involved at the end of a period of limitation and where it is acted upon at an early portion of the period.-Amex Asphalt Corp. v. City of N.Y., 263 App. Div. 968, 33 N.Y.S. 2d 182 [1942], aff'd 288 N.Y. 721, 43 N.E. 2d 97 [1943].

¶ 63. The decision in Di Bartolo v. City of N.Y., 276 App. Div. 351, 41 N.Y.S. 2d 845 [1944], means that the burden is on the City to plead a violation of a stipulation adjourning the time for an examination by the Comptroller,

with resultant prejudice to the City, and to prove that fact on the trial. The mere violation of the stipulation would not be important, but what would be important is the prejudice to the City because of the violation.-Angelo v. City of N.Y., 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 64. Where examination of plaintiff by the Comptroller was adjourned by stipulation but the plaintiff failed to appear on the adjourned date, and, although he waited more that 30 days after the date he served notice upon the Comptroller, he nevertheless brought his action before any examination was had and therefore before the expiration of 30 days after conclusion of the examination, as required by the stipulation, his action was dismissed as premature. Violation of the terms of a stipulation with the Comptroller is as serious a matter as the violation of the statute itself.-Angelo v. City of New York, 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 65. Where on January 7, when the examination of plaintiff by the Comptroller was further adjourned, the City still had five days from the date to which the examination was adjourned within which to adjust the claim, but one day later, on January 8, when the City verified its amended answer, it admitted that notices of claim and of intention to sue had been presented to the Comptroller for adjustment "and that no adjustment thereof has been made," this amounted to a clear confession, for the purpose of pleading and trial, that the 30-day period for adjusting the claim had expired and that the Comptroller had neglected and refused to make an adjustment during that period, and hence the action was not to be deemed prematurely brought where it was commenced prior to five days after the adjourned date. Furthermore, an examination of the plaintiff was thereafter conducted by the Comptroller more than 11 months before the trial with no suggestion of adjustment or payment being subsequently made by the Comptroller, so that the plaintiffs were justified in assuming that the question of premature institution of the action was out of the case. Also, if the City desired to rely on the stipulation of the parties to establish that the action was prematurely commenced, the special agreement so relied upon should have been pleaded as an affirmative defense.-Di Bartolo v. City of N.Y., 293 N.Y 114, 56 N.E. 2d 71 [1944].

¶ 66. Where plaintiff, in his action against the City, alleged full performance of all conditions precedent to institution of the action, that he had been notified to appear for examination by the Comptroller, and that a stipulation had been entered into fixing a date for his examination, but he failed to allege any excuse for his non-appearance on the adjourned date, a defense alleging that plaintiff failed to appear in accordance with the stipulation and that the stipulation provided that no suit might be brought until after expiration of the time within which the Comptroller could settle or adjust the claim, **held** sufficient. Plaintiff had the burden of excusing his absence if the stipulation was in force.-Angelo v. City of N.Y., 186 Misc. 369, 63 N.Y.S. 2d 243 [1946].

¶ 67. Where plaintiff had filed its notice of claim with the City Comptroller on March 24, 1938, seven days later it had been subpoenaed to appear before the Comptroller and give evidence as to its claim, the examination was thereafter adjourned five times at plaintiff's request, on the final adjourned date plaintiff failed to appear and on November 28, 1938 the Comptroller notified plaintiff that its claim was disallowed, but on June 12, 1941 plaintiff notified the Comptroller that it was ready to be examined at the Comptroller's convenience, and upon the Comptroller's refusal to hold the examination plaintiff instituted the present action against the City, City **held** not entitled to summary judgment, inasmusch as there was present an issue as to whether the City had in fact waived the right to examine, as the subpoena was not ignored and an opportunity for examination was given the Comptroller prior to institution of the suit.-Daniel J. Rice, Inc. v. City of N.Y., 109 (69) N.Y.L.J. (3-25-43) 1166, Col. 2 F.

¶ 68. Absence of allegation in complaint that at least 30 days had elapsed since the demand upon which the action was founded was presented to the Comptroller for adjustment and that the Comptroller had failed to make adjustment, **held** to require dismissal of complaint.-Venditti v. City of N.Y., 187 Misc. 84, 60 N.Y.S. 2d 792 [1946], reversed without opinion, 188 Misc. 271, 67 N.Y.S. 2d 866 [1946] by permitting plaintiff to amend his complaint and include the required allegation.

¶ 69. After dismissal without prejudice of action against City for failure to comply with Charter provisions prescribing conditions precedent to the beginning of action, plaintiff could commence another action within one year

(C.P.A. § 23; 176 N.Y. 404; 250 A.D. 102; &c.).-Angelo v. City of N.Y., 115 (50) N.Y.L.J. (3-2-46) 848, Col. 4 F.

¶ 70. Personal injury action which was prematurely brought against the City of New York because the summons and complaint were served upon the City two days prior to the 30-day period required to elapse after service of notice upon the City, was nevertheless brought "within the time limited therefor", within meaning of Civil Practice Act § 23, where it was otherwise brought within the time limited by the general provisions of the Civil Practice Act. Hence the provisions of § 23 were applicable to make timely a new action commenced a few days after dismissal of the prior action as premature.-Di Donna v. City of New York, 48 N.Y.S. 2d 847 [1944].

¶ 71. Plaintiff's individual suit against City for injuries could not be related back to the date he commenced suit, in a representative capacity, on behalf of his wife who had been killed in the same accident, so as to bring his individual suit within the Statute of Limitations.-Iacono v. City of N.Y., 136 N.Y.S. 2d 767 [1954].

¶ 72. Motion of the City for leave to serve a second amended answer pleading Statute of Limitations was granted where City previously had made such motion and had then inadvertently failed to state reliance upon such statute in its first amended answer.-Manevetz v. City of New York, 283 App. Div. 1095, 131 N.Y.S. 2d 664 [1954].

¶ 73. Contention that the infant-plaintiff's action against the City was barred by virtue of Admin. Code § 394a-1.0, subd. c, where it was not brought until over two years after the accident, was rejected (C.P.A. § 60; 258 N.Y. 344; 7 N.Y.S. 2d 402).-In re Hector, 193 Misc. 727, 85 N.Y.S. 2d 440 [1948].

¶ 74. Admin. Code § 394a-1.0(c) operates as a Statute of Limitations, and Court may not excuse failure of the plaintiff to institute the action within the time limited.-Klein v. City of N.Y., 118 (117) N.Y.L.J. (12-1-47) 1537, Col. 4 F.

¶ 75. In action against City to recover for injuries sustained by fall on snow and ice, City **held** precluded from setting up the one-year statute of limitations prescribed by Admin. Code § 394a-1.0, by its failure to plead such bar in the answer or to move to amend at the trial.-Reilley v. City of N.Y., 273 App. Div. 1014, 78 N.Y.S. 2d 781 [1948], aff'd 298 N.Y. 710, 83 N.E. 2d 12 [1948].

¶ 76. That the complaint, in plaintiff's action against the City to recover for injuries sustained when she slipped on snow and ice upon a sidewalk, contained a count in nuisance as well as a count in negligence, did not render inapplicable Admin. Code § 394a-1.0, inasmuch as the case was submitted to the jury on the theory of negligence only, and moreover the rules applicable to negligence would be applied where the torts were co-existing and practically inseparable, and the same acts or omissions constituting negligence gave rise to a nuisance.-Jablon v. City of N.Y., 177 Misc. 838, 31 N.Y.S. 2d 764 [1941], aff'd 268 App. Div. 859, 58 N.Y.S. 2d 82 [1944].

¶ 77. In an action for injunctive relief against the maintenance of a culvert on plaintiff's land which blocked the flow of a stream so as to cause an overflow of sewage and surface waters upon plaintiff's premises and for damages, it was not necessary to allege the prior service of a notice of claim. Although the complaint demanded alternative relief that plaintiffs be compensated in damages for the permanent appropriation of their land, the defendant's contention that the recovery of damages was the main object of the action and that proof of service of a notice of claim must be proved was rejected.-Missall v. Palma, 292 N.Y. 563, 54 N.E. 2d 686 [1944].

¶ 78. This section is a condition precedent to the commencement of a statutory action to recover treble damages for the destruction of trees and shrubs when the City entered upon the plaintiff's lands after the commencement of condemnation proceeding but before the vesting of title in the City.-Rice v. City of New York, 32 Misc. 2d 942, 225 N.Y.S. 2d 65 [1962].

¶ 79. Provision of Greater New York Charter § 261 prohibiting maintenance of action against the City unless a notice of intention to sue was served upon the Corporation Counsel and the Comptroller within six months after accrual of the cause, and unless the action were commenced within one year after the accrual, were in conflict with the federal

Jones Act and the uniform operation of the Maritime Law, and were therefore inoperative in an action under the Jones Act.-Frame v. City of N.Y., 34 F. Supp. 194 [1940].

¶ 80. Plaintiff, suing as a "paying" patient at a City hospital to recover for injuries allegedly sustained by reason of negligence of a physician employed at the hospital by the City, **held** not entitled to have struck out a defense asserting that the action against the physician was not commenced within the time prescribed within General Municipal Law, § 50-d, on the theory that the physician's services were not gratuitously rendered and therefore he was not entitled to protection of the statute and that as to him the two-year Statute of Limitations was applicable. In pressing such motion plaintiff placed herself in anamalous position of asserting a common law action against the physician for whose malpractice the City would not be liable, and at the same time continuing her suit against the City on theory it was liable by virtue of the statute. So long as the action was maintained in the present form, with the City retained as a defendant, plaintiff was required to adhere to the requirements of the statute, including the one-year period of limitation applicable thereto.-Mackrell v. City of N.Y., 183 Misc. 1036, 52 N.Y.S. 2d 844 [1944].

¶ 81. In an action for negligence and malpractice, the 90-day period prescribed by subd. c does not begin to run at the last date of negligence of malpractice but begins to run at the end of a continuous period of treatment.-Borgia v. City of New York, 12 N.Y. 2d 151, 237 N.Y.S. 2d 319, 187 N.E. 2d 777 [1962].

¶ 82. In an action to recover for the malpractice of a physician who rendered services gratuitously to a person in a public institution maintained by the City of New York, a notice of intention to commence an action must be served within six months, pursuant to this section, whether the action is against the municipality or the physician.-De Licka v. Leo, 281 N.Y. 266, 22 N.E. 2d 367 [1939].

¶ 83. Under General Municipal Law § 50-d a physician or dentist rendering services gratuitously to a person in a public institution maintained by a municipal corporation may be sued, but such right to sue must be governed by statutes of limitation similar to those affecting the municipality itself. Hence plaintiff, whose intestate was allegedly treated in a negligent manner by defendant physician at a child health station maintained by the City, might properly be sued, along with the City, and the notice of intention to sue was timely and the action was instituted within the period fixed by Admin. Code § 394a-1.0, where the action was brought between six months and one year after the alleged cause of action accrued.-Grimaldi v. City of N.Y., 177 Misc. 492, 30 N.Y.S. 2d 366 [1941].

¶ 84. Requirements of New York City Charter § 261 and of Admin. Code § 392a-1.0, that an action be commenced within one year after accrual of the cause of action, and that notice of intention to commence such an action be given within six months after accrual, apply only to actions based upon negligence or nuisance, and not to an action against the City to recover for damages to plaintiff's building resulting from the demolition of the building adjoining the plaintiff's building (249 App. Div. 625).-Aeonitt Realty Corp. v. City of N.Y., 105 (10) N.Y.L.J. (1-13-41) 191, Col. 6 M.

¶ 85. Requirement of Admin. Code relative to giving of notice to the City of claims against it applied solely to acts founded on negligence or nuisance and not to a claim for damage to an adjoining building resulting from construction work where the liability was predicated on violation of a statute and not on negligence.-Victor A. Harder Realty & Const. Co. v. City of N.Y., 64 N.Y.S. 2d 310 [1946].

¶ 86. In an action against the New York City Housing Authority it is not necessary to serve a notice of claim or intention to sue upon the Comptroller and/or the Corporation Counsel of the City of New York.-Firman v. N.Y. City Housing Authority, 117 (44) N.Y.L.J. (2-24-47) 736, Col. 6 T.

¶ 87. Where no notice of claim had been filed on behalf of the husband, although such notice was filed on behalf of the wife, the judgment entered in favor of the husband for loss of services was set aside, since the claim filed by the wife did not inure to the husband's credit, and there could be no waiver of requirements of the Admin. Code. The claim for loss of services was one for "injuries to person".-Gordon v. City of N.Y., 107 (131) N.Y.L.J. (6-6-42) 2419, Col. 4

M.

¶ 88. City employee who failed to present a notice of claim to the Comptroller or to comply with Admin. Code § 394a-1.0, subd. a, **held** precluded from commencing a proceeding under C.P.A. Art. 78 for order directing respondents to pay him certain back pay alleged to be due him by reason of his retroactive seniority.-In re Strauss (Reid), 197 Misc. 346, 95 N.Y.S. 2d 269 [1950].

¶ 89. Respondent's claim for damages to its property allegedly resulting from the unauthorized dumping of waste material thereon by the City of New York, was founded upon a consummated invasion of its property, not upon intermittent and recurring injuries, and accordingly its damages were not limited by Admin. Code § 394a-1.0, subd. b, to the period of six months prior to the filing of notice of claim under that law.-Bomptin Realty Co. v. City of N.Y., 276 App. Div. 1094, 96 N.Y.S. 2d 414 [1950], rev'g 196 Misc. 218, 91 N.Y.S. 2d 780 [1949].

¶ 90. Although action by contractor against City to recover an alleged balance due for work performed was not brought within the six month period after issuance of certificate by the Commissioner of Public Works, as the contract required, it was nevertheless deemed timely as the City had not given plaintiff notice of the filing of the certificate, and the final certificate was known neither to the plaintiff nor its attorney.-Hauer Const. Co. v. City of N.Y., 125 (60) N.Y.L.J. (3-28-51) 1109, Col. 3 F.

¶ 91. The failure of the father of an injured child to serve a summons and complaint on the Board of Education within one year after his son's accident barred his cause of action.-Glatstein v. City of New York, 135 (126) N.Y.L.J. (6-29-56) 8, Col. 4 F.

¶ 92. An action against the Board of Education was untimely where a contractor finished his work and the work was accepted by the Board on January 19, 1956 and the action was not commenced until February 25, 1957. The contract had provided that no action shall lie against the Board or City upon a claim based upon the contract unless the action shall be commenced within one year after the date of acceptance of the work by the Board.-Lemitt Const. Corp. v. Bd. of Education, 8 Misc. 2d 817, 168 N.Y.S. 2d 541 [1957].

¶ 93. Father and son, who was injured when he was twelve years old due to alleged negligence of Board of Education, instituted an action in the Supreme Court on June 5, 1953. On March 16, 1962 it appeared for trial in the "Blockbuster Part" and on March 19, 1962 the action was dismissed on the ground that plaintiffs' counsel refused to proceed to trial when so directed by the judge. The motion to restore the action to trial was denied and no appeal was taken. Thereafter on September 18, 1962 plaintiff instituted an action in the Civil Court. At that time the son was twenty-one years old. **Held:** While C.P.A. § 60 extended the time of the "infant" son to institute the second action in the Civil Court so as to give him one year after the disability of infancy ceased in which to bring his action the dismissal in the Supreme Court constituted a dismissal for neglect to prosecute. Therefore, C.P.A. § 23 did not protect the plaintiff father from the bar of the Statute of Limitations set forth in this section and his complaint for loss of services was dismissed.-Martello v. Board of Education, 49 Misc. 2d 551, 267 N.Y.S. 2d 963 [1966].

¶ 94. The one year time limitation prescribed by this section is applicable to actions against the City whether the actions arise from the City's governmental functions or from its proprietary functions. The plaintiff, in his action to recover from injuries sustained while a passenger in a city subway train, unsuccessfully contended that the operation of the subways was a proprietary function in which the city was engaged in a business venture and therefore the statute establishing a one year time limitation was invalid as derogatory of plaintiff's common-law remedy.-McGuire v. City of New York, 135 (89) N.Y.L.J. (5-8-56) 12, Col. 1 F.

¶ 95. An action under § K41-44.0 of the Admin. Code to recover six months' salary for loss of employment was a new and special cause of action not governed by the terms of this section and it was not necessary that the plaintiffs present a demand to the Comptroller and wait thirty days for payment or adjustment. Section K41-44.0 is complete in itself and after the plaintiffs complied with all the prerequisites of that section their action could properly be

commenced.-Eckert v. City of New York, 268 App. Div. 46, 48 N.Y.S. 2d 590 [1944], aff'd 296 N.Y. 1037, 73 N.E. 2d 910 [1947].

¶ 96. The plaintiffs by signing City payrolls under protest, demanded the balance due them and the fact that they had not filed a formal notice of claim until several years later was immaterial. The requirement for the filing of a notice of claim as distinguished from the making of a demand is purely procedural and since this section is not substantive, it does not go to the essence of the claim and the plaintiffs were entitled to interest on the amounts due each payroll period from the date they signed their payrolls under protest.-Brunner v. City of New York, 200 Misc. 850, 103 N.Y.S. 2d 382 [1951], modified by 280 App. Div. 965, 116 N.Y.S. 2d 942 [1952] where it was held that signing payroll under protest was not such a demand as is prerequisite for the running of interest.

¶ 97. Since claim of defendant against the third party was contingent upon a recovery against defendant by the plaintiff, requirement of Admin. Code § 394a-1.0 that claims be presented to the Comptroller for adjustment, could not be complied with and would seem to be inapplicable.-Dick v. Sunbright Steam Laundry Corp., 282 App. Div. 928, 125 N.Y.S. 2d 402 [1953], rev'd on other grounds, 307 N.Y. 422, 121 N.E. 2d 399 [1954].

¶ 98. Where a proper notice of claim for damages for personal injuries was served upon the City of New York by the intestate during her lifetime, it was not necesary for her administrator to serve another notice when subsequently a claim was made for her wrongful death, as substantially the wrongful death action was the continuance of the original cause of action for the benefit of those dependent on the services or bounty of deceased and who had been injured by the personal wrong done to her, and Decedent Estate Law § 130 continues for the benefit of those persons a right of action which otherwise would have terminated on the death of the injured person, and enlarges its scope to embrace the injury resulting from his death.-Holmes v. City of N.Y., 269 App. Div. 95, 54 N.Y.S. 2d 289 [1945], aff'd without opinion, 295 N.Y. 615, 64 N.E. 2d 449 [1945].

¶ 99. Where deceased had filed a proper notice of claim against the City for injuries sustained in an accident, and shortly thereafter he died as result of his injuries, motion by his executrix for leave to serve an amended notice of claim to set forth the wrongful death and to increase the damages claimed would be granted in furtherance of orderly procedure to advise the City of the subsequent facts, although actually it would appear not necessary to amend the notice to include the wrongful death claim.-In re Zambrano (City of N.Y.), 117 (25) N.Y.L.J. (1-30-47) 416, Col. 1 F.

¶ 100. Amendment in 1947 of Admin. Code § 394a-1.0 should be read merely as requiring extra details to be stated in the notice of claim, and not as imposing a new obligation upon the legal representative, following death of a claimant, to file a claim.-Sharkey v. City of N.Y., 80 N.Y.S. 2d 284 [1948].

¶ 101. Where infant, suing City of New York and the Board of Education to recover damages for personal injuries, had served his notice to sue upon the Comptroller and the Corporation Counsel but not upon the Board of Education as required by Unconsolidated Laws §§ 1911 and 1912, such omission **held** fatal to the infant's cause of action against the Board of Education.-Tilinsky v. City of New York, 255 App. Div. 815, 7 N.Y.S. 2d 402 [1938].

¶ 102. Greater New York Charter § 262, providing that the Supreme Court shall have exclusive jurisdiction over all actions against the City of New York and that such actions shall be tried in the county within the City in which the cause of action arose, or in the county of New York, subject to power of the court to change the venue in proper cases, was not repealed or superseded by the new Charter, and since it was not inconsistent with the provisions thereof it was still in full force and effect.-Battleman v. Hoffman's Estate, 257 App. Div. 987, 13 N.Y.S. 2d 655 [1939].

¶ 103. Admin. Code § 394a-1.0, requiring service of notice of intention to sue Board of Education to be made within six months after cause of action accrues and limiting time for commencement of the action to one year after the cause of action arose, had no application to cause of action which arose in January 1935, before effective date of the statute, which was on January 1, 1938.-Sartori v. City of N.Y., 258 App. Div. 904, 16 N.Y.S. 2d 211 [1939].

¶ 104. Counterclaim which failed to allege compliance with Admin. Code § 394a-1.0 (a) was insufficient.-City of

N.Y. v. Crotta, 107 (101) N.Y.L.J. (5-1-42) 1845, Col. 4 F.

¶ 105. Provisions of Admin. Code § 394a-1.0, subds. a, b and c, relative to commencement of actions against the City and the giving of notice to the City, are applicable not only to claims but to counterclaims (138 Misc. 524), and hence counterclaims which failed to allege compliance with such provisions were defective, although the paragraphs involved would be sufficient as defenses.-City of N.Y. v. De Marco, 104 (49) N.Y.L.J. (8-2-40) 458, Col. 7 T.

¶ 106. The statute requiring notice to be given the City of New York in an action brought against it should not be construed to include the cross-complaint of a co-defendant whose claim against the City is contingent, particularly where the plaintiff in the action, whose claim was definite and certain, had complied with the statute by apprising the City of his grievance.-Tyson v. Primary Realty Corp., 112 (119) N.Y.L.J. (11-22-44) 1391, Col. 2 F.

¶ 107. Cross-complaint, pleaded under Civil Practice Act § 264 against the City of New York, must comply with the requirements imposed by Admin. Code § 394a-1.0, subd. a, with respect to "every action or special proceeding" against the City.-Patterson v. City of New York, 185 Misc. 610, 57 N.Y.S. 2d 427 [1945].

¶ 108. Service of process made upon the individual defendants, sued both individually and in their respective capacities as officials of the City of New York, by leaving a copy of the summons and complaint with a clerk in the office of the City's Corporation Counsel in charge of a room bearing a sign stating that papers were to be served there, **held** insufficient to constitute valid personal service, as there was no provision of law authorizing service upon them by delivery of the summons to the Corporation Counsel.-Avery v. O'Dwyer, 201 Misc. 989, 110 N.Y.S. 2d 569, modified 280 App. Div. 766, 113 N.Y.S. 2d 686, aff'd without opinion, 305 N.Y. 658, 112 N.E. 2d 428 [1953].

¶ 109. Service of summons made upon the City of New York by leaving a copy of the summons and complaint with a clerk in the office of the City's Corporation Counsel in charge of a room bearing a sign stating that papers were to be served there, **held** sufficient, by virtue of C.P.A. § 228 [Miller v. O'Connell, N.Y.L.J. (3-15-47), p. 1028].-Id.

¶ 110. Motion to correct title of the summons and complaint to include name of the City of New York inadvertently omitted from the title, was denied, notwithstanding the City had knowledge of the claim through its presentation to the Comptroller and the hearing on it, and that the omission was a mere oversight. Nevertheless, under the guise of amendment, basic jurisdictional requirements may not be wholly disregarded.-Id.

¶ 111. The filing of a notice of claim against the City pursuant to this section is not a "proceeding" within the meaning of Judiciary Law § 475 which gives an attorney who appears in a proceeding a lien on his client's cause of action from the time of the commencement of the proceeding. Thus, where an attorney had filed only a notice of claim and a notice of intention to sue he did not have a lien for his legal services on a settlement agreed to between his client and the City of New York.-Matter of Nathan, 178 Misc. 227, 33 N.Y.S. 2d 612 [1942].

¶ 112. Wrongful death and conscious pain and suffering action against City was governed by two-year period of limitations prescribed by Decedent Estate Law § 130, and the time ran from date of decedent's death. Provisions of § 394a-1.0 were not applicable.-Devine v. City of New York, 28 Misc. 2d 88, 214 N.Y.S. 2d 905 [1961].

¶ 113. In an equity action against the City for rescission of a contract claimed to have become incapable of performance, it was unnecessary for plaintiff to allege compliance with § 394a-1.0 of the Code.-Astrove Plumbing & Heating Corp. v. City of New York, 137 (24) N.Y.L.J. (2-4-57) 6, Col. 5 T.

¶ 114. Where a claimant has a right of action against the City, leave to sue is unnecessary, and this motion therefore is denied. If the action proves to be untimely, the City may plead the Statute of Limitation.-Barnathan v. City of New York, 137 (29) N.Y.L.J. (2-11-57) 9, Col. 5 T.

¶ 115. A taxpayer's failure to serve the notice and demand required by § 394a-1.0 will preclude its recovery of a refund of general business and financial tax payments, even where it did not discover its right to refund until too late to

comply with the section.-Rohy & Haas v. City of New York, 135 (120) N.Y.L.J. (6-21-56) 7, Col. 4 T.

¶ 116. Where an action was commenced prior to the 1958 amendment to § 50-h of the General Municipal Law, the failure of the plaintiff to appear for examination pursuant to demand of the defendant was insufficient as a defense to the action since once the action was started the Comptroller's right to demand an examination was lost.-Gross v. City of New York, 144 (121) N.Y.L.J. (12-27-60) 6, Col. 7 M.

¶ 117. In an action against the city for personal injuries, the 75 days elapsing between the time the City demanded a physical examination and the date set for such examination should have been added to the limitation of one year for commencement of the action.-Gurfein v. City of New York, 28 Misc. 2d 252, 214 N.Y.S. 2d 160 [1960].

¶ 118. In an action for personal injuries and loss of services, the period during which plaintiffs were precluded from commencing their action because of the City's demand for a physical examination should have been added to the statutory one-year period provided by this section of the Code.-Israel v. City of New York, 28 Misc. 2d 418, 214 N.Y.S. 2d 161 [1961].

¶ 119. The time during which plaintiff was stayed from commencing an action pending his examination under General Municipal Law § 50-h was added to the statutory one-year period for commencing an action against the City under this section.-Johnson v. City of New York, 148 (24) N.Y.L.J. (8-3-62) 6, Col. 4 T.

¶ 120. Action by plaintiff for breach of contract of purchase of real property in which plaintiff sued for recovery of his down payment under a contract drawn by the City and which provided that if the City was unable to convey marketable title its liability was limited to return of payments made on account of the purchase was not barred because plaintiff failed to present claim to the Comptroller pursuant to this section as this section does not apply to an action which seeks return of plaintiff's money pursuant to express language of a contract.-Redner v. City of N.Y., 53 Misc. 2d 148, 278 N.Y.S. 2d 51 [1967].

¶ 121. Plaintiff was not barred by this section which requires a notice of claim from instituting a third party proceeding against the Department of Social Services when sued by a hospital for medical services where he alleged that he was eligible for Medicaid assistance to pay the claim since this section applies to tort cases and does not apply to third party complaints.-Society of N.Y. Hospital v. Blake, 73 Misc. 2d 305, 341 N.Y.S. 2d 506 [1973].

¶ 122. Notice of claim was not prerequisite to Article 78 proceeding for order directing payment of salary to petitioner for period between date of his termination as an accountant for the City Transit Authority and date of his reinstatement to that position where compliance would be a "futile exercise" and there was no claim to settle, adjust or negotiate and petitioner's right to back pay was based on the Civil Service Law.-In re Gordon (City of N.Y.) 174 (74) N.Y.L.J. (10-15-75) 7, Col. 1 M.

¶ 123. Notice of claim is required in an action against the city for the wrongful inducement of a breach of contract, the gravaman of the complaint being in tort.-Hannibal Gen. Contractors v. St. Matthew and St. Timothy's Housing Corp., 83 Misc. 2d 53, 371 N.Y.S. 2d 535 [1975].

¶ 124. Compliance with the provisions of subdivision a of this section was required, even assuming that an exception exists, where instant action was not essentially for equitable relief, no injunction was sought, eight of the causes of action were for money only and five for declaratory relief.-Aral Development Corp. v. City of New York, 59 App. Div. 2d 883 [1977].

¶ 125. The provisions of this section requiring an allegation that at least thirty days have elapsed since the claim upon which the action is based was presented to the comptroller for adjustment must be included in a nonpayment summary proceeding against the city to recover possession of premises leased by the city for use by a community college, since this is a "hybrid proceeding-action, which may terminate in a money judgment for rent due in addition to a possessory judgment".-Devon Estates v. City of New York, 92 Misc. 2d 1077 [1977].

¶ 126. The requirement of subdivision a of this section that an allegation that 30 days have elapsed since service of a notice of claim upon the Comptroller be contained in every action against the city enlarges the Statute of Limitations to recover upon a liability created by statute (CPLR 214(2)) by a 30 day period.-Kowalski v. Dept. of Corrections of City of N.Y., 66 App. Div. 2d 814, 411 N.Y.S. 2d 367 [1978].

¶ 127. Plaintiff, who was suing city to recover overpayment it made under a contract to improve real property, was not limited to the amount set forth in its notice of claim since this section does not require the notice of claim to be in any particular form and city had actual knowledge of the total amount of plaintiff's claim.-Index Construction Corp. v. City of New York, 180 (82) N.Y.L.J. (10-27-78) 13, Col. 2 T.

¶ 128. Claim of respondent, who was injured in a hit-and-run accident while acting within the scope of his employment as a sanitation worker for the city was dismissed where the only notice given to the city was the filing of a hit-and-run accident report by claimant with the police and knowledge of city personnel, including claimant's superior that he was involved in an accident and demand to Comptroller pursuant to this section was not made.-Nassau Insur. Co. v. Guarascio, 82 App. Div. 2d 505 [1981].

¶ 129. Commissioner of Transportation was directed to accept and file a survey of defects on city streets in the form of maps prepared by professional surveyors to provide the notice required by the "Pothole Law" and Commissioner could not refuse to record such notices because of considerations of administrative convenience or expediency.-Big Apple v. Ameruso, 110 Misc. 2d 688 [1981].

¶ 130. Failure to comply with notice provisions of pothole law cannot be used by city in order to dismiss action for injuries sustained when defendant slipped on a patch of ice.-Miles v. Jennings & Hatwell Oil Co., 115 Misc. 2d 23 [1982].

¶ 131. Compliance with pothole law is not required where there is proof of relevant construction in area of accident.-Aetna Life & Cas. v. City of New York, 116 Misc. 2d 838 [1982].

¶ 132. The pothole law applies to a claim asserted against the city in a third-party action and compliance with that law is a prerequisite to maintaining the third party action.-Schwartz v. Turkin, 115 Misc. 2d 829 [1982].

¶ 133. Plaintiff's failure to allege that written notice of the dangerous condition was given to the city, as required by § 394a-1.0 d.2 requires dismissal of complaint. Fact that city pleaded failure to comply as an affirmative defense is immaterial.-Cipriano v. N.Y.C., 96 App. Div. 2d 817 [1983].

¶ 134. Collapse of portion of public pier does not come within ambit of statute requiring prior notice to city of defect in order to maintain action to recover for injuries. City cannot impose prior notice requirement when condition could not be ascertained by average person from normal observation of public places.-Ferrigno v. N.Y.C., 121 Misc. 2d 602 [1983].

¶ 135. Service of notice of claim must be made upon Comptroller. Failure to make service upon designated officer is fatal defect which mandates dismissal of complaint. Fact that city was not prejudiced is of no moment.-Davidson v. Bronx Municipal Hospital, 99 App. Div. 2d 730 [1984].

¶ 136. Cross claim for additional costs as result of suspension of construction of Second Avenue subway should be dismissed since no notice of claim asserting those damages had been served upon city nor did cross complaint allege service of notice of claim, that 30 days had elapsed and that Comptroller had failed or refused to pay claim. City is not equitably estopped from raising this issue even though it participated in action for 6 yrs. before raising it and an asst. corp. counsel orally agreed to allow belated service of claim.-Chinatown Apts. v. N.Y.C. Transit Authority; Horn Construction Co. vs. N.Y.C., 100 App. Div. 2d 824 [1984].

¶ 137. Determined adequacy of proof of "construction" needed in order for plaintiff to be excepted from prior

written notice requirement of pothole law. Testimony that area appeared to be under construction held to be inadequate proof. Action dismissed.-Aetna Life & Casualty v. N.Y.C., 189 (13) N.Y.L.J. (1-19-83) 14, Col. 3 M.

¶ 138. Where a combined complaint and CPLR Art. 78 petition served upon the Corporation Counsel of the City of New York is later converted into a civil rights action by stipulation of the parties, the original papers suffice as a notice of claim under this section.-Johnson v. Perales, 123 Misc. 2d 659 [1984].

¶ 139. An inspection report filed by a city inspector noting a violation of this code did constitute proper written notice of the defective condition as required by this section since the law does not require that such notices be submitted only by members of the public or by public interest groups.-Ostermeier v. Victorian House, 126 Misc. 2d 46 [1984].

CASE NOTES

¶ 1. Prior written notice pursuant to subsection [d][2] of this section is a condition precedent to a cause of action and one which the plaintiff must prove and plead. Although maps have been held to constitute such written notice, the plaintiff must demonstrate that the maps allegedly filed were filed at least 15 days in advance of the incident in question and that they listed the particular defect which allegedly caused the injury. Plaintiff has not so demonstrated and thus the City's motion for summary judgment is granted.-Acevedo v. City of New York, 128 App. Div. 2d 488 [1987].

¶ 2. Defective sidewalk condition within meaning of NYC Ad Cd § 394a-1.0(d) [7-201 (c)] is not "acknowledged in writing" by a tree inspection report.-Laing v. City of New York, 133 App. Div. 2d 339 [1987] affirmed 71 N.Y. 2d 912 [1988].

¶ 3. Claim against Comptroller for negligence when a person debarking from bus had accident in street and there were no warnings posted. Notice of claim failed to set forth "time when, place where and manner in which the claim arose" per General Municipal Law § 50-e(2) City unable to conduct proper investigation of actual accident sight.-Mitchell v. City of New York, 131 App. Div. 2d 313 [1987].

¶ 4. Prior written notice required by the Pothole Law (NYC Ad Cd § 7-201(c)(2) a condition precedent to action. That allegation was missing from plaintiffs complaint but plaintiff alleges timely written notice was given of a sidewalk defect in form of a map prepared by the Big Apple Pothole and Sidewalk Protection Corp. filed with DOT July 15, 1982 [Matter of Big Apple Pothole v. Ameruso, 110 Misc. 2d 688, 691]. Plaintiff must produce "evidentiary facts" that written notice was given. Similar map was submitted. Issue of fact whether plaintiff fell as result of defect.-Becker v. City of New York, 131 App. Div. 2d 413 [1987].

¶ 5. In two cases plaintiffs were relieved of proving that the city had written notice of an alleged defect. Under the Pothole Law, § 7-201, the city must keep accurate records of all prior notices of defect and make these records accessible. The failure to index a record of all notices of defect in any way but by location hampers discovery making it impermissible.-Shatzkamer v. Eskind, Termine v. City of New York, 139 Misc. 2d 672 [1988].

¶ 6. Broken glass and debris on sidewalk caused plaintiff to fall and receive personal injuries while using a public coin telephone. The accumulation of broken glass, stones, debris, etc. on a public sidewalk island is a condition which falls within scope of Prior Written Notice provision of § 7-201(c). These conditions are indeed dangerous and unsafe and require prior written notice to city. The explicit words "broken glass, stones, debris" need not be stated in the statute to constitute an unsafe condition.-Rebaudo v. N.Y. Tel Co., 139 Misc. 2d 711 [1988].

¶ 7. Illegally parked car on sidewalk does not constitute an "obstruction" within meaning of § 7-201(e)(2). Obstruction statute should be read strictly meaning physical defects in surface of sidewalk.-Lopez v. NYC Hous. Auth., 149 App. Div. 2d 342 [1989].

¶ 8. A concrete pathway located between a schoolyard and a public playground, which was used both as a link between two city streets and as an entrance to the playground, was deemed a "sidewalk" for purposes of the written

notice rule of this section. Fattorusso v. City of New York, 173 A.D.2d 768, 570 N.Y.S.2d 636 (2nd Dept. 1991).

¶ 9. In an action to recover damages caused by defective road conditions, court dismissed complaint on grounds that City had not received prior written notice of condition §7-201(c)(2), although prior notice is not required where it is claimed municipality was affirmatively negligent in causing condition, there was no proof independent contractor hired by City created condition complained of.-Messina v. City of New York, 190 AD2d 659 [1993].

¶ 10. Tenant is not precluded by his failure to comply with §7-201 from asserting landlord's breach of the warranty of habitability as a defense to the City's claim for rent. City of New York v. Jones, NYLJ, May 28, 1992, at 24, col. 5 App. Term, 2d & 11th Jud. Dists. Tenant is precluded by her failure to comply with §7-201 from asserting the City's breach of warranty of habitability as the basis for an affirmative judgment against the City.-City of NY v. Candelario, 156 Misc. 2d 330 [1993].

¶ 11. An abandoned car on a city street is clearly an obstruction requiring prior written notice before incurring liability for injury as a consequence of "dangerous or obstructed condition" on "any street, highway . . .", Ad Code §7-201(c)(2).-Lee v. City of New York, 193 AD2d 787 [1993].

¶ 12. Plaintiff stepped into pothole while alighting from bus and returned to site two days later to photograph pothole found it had been repaired. Plaintiff's claim that for defect to have been repaired within two days meant there must have been prior notice does not meet burden of proof.-Sandler v. NY City Tr. Auth., 188 AD2d 335 [1993].

¶ 13. The 15 day requirement is just a condition precedent to the commencement of an action against the city. The City is only liable for injuries caused by defective conditions it failed to repair in a reasonable period after receiving written notice of defect. A question of fact exists regarding the City's reasonableness in failing to make repairs within 15 days and also whether the plaintiff's injuries were caused by defective conditions.-Weinreb v. City of New York, 193 AD2d 596 [1993].

¶ 14. The street maps filed by the Big Apple Pothole and Sidewalk Protection Corporation with the City Department of Transportation serve as prior written notice of defective conditions indicated thereon, even when the map incorrectly identifies a building as No. 1448 instead of Nos. 1450 and 1452 since the City could have located the defect by comparing the location to the map.-Weinreb v. City of New York, 193 AD2d 596 [1993].

¶ 15. Ad Code §7-201 requirement that moving papers against the City contain an allegation that a 30-day demand upon which the action is based was presented to the Comptroller and that he neglected or refused to make an adjustment or payment for 30 days is inapplicable to a proceeding for repossession brought by a nontenant who was peaceably in possession when ousted by City.-Almonte v. City of N.Y. H.P.D., 158 Misc. 2d 290, 601 NYS2d 245 [1994].

¶ 16. City must have prior notice of defective condition in order to maintain a personal injury action pursuant to Ad Cd §7-201. In this case city had notice of two defective conditions "a short distance away" and a broken curb "a couple of feet away". Such other notices would not necessarily have brought the subject defective condition to the attention of the NYC Transportation Department.-Curci v. City of New York, 209 AD2d 574 [1994].

¶ 17. City proved that it had not been given any prior written notice of alleged defective condition and that no work construction or repair had been performed in two years preceding the accident. Plaintiff's proof consisted of an expert's affidavit who examined the subject area 20 months after the incident and was unable to say that alleged defective condition existed at time of plaintiff's injury or that city created the defect. The complaint was dismissed.-Elstein v. City of New York, 209 AD2d 186 [1994].

¶ 18. Plaintiff is required by Ad Cd §7-201(c) to establish prior notice to City of New York as a condition precedent to an action for personal injury alleging defective sidewalk. Although a prior map of the Big Apple Pothole and Sidewalk Protection Corporation showed the defect the city produced a more recent pre-accident Big Apple map that did not show a defective condition. Subsequent maps supersede prior maps. The complaint was dismissed for

failing to establish notice of condition.-Katz v. City of New York, 212 AD2d 483 [1995].

¶ 19. Prior written notice of defects or hazardous conditions of city streets and sidewalks, Ad Cd §7-201(c), may be traced to the most current map depicting defects by the Big Apple Pothole and Sidewalk Protection Committee Inc., on file with the Department of Transportation, the map closest in time to the accident. In this case, Supreme Court correctly dismissed the complaint when the city produced a successor map that did not show any defect in the area of plaintiff's accident.-Katz v. City of New York, 212 AD2d 483 affirmed 87 NY2d 241 [1996].

¶ 20. A repair order of the Department of Transportation was found to be insufficient to provide written notice of the condition which led to plaintiff's injuries, where the order merely indicated that there were holes in a stretch of roadway which exceeded 400 feet in length.-Fraser v. City of New York, 640 N.Y.S.2d 607 [App. Div. 2d Dept. 1996].

¶ 21. Plaintiff can maintain a cause of action against the City even in the absence of prior written notice of an alleged highway defect, where the municipality was affirmatively negligent in causing or creating the defective condition. The City negligently left in place an inadequately secured guard rail section adjacent to the sign post into which the plaintiff's decedent's car crashed.-Miller v. City of New York, 640 N.Y.S.2d 11 [App. Div. 1st Dept. 1996].

¶ 22. Where in response to a summary eviction proceeding, a tenant interposes a counterclaim against the City for damages, the counterclaim will be dismissed unless there was a proper and timely served notice of claim.-City of New York v. Candelario, 637 N.Y.S.2d 311 [App. Div. 2nd Dept. 1996].

¶ 23. Prior written notice of a defect is a condition precedent which plaintiff must plead and prove in order to maintain an action against the City. Where plaintiff produced a copy of a filed map which showed the defect, but the City produced a subsequently filed map which did not show the defect, the court held that plaintiff did not meet the notice requirement.-Katz v. City of New York, 87 N.Y.2d 241, 638 N.Y.S.2d 593 [1995].

¶ 24. Actual written notice of a defect is an exception to the prior written notice requirement. Where there is such notice, the 15 day "grace period" under the law to repair a defective condition does not apply to insulate the City for failing to take measures within a reasonable time to prevent injury from the condition.-Bernstein v. City of New York, 633 N.Y.S.2d 488 [App. Div. 1st Dept. 1995].

¶ 25. The City is not liable unless the written notice pinpoints the particular defect. Where the accident arose out of an alleged depression in a grassy area between the curbline and sidewalk, the facts that the City had notice of two raised portions of the sidewalk "a short distance away" and a broken curb "a couple of feet away" were not sufficient.-Curci v. City of New York, 209 A.D.2d 574, 619 N.Y.S.2d 98 [2nd Dept. 1994].

¶ 26. Plaintiff has the burden of proving that the City had prior notice, unless it is claimed that the City was affirmatively negligent in causing or creating the defect, in which case proof of notice is not required.-Elstein v. City of New York, 209 A.D.2d 186, 618 N.Y.S. 2d 528 [1st Dept. 1994].

¶ 27. An affidavit of a city official responsible for keeping of an index record of all notices of defective conditions received by the Department of Transportation is sufficient to establish that no prior written notice was received by the City. The affidavit need only indicate that a search was made and no notice was found. However, where it is shown that the City caused or created a hazardous condition, no notices is required. The City here had resurfaced a road without expansion joints, which would have guarded against roadway deterioration otherwise caused by temperature fluctuation and heavy stop-and-go traffic.-Cruz v. City of New York, 630 N.Y.S.2d 523 [App. Div. 1st Dept. 1995].

¶ 28. The City received actual written notice of a sidewalk defect. The adjacent property owner undertook to perform repairs but the work was defective. The court held that the City was not absolved from liability for its failure to properly cure the hazardous condition.-DeJesus v. City of New York, 199 A.D.2d 139, 605 N.Y.S. 2d 253 [1st Dept. 1993].

¶ 29. For purposes of the statutory requirement that the Department of Transportation be given written notice of any "dangerous or obstructed condition" before the City can be held liable as a result of personal injuries caused by such condition, an abandoned car is deemed an obstruction.-Lee v. City of New York, 193 A.D.2d 787, 598 N.Y.S. 2d 273 [2nd Dept. 1993].

¶ 30. Maps filed with the New York City Department of Transportation by the Big Apple Pothole and Sidewalk Protection Corporation (Big Apple) were held to be sufficient to give the City written notice of the allegedly defective condition which led to plaintiff's injuries. The Code does not contain any requirement as to the specificity of the notice. Here, although the maps incorrectly labeled the property in front of which plaintiff fell, the City, upon inspection, would have been able to locate the defective condition which caused plaintiff's injury by comparing the location with the Big Apple map. Thus, defendant's motion for summary judgment by reason of lack of notice had to be denied. However, plaintiff's motion for partial summary judgment on the issue of liability also had to be denied. § 7-201(c) provides that action cannot be maintained unless the City failed to repair the condition within 15 days after receipt of notice. The 15 day requirement is a condition precedent to the commencement of an action against the City, but the City is only liable for injuries resulting from defective conditions which it failed to repair within a reasonable time after receipt of notice.-Weinrib v. City of New York, 193 A.D.2d 596, 597 N.Y.S. 2d 432 [2nd Dept. 1993].

¶ 31. A tenant of a City-owned building was sued for use and occupancy. The court held that the tenant could not interpose an affirmative counterclaim for breach of the warranty of habitability (i.e. a claim in excess of the amount sought by the City) because she had not served a notice of claim against the City under § 7-201.-City of New York v. Candelario, 156 Misc.2d 330, 601 N.Y.S. 2d 371 (App. Term 2nd & 11th Judic. Dists. 1993). However, the same court, in City of New York v. Jones, N.Y.L.J. May 28, 1992, held that the tenant could assert the warranty of habitability as a defense (as opposed to an affirmative counterclaim) to the City's claim for rent.

¶ 32. Plaintiff contended that for the defect in question to have been repaired within two days, there must have been written notice to the City. However, the court held that this fact alone was not sufficient to prove the existence of written notice.-Sandler v. New York City Transit Authority, 188 A.D.2d 335, 591 N.Y.S. 2d 17 [1st Dept. 1992].

¶ 33. The fact that the City had attempted routine maintenance of the road where an accident occurred does not relieve the plaintiffs of their obligation to comply with the written notice requirement. The alleged defect here was the type of physical condition which would not ordinarily come to the attention of the municipality without notice.-Gaddy v. City of New York, 184 A.D.2d 548, 584 N.Y.S. 2d 329 [2nd Dept. 1992].

¶ 34. The issue of whether the City had prior written notice of a sidewalk defect was properly submitted to a jury upon proof that the same defect was the subject of an earlier hearing (under General Municipal Law § 50-h) that involved another claimant represented by the same counsel as plaintiff.-Rubain v. City of New York, 182 A.D.2d 583, 582 N.Y.S.2d 435 (1st Dept. 1992).

¶ 35. The Big Apple Pothole Corp. filed a map having the demarcation "CONS," which, to the map preparer, meant that there were too many defective conditions (due to construction) to separately mark them with X's. The court held, however, that where the map legend did not explain the meaning of "CONS," the City could reasonably not be expected to have written notice of the defect which caused the alleged injury. Moreover, although actual notice was not required where the City in fact created an unsafe condition, there was insufficient proof here that the City had caused the condition. Waldron v. City of New York, 175 A.D.2d 123, 571 N.Y.S.2d 816 (2nd Dept 1991).

¶ 36. Section 7-201 mandates prior written notice as a condition precedent to bringing an action against the City for personal injuries attributable to a sidewalk defect or obstruction. Failure to plead and prove such written notice requires dismissal of the complaint. Absent notice, the City is not liable for nonfeasance (not repairing or maintaining a sidewalk or roadway) and is responsible only for affirmative acts of negligence. Lack of compliance with the written notice requirement will be excused only under the narrowest of circumstances, such as where the accident occurred during a construction project at which a municipal inspector was present on a sufficient basis to ensure against precisely

the danger that caused the ensuing injury. The court here dismissed a personal injury action where there was no written notice and the City's inspector at a construction site was there solely to assess the quality of the contractor's performance and to ensure the safety of the workplace, and not to examine the condition of the sidewalk. Moreover, the inspector was not from the agency to which the written statutory notice must be furnished. Kelly v. City of New York, 172 A.D.2d 350, 568 N.Y.S.2d 744 (1st Dept. 1991).

¶ 37. Plaintiff slipped and fell on the roots of a tree which was growing in the grassy area between the sidewalk and the curb in front of a privately owned building. The tree was owned and maintained by the City, which was reponsible for pruning and removing roots. The court held that the grassy area adjacent to the curb line was part of the sidewalk and thus subject to the written notice rule of § 7-201. The court dismissed the action because there was neither written notice nor proof of affirmative negligence on the part of the City. The mere planting of a tree was not an affirmative act of negligence, and the alleged failure of the City to maintain the tree was, at best, simple nonfeasance for which there could be no liability absent prior written notice of the condition. Zizzo v. City of New York, 176 A.D.2d 722, 574 N.Y.S.2d 966 (2nd Dept. 1991).

¶ 38. Even though the owner was found to have purchased a home that had been structurally altered in such a manner that it was not in compliance with the zoning law, and the owner was aware of the prior owner's unsuccessful attempts to obtain the necessary variances which would have excused the violations in issue, the court in its discretion can decline to issue civil penalties against the owner. City of New York v. Falack, 175 A.D.2d 853, 5735 N.Y.S.2d 698 (2nd Dept. 1991).

¶ 39. This section, which provides for notifying the City of defects but which does not impose upon the City an affirmative duty to repair, cannot form the basis of a police officer's action under General Municipal Law § 205-e (§ 205-e now allows an injured police officer to maintain an action even though the injury arose out of the dangers inherent in police work, but only if the officer can point to a specific statute that was violated). Jackson v. City of New York, 659 N.Y.S.2d 321 (App.Div. 2d Dept. 1997).

¶ 40. A drainage hole, into which plaintiff fell, was located on the side of a highway, where he had pulled his car off the road. The court held that this was in an area included within the definition of a "highway" under Vehicle and Traffic Law §§ 118, 143-a and 144-a. Thus, the alleged defect was subject to the "actual notice" rule of Administrative Code § 7-201. Solone v. City of New York, 656 N.Y.S.2d 915 (App.Div. 2d Dept. 1997).

¶ 41. A pedestrian was walking along the sidewalk. At one point, he veered from the sidewalk into the roadway, allegedly due to the presence of an accumulation of debris which rendered the sidewalk passable only with great difficulty. He was then struck by an unidentified motorist. In the ensuing personal injury action, he alleged that the City was negligent in allowing the sidewalk to become impassable. The court held that actual notice requirement applied because this was an "obstructed condition" within the meaning of the law. Almodovar v. City of New York, 658 N.Y.S.2d 446 (App.Div. 2d Dept. 1997).

¶ 42. A firefighter was injured when he fell on a broken sidewalk in front of his firehouse. The court held that where prior to the accident, the commander of the firehouse had previously filed a written "Fire Department Buildings Unit Work or Repair Requisition" report describing the unsafe condition of the sidewalk and requesting that it be repaired, the requirements of § 7-201 had been satisfied. Borgia v. City of New York, N.Y.L.J., July 31, 1997, page 25, col. 4 (Sup.Ct. Queens Co.).

¶ 43. Failure to comply with the notice statute may be excused where a municipality knows or should know of the defective condition because it either has inspected or was performing work upon the subject area shortly before the accident, or where it created the defect in the roadway. Sewell v. City of New York, 656 N.Y.S.2d 916 (App.Div. 2nd Dept. 1997).

¶ 44. Oil on a roadway constitutes a defect for purposes of the statute. Baez v. City of New York, 653 N.Y.S.2d

926 (App.Div. 1st Dept. 1997).

¶ 45. A corporate tenant's counterclaims against the City in a commercial summary holdover eviction proceeding were dismissed by reason of the untimely filing of a notice of claim under the statute. City of New York v. Wall Street Racquet Club, 136 Misc.2d 405, 518 N.Y.S.2d 737 (Civ. New York Co. 1987).

¶ 46. The lack of compliance with the statute will be excused only in the narrowest of circumstances demonstrating affirmative negligence on the part of the municipality, such as where the City was engaged in a construction project at the subject area and where a city inspector was present on a sufficient basis to ensure against precisely the danger that caused the ensuing injury (Kirschner v. Town of Woodstock, 146 A.D.2d 465, 536 N.Y.S.2d 912 (3rd Dept. 1989).

¶ 47. Even though the Department of Environmental Protection may have inspected the site, the requirements of the notice law are not met unless the Department of Transportation has received notice. Feasel v. City of New York, N.Y.L.J., Mar. 17, 1997, at 30, col. 3 (Civ.Ct. New York Co.).

¶ 48. A stairway leading from a sidewalk up to a municipal park is considered part of the "street," so that the "actual notice" law will apply. Woodson v. City of New York, 93 N.Y.2d 936, 693 N.Y.S.2d 69 (1999).

¶ 49. A defendant in an action to abate a public nuisance is not entitled to a jury trial. City of New York v. 114-25 Farmers Blvd., 178 Misc.2d 404, 678 N.Y.S.2d 886 (Sup.Ct. Queens Co. 1998).

¶ 50. A case was dismissed by reason of failure to show prior written notice of a sidewalk defect, where the defect was not contained on a Big Apple Pothole Corporation map upon which plaintiff relied. Cuffey v. City of New York, 680 N.Y.S.2d 14 (App.Div. 2d Dept. 1998).

¶ 51. Failure to plead and prove compliance with the statute will result in dismissal of a claim against the City. Longo v. American Golf Corp., 256 A.D.2d 387, 681 N.Y.S.2d 589 (App.Div. 1st Dept. 1999).

¶ 52. The notice law is interpreted liberally in favor of plaintiffs. In one case, a court held that so long as the proof at trial related to the same defect as that contained in the notice, the statutory requirement has been met. Thus, where the notice referred to a "hole" in the sidewalk, plaintiff was able to prevail at trial even though the proof at trial related to an "uneven sidewalk." Brown v. City of New York, N.Y.L.J., Aug. 25, 1999, page 23, col. 3 (Civ.Ct. Bronx Co.).

¶ 53. In a summary holdover proceeding brought against the City after a lease has expired under its terms, no notice of claim is required. The primary object of the action is to seek possession, and there is nothing for the Comptroller to have settled or adjusted. Katzman v. City of New York, 703 N.Y.S.2d 347 (App.Term 1st Dept. 1999).

¶ 54. A claimant unsuccessfully argued that where the site of the alleged accident did not appear on any maps maintained by the City, the actual notice law did not apply and that liability could be established by showing constructive notice on the part of the City. The City does not have an affirmative obligation to have included the site in question on any map, the court said. Wekar v. City of New York, N.Y.L.J., Feb. 29, 2000, page 26, col. 3 (Sup.Ct. New York Co.).

¶ 55. It has generally been held that where the plaintiff seeks to rely upon maps of the Big Apple Pothole and Sidewalk Protection Committee, Inc. ("Big Apple"), the map that controls is the most recently filed map that pre-dates plaintiff's accident. Katz v. City of New York, 87 NY2d 241 (1995). However, the relevant appellate authority does not always preclude a court from considering earlier filed maps. In one case, defendant's attorney, in cross-examining Big Apple's witness, elicited information that on a single day, Big Apple had served the Department of Transportation with more than 100 pages of maps and on some days served hundreds of maps at a time, and that each map contained hundreds of depicted defects. The purpose was to convince the jury that defendant is overwhelmed with defects to correct and should not have been held responsible for the plaintiff's accident. The court held that once defendant used

this tactic, it opened the door for plaintiff to introduce an earlier map and of defendant to counter at least part of this argument. The earlier map was used by plaintiff to show that not only did defendant have three months to repair the defect from the date of filing of the later map to the date of plaintiff's accident, but also that from the filing of the earlier map, defendant knew of the defect as far back as one year prior to the filing of the later map, and thus had well over a year to correct the defect. Gallery v. City of New York, 182 Misc.2d 555, 699 N.Y.S.2d 266 (Sup.Ct. New York Co. 1999).

¶ 56. A municipality which has enacted a prior written notice statute is not liable for personal injuries unless it either received actual written notice of the dangerous condition, its affirmative act of negligence proximately caused the accident, or a special use confers a special benefit on the municipality. A transitory slippery condition, such as an oil spill, is a type of potentially dangerous condition for which prior written notice must be given before liability will attach. Estrada v. City of New York, 274 A.D.2d 194, 709 N.Y.S.2d 105, leave to appeal denied, 95 N.Y.2d 764, 716 N.Y.S.2d 38.

¶ 57. An intra-departmental report of an engineer for the New York City Board of Education will not qualify as notice to the City of a defect. Kempler v. City of New York, 272 A.D.2d 584, 709 N.Y.S.2d 818 (2d Dept. 2000).

¶ 58. A motorist sought recovery for injuries sustained when her automobile left the roadway and collided with a tree. The court held that the notice law did not apply where the City allegedly created a "drop off" of some four to eight inches at the right of the roadway, which drop off was created by the City's affirmative act of resurfacing the roadway next to the deteriorated curb. Gonzalez v. City of New York, 268 A.D.2d 214, 700 N.Y.S.2d 462 (1st Dept. 2000).

¶ 59. A cobblestone pathway in a City park, which leads to a sidewalk, is considered to be a "sidewalk" within the meaning of the law. It does not matter that the pathway is made of a different material from that of the adjoining sidewalk. Dennis v. City of New York, N.Y.L.J., Sept. 11, 2000, page 27, col. 4 (Civ.Ct. Bronx Co.).

¶ 60. A traffic signpost, which had been attached to a public sidewalk and subsequently became detached, is subject to the prior written notice requirement. Brady v. City of New York, 190 Misc.2d 284, 737 N.Y.S.2d 499 (App.Term 2nd Dept. 2001).

¶ 61. Once the City shows that it was not notified of an alleged street defect, the burden shifts to plaintiff to raise a triable issue as to whether the City affirmatively created or caused the defect. Even assuming that the City dug a trench from which certain pavement cracks seemed to originate, plaintiff could not recover in the absence of proof that the defect was a consequence of negligently performed work rather than normal pavement deterioration over time. Cardona v. City of New York, 305 A.D.2d 303, 759 N.Y.S.2d 323 (1st Dept. 2003).

¶ 62. The issue of whether a Big Apple map showing a broken or uneven curb and an obstruction protruding from the sidewalk gave defendant sufficient notice of the broken sidewalk was for the jury to decide. The notice requirement is construed strictly against the City, and a notice is sufficient if it brought the particular condition at issue to the attention of the City.

Vasquez v. City of New York, 298 A.D.2d 187, 748 N.Y.S.2d 140 (1st Dept. 2002).

¶ 63. In Torres v. City of New York, 39 A.D.3d 438, 834 NYS2d 164 (1st Dept. 2007), a motorist brought an action against the city for injuries sustained when the car he was driving hit a hole in the road, causing him to lose control of the car. Previously, the court had sustained a liability verdict against the City, holding that prior notice of a roadway defect is not necessary to hold city liable, where the defectis arises from the city's affirmative negligence, even where defect not immediately apparent but develops over an extended period. However, Bielecki v. City of New York, 14 A.D.3d 301, 788 N.Y.S.2d 67 (1st Dept. 2005), the court expressly held that prior written notice is necessary under § 7-201 when the alleged defect is not immediately apparent at the conclusion of the City's roadway work but develops subsequently. In light of Bielecki, the court dismissed the Torres case.

¶ 64. In Silva v. City or New York, 774 N.Y.S.2d 788 (2d Dept. 2004), plaintiffs sought to come within the "affirmative negligence" exception to the actual notice law. They contended that the negligence consisted of a failure to repair a water main in an expeditious manner. The court, however, held that this alleged failure to repair did not constitute affirmative behavior necessary to establish that the City created the defective condition.

¶ 65. Where there was no evidence that the City created the defective condition, and the City established, through an affidavit from an appropriate official, that a search of the Department of Transportation's records was conducted and that there was no prior written notice of the defective condition, the City was entitled to dismissal of cross-claims brought by co-defendants in a pothole-related personal injury case. Campisi v. Bronx Water & Sewer Service, Inc., 1 A.D.3d 166, 766 N.Y.S.2d 560 (1st Dept. 2003).

¶ 66. The court had to determine whether an internal document prepared by the Department of Environmental Protection (DEP) constituted actual notice to the City of a defective condition. Plaintiff had fallen after slipping into a hole in the street. Some time before the accident, some unknown person had called the complaint bureau of the Bureau of Sewers (a part of DEP) about a problem in the area. According to the complaint ticket generated as a result of the call, the problem was a "catch basin, sunken/damaged/raised, affecting street". A catch basin is an open box set into the street and covered by a metal grate. Its purpose is to collect water. The maintenance of catch basins is DEP's responsibility. The grate covering a catch basin is held in place by a metal frame, which sits on bricks that make up the upper portion of the catch basin walls. The bricks support part of the adjacent pavement. Thus, if bricks are removed or fall away, the pavement will be unsupported, and any weight placed on it will cause that portion of the street to cave in. The DEP document reflecting the complaint was forwarded to a Bureau of Sewers supervisor, who inspected the catch basin and adjacent area and filed a report stating: "repair defective catch basin unit . . . [which] is missing bricks on the wall due to caving . . ." Before any work was done, plaintiff was injured in a slip and fall accident. The City sought dismissal of plaintiff's personal injury action on the ground that the Department of Transportation (DOT) had never received actual notice of the defective street. The DEP supervisor testified that although he normally referred complaints about defects in the roadway to the DOT, he did not do so on this occasion because he believed that DEP was responsible for the repair. Plaintiff sought to establish actual notice by means of that portion of §7-201(c) that refers to "written acknowledgment from the City of the defective, unsafe, dangerous or obstructed condition." The court held that the written statement showing that DEP, the city agency responsible for repairing the condition, had actual knowledge both of the condition and its dangerous nature, was an "acknowledgment" sufficient to satisfy the Pothole Law. Bruni v. City of New York, 2 N.Y.3d 319, 778 N.Y.S.2d 757, 811 N.E.2d 19 (2004).

¶ 67. The issuance by the City of a work permit to Con Edison and Empire City Subway Company does not constitute actual notice of a defect. The work permits gave no indication that the City was aware of the defective condition so as to constitute a "written acknowledgment" within the meaning of the Pothole Law. DeSilva v. City of New York, 15 A.D.3d 252, 790 N.Y.S.2d 87 (1st Dept. 2005).

¶ 68. Although affirmative acts of negligence on the part of the City constitute an exception to the actual written notice law, that exception is limited to work by the City that immediately results in the existence of a dangerous condition. Where a defect developed over time as a result of water seeping into, and freezing within, the City's allegedly negligent patchwork repair of a pathway, the exception does not apply. The court explained that if it were to extend the affirmative negligence exception to cases where it is alleged that a dangerous condition developed over time from an allegedly negligent municipal repair, the exception to the notice requirement would swallow up the requirement itself, thereby defeating the purpose of the Pothole Law. Bielecki v. City of New York, 14 A.D.3d 301, 788 N.Y.S.2d 67 (1st Dept. 2005).

¶ 69. An affidavit of a representative of the Dept. of Transportation (DOT) responsible for supervising searches for records of notices of defective conditions, stating that no such records were found, is sufficient to establish that no such prior written notice of the alleged defect was filed with the City. Moreover, the mere issuance of a permit for a street excavation is not sufficient to provide the requisite written notice of a roadway defect. Marceca v. City of New York, 5 Misc.3d 936, 787 N.Y.S.2d 640 (Sup.Ct. Kings Co. 2004).

¶ 70. Where there are factual disputes regarding the precise location of the defect that caused the accident, and where the alleged defect is designated on a map filed with the City by the Big Apple Pothole Corp., the jury should determine the issue. Accordingly, the court denied the City's motion for summary judgment. Almadottir v. City of New York, 15 A.D.3d 426, 789 N.Y.S.2d 729 (2d Dept. 2005).

¶ 71. In one case, plaintiff allegedly was injured when he stepped into a pothole. Although the City did not have prior written notice of the defect, plaintiff contended that the City created the dangerous condition through an affirmative act of negligence. Plaintiff submitted an engineer's report that the City performed a defective street repair and described the manner in which the repair deviated from relevant industry standards. However, where plaintiff submitted no evidence as to when the street repair occurred in relation to the accident, and did not show that the repair immediately resulted in a dangerous condition, plaintiff was unable to get around the "actual notice" rule. The mere "eventual" emergence of a dangerous condition due to wear and tear and environmental factors does not fall under the allowable exceptions to NYC Admin. Code 7-201(c)(2). Yarborough v. City of New York, 28 A.D.3d 650, 813 N.Y.S.2d 511 (2nd Dept. 2006).

¶ 72. Where a pothole recurs approximately two years after a repair by the City, and the record shows that such recurrence was not the result of an affirmative act of negligence, the "actual written notice rule" precluded recovery on the part of a plaintiff who stepped into the hole. Ocasio v. City of New York, 28 A.D.2d 311, 813 N.Y.S.2d 408 (1st Dept. 2006)

¶ 73. Where the City acknowledged receipt of a defect, but where the accident occurred within the grace period provided by Administrative Code § 7-201, which gives the City 15 days to repair or remove a defect, the City is not liable for the accident allegedly caused by the defect. Plaintiff argued that he was excepted from any prior notice requirement based on the City's alleged affirmative creation of a defect by the placement of cones in the area of the accident. However, the court said that this argument was without merit, since the placement of cones did not create the depression in the roadway that was the proximate cause of the accident. Kruszka v. City of New York, 29 A.D.3d 742, 816 N.Y.S.2d 510 (2nd Dept. 2006).

¶ 74. Plaintiff brought suit when he was injured, allegedly due to tripping over several garbage bags which obstructed a pedestrian overpass. The City is not liable for a defect in or obstruction to a sidewalk or roadway unless it received at least 15 days written notice before the occurrence, and failed to remedy it. Plaintiff conceded that there was no prior written notice of this condition, but argued that the garbage bags were a "transitory condition" and not covered by Admin. Code § 7-201(c). In other words, plaintiff proceeded on a constructive notice theory, and contended that the garbage bags were present for a sufficient period of time so that the City had constructive notice of the defect. The court, however, rejected the "transitory condition" claim. Although the City might have been liable if it had affirmatively created the condition, there was insufficient evidence that the City had done so. Thus, the court dismissed the action. Min Whan Ock v. Grace Korean Presbyterian Church, 34 A.D.3d 542, 824 N.Y.S.2d 651 (2nd Dept. 2006).

¶ 75. In one case, the court sustained a verdict in favor of a Plaintiff who tripped on an obstruction protruding from the sidewalk. The City moved to set aside the verdict, contending that it had not received written notice pursuant to Sec. The court denied the motion, noting that the Admin. Code does not establish any specific requirements as to the content of the notice. Since the prior notice law conflicts with the common law and must be strictly construed against the city, a notice would be sufficient if it brought the alleged defective condition to the attention of the authorities. A map submitted to the N.Y.C. Dept. of transportation may serve to provide the City with prior written notice of the alleged defect. Where there are factual disputes regarding the precise location of the defect that caused plaintiff to fall, and whether the alleged defect is designated on the map, the jury must resolve the question, as in this case.

Thus, whether the Big Apple map indicating the presence of an obstruction protruding from the sidewalk at the address immediately adjacent to the address in front of which plaintiff fell, the only sidewalk defect, of that character indicated in the vicinity, provided the City with prior written notice, presented an issue of fact for the jury to resolve. Since the evidence presented at trial led to a reasonable inference that the notice was sufficient, there was no basis to set

aside the verdict. Vertsberger v. City of New York, 34 A.D.3d 453, 824 N.Y.S.2d 651 (2d Dept. 2006).

¶ 76. In Walker v. City of New York, 34 A.D.3d 226, 825 N.Y.S.2d 445 (1st Dept. 2006), plaintiff tripped and fell on a sidewalk and sustained injuries. In the resulting lawsuit, plaintiff sought to show that the accident was caused by an affirmative act of negligence, rendering inapplicable the written notice requirement. The court held that the evidence was insufficient to show that the City had performed work at the location where plaintiff fell. Plaintiff had offered into evidence four Dept. of Transportation records reflecting repair orders, but only one of the repair orders indicated that repair work had actually been undertaken. Even that one record showed only that there was a pothole somewhere in the intersection in question but did not indicate that the pothole was close to the curb where plaintiff fell. Furthermore, the repair work was performed in March 1995 and the fall occurred in November 1999, so that there was no evidence that the existence of the hole was the immediate result of the repair work. Accordingly, the court set aside a verdict and dismissed the action.

¶ 77. Even though Big Apple Maps are sometimes sufficient to provide the City with actual written notice of a particular defect, the notice relied on must bring to the particular condition at issue to the attention of the authorities. In one fact-specific case, the court found that the Big Apple map was insufficient notice. Plaintiff alleged that she tripped and fell over a metal bolt or screw protruding from the sidewalk, i.e. that she fell due to an obstruction. Although the map did depict a section of raised or uneven sidewalk, the court found that this was not enough to show the presence of an obstruction. Sullivan v. City of NY, 15 Misc. 3d 1114A, 839 N.Y.S.2d 437 (Table) (Sup.Ct. Richmond Co. 2007).

¶ 78. Actual or constructive notice of a defect does not satisfy the written notice requirement. Ranello v. Consolidated Edison, 15 Misc.3d 1128A, 841 N.Y.S.2d 221 (Table) (Sup. Ct. Richmond Co. 2007), citing Reich v. Meltzer, 21 A.D.23 543, 800 N.Y.S.2d 593 (2d Dept. 2005), leave to appeal denied, 7 N.Y.3d 301, 818 N.Y.S.2d 191 (2006). However, an exception is recognized where the locality created the defect or hazard through an affirmative act of negligence, or where a special use confers a special benefit upon the City (Ranello v. Consolidated Edison, supra).

¶ 79. In Oboler v. City of New York, 8 N.Y.3d 888, 832 N.Y.S.2d 871 (2007), a pedestrian brought an action to recover for injuries sustained when he tripped and fell over a depressed manhole cover. In order to bring himself within the "affirmative negligence" exception to the law, plaintiff sought to have an expert testify that there was a 1 to 1.5 inch height differential between the edge of the asphalt and the manhole cover, that the City created the condition when the street was resurfaced, and that the City's violation of these regulations caused the injuries. There was no evidence as to when the section of the street might have been resurfaced prior to the accident, or whether the City performed any such repaving work. There are only two recognized exceptions to prior written notice laws-where the locality created the defect or hazard through an affirmative act of negligence and where a special use confers a special benefit on the locality. Moreover, the affirmative negligence exception is limited to work by the City that immediately results in the existence of a dangerous condition. Here, plaintiff presented no evidence of who last repaved this section of the roadway before the accident, when any such work may have been carried out, or the condition of the asphalt abutting the manhole cover immediately after such resurfacing. Moreover, even assuming that the special use doctrine applies to a manhole cover situated in a city public street, plaintiff presented no proof of any special benefit conferred on the City. Accordingly, the court dismissed the action.

¶ 80. See Fernandez v. Highbridge Realty Assoc., 49 AD3d 318, 853 N.Y.S.2d 71 (1st Dept. 2008), reported as note under Sec. 7-210.

¶ 81. Repair orders or reports, reflecting only that pothole repairs had been made to the subject area more than a year before the accident, were insufficient to constitute prior written notice of the defect that allegedly caused plaintiff's accident. James Marshall v. City of NY 2008 NY Slip Op. 5490, 2008 NY App. Div. Lexis 5405 (App. Div. 2nd Dept., 52 AD3d 586).

¶ 82. The "actual notice law," Section 7-201, applies to an action by a police officer under Gen. Municipal Law Sec. 205-e. In other words, police officers do not have greater rights than other persons in terms of the actual notice law.

Montalvo v. City of New York, 46 AD3d 772, 848 N.Y.S.2d 330 (2nd Dept. 2007).

¶ 83. Plaintiff brought an action to recover damages for injuries which allegedly occurred after he fell upon stepping into a depression in the asphalt abutting a manhole cover. He caught his foot on the edge of the cover. The depression and the manhole cover were located in a parking lot operated by the City. Where a municipality has not received prior written notice of a defect, there can be no liability for injuries sustained. However, if the municipality received notice but failed to remedy it, or there is an exception, there is the potential for liability. Such an exception would be if the plaintiff establishes that the area where the defect was located resulted in a special benefit for the municipality, or the municipality affirmatively caused the defect where the accident occurred and resulted in the existence of a dangerous condition, there could be liability for the municipality under the affirmative negligence exception. Even if a municipality performs negligent pothole repairs, where the defect develops over time with environmental wear and tear, the affirmative negligence exception is not applicable. Here, the plaintiff did not allege that the City received prior written notice of the defect (See Admin. Code §7-201 [c]. Even if the special use exception were applicable, in order to avail himself of the benefit of this exception, the plaintiff was required to show that the City derived some special benefit from that alleged special use. Here, the plaintiff presented no proof as to the alleged special use of the manhole, as well as what special benefit the City derived from it. The plaintiff failed to meet its burden of showing that he was entitled to avail himself of the special use exception. The City's motion to dismiss was granted. Schleif v. City of NY, 60 AD2d 926, 875 NYS2d 259, 2009 App. Div. Lexis 2356.

¶ 84. In D'Onofrio et al. v. City of New York 2008 NY Slip Op. 9860, 901 NE2d 744, 873 NYS2d 251, 11 NY3d 581 (2008), the court indicated that in order to comply with the actual notice law, the Big Apple maps had to indicate clearly the location and nature of the defect. Where symbols are used, they must accurately depict the type of defect. Thus, if Big Apple chooses to use a straight line as a symbol for a raise or uneven sidewalk, the map will not be sufficient where it displays a vague line which was described either as a poorly drawn "X" or the Hebrew letter "shin," or a pitchfork without handles. Therefore, a plaintiff who allegedly tripped over an elevation on the sidewalk will not be able to use the map as a basis for notice.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-202

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-202 Power of comptroller to extend the time for commencement of suit upon claims.

Notwithstanding any other provision of law, the comptroller may, by stipulation in writing, agree with a claimant against the city, the board of education or any community college of the city university of New York, to extend the time of such claimant to commence suit upon a claim, the settlement of which is then pending before the comptroller, provided that such stipulation shall not extend the time within which such suit may be brought for a period or periods aggregating more than six months after the expiration of the time otherwise limited by law for the commencement of a suit upon such claim.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-3.1 added chap 142/1949 § 1

Renumbered chap 100/1963 § 139

(formerly § 93d-3.3)

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff brought an action against the City of New York to recover property damages caused by the flooding

on January 1, 1963 of plaintiff's property as a result of the break in a water main. A notice of claim pursuant to General Municipal Law did not intend to complete the examination because the statutory period for commencement of the action had expired on March 30, 1964. This action was instituted on May 14, 1964 and defendant alleged in an affirmative defense that the action § 50-e was served on defendant on March 28, 1963. On December 11, 1963 one of the plaintiffs was examined by the city. The examination was not completed and was adjourned **sine die.** On May 11, 1964 the Comptroller of the City advised that it was time barred. Plaintiff's motion to strike the defense was granted because the city was equitably estopped from raising this defense as it had stipulated in connection with adjournment of the examination of claimant that no action would be brought against the city for a period of time which would not terminate before the expiration of the limitation period fixed by statute.-Robinson v. City of New York, 24 App. Div. 2d 260, 265 N.Y.S. 2d 566 [1965].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-203

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-203 Settlement of claims.

a. The comptroller may require any person presenting for settlement an account or claim, except a claim with regard to excise and non-property taxes, for any cause against the city or the board of education, to be sworn before the comptroller, any of the deputy comptrollers, or any officer or employee of the comptroller's office or of the law department designated in a written instrument by the comptroller and filed in the comptroller's office, touching such account or claim, and when so sworn, to answer orally as to any facts relative to the justness of such account or claim. Wilful false swearing before the comptroller, deputy comptroller or officer or employee designated to conduct such oral examination is perjury and punishable as such. In adjusting and settling such claims, the comptroller, as far as practicable, shall be governed by the rules of law and principles of equity which prevail in courts of justice. Claims against the city or against any of the counties contained within its territorial limits, or payable in the first instance from moneys in the city treasury for services rendered or work done or materials or supplies furnished, except:

1. claims reduced to judgment, or

2. awards, costs, charges and expenses duly taxed or ordered paid in judicial proceedings, or

3. claims arising under the provisions of contracts made at public letting in the manner provided by chapter thirteen of the charter and chapter one of title six of the code, or

4. claims settled and adjusted by the comptroller, pursuant to the authority of this section, shall not be paid unless an auditor of accounts shall certify that the charges therefor are just and rea- sonable.

b. Except as hereinbefore otherwise provided, all contracts with the city or any of such counties or with any public officer acting in its or their behalf, shall be subject to audit by the comptroller. The power hereby given to settle and adjust such claims shall not be construed to authorize the comptroller to dispute the amount of any salary established by or under the authority of any officer or department authorized to establish the same, nor to question the due performance of duties by such officer, except when necessary to prevent fraud. If in any action at law against the city to recover upon a claim not embraced within the exceptions specified in subdivision a the amount claimed by the plaintiff is in excess of the amount so audited and settled by the comptroller, the plaintiff must establish a claim by competent evidence of value, and no testimony shall be admitted to show a promise or agreement by any officer or employee of the city or of any of the counties contained within its territorial limits to pay any larger sum than the amount so audited or allowed by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-1.0 added chap 929/1937 § 1

Open par amended LL 99/1950 § 1

Open par amended chap 100/1963 § 135

Sub 4 amended LL 54/1977 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Where extra compensation for additional work was certified by the Board of Education and was the subject of specific approval by the Corporation Counsel, who requested a voucher to be drawn for it after the Comptroller excluded it from the payment to be made, the sum claimed for the extra compensation should have been paid by the Comptroller in view of his lack of legal power to re-audit claims approved and audited by the Board of Education, 107 (39) N.Y. 65 N.Y. 43.-Wilaka Const. Co. v. Board of Education, 107 (39) N.Y.L.J. (2-17-42) 723, Col. 1 T.

¶ 2. Trustees of Armory Building, who had obtained the Attorney General's indorsement, pursuant to General Municipal Law § 70a, of their claims against the City of New York for reimbursement for legal fees and disbursements paid by them in a legal proceeding brought to require the City to make certain yearly payments to the trustees for maintenance of the Armory Building, were thereafter required to submit their claim to the City Comptroller for audit, and it was his duty to determine the reasonableness of the claim. Furthermore, the audit by the Comptroller involves a judicial function requiring the exercise of the Comptroller's official judgment, and in no event would mandamus lie to compel payment of the claim.-In re Tobin (La Guardia), 107 (98) N.Y.L.J. (4-28-42) 1786, Col. 6 M.

¶ 3. Notwithstanding the head of the department had agreed in writing to a price for the extra work performed by the contractor on a construction project, the Comptroller had the power and duty to pay no more than the reasonable value therefor.-Gerace & Castagna, Inc. v. City of New York, 283 App. Div. 716, 127 N.Y.S. 2d 351 [1954], aff'd without opinion, 307 N.Y. 707, 121 N.E. 2d 536 [1955].

¶ 4. It was not necessary for the plaintiff in an oral complaint to allege the filing of a notice of claim with the City of New York and the lapse of more than 30 days since the Comptroller's refusal and neglect to adjust it.-Fried v. Board of Education of N.Y.C., 106 (144) N.Y.L.J. (12-22-41) 2088, Col. 6 M.

¶ 5. In action to recover for personal injuries sustained as result of the alleged negligence of the City of New York, the City would not be permitted to amend its answer so as to plead that the action was commenced prior to the

expiration of the 30 days allowed the Comptroller to settle or adjust the action, pursuant to Admin. Code § 93d-1.0. It appeared that the City desired to rely on a stipulation of the parties extending the time for the Comptroller to settle or adjust the claim, that by a recent decision such an agreement must be pleaded as an affirmative defense, that defendant had not so pleaded and had failed to seek to amend its answer for over one year, during which period of time plaintiff's time to institute a new action had expired.-Shrubsall v. City of New York, 183 Misc. 424, 51 N.Y.S. 2d 252 [1944].

¶ 6. Where the plaintiff failed to appear on an adjourned date for examination and then, in violation of the stipulation fixed for the adjourned date which provided that no action could be commenced until thirty days after an examination, the plaintiff did commence an action without ever submitting to examination, the action should be dismissed.-Angelo v. City of New York, 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 7. The Comptroller has the **right** to examine every claimant under Admin. Code § 93d-1.0, but there is no **requirement** that he conduct such an examination, and he may adjourn it by stipulation from time to time, or he may abandon it.-Angelo v. City of New York, 183 Misc. 391, 53 N.Y.S. 2d 487 [1944].

¶ 8. Where plaintiffs' intestate had brought suit against the City of New York to recover for injuries sustained in a subway accident under circumstances such as to preclude the presence of any eye witnesses thereto, and pending trial of the action the intestate died and the action was continued by his administratricies, the examination of the intestate by the Corporation Counsel in behalf of the City Comptroller pursuant to Admin. Code § 93d-1.0 would be received in evidence in plaintiff's behalf, under an exception to the hearsay rule, in view of the necessity created by death of the intestate and the absence of other witnesses, and the considerations that the examination was given under oath and that the examination was as searching as that permitted upon cross-examination of an adverse witness or party. However, the examination was not admissible under C.P.A. § 303, which relates to depositions taken pursuant to the provisions of C.P.A., Art. 29; nor under C.P.A. § 374a as a written record made by defendant in the regular course of business; nor under C.P.A. § 348, relating to testimony given at a former trial or hearing by a party or witness who has since died.-Boschi v. City of New York, 187 Misc. 875, 65 N.Y.S. 2d 425 [1946].

¶ 9. In an action to recover damages for personal injuries suffered by plaintiff's decedent as a consequence of being struck by a trolley car owned and operated by defendant, the examination of the decedent before the Comptroller, pursuant to this section, was properly received in evidence where the decedent had died before the trial of the action.-Rothman v. City of New York, 273 App. Div. 780, 74 N.Y.S. 2d 872 [1947].

¶ 10. In action to recover for personal injuries suffered by claimant as consequence of being struck by trolley car owned and operated by defendant City of New York, the examination before the Comptroller pursuant to Admin. Code § 93d-1.0, **held** to have been properly received in evidence, where claimant died before trial of his action.-Rothman v. City of New York, 273 App. Div. 780, 75 N.Y.S. 2d 151 [1947].

¶ 11. The Comptroller's examination of plaintiffs, pursuant to N.Y.C. Admin. Code § 93d-1.0, **held** improperly received in evidence. Such an examination is admissible only where the claimant died before trial.-Grispo v. City of New York, 129 (16) N.Y.L.J. (1-23-53) 261, Col. 3 M.

¶ 12. Where plaintiff's testatrix had brought suit against the City of New York to recover for personal injuries sustained in a subway accident, and had been examined by the City Comptroller pursuant to Admin. Code § 93d-1.0, the testimony of testatrix before the Comptroller under oath **held** admissible in evidence in action to recover for personal injuries.-Carroll v. City of New York, 130 (113) N.Y.L.J. (12-11-53) 1419, Col. 2 F.

¶ 13. Indictment of defendant for perjury based on statements made before the "Chief Examiner of the Comptroller of the City of New York" in connection with a claim filed against the City of New York for personal injuries, was dismissed on ground that under Admin. Code § 93c-1.0 the authority to administer an oath is expressly limited to the Comptroller or "either of the deputy comptrollers", and therefore the oath had not been administered by a person authorized to administer it.-People v. Siegel, 198 Misc. 566, 102 N.Y.S. 2d 551 [1950].

¶ 14. The Comptroller was wrong where he refused to hold an examination after the plaintiff had filed his notice of claim and had failed to appear at an adjourned date for examination. Three years after failing to appear at the adjourned date, the plaintiff notified the Comptroller that it was ready to be examined at his convenience. At the time of filing the claim and for three years thereafter no person capable of giving any extensive information in regard to the claim was available to the plaintiff and as soon as an informed person appeared the plaintiff requested an examination.-Daniel J. Rice, Inc. v. City of New York, 180 Misc. 860, 42 N.Y.S. 2d 532 [1943].

¶ 15. Admin. Code § 93d-1.0 and Charter § 93d deal with prelawsuit procedure and once litigation has begun such provisions are no longer operative and any examination desired must be sought under the Civil Practice Act.-In re City of New York (Allen & Pike Sts.), 181 Misc. 860, 43 N.Y.S. 2d 316 [1943].

¶ 16. Although the provisions of this section may prohibit the Comptroller from inquiring into the justness of a claim accruing under the provisions of a contract for public letting, where a contract between a contractor and the Board of Water Supply stated that the City shall not be estopped from showing the true value of work, the City could withhold payment to the contractor. Where such clauses are found in a contract and where there is no clear showing that the public agency is independent of the City, mandamus will not lie.-Matter of Frazier-Davis Construction Co., 6 App. Div. 2d 112, 175 N.Y.S. 2d 765 [1958].

¶ 17. The provisions of this section which require a claimant to be sworn before the Comptroller with reference to a claim and when so sworn to give testimony with respect thereto are not applicable to an infant plaintiff. The Comptroller's representative, after a preliminary examination, found that the infant plaintiff did not understand the nature of an oath, but nevertheless sought to take the infant's unsworn testimony. Plaintiff's attorney agreed to the incompetency of the infant and refused to permit the infant to give a sworn testimony. The City then interposed a separate defense on the ground that the infant failed to comply with the provisions of this section in that he failed to testify at the Comptroller's hearing. **Held:** the defense should be stricken out.-Anesgart v. City of New York, 10 Misc. 2d 995, 170 N.Y.S. 2d 891 [1958].

¶ 18. In a negligence action involving an allegedly defective sidewalk plaintiff was not required during unilateral oral hearing preliminary to the commencement of the cause of action and conducted at the Comptroller's office to disclose the name and address of plaintiff's witness who was with him at the time of the occurrence. As the police blotter contained the name and address of a witness there was no basis for any possible claim that defendant was not in a position to evaluate the merits of the claim with a view toward settlement.-Alongis v. City of New York, 54 Misc. 2d 771, 283 N.Y.S. 2d 301 [1967].

¶ 19. In a hearing before the City Comptroller pursuant to this section it was not necessary that the answers to the Comptroller's questions be reduced to writing and subscribed by the claimant and hence, the plaintiff's failure to sign the testimony was not a failure to comply with the Admin. Code and therefore could not be the basis of a refusal to accept for filing a statement of readiness.-Mahar v. City of New York, 139 (72) N.Y.L.J. (4-14-58) 11, Col. 1 F.

¶ 20. The Comptroller's acceptance and retention of an affidavit filed by plaintiff, in lieu of an examination of plaintiff on the merits of his claim, did not affect the waiver of the City's right to a verified notice of claim.-Kannenbaum v. City of New York, 182 Misc. 109, 50 N.Y.S. 2d 122 [1944], aff'd 268 App. Div. 1062, 52 N.Y.S. 2d 600 [1945].

¶ 21. Claims made by private nonprofit hospital corporation for refund of overpayment of New York City real estate taxes against the Comptroller of the City of New York could not be allowed where the Tax Commission of the City of New York is given exclusive statutory authority to revise erroneous tax assessments on real property. Taxes are not "claims" which the Comptroller may compromise under New York City Charter § 93(d).-St. Luke's Hospital v. Beame, 47 Misc. 2d 71, 262 N.Y.S. 2d 129 [1965].

¶ 22. In an action by an infant to recover damages for personal injuries and by his father to recover for medical

expenses it was error to permit plaintiffs over objection of defendant to read into evidence portions of examination of plaintiff father who was not a witness to the accident taken before the Comptroller and even if examination was admissible the hearsay portions were inadmissible.-Schlechtman v. Board of Education, 25 App. Div. 2d 676, 268 N.Y.S. 2d 407 [1966].

¶ 23. In view of administrative backlog and shortage of personnel in Comptroller's office, Comptroller was granted a minimum of 30 days within which to process and investigate vouchers approved by the Board of Education without interest having run on the claims until after the expiration of the 30 day grace period. In re Mars Associates, Inc. (Beame), 166 (105) N.Y.L.J. (12-2-71) 2, Col. 4 F.

¶ 24. Provision of section that a claim "settled and adjusted by the Comptroller" shall not be paid unless an auditor of accounts certifies that the charges are just and reasonable does not give the Comptroller authority to settle and adjust claims without a prior audit of the claims by his office.-White Plains v. City of New York, 63 App. Div. 2d 396, 407 N.Y.S. 2d 517 [1978].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-204

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-204 Settlement of claims.

The commissioner of finance may require any person presenting for settlement a claim in relation to excise and non-property taxes against the city to be sworn before the commissioner of finance, any of the deputy commissioners of finance, or any officer or employee of the department of finance or of the law department designated in a written instrument by the commissioner of finance and filed in the office of the commissioner, touching such claim, and when so sworn, to answer orally as to any facts relative to the justness of such claim. Wilful false swearing before the commissioner of finance, any deputy commissioner or officer or employee designated to conduct such oral examination is perjury and punishable as such. In adjusting and settling such claims, the commissioner of finance, as far as practicable, shall be governed by the rules of law and principles of equity which prevail in courts of justice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 414-1.0 added LL 43/1965 § 1

(no additional refund LL 43/1965 § 2)

Amended LL 54/1977 § 25

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-205

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-205 Comptroller to audit charges against city for costs, etc.

The comptroller, with the approval of the mayor, is authorized to audit and allow, as charges against the city, the reasonable costs, counsel fees and expenses paid or incurred, or which shall hereafter be paid or incurred by any commissioner or any judge of the civil or criminal courts of the city of New York who shall have been a successful party in any proceeding or trial to remove him or her from office, or who shall bring or defend any action or proceeding, in which the question of his or her title to office is in any way presented or involved, or in which it is sought to convict him or her, or to review or prohibit any such removal or to obtain possession of his or her office, or by any commissioner for the proper presentation and justification of his or her official conduct before any body or tribunal lawfully investigating the same, and not officially recommending his or her removal from office.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 136

CASE NOTES FROM FORMER SECTION

¶ 1. A City Magistrate successfully resisted a proceeding to remove him from office because his conduct was

unbecoming a judicial officer, but was censured by the App. Div. **Held:** he was not entitled to have his claim for legal costs and expenses audited and approved by the Comptroller as a successful party in the removal proceedings.-Matter of Maglio v. City of New York, 15 Appellate Division 2d 197, 223 N.Y.S. 2d 60 [1961], aff'd 12 N.Y. 2d 939, 238, N.Y.S. 2d 515, 188 N.E. 2d 789 [1962].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-206

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-206 Illegal claims; power of board of estimate to pay or compromise on equitable grounds.

The board of estimate may inquire into, hear and determine any claim against the city or any agency when the comptroller, or in the case of a claim against the board of education, the comptroller and the board of education, certifies in writing that such claim is illegal or invalid, but that it is equitable and proper that such claim be paid in whole or in part. If, upon such inquiry, the board of estimate, by a unanimous vote, determines that benefits have been received by the city or any agency and that public interests will best be served by payment or compromise thereof, it may authorize payment of such claim, and such claim shall thereupon be paid in such amount as the board shall determine to be just, in full satisfaction thereof, provided that the claimant shall execute a release, upon any such payment, in such form as shall be approved by the corporation counsel. The provisions of this section shall not authorize the audit or payment of any claim barred by the statute of limitations, nor any claim for services performed under an appointment in violation of any provision of the civil service law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-3.0 added chap 929/1937 § 1

Amended LL 30/1939 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Although the City may pay claims based on an implied contract it may not pay such claims if they are barred by the Statute of Limitations.-City of New York v. N.Y. City Transit Auth., 53 Misc. 2d 627, 279 N.Y.S. 2d 278 [1967].

¶ 2. Because Statute of Limitations starts to run when the right to make a demand accrues and not when the individual against whom the claim is asserted has the money to pay. The statute began to run when the right accrued to claimant and not when an expense budget containing an appropriation to pay the claim involved was adopted. Mere absence of a specific budget appropriation does not bar a right to file a claim.-Id.

¶ 3. Because of the strong public policy in this state against payment by public bodies of claims barred by the Statute of Limitations the acknowl- edgment of a debt by a city department after the statute had run was not permissible.-35 Park Avenue Inc. v. City of New York, 161 (102) N.Y.L.J. (5-26-69) 2, Col. 1 M.

¶ 4. Article 78 proceeding brought by foremen employed by the city at salaries fixed by a collective bargaining agreement to compel the Comptroller to certify that they had an equitable claim for unpaid wages was dismissed since this section is inapplicable to wage claims made by salaried employees of City.-In re DeLuca (Beame) 165 (115) N.Y.L.J. (6-16-71) 19, Col. 4 F.

¶ 5. Where plaintiff after submitting lowest bid to rebuild a school chimney received a letter from the Board of Education to proceed immediately with the work and allegedly spent $4,000 for about 8 days work before it received another letter from the Board rescinding the prior letter because the Comptroller had refused to accept the contract for failure to advertise the required number of times, plaintiff could not sue for breach of contract or for work, labor and services performed but was not barred from applying to the Board of Estimate for consideration of the claim on equitable grounds under this section.-Prosper Contracting Corp. v. Board of Education, 73 Misc. 2d 280, 341 N.Y.S. 2d 196 [1973], aff'd 43 App. Div. 2d 823, 351 N.Y.S. 2d 402 [1974].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-207

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-207 Payment of bonds upon which suit is barred by lapse of time.

Notwithstanding any other provision of law, the comptroller shall pay the principal and interest upon bonds or other evidences of indebtedness issued by the city within twenty years after a cause of action has accrued on said bonds or other evidences of indebtedness issued by the city or interest thereon, suit upon which may be barred by the statute of limitations.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B10-1.0 added chap 637/1951 § 1

Renumbered chap 100/1963 § 190

(formerly § 242-2.1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-208

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-208 Claims for injuries caused by police while executing legal process or sustained by persons injured while assisting in the apprehension of a criminal.

a. The board of estimate may inquire into, hear and determine any claim against the city wherein compensation is sought for the death of or injury to any person or persons:

1. which shall have been caused by a police officer of the city, while such officer is engaged in arresting or endeavoring to arrest any person or in retaking any person who has escaped from legal custody, or in executing any legal process, or

2. which shall have been caused by any person who is engaged in or who is in the act of leaving the scene of the commission of a felony or who is endeavoring to escape from a police officer or from legal custody, if such death was caused or injury received in assisting a police officer in the performance of the officer's duties.

b. The board, by a unanimous vote, as a matter of grace and not as a matter of right, may award an amount recommended by the comptroller to be paid to the person or persons injured, or in the case of death to the person or persons who would be entitled to distribution under the provisions of EPTL 5-4.4 or any amendments thereto. As a condition precedent, however, to consideration by the board, such claim must be certified in writing to the board by the comptroller as an illegal or invalid claim against the city, but which in the comptroller's judgment it is equitable and proper to pay in the amount certified by the comptroller; and provided, further, that a written petition stating all the essential facts in relation to such injury or death, signed by the injured person or persons, or in case of death by a person or persons entitled to receive the award or any part thereof, or by the personal representatives of a decedent, shall be filed with the comptroller within six months of the date of the occurrence which resulted in such injury or death. The

provisions of this section shall not authorize the audit or payment of any claim barred by the statute of limitations.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-4.0 added chap 929/1937 § 1

Amended LL 24/1941 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-209

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-209 Issuance of execution.

Before execution may be issued upon any judgment recovered against the city ten days' notice in writing of the recovery of such judgment shall be given to the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 394a-2.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-210

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-210 Liability of real property owner for failure to maintain sidewalk in a reasonably safe condition.

a. It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition.

b. Notwithstanding any other provision of law, the owner of real property abutting any sidewalk, including, but not limited to, the intersection quadrant for corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition. Failure to maintain such sidewalk in a reasonably safe condition shall include, but not be limited to, the negligent failure to install, construct, reconstruct, repave, repair or replace defective sidewalk flags and the negligent failure to remove snow, ice, dirt or other material from the sidewalk. This subdivision shall not apply to one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes.

c. Notwithstanding any other provision of law, the city shall not be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks (other than sidewalks abutting one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes) in a reasonably safe condition. This subdivision shall not be construed to apply to the liability of the city as a property owner pursuant to subdivision b of this section.

d. Nothing in this section shall in any way affect the provisions of this chapter or of any other law or rule governing the manner in which an action or proceeding against the city is commenced, including any provisions requiring prior notice to the city of defective conditions.

HISTORICAL NOTE

Section added L.L. 49/2003 § 1, eff. Sept. 14, 2003 and applying to

accidents occurring on or after such date.

CASE NOTES

¶ 1. The City is generally liable for accidents caused by sidewalk defects that occurred prior to September 14, 2003. Rodriguez v. City of New York, 12 A.D.3d 282, 784 N.Y.S.2d 855 (1st Dept. 2004). Where a sidewalk accident occurred prior to that date, the abutting property owner is not liable unless the owner either caused the defect to occur because of some special use, or actually created the defect. The mere fact that the accident occurred in a sidewalk area adjacent to that portion used by the owner as a driveway does not, without more, establish liability against the owner. Zektser v. City of New York, 18 A.D.3d 869, 796 N.Y.S.2d 656 (App.Div. 2d Dept. 2005).

¶ 2. A pedestrian was injured when she slipped and fell on ice and snow on a public sidewalk, adjacent to a private business. Where, as here, the accident took place before Sept. 14, 2003 when revisions to the Administrative Code took place, the abutting property owner is liable for an injury sustained by an individual only if that person's ice and snow removal efforts made the sidewalk more hazardous. Martinez v. City of NY, 20 A.D.3d 513, 799 N.Y.S.2d 252 (2nd Dept. 2005).

¶ 3. In King v. Alltom Properties, 16 Misc.3d 1125(A), 2007 WL 2333086 (Sup.Ct. Kings Co.), a pedestrian fell over the remains of a broken signpost, which was protruding from the sidewalk. The question was whether the City or the adjoining property owner was responsible for the accident. City Charter Sex. 2903 requires the City to maintain signs for controlling traffic but the City is responsible for maintaining signposts. Thus, where a pedestrian allegedly was injured when she fell over the remains of a metal signpost protruding from the sidewalk, the City, rather than the adjoining property owner, is legally responsible for the accident. The court then considered Admin. Code § 19-152, which requires property owners to maintain sidewalks, lists nine categories of substantial defects which owners must repair. Eight of those nine categories involving tripping hazards pertaining to sidewalk flags being out of level, broken or loose. One category, however, in § 19-152(a)(6), refers to "hardware defects," which mean hardware or other appurtenances not flush within one-half inch of the sidewalk surface, or cellar doors that defect greater than one inch when walked on, are not skid resistant, or are otherwise in an unsafe condition. Thus, if the landowner was to be held responsible for the signpost, the signpost had to be considered "hardware" or an appurtenance. Section 19-152 does not itself give a clear indication of what falls within these categories. However, Admin. Code § 19-147, entitled "maintenance of street hardware," does shed light on the question; it provides that utility manhole covers, castings or other street hardware shall be maintained flush with the existing surrounding grade. When juxtaposed with the mention of cellar doors in § 19-152, it is evidence that "hardware" and "appurtenances" do not refer to things that, by their very nature, are intended to protrude from the sidewalk. Rather, they refer to that category of street hardware that is meant to be embedded in the sidewalk and, when properly constructed, is flush with the surrounding sidewalk. Therefore, since such things as signposts, fire hydrants and lightposts are intended to protrude from the sidewalk, they do not fall within the ambit of § 19-152. The court rejected the City's argument that the abutting property owner had a duty to notify the City of the existence of a broken signpost. The statutory framework set forth in Admin. Code § § 7-210 and 19-152 only impose a duty to maintain and nowhere impose a duty to notify the City of dangerous conditions.

¶ 4. In one case, plaintiff fell in a gap in a tree well located on a sidewalk. The area surrounding the tree was lined with concrete blocks, although one of the blocks was missing where the tree fell. The question was whether the City or the adjoining property owner, Con. Ed., was liable. The resolution of the issue depended in part on the definition of "sidewalk." Section 7-210 does not itself contain a definition of "sidewalk." However, Title 19 of the Administrative Code, which also addresses sidewalk maintenance, says that it is "that portion of the street between the curb lines . . . and the adjacent property lines, but not including the curb, intended for the use of pedestrians." The tree line here is located between the curb and the adjacent property line, so it fits within one part of the definition. However, what about

the part of the definition, "intended for the use of pedestrians." The court stated that the language does not preclude liability on the part of the adjoining property owner. Con. Ed. argued that liability could not be shifted to it because the City was responsible for the cultivation of trees (Adm. Code. § 18-105). However, the defect here was a missing concrete block, which was not related to trees under Admin. Code § 18-104 or 18-105. In other words, the responsibility to maintain a tree and the responsibility to maintain the area surrounding a tree are unrelated obligations. Under these circumstances, and in light of the fact that the plaintiff did not allege that the missing block was caused or created by any action on the part of the City, the City was not liable, and responsibility shifted to Con. Ed. Callan v. City of New York, 17 Misc.3d 248, 841 N.Y.S.2d 196 (Sup.Ct. Kings Co. 2007).

¶ 5. A mixed-use building, combining a one-family residence with a store or office, does not qualify for the residential use exception to the statute. Thus, the City is not liable for falls occurring on the sidewalk, and the liability, if any, is with the property owner. Aurelien v. City of NY, 15 Misc.3d 1116(A), 839 N.Y.S.2d 431 (Sup.Ct. Richmond Co. 2007).

¶ 6. In Seplow v. Solil Management Corp. 15 Misc. 3d 1138(A), 841 N.Y.S.2d 823 (Sup.Ct. N.Y. County 2007), the plaintiff allegedly was injured in a fall on a portion of sidewalk that was uneven by reason of tree roots. The court held that the City was not responsible for the accident. A similar result was reached in Goss v. Briar Owners, Inc. 14 Misc.3d 1239A, 836 NYS2d 499 (Sup.Ct. Queens 2007).

¶ 7. In one case, the plaintiff fell when she lost her footing after stepping into a metal circular hole that remained after a damaged fire hydrant had been removed by the City. The issue was whether the adjoining property owner was required to repair holes created by missing fire hydrant. The court held that the City had the responsibility to correct the defect. The court found that Admin. Code § 19-152 did not place upon the adjacent landowner the duty to repair or repave a sidewalk defect attributable to the City. Not only is a fire hydrant the property of the City, but its location and maintenance fall within the sole province of the municipal authorities (see 15 RCNY § 20-08). The court further said that § 7-210 is construed against the City. Manning v. city of NY, 16 Misc.3d 1132(A), 2007 WL 2446562 (Table)(Sup.Ct. Richmond Co. 2007).

¶ 8. A pedestrian was injured when she slipped and fell on ice on a public sidewalk. The injury took place in front of a warehouse rented by the tenant. Where an accident took place before the effective date of the Admin. Code § 7-210, an adjoining landowner may be held liable for the alleged defect in the sidewalk only if it "either created the defective condition or caused the defect to occur because of a special use." The use of a sidewalk as a driveway constitutes a special use. Where a defect that causes an accident occurs in a part of the sidewalk used as a driveway, the abutting landowner, on a summary judgment motion, bears the burden of establishing that he or she "did nothing to either create the defective condition or cause the condition through" the special use of the property as a driveway. In this case, the defendant could not establish that the allegedly defective condition that resulted in plaintiff's accident was not located on the portion of the sidewalk which was used as a driveway. The defendant also failed to show that it did nothing to cause that condition through its special use of the property as a driveway. Accordingly, the court denied the motion for summary judgment. Campos v. Midway Cabinets, Inc. 51 AD3d 843, 858 N.Y. 742 (2d Dept. 2008).

¶ 9. Plaintiff was injured when she tripped over a growth from a tree that spilled out onto sidewalk in front of multi-use residence owned by defendants. In moving for summary judgment dismissing the case, defendant cited Vucetovic and contended that they were not responsible for maintenance of trees. The court, however, denied the motion for summary judgment. While it is the city's primary obligation to maintain the trees, if a tree creates a dangerous condition on a property owner's sidewalk, the property owner cannot hide behind the City's possible negligence to avoid responsibility. The property owner has a right to seek a permit from the city to correct any sidewalk defect caused by a City tree. Admin. Code of the City of NY 18-129(a).

The court distinguished Vucetovic, which involved a fall in a tree well not from a defect. In DiGregorio, however, plaintiff fell over a tree growth on the sidewalk in front of a residential building whose owner was obligated to maintain the sidewalk pursuant to Adm. Code § 7-210. Liability does not shift back to the City when the accident

occurred due to the growth of tree roots. DiGregorio v. City of NY 2008 NY Slip Op. 51013U, 2008 NY Misc. Lexis 2951 (Sup. Ct. NY Kings Cty.). See also, Falco v. Jennings Hall Senior Citizen House Development Fund, Inc., 19 Misc.3d 1107 (A), 2008 NY Slip Op. 50595(U) (Sup.Ct. Kings Co.).

¶ 10. A pedestrian was injured when he fell on a stairway owned by the City. When suit was brought against the adjoining property owner based on the owner's alleged failure to maintain the sidewalk, the court had to decide how to define "sidewalk." Since § 7-210 does not define "sidewalk," the court had to look to other sections of the Admin. Code for an appropriate definition. The plaintiff urged the court to use the definition in Sec. 7-201, which includes steps and stairways. The court, however, held that 7-201 pertained to notice requirements against the City alone, and did not affect other entities such as adjoining property owners. Instead, the court used Admin. Code Sec. 19-101(d), whose definition of "sidewalk" did not include stairways. Accordingly, the court granted summary judgment dismissing the complaint against the adjoining property owner. Fernandez v. Highbridge Realty Assoc. 49 AD3d 318, 853 NYS2d 71 (1st Dept. 2008).

¶ 11. Plaintiff slipped and fell on snow and ice on a sidewalk adjacent to a building. Since the accident took place prior to Sept. 14, 2003, and the old law applied, plaintiff could not recover against the adjoining property owner in the absence of evidence that they undertook snow removal efforts which made the naturally occurring conditions more hazardous. Thus, the action was dismissed. Everly Bisontt v. Rockaway One Company LLC 2008 NY Slip Op. 638, 47 AD3d 862, 850 NYS2d 621, 2008 NY App. Div. Lexis 629 (AD2d Dept.).

¶ 12. In 2001, plaintiff tripped and fell on a city sidewalk in front of defendant's supermarket. Prior to the enactment of Sec. 7-210 in 2003, the duty to maintain the public sidewalks rested with the City. In such as case, an abutting landowner would be liable only if it created the defective condition or made a special use of the sidewalk. The court held that the mere ownership of property and the occasional use of the side of a store for deliveries does not constitute a special use. Aracelis Rodriguez v. City of NY 2008 NY Slip Op. 1433, 48 AD3d 298, 851 NYS2d 511, 2008 NY App. Div. Lexis 1404 (App. Div. 1st Dept.).

¶ 13. Section 7-210 was designed to shift liability away from the City for sidewalk accidents other than sidewalks abutting one-family homes used exclusively for residential purposes. An adjoining property owner is not liable for an accident caused by tree roots, which are still the responsibility of the City of New York. Mastromarino v. City of NY 2008 NY Lip Op 50377U, 18 Misc.3d 1140A (Sup. Ct. Kings Cty. 2008).

¶ 14. In Vucetovic v. Epsom Downs, Inc., 10 NY3d 517, 2008 NY Slip Op. 4901, 2008 NY Lexis 1464,, plaintiff's accident occurred when he stepped into a tree well and tripped on one of the cobblestones surrounding the dirt area containing a tree stump. The tree well was located in front of the building owned by Epsom, but the tree well apparently had been cut down prior to Epsom's acquisition of the building. Approximately four months before the accident, the City cut down the tree. Before addressing the language of § 7-210 itself, the court had to examine the background underlying its enactment.

Prior to the adoption of § 7-210, property owners in NYC had a statutory duty to install, construct, repave and repair the sidewalk flags in front of or abutting such property (Admin. Code § 19-152(a) and to remove the snow or ice, dirt, or other material from the sidewalk (Admin. Code of NYC § 16-123(a)). Failure to comply with both of these laws resulted in fines or an obligation to reimburse the city for its expenses under § 19-152(e) and 167-123(e)(h). Under the previous statutory scheme, the City, as the owner of the sidewalks, generally remained liable for injuries to pedestrians caused by defective sidewalk flags, assuming there was actual written notice of a defect (Adm. Code 7-201). Under that scheme, an abutting landowner could be held liable only if the owner affirmatively created the dangerous sidewalk condition or negligently made repairs or used the sidewalk in a special manner for its own benefit.

In 2003, the City Council modified this regime by adopting section 7-210 of the Admin. Code which states: a) It shall be the duty of the owner of real property abutting any sidewalk, including, but not limited to the intersection quadrant for corner property, to maintain such sidewalk in a reasonably safe condition. b) The owner of real property,

abutting any sidewalk, and not limited to the intersection for the corner property, shall be liable for any injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalk in a reasonably safe condition. Failure to install, construct, repave, repair or replace defective sidewalk and the negligent failure to remove snow, ice, etc. can result in an owner's liability. c) NYC shall no longer be liable for injury to property or personal injury, including death, proximately caused by the failure to maintain sidewalks in a reasonably safe condition.

In other words, under the new law, tort liability has been switched from the city to the owner of the property (with the exception of owner occupied residential buildings of three or fewer units) under § 7-210. The statute was a cost-saving measure, designed to shift liability for sidewalk maintenance from the City to the property owner, whose legal obligation it was to maintain and repair sidewalks. The language of § 7-210 mirrors the duties of property owners with regard to sidewalks as set forth in Admin. Code Secs. 19-152 and 16-123. Both plaintiff and the City argued that tree wells should be considered an integral part of the sidewalk for purposes of Sec. 7-210, so that Epsom could be held accountable for the accident. Although Sec. 7-210 does not define "sidewalk," plaintiff relied on Sec. 19-101(d), which describes a sidewalk as "that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians." Although the Court of Appeals acknowledged that the case presented a close question, it agreed with Epsom that Sec. 7-210 does not impose civil liability on property owners for injuries that occur in City-owned tree wells. The court narrowly construed Sec. 7-210, because the broad construction sought by plaintiff would have imposed civil liability on adjoining property owners where no such liability existed before.

Sections 19-152 and 16-123, the provisions whose language Sec. 7-210 tracks, contemplates the installation, maintenance, repair and clearing of sidewalks or sidewalk flags. Significantly, tree wells are not mentioned in Secs. 7-210, 16-123 and 19-152. Given the statutory silence and the absence of any discussion of tree wells in the legislative history, it appeared that the City Council did not consider the issue of tree wells liability when it drafted Sec. 7-210. If the City Council desired to shift liability for accidents involving tree wells exclusively to abutting landowners in derogation of the common law, it needed specific and clear language to accomplish this goal.

In addition to the above, the court considered Admin. Code Sec. 18-104, which gives the City Parks and Recreation the exclusive jurisdiction over the "planting, care and cultivation of trees; individuals cannot lawfully cut or remove a tree without first obtaining the Department's permission. In other words, if adjoining property owners are not in control of trees, they certainly cannot be expected to maintain tree wells. Accordingly, the court held that a tree well was not part of the "sidewalk" for purposes of Section 7-210, and dismissed the action against Epsom.

¶ 15. In one case, plaintiff sought damages for injuries sustained when crossing a NYC street. Her foot entered a "dip or a slope" in the sidewalk causing her to fall. The City claims that plaintiff violated NYC Admin. Code §7-210 which applies to sidewalk accidents occurring on or after Sept. 14, 2003, which shifts liability for accidents from the City to the abutting landowner. The issue presented here is whether plaintiff's accident falls under this provision. Section 7-210 provides that it shall be the duty of the owner of real property abutting any sidewalk, including but not limited to, the intersection for corner property, to maintain the sidewalk in a reasonably safe condition. The director of the pedestrian ramp unit for the NYC Dept. of Transportation, appearing on behalf of the City, stated that pedestrian ramps and sidewalk units are distinct constructions and the ramp at the location at issue here was constructed by the City prior to plaintiff's accident. The testimony shows that the pedestrian curb-cut ramp was not constructed by, on behalf of, or for the benefit of adjoining property owners. A "pedestrian ramp" is not part of the "sidewalk." Therefore, it does not fall under §7-210. Further, plaintiff alleges that her accident occurred, not because of a failure to maintain or repair a defect in the sidewalk, but rather, because of an alleged improperly designed ramp. In other words, the adjoining property owner is responsible for lapses in maintenance but not for the steepness of the slope, which was created by the City. Accordingly, the court dismissed the action as against the adjoining property owner. Rodriguez v. Sequoia Property Management Corp., 878 N.Y.S.2d 606 (Sup.Ct. Queens Co. 2009).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-211

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-211 Personal injury and property damage liability insurance.

An owner of real property, other than a public corporation as defined in section sixty-six of the general construction law or a state or federal agency or instrumentality, to which subdivision b of section 7-210 of this code applies, shall be required to have a policy of personal injury and property damage liability insurance for such property for liability for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain the sidewalk abutting such property in a reasonably safe condition. The city shall not be liable for any injury to property or personal injury, including death, as a result of the failure of an owner to comply with this section.

HISTORICAL NOTE

Section added L.L. 54/2003 § 1, eff. Sept. 14, 2003 and applying to

accidents occurring on or after such date.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-212

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 2 ACTIONS AGAINST NEW YORK CITY

§ 7-212 Authority to make payments for personal injury, including death, where abutting property owner liable pursuant to section 7-210 is uninsured.

a. Where a judgment for personal injury, including death, obtained against an abutting property owner pursuant to section 7-210 of this code is unsatisfied for a period of at least one year following entry of such judgment in the office of the county clerk of the county in which such property is situated and the judgment debtor has been determined by the comptroller after investigation to have no policy of liability insurance or other assets to satisfy such judgment, the comptroller, after consultation with the corporation counsel, is hereby authorized and empowered to make a payment for such personal injury, including death.

b. Any such payment shall be made in the discretion of the comptroller and shall not be made as a matter of right. The amount of such payment shall not exceed uncompensated medical expenses. Payment may be in a single payment, or may be made in periodic payments. No such payment or periodic payments shall exceed fifty thousand dollars in total with respect to any unsatisfied judgment and the total of all such payments for all judgments in any fiscal year shall not exceed four million dollars.

c. Petitions for a payment under this section shall be presented to the comptroller not less than one or more than three years following entry of such judgment in the office of the county clerk of the county in which such property is located. Each petition shall include evidence demonstrating (i) that efforts to collect the judgment have been pursued, and (ii) that the judgment debtor has no policy of liability insurance or other assets to satisfy the judgment.

d. Before the comptroller shall make such payment, he or she shall require the petitioner to execute an assignment of the judgment to the city. After assignment the city shall be entitled to enforce the judgment. To the extent

that the city collects money on the judgment in excess of the payment or payments made to a petitioner pursuant to this section, such excess amount shall be paid to the petitioner after deducting the city's expenses.

e. No payment shall be made under this section if it is determined that the unsatisfied judgment was obtained by fraud, or by collusion of the plaintiff and of any defendant in the action.

f. The comptroller shall, by rule, establish procedures for the presentation of petitions for payment pursuant to the provisions of subdivision c of this section, for the review of such petitions by that office and with respect to such other matters as are necessary to implement the provisions of this section.

HISTORICAL NOTE

Section added L.L. 54/2003 § 2, eff. Sept. 14, 2003 and applying to

accidents occurring on or after such date.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-301

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 3 BOARD OF STATUTORY CONSOLIDATION

§ 7-301 Board of statutory consolidation; powers and duties.

a. The board of statutory consolidation shall consist of the mayor, the comptroller, the public advocate and the corporation counsel. The board from among its members shall elect a chairperson, a vice-chairperson and a secretary. The members of such board shall serve as such members without compensation. The powers and duties of such board shall include the direction and control of the revision, simplification, consolidation, codification, restatement and annotation of the statutes, local laws, and departmental rules and regulations having the force of law affecting and relating to the government, affairs and property of the city and of the counties contained therein.

b. The revision, simplification, consolidation, codification, restatement and annotation herein provided for shall be carried on under the direction and control of such board by such counsel, assistant counsel and other persons as it shall designate and employ for that purpose. Compensation and necessary expenses shall be fixed by such board on the certification of the executive officer thereof as may be designated by such board and paid by the comptroller after audit by and on the warrant of such comptroller out of an appropriation that shall be made for such purpose. Such board is authorized and empowered, in its discretion, to keep and use the ledgers, documents, books, reports and all other papers and property of the codification division of the New York city charter revision commission, created by chapter eight hundred sixty-seven of the laws of nineteen hundred thirty-four.

c. The board shall cause its work to be printed from time to time, and may distribute copies of the same to such persons as it may deem fit for the purpose of obtaining their suggestions and advice in relation to such work. It shall report to the local legislative body of the city upon the progress of its work. It shall recommend for enactment to the legislature the statutes or to the local legislative body the local laws, and rules and regulations so revised, simplified, consolidated, codified, or restated and shall designate such statutes, or parts of statutes, as in its judgment should be

repealed and shall recommend the enactment of any acts, or parts of acts, which such repeal may in its judgment render necessary. Such board shall have the power to cause to be published and to sell any such publication and to copyright annotations thereto, the proceeds of such sale to be paid into the city treasury.

d. The city is authorized to appropriate and make available to the board of statutory consolidation such sums of money as may be necessary to defray the expenses of such board to enable it to perform its duties under this section, upon the receipt of a requisition therefor stating the purposes for which such moneys are required.

e. Such board may, under its direction and control, delegate to the corporation counsel the duty of continuing the annotating and editing of such statutes, local laws, rules and regulations and of statutes, local laws, and rules and regulations hereafter enacted or adopted relating to the government, affairs and property of the city and the counties therein contained.

f. Nothing contained in section eleven hundred fifteen or in any other section of the charter or in any other law shall be construed to prevent such mayor, comptroller, public advocate and corporation counsel from serving on such board, nor shall it prevent any city or county officer of the city from serving on the staff of such board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, f amended L.L. 68/1993 § 27, eff. Jan. 1, 1994

DERIVATION

Formerly § B16-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 317

(formerly § 397-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-401

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 4 JURORS

§ 7-401 Jurors fees.

In pursuance of section five hundred twenty-one of the judiciary law, it is hereby directed that the sum of twelve dollars be allowed to each grand juror and each trial juror for each day's necessary attendance as such a juror at a term of any court of record of civil or criminal jurisdiction held within the city of New York; provided, however, that no such juror shall be so paid for attendance on any day on which the juror shall be excused from service at his or her own request.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a8-1.0 added chap 929/1937 § 1

Amended LL 65/1960 § 1

Renumbered and amended chap 100/1963 § 157

(formerly § 117(5)-1.0)

Amended LL 52/1969 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-402

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 4 JURORS

§ 7-402 Fees to grand jurors.

Pursuant to section five hundred twenty-one of the judiciary law, where the term of a grand jury is extended by an order of the court, the sum of twelve dollars shall be allowed to each grand juror for each day's necessary attendance by such grand juror during such extended term.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a8-2.0 added LL 57/1951 § 1

Renumbered and amended chap 100/1963 § 158

(formerly § 117(6)-1.0)

Amended LL 64/1969 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-403

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 4 JURORS

§ 7-403 Fees to grand jurors of extraordinary terms.

Pursuant to section five hundred twenty-one of the judiciary law, where a grand jury has been, or will hereafter be, empaneled to serve at an extraordinary and trial term of the supreme court of this state in any county within the city of New York, and where the term of such a grand jury continues for a period longer than thirty days from the date when such grand jury was empaneled and sworn, the sum of twelve dollars shall be allowed to each member of such grand jury for each day's necessary attendance as a grand juror from and after the expiration of such thirty-day period and until such grand jury shall have been discharged by the court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 117a8-3.0 added LL 40/1952 § 1

Renumbered and amended chap 100/1963 § 159

(formerly § 117(6)-1.1)

Amended LL 64/1969 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-501

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-501 Bond of sheriff.

a. Before entering upon the duties of office, the sheriff shall give a bond to the city and to whom it may concern in the sum of three hundred thousand dollars, with not less than three sufficient sureties, to be approved by the comptroller, conditioned that the sheriff shall well and faithfully in all things perform and execute the duties of the office of sheriff during his or her continuance in such office without fraud, deceit, or oppression, and that the sheriff shall in like manner well and faithfully account for all moneys received by him or her or his or her subordinates by virtue of the sheriff's office. Such bond shall be filed in the office of the comptroller.

b. In case of any official misconduct, default, mistake or omission of duty on the part of the sheriff, an action upon such bond may be begun and prosecuted to judgment by the person or corporation injured or damaged by such official misconduct, default, mistake or omission of duty.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-1.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-502

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-502 Seal.

The sheriff is authorized to adopt a seal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-3.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-503

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-503 Sheriff; accounting for fees.

The sheriff shall be paid a salary to be fixed by the mayor. All fees shall be the property of the city. All sums so received, except as otherwise provided by law, shall be deposited by the commissioner of finance, without deduction, in accordance with section fifteen hundred twenty-three of the charter.

HISTORICAL NOTE

Section amended L.L. 53/1995 § 4, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-4.0 added LL 4/1942 § 3

Amended chap 100/1963 § 1582

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-504

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-504 Statement of account to comptroller.

a. The sheriff, within ten days after the expiration of each calendar month, shall transmit to the comptroller a statement of the sheriff's accounts in such form as the comptroller shall prescribe.

b. Such statement shall be verified by the oath of the sheriff. The verification of every account transmitted to the comptroller shall be to the effect that the same is a true transcript or summary of the accounts and the books of the office of the sheriff.

c. The comptroller may examine under oath the sheriff or any of the sheriff's subordinates regarding the amount of moneys paid to and received by the sheriff and the sheriff's subordinates, in their official capacity, and regarding any statements contained in the certified transcript and return. An order for such examination must be granted by a justice of the supreme court whenever an application shall be made therefor by such comptroller and such examination shall take place before such justice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-5.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-505

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-505 Penalty for failure to account to comptroller.

If the sheriff or any of the sheriff's subordinates shall receive for their own use or neglect to account for any moneys belonging to the city, or if the sheriff shall neglect to render to the comptroller an account of the moneys which he or she has received or is entitled to receive in his or her official capacity or to pay over the same as herein required, or if the sheriff or any of the sheriff's subordinates shall make a false statement in such certified transcript and return or shall swear falsely upon an examination by the comptroller, the sheriff or any such subordinate shall be deemed guilty of a misdemeanor and punishable with a fine of not less than five hundred dollars nor exceeding five thousand dollars or imprisonment for a period of not less than three months nor exceeding five years, or both, at the discretion of the court before whom the sheriff or any such subordinate may be convicted. Such convicted officer or subordinate shall also forfeit any sum that may be due him or her on account of salary and shall be liable to the city in a civil action for all moneys so received and not accounted for and not paid over into the treasury of the city as required by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-6.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-506

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-506 Disposition of moneys collected.

All moneys collected by the sheriff or any of the sheriff's subordinates in any action or proceeding except fees authorized by law shall be paid to the party or parties to whom they are directed to be paid. When the sheriff is not so directed all such monies shall be deposited by the commissioner of finance in the court and trust fund accounts maintained by the commissioner of finance in accordance with applicable law. The money so deposited shall be withdrawn only on an order of the court on notice to the commissioner of finance and all parties who have appeared in the action or proceeding.

HISTORICAL NOTE

Section amended L.L. 53/1995 § 5, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-7.0 added LL 4/1942 § 3

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-507

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-507 Sheriff's books and records.

The sheriff shall keep in proper books or records, in such form as the comptroller shall prescribe, an exact account of all fees actually received by the sheriff or the sheriff's subordinates for any service done in their official capacity.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-8.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-508

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-508 Sheriff's sale.

a. Auctioneer; fees. 1. Whenever the sheriff is required by law to sell real or personal property, he or she may, and if requested in writing by any party or by the attorney of any party to the action or proceeding in which such sale be made, the sheriff must cause such sale to be made through an auctioneer. Such auctioneer shall be selected by the sheriff, except where the attorneys of such of the parties as have appeared in the action or proceeding in which such sale is to be made in writing name an auctioneer, subject to the approval of the sheriff, in which event the sale must be made by the sheriff through such autioneer. In the event of disapproval by the sheriff, the sale must be made by an auctioneer selected by the sheriff.

2. Such sheriff is authorized and directed to withhold from the proceeds of the sale a sum which would be sufficient to compensate the auctioneer for services rendered in conducting such sale, together with all necessary disbursements of such auctioneer as may be approved by the sheriff or by the attorneys for the parties to such action or proceeding, and to pay over such sum to such auctioneer. In no case shall such auctioneer's fee exceed the customary market rate of auctioneers' fees for similar services.

3. If the sheriff or any of the parties shall object to the fees and disbursements claimed by the auctioneer, such fees and disbursements shall be taxed by the court upon the application of the sheriff or of the auctioneer or of any of the parties who have appeared in the action or proceeding on two days' notice by the party desiring such taxation to be given to all of the other parties last mentioned.

b. Advertisement; cost. The sheriff shall himself or herself, or through the auctioneer designated to conduct the sale, cause to be advertised every sale of personal property to be made under any process or mandate of the court in not

exceeding two daily newspapers, except in the sale of perishable property, in which case the court, upon application of the sheriff, may direct the sale thereof at such a time and upon such a notice as it deems proper. Such advertisement shall be made for such a time as the sheriff shall deem sufficient and ample to give proper notice to the public of the sale for the purpose of realizing the highest price for the property to be sold. Such advertisements shall be printed in a daily newspaper or daily newspapers published in the city in addition to the public posting of notice of such sale now required by law. The sheriff shall retain the cost of such advertising from the proceeds of the sale and shall pay the newspaper or newspapers in which such advertisement shall be printed.

c. Deductions for expenses; record. 1. The sheriff shall also deduct from the proceeds of the sale the amounts paid by the sheriff or to be paid for cartage and for the transportation of the goods, as well as such sums paid to keepers or custodians or for storage of the property as hereinafter provided, together with the sums paid by the sheriff for insurance or expended necessarily in the protection and preservation of the property.

2. It shall be the duty of the sheriff after having paid over the proceeds of the sale to the parties in interest, less the amounts by this section authorized to be deducted from such proceeds, to enter in a proper book or record, to be kept for that purpose, under the title of the action in which such sale is made, the time and place of such sale, the name of the auctioneer who effected such sale and an itemized statement of the amount for which such goods are sold, the amount received therefor and the disbursements made by such sheriff under the authority of this section.

3. The sheriff shall keep vouchers or receipts for such payments regularly filed under the title of the action under which such sale has been effected at all times on file in the sheriff's office. The same shall at all times during office hours be open to inspection as public records.

d. Whenever the sheriff deems it necessary, may require that the party directing the sale advance any or all of the costs and disbursements provided for in this section, in which event the sheriff shall repay the same out of the proceeds, if any, of the sale.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-9.0 added LL 4/1942 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 1032-9.0, subd. a(2), limits the fee of an auctioneer in sales on behalf of the sheriff in the City of New York to $2^1/_2$ percent in Bronx County in the absence of a contrary written agreement, inasmuch as such is the rate provided by General Business Law § 21 in Bronx County by virtue of County Law § 246a, and the Admin. Code provides that the commission shall not exceed the customary market rate of auctioneer's fees for similar services.-Di Palma v. Carraro, 180 Misc. 998, 45 N.Y.S. 2d 206 [1943], aff'd 267 App. Div. 947, 48 N.Y.S. 2d 460 [1944]; and see also, 269 App. Div. 659, 53 N.Y.S. 2d 353 [1945].

¶ 2. Where five separate and distinct mortgages on five separate and distinct parcels, with a separate bond for each, four mortgages being owned by one plaintiff and one by the other plaintiff, were foreclosed in one action, the auctioneer was entitled to separate fees on each sale, making a total of $115 where the judgments on all mortgages exceeded $25,000, and an additional $25 for five salesroom fees (contra 163 Misc. 880).-Bretzfelder v. Ghelardi, 115 (99) N.Y.L.J. (4-29-46) 1666, Col. 7 M.

¶ 3. Plaintiff's objection that the sheriff failed to realize any money from the defendant's property after execution was filed with him, as grounds for denial of poundage, could not be sustained where it was shown that the plaintiff

requested delay of physical possession and failed to advance the cost of advertising a sale under the execution, though requested to do so by the sheriff, under the authority of subdivision d of this section.-Manni v. Shirtcraft Co., Inc., 6 Misc. 2d 925, 161 N.Y.S. 2d 257 [1957].

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Administrative Code of the City of New York

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NYC Administrative Code 7-509

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-509 Storage of property; payment.

The sheriff is authorized to store any goods or property for the safe keeping of which the sheriff may at any time be responsible, or to designate proper and competent persons to act as keepers or custodians of such goods or property, and to fix the salary of such keepers subject to review by a justice of the supreme court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-10.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-510

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-510 Inquiry for enforcement of judgments owed to the city.

The sheriff shall be empowered to make an inquiry to determine whether a judgment debtor of the city has sufficient assets and property, including any debts owed to a judgment debtor, to pay the judgment. In connection with such an inquiry, the sheriff is authorized to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as he or she may deem necessary.

HISTORICAL NOTE

Section added L.L. 47/1991 § 1, eff. July 17, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-513

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-513 Counsel. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 53/1995 § 6, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-12.1 added LL 4/1942 § 3

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-514

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-514 Fees defined.

The term "fees", as used in this chapter, shall include all percentages, commissions, compensations, poundages, perquisites, and emoluments of any nature which the sheriff or any of the sheriff's subordinates may receive by virtue of their office.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-13.0 added LL 4/1942 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-515

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-515 Additional hours.

a. The sheriff's subordinates or employees may be ordered to serve during any additional hours as the proper performance of the duties of the office requires.

b. Whenever the last day on which any paper is required to be filed or delivered or any act is required to be done or performed in such office expires on Saturday, Sunday or a public holiday, the time therefor is hereby extended to and including the next business day.

HISTORICAL NOTE

Section amended L.L. 53/1995 § 7, eff. July 27, 1995

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-14.0 added LL 4/1942 § 3

Amended chap 801/1958 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-516

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 5 CITY SHERIFF

§ 7-516 Construction clause.

Any law, rule, regulation, contract or other document which refers or is applicable to the sheriff of any of the counties in the city shall refer to the office of the city sheriff in such county, except that any provision, in any law, rule, regulation, contract or other document relating to the custody and transportation of prisoners held for any cause in criminal proceedings in any county within the city, heretofore applicable to any sheriff of any of the counties within the city, shall apply to the department of correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-15.0 added LL 4/1942 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. In view of provisions of Admin. Code § 1032-15.0, that any law, rule or regulation which refers to or is applicable to the sheriff of any of the counties of the City shall refer to the office of the City Sheriff in such county, each county division of the office of the City Sheriff was to be regarded as an independent entity for the purpose of applying the provisions of C.P.A. § 17. Hence plaintiff's timely delivery of the summons and complaint to the New York County Division of the Sheriff's Office, which made a return specifying that the defendant could not be found in

New York County, would not validate a service thereafter made by the Bronx County Division of the Sheriff's Office, to which office the summons and complaint were delivered after expiration of the applicable period of limitations, although within 60 days after delivery of the summons to the New York County Division.-Balter v. Janis, 200 Misc. 635, 107 N.Y.S. 2d 837 [1951].

¶ 2. Delivery of a summons to the Sheriff of the City of New York, Kings County Division, prior to the expiration of the two year statutory period was ineffectual to toll the statute where the defendants in the wrongful death action were residents of Queens County.-Barko v. Mollica, 5 A.D. 2d 699, 169 N.Y.S. 2d 771 [1957].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-601

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-601 Register; bond.

a. The register, before entering upon the duties of office, shall give a bond to the city and to the people of the state of New York in the sum of eighty thousand dollars, with not less than two sufficient sureties to be approved by the comptroller, conditioned that the register will faithfully discharge the duties of such office and all trusts imposed upon him or her by law by virtue of the register's office, including all duties in connection with the tax on mortgages as prescribed by article eleven of the tax law. Such bond shall be filed in the office of the comptroller.

b. In case of any official misconduct, default, neglect or omission of duty on the part of the register, an action upon such bond may be brought and prosecuted to judgment by the person or corporation injured or damaged by such official misconduct, default, neglect or omission of duty.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-1.0 added LL 4/1942 § 5

Amended chap 252/1949 § 5

CASE NOTES FROM FORMER SECTION

¶ 1. Where plaintiffs sought a declaratory judgment that certain words in an assignment of a mortgage were inserted by inadvertence and that these words constituted a cloud on title which they were entitled to have removed by a judgment in order to enable them to satisfy the mortgage, contention of Register of the City of New York that plaintiffs had an adequate remedy in a C.P.A. Art. 78 proceeding, was rejected. Such a proceeding could not be brought to compel the Register to cancel the mortgage, as the Register is merely a ministerial officer and may not decide questions of law or fact.-Gilkey v. City Bank Farmers Trust Co., 129 (31) N.Y.L.J. (2-16-53) 514, Col. 4 F.

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Administrative Code of the City of New York

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NYC Administrative Code 7-602

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-602 Bond of deputies, assistants, clerks and other subordinate employees.

The register shall require from any deputy, assistant, clerk, employee or other subordinate a bond in such sum and with such sureties as may be approved by him or her and the comptroller, which bond shall run to the register, the city and to whom it may concern, and shall be conditioned for the faithful performance of his or her duty. Each such bond shall be filed with the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-2.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-603

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-603 Seal.

The register is authorized to adopt a seal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-3.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-604

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-604 Register; accounting for fees.

a. The register shall be paid a salary to be fixed by the mayor. All fees shall be the property of the city. All sums so received shall be paid to the commissioner of finance monthly without deduction. The additional fee of twenty dollars for recording any instrument required by New York state statute to be recorded pursuant to subdivision one of section 7-614 of this code shall be used as follows: five dollars paid monthly by the commissioner of finance to the New York state commissioner of education, after deducting twenty-five cents, for deposit into the New York state local government records management improvement fund and fifteen dollars, after deducting seventy-five cents, for deposit to the cultural education account.

b. It shall be the duty of the register to keep an exact account of all fees which the register or any of the register's subordinates or assistants shall be entitled to demand and receive from any person for any service rendered by the register or them in the register's or their official capacity, pursuant to law. Such account shall show the nature of every such service performed and the fees chargeable therefor, and shall at all times during business hours be open to the inspection, without any fee or charge therefor, of all persons desiring to examine the same, and such account shall be deemed a part of the records of the office in which they shall be kept, and shall be preserved therein as are other records, except that the register may destroy such account upon obtaining the written consent of the comptroller authorizing such destruction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 83/2002 § B4, eff. July 1, 2002.

Subd a amended chap 78/1989 § 10

DERIVATION

Formerly § 1052-4.0 added LL 4/1942 § 5

Sub b amended LL 78/1948 § 1

Sub a amended chap 100/1963 § 1584

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-605

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-605 Statement of account to comptroller.

A statement of such account, to be made in such form as shall be prescribed by the comptroller, shall be transmitted by the register for each calendar month, within ten days from the expiration thereof, to the comptroller, which shall be verified by the oath of the register, and which shall show all fees which the register or the register's subordinates or assistants shall be entitled to demand and receive from any person for any service rendered in their official capacity, by virtue of any law since making the last preceding return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-5.0 added LL 4/1942 § 5

Amended LL 78/1948 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-606

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-606 Penalty for neglect to account.

The register or any subordinate who shall receive to their own use or neglect to account for any fees, declared to belong to and be for the benefit of the city, or who shall neglect to render to such comptroller an account of the fees accruing to the register's office, or to pay over the same as required herein, shall be deemed guilty of a misdemeanor, and punishable with a fine of not less than five hundred dollars nor exceeding five thousand dollars, or imprisonment for a period of not less than three months nor exceeding one year, or both, at the discretion of the court before whom such officer may be convicted, and in addition shall forfeit any sum that may be due to him or her on account of his or her salary and shall be liable to the city in a civil action for all moneys so received and not accounted for and paid over into the treasury of the city pursuant to the requirements of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-6.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-607

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-607 Real estate instruments to be recorded.

Every instrument affecting real estate or chattels real, situated in the counties within the city, shall be indexed pursuant to the provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-7.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-608

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-608 Microfilmed instruments; how indexed.

If recording is done by microphotography or other photographic processes, the words liber and page when used in this chapter shall be construed to mean the serial number of microfilmed instruments.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-7.1 added chap 638/1953 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-614

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-614 Fees.

The register, and the county clerk of the county of Richmond when acting as recording officer, are entitled, for services specified in this section, to the following fees, to be paid in advance:

1. For recording, indexing and endorsing a certificate on any instrument, ten dollars in the case of the Richmond county clerk and twelve dollars in the case of the register; and, in addition thereto, two dollars in the case of the Richmond county clerk and five dollars in the case of the register for each page or portion of a page, two dollars for each additional block indexed against exceeding one, and three dollars for each additional lot indexed against exceeding one; and, in addition thereto, twenty dollars for recording any instrument required by state statute to be recorded.

2. For filing and indexing a certificate of the appointment of a commissioner of deeds, ten dollars.

3. For issuing, signing and sealing a certificate, six dollars.

4. For searching and certifying the title to or an incumbrance or lien upon real property, fifty cents per year for each name against which the search is made, and fifty cents per year for each separate piece or parcel of property not consisting of contiguous lots. There shall be an additional charge of ten cents for each return made of any conveyance or lien found. The minimum charge for a search and certificate, and return, if any, shall be ten dollars.

5. For preparing and certifying a copy of a paper filed or recorded in the office, four dollars for each page or portion thereof.

6. For certifying a prepared copy of a paper filed or recorded in the office, four dollars for each page or portion thereof.

7. For filing and indexing each map, twenty dollars, and two dollars for each square foot or major part thereof of a map surface.

8. For copying any map which he or she may copy or certify, such reasonable fees for the service as may be fixed by the register, or county clerk when acting as register, subject to review by the supreme court, by which the same may be taxed.

9. For issuing a last owner of record report, fifteen dollars.

10. For filing a statement under oath reciting facts evidencing entitlement to a credit against, or exemption in whole or in part from, the tax on mortgages imposed by or pursuant to the authority of article eleven of the tax law, eight dollars.

11. For purposes of this section, the size of each page accepted for recording and indexing shall not exceed nine inches by fourteen inches, and every printed portion thereof shall be plainly printed in type of which the face is not smaller than eight point. The register and the county clerk acting as recording officer may in special circumstances accept a page exceeding the size or with smaller print than that prescribed herein, on such terms and at such fee, subject to review by the supreme court, as he or she may deem appropriate, but the fee for such recording and indexing shall be not less than double the fees otherwise chargeable by law therefor.

12. The register, or county clerk when acting as register, may fix the fee for any service rendered by him or her, and for which no fee is herein specified, subject to review by the supreme court.

HISTORICAL NOTE

Section amended L.L. 35/1987 § 1

Section added chap 907/1985 § 1

Subd. 1 amended chap 83/2002 § B5, eff. July 1, 2002. Note language

set to expire Dec. 31, 2005 was made permanent by chap

520/2004 § 1.

Subd. 1 amended L.L. 56/1995 § 1, eff. July 1, 1995

Subd. 1 amended L.L. 53/1991 § 1, eff. Sept. 1, 1991

Subd. 1 amended ch. 78/1989 § 11. Note: This amendment expires and

is repealed on Dec. 31, 2000 per chap 385/1995 § 1

DERIVATION

Formerly § 1052-13.0 added LL 4/1942 § 5

Sub 13 amended LL 66/1950 § 1

Amended LL 131/1953 § 1

Subs 6-9, 11 amended LL 70/1963 § 1

Sub 16 renumbered LL 70/1963 § 2

(formerly sub 15)

Sub 15 added LL 70/1963 § 2

Amended LL 14/1970 § 1

Amended LL 10/1975 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The "amount involved in a chattel mortgage," within meaning of Admin. Code § 1052-13.0, prescribing a graduated fee of $1.25 "for each $100,000 or fraction thereof" when "the amount involved in a chattel mortgage or other instrument affecting chattels" is $100,000 or more, means the amount of the indebtedness which the mortgage is given to secure, and not the particular amount of money advanced at the time the mortgage is executed, if that is less than the entire debt. Accordingly, where the mortgage in question expressly recited that the truck concerned was to constitute security not only for the $4,094.74 loan but for the prior indebtedness of $3,500,000 as well, the filing fee was to be measured by the total debt secured. The certificate of stockholders' consent required by § 16 of the Stock Corporation Law in connection with the execution of a chattel mortgage by the corporation was not an "other instrument" affecting chattels within meaning of subd. 5 of § 1052-13.0 of the Admin. Code, and hence it might be filed upon payment of a fee of 25 cents, instead of the graduated fee prescribed by § 1052-13.0. The phrase, "other instrument", refers to a document that affects rights in chattels, whereas it is the mortgage plus the stockholders' consent, not the certificate attesting to such consent, that creates rights.-Manufacturers Trust Co. v. Ralph, 300 N.Y. 411, 91 N.E. 2d 865 [1950].

¶ 2. Under Admin. Code § 1052-13.0, the fee for filing a satisfaction of a chattel mortgage is $1.25, regardless of the amount of the loan. Subdivision 14, relative to the charge for filing and entering a chattel mortgage or any renewals thereof, did not authorize a charge of $1.25 for each $100,000 of the amount involved in the chattel mortgage when it was merely sought to file a satisfaction.-W. L. Maxson Corporation v. Ralph, 182 Misc. 144, 47 N.Y.S. 2d 643 [1944], aff'd without opinion, 268 App. Div. 753, 48 N.Y.S. 2d 802 [1944], aff'd 294 N.Y. 880, 62 N.E. 2d 782 [1945].

¶ 3. Instrument executed under chattel mortgage securing an indebtedness of $5,100,000 whereby it released from the lien of the mortgage three vessels but retained its mortgage lien on the other properties and vessels still subject thereto, was deemed a partial satisfaction of the mortgage for which the fee for filing of the release in each county should have been $1.25 instead of the graduated scale of fees prescribed in Admin. Code § 1052-13.0, subd. 14, which applies to an "instrument affecting chattels".-N.Y. Trap Rock Corp. v. City of N.Y., 204 Misc. 753, 124 N.Y.S. 2d 636 [1953].

¶ 4. Under circumstances of the instant case, the City Register was deemed required to accept and record the satisfaction of the mortgage in question and to cancel and discharge the mortgage [Admin. Code § 1052-9.0(k)]. The Register had contended that the discharge of a mortgage by him under the statute must be based upon a certificate of satisfaction executed by one with a complete and unbroken record title to the mortgage, and that in the instant case the certificate of satisfaction showed a break in the chain of title to the mortgage.-Application of Lauro, 298 N.Y. 845, 84 N.E. 2d 149 [1949].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-615

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-615 Corrections to be without erasures.

No entry in any book or index in the register's office or the office of the clerk of the county of Richmond shall be erased so as to be illegible, but in case of any correction the same shall be made without destroying the original entry by drawing a line through such original entry, and in all such cases the date of such correction attested by the signature of such register or county clerk or his or her assistant shall be entered upon the same page on which such correction is made, on the margin opposite such correction. Such correction shall only be made upon the production to the register or county clerk of the original instrument, or, when it is impossible to produce the original instrument, the register or the county clerk, however, may make any correction of the records in his or her office where it is obvious or apparent that an error has been made in recording or indexing any instrument.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-14.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-616

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-616 Miscellaneous instruments.

The provisions of this chapter shall not apply to the indexing of general assignments, wills and powers of attorney. Such instruments shall be filed or recorded as now required by law, and when recorded such general assignments, wills and powers of attorney shall be indexed in separate alphabetical indices.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-15.0 added LL 4/1942 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-617

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-617 Searches.

a. The register, upon request, and upon payment of, or offer to pay, the fees allowed by law, shall diligently search the files, papers, records and dockets in the register's office, and either make one or more transcripts therefrom, and certify to the correctness thereof, and to the search, or certify that a document or paper, of which the custody legally belongs to the register cannot be found. It shall be the duty of the register to cause any and every written order or requisition directing a search to be made to be executed and complied with without delay. The city shall be liable for all damages and injuries resulting from errors, inaccuracies or mistakes in the register's return so certified by the register.

b. The register shall in all cases charge and collect for such search, in addition to the fees prescribed in this chapter, an additional guaranty charge of two dollars which charge shall be accounted for by the register as other fees collected by the register.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-16.0 added LL 4/1942 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-618

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-618 Chattel mortgages, etc., and renewals thereof to be indorsed.

When a chattel mortgage or a conditional bill of sale or other instrument affecting chattels is presented for filing in the office of the register, it must be indorsed on the outside thereof with the names of the parties thereto, the amount of indebtedness and the location of the property affected by such instrument. Every renewal of any such instrument must, in addition to the aforesaid indorsements, be stamped or marked "renewal," and contain in the body thereof a reference to the serial number and the date of filing of the chattel mortgage or other instrument which it is desired to be continued for a further period, and the serial number and the date of filing of the latest previous renewal thereof, if any.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-17.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-619

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-619 Destroying obsolete documents and records.

The register is authorized to destroy any or all chattel mortgages, chattel mortgage indices, certificates of stockholders' consent to the execution of mortgages of chattels, bills of sale, conditional bills of sale affecting real property or other filed instruments affecting chattels, on file in the register's office after the expiration of five years from the date of filing, and any daily index or tickler more than two years old and which has been replaced by permanent block and alphabetical indices as provided for in this chapter, and all surplus copies of land maps of any of the counties of the city more than ten years old, which have not been disposed of by sale or otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-18.0 added LL 4/1942 § 5

Amended LL 66/1950 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-620

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-620 Preserving and copying records.

Whenever by reason of age, exposure or any casualty, any public records, maps or papers in the custody of the register shall become mutilated, obliterated or rendered unfit for public service, it shall be the duty of the register to cause copies thereof to be made and certified for public use, and such copies when so made shall for all purposes take the place of the original records.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-19.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-621

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-621 Construction and application of this chapter.

This chapter shall not be construed to repeal or modify the provisions of the real property law in relation to the recording of instruments, and of registering titles to real property; nor of the lien law respecting chattel mortgages; nor of the personal property law in relation to contracts for the conditional sale of goods and chattels; nor of the tax law regarding the taxation of mortgages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-20.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-622

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-622 Indices to be public records.

Upon the completion of the indexing and reindexing directed by this chapter as to any instruments or liens herein mentioned, the same shall be deposited in the same office in which the respective instruments or liens are required to be kept, or such other place as shall be provided for them, for public use, and the same shall thereupon be public records.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-21.0 added LL 4/1942 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-623

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-623 Business hours.

a. The office of the register shall remain open for the transaction of business every day in the year, except Saturdays, Sundays and holidays, from nine o'clock in the forenoon to four o'clock in the afternoon and except during the months of July and August when it shall remain open for the transaction of business from nine o'clock in the forenoon until two o'clock in the afternoon except Saturdays, Sundays and holidays. The register may order any of the register's subordinates or employees to serve during such additional hours as the proper performance of the duties of the office requires.

b. Whenever the last day on which any paper is required to be filed or delivered or any act is required to be done or performed in such office expires on Saturday, the time therefor is hereby extended to and including the next business day.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-22.0 added LL 4/1942 § 5

Amended chap 801/1958 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. This section is not a limitation on the power of the City register to require additional working hours. Nothing in the history of the statute nor in the nature of services performed by the City Register suggests basis for discrimination in working hours between his employees and other city employees.-Montreuil v. Board of Estimate, 10 App. Div. 2d 266, 198 N.Y.S. 2d 891 [1960].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-624

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-624 Construction clause.

Any law, rule, regulation, contract, or other document which refers or is applicable to the register, register of deeds or registrar of any of the counties within the city shall refer to the city register.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-23.0 added LL 4/1942 § 5

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-625

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-625 Block indexing after July first, nineteen hundred sixty-four.

a. Tax maps; block boundaries, block number designations. On and after July first, nineteen hundred sixty-four, the tax maps for the boroughs of Manhattan, Bronx, Brooklyn and Queens shall be substituted for the land maps theretofore in use for the counties of New York, Bronx, Kings and Queens and such tax maps shall be conclusive as to location of block boundaries and block number designations.

b. Block index forms. On and after July first, nineteen hundred sixty-four, new forms for the (1) conveyance block index, and (2) mortgage block index for the counties of New York, Bronx, Kings and Queens may be adopted by the register, which forms shall make provision for the following information:

(1) Conveyance Block Index

1. Name of grantor

2. Name of grantee

3. Date of recording

4. Liber and page

5. Lot number and remarks; and

(2) Mortgage Block Index

1. Name of mortgagor

2. Name of mortgagee

3. Date of recording

4. Liber and page

5. Lot number and remarks

6. Date of recording and liber and page of certificate of dis- charge

c. Indexing under new block numbers. On and after the adoption of the new forms for the block index, the existing block index in use in the register's office, shall be closed and a new block index shall be opened for each block in the form as adopted by the city register. At the end of each block index so closed, a reference shall be made to the new block index. On and after the date on which any such new block index shall be opened, the register shall index in such new block index, under the proper block numbers and in the proper index, all instruments which are presented to the register on and after such date for recording and which are authorized or required by law to be recorded.

On and after the first day of January next succeeding the certifying and filing, by the real property assessment bureau, with the city register of a list of the numbers of new, altered or additional blocks with maps or diagrams showing such alterations or additions, the indices of all blocks theretofore existing shall be closed except for the purpose of completing the indexing belonging to the preceding year. A new block index shall thereupon be opened for every such altered or new block in the prescribed form, which new index shall thenceforth be used for all entries relating to land in such altered or new blocks. At the end of each block index so closed, a reference shall be made to the new block index.

d. Daily block indices. On and after July first, nineteen hundred sixty-four, new forms for the daily index of conveyances and the daily index of mortgages may be adopted by the register. Such forms shall make provision for the following information:

1. Names of parties

2. Block number

3. Serial number

4. Liber and page

e. Endorsement on instruments of tax block number and of tax lot numbers. On and after the adoption of the new forms for the block index, every instrument presented to the register and required to be indexed in the block index of conveyances or mortgages shall have endorsed thereon every block number and every lot number on the current tax map in which the land affected by the instrument is situate.

f. Block index to be notice. The entries made in such indices, except the lot number designation and the information contained in the column or columns headed Lot Number and Remarks, shall be deemed and taken to be a part of the record of the instrument to which such entries respectively refer, and shall be notice to subsequent purchasers or incumbrancers to the same extent and with like effect as the recording of such instruments in the office of the register, now is or may be notice.

g. Miscellaneous instruments. On and after July first, nineteen hundred sixty-three, any instrument entitled to be indexed and recorded as a miscellaneous instrument shall be indexed in a miscellaneous index and recorded in a miscellaneous liber.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-24.0 added chap 925/1963 § 1

Sub c amended chap 851/1964 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-626

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-626 Block indexing after July first, nineteen hundred eighty-one in Richmond county.

a. Tax maps; block boundaries, block number designations. On and after July first, nineteen hundred eighty-one, the tax map for the borough of Staten Island shall be substituted for the land map theretofore in use for the county of Richmond and such tax map shall be conclusive as to location of block boundaries and block number designations.

b. Block index forms. On and after July first, nineteen hundred eighty-one, new forms for the (1) conveyance block index, and (2) mortgage block index for the county of Richmond may be adopted by the register, which forms shall make provision for the following information:

(1) Conveyance Block Index

1. Name of grantor

2. Name of grantee

3. Date of recording

4. Liber and page

5. Lot number and remarks; and

(2) Mortgage Block Index

1. Name of mortgagor

2. Name of mortgagee

3. Date of recording

4. Liber and page

5. Lot number and remarks

6. Date of recording and liber and page of certificate of dis- charge

c. Indexing under new block numbers. On and after the adoption of the new forms for the block index, the existing block index in use in the register's office with respect to Richmond county, shall be closed and a new block index shall be opened for each block in the form as adopted by the city register. At the end of each block index so closed, a reference shall be made to the new block index. On and after the date on which any such new block index shall be opened with respect to Richmond county, the register shall index in such new block index, under the proper block numbers and in the proper index, all instruments which are presented to the register on and after such date for recording and which are authorized or required by law to be recorded. On and after the first day of January next succeeding the certifying and filing, by the real property assessment bureau, with the city register of a list of the numbers of new, altered or additional blocks with maps or diagrams showing such alterations or additions, the indices of all blocks theretofore existing shall be closed except for the purpose of completing the indexing belonging to the preceding year. A new block index shall thereupon be opened for every such altered or new block in the prescribed form, which new index shall thenceforth be used for all entries relating to land in such altered or new blocks. At the end of each block index so closed, a reference shall be made to the new block index.

d. Daily block indices. On and after July first, nineteen hundred eighty-one, new forms for the daily index of conveyances and the daily index of mortgages may be adopted by the register. Such forms shall make provision for the following information:

1. Names of parties

2. Block number

3. Serial number

4. Liber and page

e. Endorsement on instruments of tax block number and of tax lot numbers. On and after the adoption of the new forms for the block index, every instrument presented to the register with respect to Richmond county and required to be indexed in the block index of conveyances or mortgages shall have endorsed thereon every block number and every lot number on the current tax map in which the land affected by the instrument is situate.

f. Block index to be notice. The entries made in such indices, except the lot number designation and the information contained in the column or columns headed Lot Number and Remarks, shall be deemed and taken to be a part of the record of the instrument to which such entries respectively refer, and shall be notice to subsequent purchasers or incumbrancers to the same extent and with like effect as the recording of such instruments in the office of the register, now is or may be notice.

g. Miscellaneous instruments. On and after July first, nineteen hundred eighty-one, any instrument entitled to be indexed and recorded as a miscellaneous instrument shall be indexed in a miscellaneous index and recorded in a miscellaneous liber.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-24.1 added chap 365/1981 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-627

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 6 CITY REGISTER

§ 7-627 Alphabetical indices.

Notwithstanding the provisions of any general, special or local law, the register may adopt a form of consolidated alphabetical index book for any one or all of the counties of New York, Bronx, Kings and Queens, in which shall be entered the names of the parties to conveyances and mortgages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1052-25.0 added chap 554/1967 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-701

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-701 Legislative declaration.

The council of the city of New York finds that public nuisances exist in the city of New York in the operation of certain commercial establishments and the use or alteration of property in flagrant violation of the building code, zoning resolution, health laws, multiple dwelling law, penal laws regulating obscenity, prostitution and related conduct, licensing laws, environmental laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety, and welfare; the council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety, and welfare of the people of the city of New York and of the businesses thereof and visitors thereto. It is the purpose of the council to create one standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this law, without prejudice to the use of procedures available under existing and subsequently enacted laws, and to strengthen existing laws on the subject.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.0 added LL 55/1977 § 1

Amended LL 18/1983 § 1

CASE NOTES

¶ 1. The court can impose both civil penalties and punitive damages under the nuisance abatement law, without violating the constitutional prohibition against double jeopardy. City of New York v. Taliaferrow, 158 A.D.2d 445, 551 N.Y.S.2d 253 (2nd Dept. 1990).

¶ 2. The court granted injunctive relief closing a theatre exhibiting adult films. The testimony established by clear and convincing evidence that the establishment was made available for prohibited sexual activities and thus constituted a threat to public health. Constitutional standards were in that the City first attempting to pursue a less restrictive alternative designed to eliminate the activity. Management was given an explicit pre-closure warning that sexual activities dangerous to public health were occurring at the premises and that the City would seek closure if such activities were not immediately curtailed. The premises were closed only after the owner, despite repeated assurances that they would monitor the facility, failed to eliminate the prohibited activity.-City of New York v. 777-779 Eighth Avenue Corp., 640 N.Y.S.2d 546 [App. Div. 1st Dept. 1996].

¶ 3. An order closing the premises was properly granted where there was clear and convincing evidence that drugs were sold to undercover police officers on five separate occasions during a one year period.-City of New York v. 924 Columbus Associates, L.P., 640 N.Y.S.2d 497 [App. Div. 1st Dept. 1996].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-702

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-702 Short Title.

This chapter shall be known as the "nuisance abatement law".

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.1 added LL 55/1977 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-703

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-703 Public nuisance defined.

The following are declared to be public nuisances:

(a) Any building, erection or place, including one- or two-family dwellings, used for the purpose of prostitution as defined in section 230.00 of the penal law. Two or more criminal convictions of persons for acts of prostitution in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance. In any action under this subdivision, evidence of the common fame and general reputation of the building, erection or place, including one- or two-family dwellings, of the inmates or occupants thereof, or of those resorting thereto, shall be competent evidence to prove the existence of the public nuisance. If evidence of the general reputation of the building, erection or place, including one- or two-family dwellings, or of the inmates or occupants thereof, is sufficient to establish the existence of the public nuisance, it shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form in the property, real or personal, used in conducting or maintaining the public nuisance;

(b) Any building, erection or place, including one- or two-family dwellings, used for the purpose of obscene performances. The term "obscene" shall have the same meaning as that term is defined in subdivision one of section

235.00 of the penal law. The term "performance" shall have the same meaning as that term is defined in subdivision three of section 235.00 of the penal law. Two or more convictions, as defined in subdivision thirteen of section 1.20 of the criminal procedure law, of persons for production, presentation or direction of an obscene performance or for participation in such performance, in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance;

(c) Any building, erection or place, including one- or two-family dwellings, used for the purpose of promotion of obscene material. The term "obscene" shall have the same meaning as that term is defined in subdivision one of section 235.00 of the penal law. The term "material" shall have the same meaning as that term is defined in subdivision two of section 235.00 of the penal law. Two or more convictions, as defined in subdivision thirteen of section 1.20 of the criminal procedure law, of persons for promotion of or possession with intent to promote obscene material in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance;

(d) Any building, erection or place, other than a one- or two-family dwelling classified in occupancy group J-3 pursuant to section 27-237 of this code, which is in violation of article five of subchapter two*12 of chapter one of title twenty-six or of article three, four, six, ten, twenty-two or twenty-four of subchapter one of chapter one of title twenty-seven of this code. A conviction, as defined in subdivision thirteen of section 1.20 of the criminal procedure law, of persons for offenses, as defined in subdivision one of section 10.00 of the penal law, in violation of the aforesaid provisions of this code in the building, erection or place, including one- or two-family dwellings, within the period of one-year preceding the commencement of an action under this chapter, shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance;

(e) Any building, erection or place, other than a one- or two-family dwelling classified in occupancy group J-3 pursuant to section 27-237 of this code, which is a nuisance as defined in section 17-142 of this code or which is an infected and uninhabitable house as defined in section 17-159 of this code or which is in violation of subdivision two of section 16-118 of this code;

(f) Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law;

(g) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of one or any combination of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law;

(h) Any building, erection or place, including one- or two-family dwellings, used for any of the unlawful activities described in section one hundred twenty-three of the alcoholic beverage control law;

(i) Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a violation of subchapter six, eight or ten of chapter one of title twenty-four of this code;

(j) Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a violation of subchapter three or four of chapter two of title twenty-four of this code;

(k) Any building, erection or place, including one- or two-family dwellings, wherein there exists or is occurring a violation of the zoning resolution;

(l) Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a criminal nuisance as defined in section 240.45 of the penal law;

(m) Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more violations on the part of the lessees, owners, operators, or occupants, of one or any combination of the following provisions: sections 165.40, 165.45, 165.50, 170.65, 170.70 or 175.10 of the penal law or section four hundred fifteen-a of the vehicle and traffic law;

(n) Any building, erection or place, including one- or two-family dwellings, in which a security guard, as defined in subdivision six of section eighty nine-f of the general business law, is employed in violation of one or more of the following provisions: the alcoholic beverage control law or sections 20-360.1 or 27-525.1 of this code;

(o) Reserved.

(p) Reserved.

(q) Reserved.

(r) Any building, erection or place, including one- or two-family dwellings, used for the creation, production, storage or sale of a false identification document, as defined in subsection (d) of section one thousand twenty-eight of title eighteen of the United States code, a forged instrument, as defined in subdivision seven of section 170.00 of the penal law, or a forgery device, as that term is used in section 170.40 of the penal law. It shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance if there have occurred, within the one-year period preceding the commencement of an action under this chapter, two or more violations constituting separate occurrences on the part of the lessees, owners, operators or occupants of one or any combination of the following provisions: paragraph one, five or eight of subsection (a) of section one thousand twenty-eight of title eighteen of the United States code, section 170.05, 170.10, 170.15 or 170.40 of the penal law or, under circumstances evincing an intent to sell or distribute a forged instrument, section 170.20, 170.25 or 170.30 of the penal law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (d) laid out for footnote purposes.

Subd. (g) amended L.L. 8/2007 § 1, eff. Apr. 13, 2007.

Subd. (g) amended L.L. 113/1993 § 1, eff. Dec. 29, 1993

Subd. (l) amended L.L. 35/2006 § 1, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. (m) amended L.L. 8/2007 § 2, eff. Apr.13, 2007.

Subd. (m) amended L.L. 35/2006 § 1, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. (n) amended L.L. 8/2007 § 2, eff. Apr.13, 2007.

Subd. (n) added L.L. 35/2006 § 1, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Subd. (r) added L.L. 8/2007 § 3, eff. Apr. 13, 2007.

DERIVATION

Formerly § C16-2.2 added LL 55/1977 § 1

Amended LL 59/1982 § 1

Sub g amended LL 18/1983 § 2

Subs k, l amended LL 18/1983 § 3

Sub m added LL 18/1983 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff was not entitled to a permanent injunction and monetary damages on theory that defendants operated hotel as a nuisance in that it was operated as a house of prostitution where although there were three arrests for prostitution in the hotel within one year before commencement of action overt solicitation did not occur within the hotel and there were no arrests or convictions for promoting prostitution.-People v. Macbeth Realty Co., 100 Misc. 2d 926, 420 N.Y.S. 2d 252 [1979].

¶ 2. Subdivision (a) of this section held not facially unconstitutional as there is some minimal, rational connection between three arrests and three convictions for prostitution in a hotel and the maintaining of a house of prostitution.-People v. Macbeth Realty Co., 100 Misc. 2d 926, 420 N.Y.S. 2d 252 [1979].

¶ 3. Plaintiff was entitled to a preliminary injunction closing a bar and enjoining further use of the premises by defendants on ground that it was regularly used for purposes of prostitution, where there had been six convictions for prostitution within the premises and the bar was the scene of several violent criminal acts, even though defendant claimed that the tenant had surrendered possession of the premises to the landlord, since the tenant could "return in the guise of another corporate entity" or the premises could be leased to someone else for similar use.-City of N.Y. v. Dazar Restaurants, 182 (33) N.Y.L.J. (8-16-79) 6, Col. 2 M.

¶ 4. City is authorized to commence action for preliminary and permanent injunction enjoining public nuisance. Operation of bodega by def. was in violation of zoning resolution and therefore constituted a public nuisance. (Subd. k).-N.Y.C. v. Narod Realty, 122 Misc. 2d 885 [1983].

¶ 5. Defendant intentionally permitted a public nuisance to exist in violation of subds. (a), (e) and (g) by failing to control trafficking in drugs. The Nuisance Abatement Law is constitutional. Temporary receiver to manage the hotel was appointed.-N.Y.C. v. Senate Associates, 191 (109) N.Y.L.J. (6-6-84) 5, Col. 5 T.

CASE NOTES

¶ 1. City established that a public nuisance, as defined in § 7-703, existed on premises habitually used by prostitutes. People (NYC) v. Taliaferrow, 144 Misc. 2d 649 [1989].

¶ 2. The City sought a permanent injunction against defendants based on three separate sales of alcohol to underage auxiliary police officers within a 15 month period. The City also sought a preliminary injunction as well as a temporary restraining order (TRO) and closure of the premises. The trial court denied the preliminary injunction on the ground that three instances of underage sales were insufficient to constitute a pattern of illegal activities giving rise to a public nuisance. The Appellate Division, however, held that the trial court should not have denied a preliminary injunction without a hearing. Unlike other types of public nuisances listed in the Admin. Code, § 7-703 that specifically require a minimum number of violations before a nuisance is established (e.g. § 7-703(g), which relates to controlled substances, marijuana and gambling), § 7-703(h), relating to underage sales of alcohol, does not expressly require multiple violations of the Alcoholic Beverages Control Law. It is not clear why the legislature wrote the statute this

way. What is clear, however, is that the trial court should have given the City an opportunity to establish its case of nuisance and should have given the defendant an opportunity to contest the allegations. City of NY v. Untitled LLC 2008 NY Slip Op. 4434, 2008 NY App. Div. Lexis 4155 (App. Div. 1st Dept.).

FOOTNOTES

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[Footnote 12]: * So in original, "two" should be "three" per New York City Law Department.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-704

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 1 [PUBLIC NUISANCE DEFINED]

§ 7-704 Remedies.

(a) The corporation counsel shall bring and maintain a civil proceeding in the name of the city in the supreme court of the county in which the building, erection or place is located to permanently enjoin the public nuisances, defined in subdivisions (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (r) of section 7-703 of this chapter, in the manner provided in subchapter two of this chapter.

(b) The corporation counsel shall bring and maintain a civil proceeding in the name of the city, in the supreme court of the county in which the building, erection or place is located to recover a civil penalty in relation to the public nuisances defined in subdivisions (b) and (c) of section 7-703 of this chapter, in the manner provided in subchapter three of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended L.L. 8/2007 § 4, eff. Apr. 13, 2007.

Subd. (a) amended L.L. 35/2006 § 2, eff. Nov. 21, 2006. [See

§ 20-360.1 Note 1]

DERIVATION

Formerly § C16-2.3 added LL 55/1977 § 1

Amended LL 18/1983 § 4

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-705

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-705 Applicability.

This subchapter shall be applicable to the public nuisances defined in subdivisions (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (r) of section 7-703 of this chapter.

HISTORICAL NOTE

Section amended L.L. 8/2007 § 5, eff. Apr. 13, 2007.

Section amended L.L. 35/2006 § 3, eff. Nov. 21, 2006. [See § 20-360.1 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.4 added LL 55/1977 § 1

Amended LL 18/1983 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-706

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-706 Action for permanent injunction.

(a) Generally. Upon the direction of the mayor, or at the request of the head of a department or agency of the city, or at the request of a district attorney of any county within the city, or at the request of a member of the city council with respect to the public nuisances defined in subdivisions (a), (b), (c), (g), and (h) and section 7-703 of this chapter, or upon his or her own initiative, the corporation counsel may bring and maintain a civil proceeding in the name of the city in the supreme court to permanently enjoin a public nuisance within the scope of this subchapter, and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. The owner, lessor and lessee of a building, erection or place wherein the public nuisance as being conducted, maintained or permitted shall be made defendants in the action. The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this subchapter.

(b) The summons; the caption; naming the building, erection or place as defendant. The corporation counsel shall name as defendants the building, erection or place wherein the public nuisance is being conducted, maintained or permitted, by describing it by block, lot number and street address and at least one of the owners of some part of or interest in the property.

(c) In rem jurisdiction over building, erection or place. In rem jurisdiction shall be complete over the building, erection or place wherein the public nuisance is being conducted, maintained or permitted by affixing the summons to

the door of the building, erection or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners of some part of or interest in the property. Proof of service shall be filed within two days thereafter with the clerk of the court designated in the summons. Service shall be complete upon such filing.

(d) Service of summons on other defendants. Defendants, other than the building, erection or place wherein the public nuisance is being conducted, maintained or permitted, shall be served with the summons as provided in the civil practice law and rules.

(e) Notice of pendency. With respect to any action commenced or to be commenced by him or her pursuant to this subchapter, the corporation counsel may file a notice of pendency pursuant to the provisions of article sixty-five of the civil practice law and rules.

(f) Presumption of ownership. The person in whose name the real estate affected by the action is recorded in the office of the city register or the county clerk, as the case may be, shall be presumed to be the owner thereof.

(g) Presumption of employment or agency. Whenever there is evidence that a person was the manager, operator, supervisor or, in any other way, in charge of the premises, at the time a public nuisance was being conducted, maintained or permitted, such evidence shall be presumptive that he or she was an agent or employee of the owner or lessee of the building, erection or place.

(h) Penalty. If, upon the trial of an action under this chapter or, upon a motion for summary judgment in an action under this chapter, a finding is made that the defendant has intentionally conducted, maintained or permitted a public nuisance defined in this chapter, a penalty, to be included in the judgment, may be awarded in an amount not to exceed one thousand dollars for each day it is found that the defendant intentionally conducted, maintained or permitted the public nuisance. Upon recovery, such penalty shall be paid into the general fund of the city.

HISTORICAL NOTE

Section amended LL 6/1989 § 2 [See Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.5 added LL 55/1977 § 1

NOTE

1. Provision of LL 6/1989 § 1

Section one. Legislative Intent. The Council hereby finds that the Nuisance Abatement Law, Local Law 55 of 1977, as amended by Local Law 18 of 1983, was enacted to create a standardized procedure for securing legal and equitable remedies relating to public nuisances: commercial establishments or property operated or used in violation of local and state laws, the existence of which are detrimental to the public health, safety and welfare. The Council hereby reaffirms its desire to sanction and penalize such public nuisances in the city of New York and to further strengthen the law by adding members of the City Council as parties who may initiate an injunction proceeding to obtain penalties against a public nuisance and a civil proceeding to obtain penalties against a person who conducts or maintains such a nuisance.

CASE NOTES

¶ 1. City established the habitual use of premises by prostitutes and that defendants should thus be permanently enjoined from continuing this public nuisance. Evidence of the general reputation of the premises and occupants thereof

is sufficient to establish the existence of the public nuisance and imposition of civil penalties pursuant to § 7-706(h) are appropriate.-People (NYC) v. Taliaferrow, 144 Misc. 2d 649 [1989].

¶ 2. An order preliminarily enjoining defendants from the use and occupancy of the first floor area of the premises was proper under section 7-701 et seq. of the Ad Code of the City of New York where six NY City police officers observed illegal gambling activity. The police officers affidavits regarding the illegal activity established a prima facie showing sufficient to sustain the temporary closing order (Ad Code § 7-703(g)). There is a presumption that the person in charge of the premises at which the nuisance is discovered is the agent or employee of the owner or lessees (Ad Code § 7-706(g)) does not arise on an application for preliminary relief.-City of New York v. Castro, 160 AD2d 651.

¶ 3. City seeks injunction to prohibit storage of certain material on property, prevent the operation of an illegal construction waste transfer station and require removal of waste as a violation of Ad Cd § 7-703(f)(1). Notice of pendency authorized by Ad Cd § 7-706(e) cannot be cancelled through surety bonds issued by an unlicensed Texan bonding company.-City of New York v. Britestarr Homes, Inc., 150 Misc 2d 820 [1991].

¶ 4. Once the City has chosen to use the eviction route (see RPAPL §§ 711 and 715) to remove the perpretrators of the alleged nuisance (receiving stolen property), and the operators of the premises had entered into a consent decree agreeing to vacate the premises, the City could not properly continue an action for an injunction against them. The City was also unsuccessful in its claim for civil penalties. There was nothing in the law which supported a claim for penalties independent of permanent injunctive relief where the nuisance pertained to stolen property, the court said. Although the court took note of the City's contention that a business should not be able to escape monetary liability under the nuisance law by closing prior to judgment, the court was not in a position to rewrite the law. City of New York v. Mora, 261 A.D.2d 185, 690 N.Y.S.2d 33 (1st Dept. 1999), appeal dismissed, 93 N.Y.2d 1041, 697 N.Y.S.2d 569 (1999).

¶ 5. The Metropolitan Transportation Authority brought an eviction proceeding against Mor, on the basis of nuisance-the tenant allegedly had been operating a shop that dealt in stolen goods. The court held that even though the tenant had signed a consent order with respect to the eviction, the City could still use the nuisance law to maintain an action seeking a permanent injunction and recovery of civil penalties. City of New York v. Mora, 261 A.D.2d 185, 690 N.Y.S.2d 33 (1st Dept. 1999), appeal dismissed 93 N.Y.2d 1041 690 N.Y.S.2d 3 (1999).

¶ 6. While the eviction of a tenant whose conduct created a public nuisance may abate the nuisance, the case is not considered moot, and the City can still maintain a claim for permanent injunction against the offensive conduct. City of New York v. Mike Phillips check, 2000 WL 710119 (App.Div. 2d Dept.)

¶ 7. See Cromwell v. Hoffman, 724 N.Y.S.2d 420 (App. Div. 1st Dept. 2001), reported under Sec. 20-361.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-707

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-707 Preliminary injunction.

(a) Generally. Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this subchapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting a preliminary injunction shall direct a trial of the issues within three business days after joinder of issue or, if issue has already been joined, within three business days after the entry of the order. Where a preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction within three business days after the conclusion of the trial. A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted.

(b) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the city agency at whose request the underlying action is being brought. In the event the underlying action is being brought at the direction of the mayor, or at the request of several city agencies or by the corporation counsel, on his or her own initiative, or upon the request of a district attorney, or a member of the city council, the order shall be enforced by the agency designated by the mayor. The police department shall, upon the request of the agency involved or upon the direction of

the mayor, assist in the enforcement of the preliminary injunction.

(c) Preliminary injunctions, inventory, closing of premises, posting of orders and notices, offenses. If the court grants a preliminary injunction, the provisions of section 7-711 of this subchapter shall be applicable.

HISTORICAL NOTE

Section amended LL 6/1989 § 3 [See § 7-706 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.6 added LL 55/1977 § 1

Sub a amended LL 18/1983 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. Although a preliminary injunction was warranted under this section in action by city to restrain defendants from maintenance and use of a single-room-occupancy hotel as a public nuisance in that it was being used for prostitution, only those rooms used for prostitution and any vacant rooms or those that might become vacant during the pendency of the action would be ordered closed, since the tenants of most of the rooms had nothing to do with the prostitution and it "would work an unjust hardship on such tenants to require them to leave their homes".-People v. MacBeth Realty Co. Inc., 63 App. Div. 2d 908 [1978].

CASE NOTES

¶ 1. City is entitled to a preliminary injunction pursuant to § 7-707 enjoining defendents from the use and occupancy of an area where several arrests were made for gambling. The law is not void for failing to clearly define the term "violation" since the repeated illegal conduct clearly constituted a public nuisance. Fifth Amendment right against self incrimination was not violated since the statute provides for rescission of closing order upon proper showing, other than testimony, that public nuisance has been abated.-City of New York v. Castro, 143 Misc. 2d 766 [1989].

¶ 2. The court granted an injunction which closed a theatre in which sex- ually explicit films had been shown and in which high risk sexual activities had occurred. The aim is to control the spread of the HIV virus. Under § 7-707(a), the court may grant a preliminary injunction enjoining a public nuisance and the persons conducting or permitting the nuisance. The court's jurisdiction is in rem and its orders are enforced against the premises. Although the owner denied any personal fault and sought to shift reponsibility onto a lessee, the court held that the owner could not hide behind the lease and was presumed to know how the property was being used.-City of New York v. Capri Cinema, 641 N.Y.S.2d 969 (Sup.Ct. New York Co. 1995).

¶ 3. The court granted an injunction prohibiting a public nuisance, where the City made a clear and convincing showing that illegal gambling had occurred at the premises on several occasions within a one-year period. In light of proof of illegal operations at the premises over an extended period, and the City's ongoing right to insure that the guilty parties do not subsequently recommence their illegal activities in the same location, continued injunctive relief was appropriate, the court said. The court noted that the injunction was based on the existence of the nuisance, and that the landlord's alleged lack of knowledge concerning the tenant's illegal activities was irrelevant. City of New York v. Partnership 91, 277 A.D.2d 164, 716 N.Y.S.2d 659 (1st Dept. 2000).

¶ 4. In City of New York v. Ring, 34 A.D.3d 318, 823 N.Y.S.2d 145 (1st Dept. 2006), the City obtained a preliminary injunction, prohibiting defendants from maintaining, creating, conducting or permitting a public nuisance, pursuant to the Nuisance Abatement Law (Admin. Code of NYC Title 7, Chapter 7). The nuisance that the City wanted

to abate related to the sale of counterfeit trademarked merchandise. The defendants argued that once the goods were removed, this rendered moot the City's application for a permanent injunction. The court, however, held that the action was not moot, since the City had an ongoing right to insure that the respondents do not recommence their illegal activities in the same location.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-708

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-708 Motion papers for preliminary injunction.

The corporation counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a permanent injunction abating a public nuisance within the scope of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.7 added LL 55/1977 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-709

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-709 Temporary closing order.

(a) Generally. If, on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, erection or place wherein the public nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

(b) Service of temporary closing order. Unless the court orders otherwise, a temporary closing order together with the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served, in the same manner as a summons as provided in the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.8 added LL 55/1977 § 1

Sub a amended LL 18/1983 § 7

CASE NOTES FROM FORMER SECTION

¶ 1. Although a temporary closing order was warranted under this section in action by city to restrain defendants from maintenance and use of a single-room-occupancy hotel as a public nuisance in that it was being used for prostitution, only those rooms used for prostitution and any vacant rooms or those that might become vacant during the pendency of the action would be ordered closed since the tenants of most of the rooms had nothing to do with the prostitution and it "would work an unjust hardship on such tenants to require them to leave their homes".-People v. MacBeth Realty Co., Inc., 63 App. Div. 2d 908 [1978].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-710

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-710 Temporary restraining order.

(a) Generally. If, on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary restraining order, such temporary restraining order may be granted without notice restraining the defendants and all persons from removing or in any manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

(b) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served, in the same manner as a summons as provided in the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.9 added LL 55/1977 § 1

Sub a amended LL 18/1983 § 8

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-711

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-711 Temporary closing order; temporary restraining order.

(a) Generally. If on a motion for a preliminary injunction, the corporation counsel submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders.

(b) Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders shall be enforced by the agency at whose request the underlying action is being brought. In the event the underlying action is being brought at the direction of the mayor, or at the request of several city agencies or by the corporation counsel on his or her own initiative, or upon the request of a district attorney, or a member of the city council, the order shall be enforced by the city agency designated by the mayor. The police department shall, upon the request of the agency involved or upon the direction of the mayor, assist in the enforcement of a temporary closing order or a temporary restraining order.

(c) Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary closing order or a temporary restraining order shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this subchapter and shall enter upon the building, erection or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory including, but not limited to photographing such personal property.

(d) Closing of premises pursuant to temporary closing order. The officers serving a temporary closing order shall, upon service of the order, command all persons present in the building, erection or place to vacate the premises forthwith. Upon the building, erection or place being vacated, the premises shall be securely locked and all keys delivered to the officers serving the order who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, erection or place involved. If the fee owner, lessor or lessee is not at the building, erection or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, in which event, the officers shall deliver the keys to such owner, lessor or lessee.

(e) Posting of temporary closing order and temporary restraining order; posting of notices; offenses. Upon service of a temporary closing order or a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the public nuisance is being conducted, maintained or permitted. In addition, where a temporary closing order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that the premises have been closed by court order, which notice shall contain the legend "closed by court order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises, the date of the order, the court from which issued and the name of the office or agency posting the notice. In addition, where a temporary restraining order has been granted, the officers shall affix, in the same manner, a notice similar to the notice provided for in relation to a temporary closing order except that the notice shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five hundred dollars or by imprisonment not exceeding ninety days, or by both, provided such order or notice contains therein a notice of such penalty. The police department shall, upon the request of the agency involved or upon the direction of the mayor, assist in the enforcement of this subdivision.

(f) Intentional disobedience of or resistance to temporary closing order or temporary restraining order. Intentional disobedience of or resistance to a temporary closing order or a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than one thousand dollars or by imprisonment not exceeding six months or by both.

HISTORICAL NOTE

Section amended LL 6/1989 § 4. [See § 7-706 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.10 added LL 55/1977 § 1

Subs c, d, e, f amended LL 48/1983 § 1

CASE NOTES

¶ 1. A closing order issued under the statute does more than abate the alleged nuisance, and bars even the owner from entering the property without court permission. However, the court can afford the owner a limited right of access for the purpose of inspecting the property and making needed repairs. City of New York v. Jai Balaji, 176 Misc.2d 719, 673 N.Y.S.2d 861 (Sup.Ct. Queens Co. 1998).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-712

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-712 Temporary closing order; temporary restraining order; defendant's remedies.

(a) A temporary closing order or a temporary restraining order shall be vacated, upon notice to the corporation counsel, if the defendant shows by affidavit and such other proof as may be submitted that the public nuisance within the scope of this subchapter has been abated. An order vacating a temporary closing order or a temporary restraining order shall include a provision authorizing agencies of the city to inspect the building, erection or place which is the subject of an action pursuant to this chapter, periodically without notice, during the pendency of the action for the purpose of ascertaining whether or not the public nuisance has been resumed. Intentional disobedience of or resistance to an inspection provision of an order vacating a temporary closing order or a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five hundred dollars or by imprisonment not exceeding six months, or by both. The police department shall, upon the request of the agency involved or upon the direction of the mayor, assist in the enforcement of an inspection provision of an order vacating a temporary closing order or temporary restraining order.

(b) A temporary closing order or a temporary restraining order may be vacated by the court, upon notice to the corporation counsel, when the defendant gives an undertaking and the court is satisfied that the public health, safety or welfare will be protected adequately during the pendency of the action. The undertaking shall be in an amount equal to the assessed valuation of the building, erection or place where the public nuisance is being conducted, maintained or permitted or in such other amount as may be fixed by the court. The defendant shall pay to the city, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing

and maintaining the action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.11 added LL 55/1977 § 1

CASE NOTES

¶ 1. Where a temporary closing order is in effect by reason of drug sales on premises leased by a tenant, it was improper for the landlord to engage in self-help by renting to another tenant without notice to the New York City Corporation Counsel and without leave of court.-City of New York v. 924 Columbus Associates, L.P., 640 N.Y.S.2d 497 (App.Div. 1st Dept. 1996).

¶ 2. A temporary closing order can be vacated only upon a sufficient evidentiary showing that the public nuisance has been abated. The conclusory association of counsel that the tenant of record had vacated the premises and that the complained-of activities were no longer taking place, was not sufficient to obtain vacatur of the closing order. In other words, the mere fact that the landlord is back in possession does not alone establish that the premises illegality has abated. City of New York v. Partnership 91, 277 A.D.2d 164, 716 N.Y.S.2d 659 (1st Dept. 2000).

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NYC Administrative Code 7-713

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-713 Temporary receiver.

(a) Appointment, duration and removal. In any action wherein the complaint alleges that the nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof which are occupied in whole or in part as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.

(b) Powers and duties. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.

(c) Oath. A temporary receiver, before entering upon his or her duties shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be administered by any person authorized to take acknowledgements of deeds by the real property law. The oath or affirmation may be waived upon

consent of all parties.

(d) Undertaking. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment, that such receiver will faithfully discharge his or her duties.

(e) Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver or of any person having an apparent interest in the property, the court may require the keeping of particular records or direct or limit inspection or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the temporary receiver's undertaking as well as upon each party.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.12 added LL 18/1983 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-714

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 2 [REMEDIES FOR PUBLIC NUISANCES GENERALLY; PERMANENT INJUNCTION]

§ 7-714 Permanent injunction.

(a) A judgment awarding a permanent injunction pursuant to this subchapter may direct the sheriff to seize and remove from the building, erection or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the sheriff of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the civil practice law and rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the city.

(b) A judgment awarding a permanent injunction pursuant to this subchapter may authorize agents of the city to forthwith remove and correct construction and structural alterations as provided in section 26-246 of this code.

(c) A judgment awarding a permanent injunction pursuant to this subchapter may direct the closing of the building, erection or place by the sheriff, to the extent necessary to abate the nuisance, and shall direct the sheriff to post a copy of the judgment and a printed notice of such closing conforming to the requirements of subdivision (e) of section 7-711 of this subchapter. Mutilation or removal of such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than two hundred fifty dollars or by imprisonment not exceeding fifteen days, or by both, provided such judgment contains therein a notice of such penalty. The closing directed by the judgment shall be for such period as the court may direct but in no event shall the closing be for a period of more than one year from the posting of the judgment provided for in

this subdivision. If the owner shall file a bond in the value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, erection or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the building, erection or place. A closing by the sheriff pursuant to the provisions of this subdivision shall not constitute an act of possession, ownership or control by the sheriff of the closed premises.

(d) Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment not exceeding six months, or by both.

(e) Upon the request of the agency involved or upon the direction of the mayor, the police department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.

(f) A judgment rendered awarding a permanent injunction pursuant to this subchapter shall be and become a lien upon the building, erection or place named in the complaint in such action, such lien to date from the time of filing a notice of lis pendens in the office of the clerk of the county wherein the building, erection or place is located. Every such lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.

(g) A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursements allowed by the civil practice law and rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the city in investigating, bringing and maintaining the action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.13 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.12)

CASE NOTES

¶ 1. The City can recover costs in an action to abate a public nuisance. The CPLR provisions dealing with costs do not pre-empt Section 7-714 of the Administrative Code. City of New York v. Basil Co., 182 A.D.2d 307, 589 N.Y.S.2d 319 (1st Dept. 1992).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-715

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-715 Applicability.

This subchapter shall be applicable to public nuisances defined in subdivisions (b) and (c) of section 7-703 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.14 added LL 55/1977 § 1

Renumbered and amended LL 18/1983 § 10

(formerly § C16-2.13)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-716

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-716 Action for civil penalty.

(a) Generally. Upon the direction of the mayor, or at the request of the head of a department or agency of the city, or at the request of a district attorney of any county within the city, or at the request of a member of the city council with respect to the public nuisances defined in subdivisions (a), (b), (c), (g) and (h) of section 7-703 of this chapter, or upon his or her own initiative, the corporation counsel may bring and maintain a civil proceeding in the name of the city in the supreme court to recover a civil penalty against any person conducting, maintaining or permitting a public nuisance within the scope of this subchapter. The amount of any civil penalty awarded in a judgment entered pursuant to this subchapter shall be in an amount of one thousand dollars for each day the public nuisance has been conducted, maintained or permitted. Upon recovery, such penalty shall be paid into the general fund of the city. The venue of such action shall be in the county wherein the public nuisance is being conducted, maintained or permitted.

(b) The summons and its service; naming of parties as defendants. The corporation counsel shall name as defendants all persons conducting, maintaining or permitting a public nuisance within the scope of this subchapter. Other persons may be named as defendants pursuant to the rules governing joinder of parties set forth in the civil practice law and rules. The summons shall be served in the manner provided by the civil practice law and rules.

(c) Scienter. A temporary restraining order shall not be granted nor shall a judgment be entered against a defendant unless the court is satisfied that the defendant had knowledge of the public nuisance which the defendant conducted, maintained or permitted. The presumption of knowledge provided by subdivision one of section 235.10 of

the penal law shall be applicable to this subchapter.

HISTORICAL NOTE

Section amended L.L. 6/1989 § 5. [See § 7-706 Note 1]

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.15 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.14)

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CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-717 Preliminary injunction.

(a) Generally. Pending an action pursuant to section 7-716 of this subchapter, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer, as defined in subdivision (b) of this section. An order granting a preliminary injunction shall direct a trial of the issues within three business days after joinder of issue or, if issue has already been joined, within three business days after entry of the order. Where a preliminary injunction has been granted the court shall render a decision with respect to the final determination of the action within three business days after the conclusion of the trial. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted. The existence of an adequate remedy at law shall not prevent the granting of a temporary injunction or a temporary restraining order pursuant to this subchapter.

(b) "Bulk transfer" defined. A "bulk transfer" is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transferor in the building, erection or place where the public nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor's business.

(c) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the agency or agencies specified in subdivision (b) of section 7-707 of this chapter.

(d) Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of subdivision

(d) of section 7-719 of this subchapter shall be applicable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.16 added LL 55/1977 § 1

Renumbered and amended LL 18/1983 § 11

(formerly § C16-2.15)

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NYC Administrative Code 7-718

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Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-718 Motion papers for preliminary injunction.

The corporation counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a civil penalty within the scope of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.17 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.16)

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Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-719 Temporary restraining order.

(a) Generally. If, on a motion for a preliminary injunction pursuant to section 7-717 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted, a temporary restraining order may be granted without notice restraining the defendants and all persons from making or permitting a "bulk transfer" as defined in subdivision (b) of section 7-717, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for a preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

(b) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for a preliminary injunction shall be personally served, in the same manner as a summons as provided in the civil practice law and rules.

(c) Enforcement of temporary restraining order. A temporary restraining order shall be enforced by the city agency or agencies specified in subdivision (b) of section 7-707 of this chapter.

(d) Inventory upon service of temporary restraining order. The officers serving a temporary restraining order

shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this subchapter and shall enter upon the building, erection or place for such purpose.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.18 added LL 55/1977 § 1

Renumbered and amended LL 18/1983 § 12

(formerly § C16-2.17)

Administrative Code of the City of New York

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NYC Administrative Code 7-720

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Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-720 Vacating a temporary injunction or a temporary restraining order.

When the defendant gives an undertaking in the amount of the civil penalty demanded in the complaint together with costs, disbursements and the projected actual costs of the prosecution of the action to be determined by the court, upon a motion on notice to the corporation counsel, a temporary injunction or a temporary restraining order shall be vacated by the court. The provisions of the civil practice law and rules governing undertakings shall be applicable to this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.19 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.18)

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NYC Administrative Code 7-721

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-721 Judgment.

(a) Seizure and destruction of obscene material. A judgment awarding a civil penalty pursuant to this subchapter shall direct the sheriff to seize and remove from the building, erection or place and to forthwith destroy all material found by the court or jury to be obscene as defined in section 235.00 of the penal law.

(b) Enforcement of the judgment for a civil penalty. A judgment awarding a civil penalty shall be enforced by the sheriff pursuant to the provisions of the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.20 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.19)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-722

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 7 NUISANCE ABATEMENT LAW

SUBCHAPTER 3 [REMEDIES FOR PROMOTION OF OBSCENE MATERIAL; SEIZURE AND CIVIL PENALTY]

§ 7-722 Chapter not exclusive remedy.

This chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the city of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C16-2.21 added LL 55/1977 § 1

Renumbered LL 18/1983 § 9

(formerly § C16-2.20)

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NYC Administrative Code 7-801

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-801 Short title.

This chapter shall be known as the "New York city false claims act."

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1, 2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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NYC Administrative Code 7-802

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-802 Definitions.

For purposes of this chapter, the following terms shall mean:

1. "City" means the city of New York, and any city agency, department, division or bureau, and any board, committee, institution, agency of government, local development corporation or public benefit corporation, the majority of whose members are appointed by city officials.

2. "Civil enforcement action" means a legal action brought pursuant to section 7-804 of this chapter for the commission of any act or acts described in subdivision a of section 7-803 of this chapter.

3. "Claim" means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the city, or to any contractor, grantee or other recipient, if the city provides the money or property which is requested or demanded or will reimburse such contractor, grantee or other recipient for the money or property which is requested or demanded. "Claim" also encompasses any record or statement used in presenting an obligation to pay or transmit money or property either directly or indirectly to the city.

4. "False claim" means any claim, or information relating to a claim, which is false or fraudulent.

5. "Knowing" and "knowingly" mean that with respect to information, a person: (i) has actual knowledge of the falsity of the information, or (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.

6. "Person" means any natural person, corporation, partnership, firm, organization, association or other legal entity or individual, other than the city.

7. "State" means the state of New York and any state department, agency, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other entity performing governmental or proprietary function for the state.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-803 False claims.

a. Any person who:

1. knowingly presents, or causes to be presented, to any city officer or employee, a false claim for payment or approval by the city;

2. knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the city;

3. conspires to defraud the city by getting a false claim allowed or paid by the city;

4. has possession, custody, or control of property or money used, or to be used, directly or indirectly, by the city and, intending to defraud the city or willfully conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

5. is authorized to make or deliver a document certifying receipt of property used, or to be used, directly or indirectly, by the city and, intending to defraud the city, makes or delivers the receipt without completely knowing that the information on the receipt is true;

6. knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the city knowing that such officer or employee lawfully may not sell or pledge the property; or

7. knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or

decrease, directly or indirectly, an obligation to pay or transmit money or property to the city;

shall be liable to the city for three times the amount of damages which the city sustains because of the act or acts of such person, and a civil penalty of between five thousand and fifteen thousand dollars for each violation of this section, except that any party to a civil enforcement action commenced may request the court to assess, and the court may agree to so assess, not more than two times the amount of damages sustained because of the act or acts of such person if all of the following circumstances are found:

(i) The person committing the violation of section 7-803 of this chapter had furnished all information known to such person about such act or acts to (a) the commissioner of investigation or (b) the corporation counsel or a city agency head, who shall refer such information to the commissioner of investigation, and has furnished such information within thirty days of the date on which such person first obtained the information;

(ii) such person fully cooperated with any government investigation of such violation; and

(iii) at the time such person furnished information about the violation, no criminal or civil action or proceeding, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

b. A person who violates this section shall also be liable for the costs, expenses and attorneys' fees of a civil enforcement action and for the cost of the city's investigation.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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NYC Administrative Code 7-804

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Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-804 Civil actions for false claims.

a. If the corporation counsel finds that a person has violated or is violating the provisions of section 7-803 of this chapter, he or she may institute a civil enforcement action against that person in any court of competent jurisdiction.

b. 1. Any person may submit a proposed civil complaint to the city alleging violations of section 7-803. Proposed civil complaints shall be signed and verified and shall include all material evidence and information possessed by such person in support of the allegations in such proposed civil complaints. The city shall diligently investigate all such proposed civil complaints. The city may request such additional information as it deems necessary from the person submitting a proposed civil complaint.

2. The corporation counsel and the commissioner of investigation shall promulgate rules establishing a protocol detailing the procedures by which the city will address proposed civil complaints after they have been submitted, which protocol shall include the requirement that within one hundred eighty days of receipt of a proposed civil complaint, the city shall, in writing, notify the person who submitted the proposed civil complaint that the corporation counsel:

(i) intends to commence a civil enforcement action based on the facts alleged in the proposed civil complaint against one or more of the defendants named in the proposed civil complaint, in which case he or she shall commence such action within ninety days of such notification, provided that if the corporation counsel determines that a delay in commencing such action is warranted, he or she may delay such commencement, upon notice to the person who submitted the proposed civil complaint, for an additional ninety days at which time he or she shall commence such action;

(ii) designates the person or, if the person is not an attorney, the attorney of such person, as a special assistant corporation counsel for purposes of filing a civil enforcement action against one or more of the defendants named in the proposed civil complaint; or

(iii) declines to commence a civil enforcement action or designate such person to commence a civil enforcement action in which case the corporation counsel shall state in the notification its reason for doing so.

3. The corporation counsel shall commence a civil enforcement action or designate the person who submitted the proposed civil complaint or, if the person is not an attorney, his or her attorney, to commence a civil enforcement action unless:

(i) the proposed civil complaint is barred for the reasons set forth in subdivision d of this section;

(ii) the corporation counsel has determined that the proposed civil complaint is based upon an interpretation of law or regulation which if adopted, would result in significant cost to the city;

(iii) the corporation counsel has determined that commencing a civil enforcement action would interfere with a contractual relationship between the city and an entity providing goods or services which would significantly interfere with the provision of important goods or services, or would jeopardize the health and safety of the public; or

(iv) the corporation counsel has determined that the complaint, if filed in a court of competent jurisdiction, would be dismissed for failure to state a claim upon which relief may be based.

c. If the commissioner of investigation determines that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, then the corporation counsel may decline to commence a civil enforcement action based on a proposed civil complaint or to designate the person who submitted such proposed civil complaint to commence such action, provided that the corporation counsel notifies the person who submitted the proposed civil complaint of such determination within ninety days of receipt by the city of such proposed civil complaint and every one hundred eighty days thereafter until such time as the commissioner of investigation determines that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation, at which time the corporation counsel shall provide to the person who submitted the proposed complaint the notification required in paragraph two of subdivision b of this section. The determination by the commissioner of investigation shall be final.

d. Certain actions barred. This section shall not apply to claims, records, or statements made pursuant to federal, state or local tax law nor to any proposed civil complaints:

1. based upon one or more false claims with a cumulative value of less than twenty five thousand dollars;

2. based upon allegations or transactions which are the subject of any pending criminal or civil action or proceeding, including a civil enforcement action, or an administrative action in which the city is already a party;

3. derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or upon allegations or transactions disclosed by the news media and likely to be seen by the city officials responsible for addressing false claims, unless the person who submitted the proposed complaint is the primary source of the information;

4. based upon information discovered by an employee of the city, state or federal government in the course of his or her employment unless: (i) such employee first reported such information to the department of investigation; and (ii) the city failed to act on the information within six months of its receipt by the department of investigation; or

5. against the federal government, the state of New York, the city or any officer or employee acting within the

scope of his or her employment.

e. Nothing herein shall be construed as authorizing anyone other than the corporation counsel and a person or attorney authorized pursuant to this chapter to commence a civil enforcement action to represent the city of New York in legal proceedings.

f. Pending and related actions. 1. No person, other than the corporation counsel, may intervene or bring a related action based upon the facts underlying a civil enforcement action, unless such other person has first obtained the permission of the corporation counsel to intervene or to bring such related action.

2. Regardless of whether the corporation counsel has commenced a civil enforcement action or another party has been designated to do so, the city may elect to pursue any alternate action with respect to the presentation of false claims, provided that the person who submitted the proposed civil complaint upon which such alternate action is based, if any, shall be entitled to the same percentage share of any cash proceeds recovered by the city as such person would have been entitled to if such alternate action was a civil enforcement action.

g. Rights of the parties. 1. If the corporation counsel elects to commence a civil enforcement action, then the city shall have the sole authority for prosecuting, and, subject to the approval of the comptroller, settling the action and may move to dismiss the action, or may settle the action notwithstanding the objections of the person who submitted the proposed civil complaint upon which such civil enforcement action is based.

2. If a person who submitted a proposed complaint or his or her attorney has been designated to commence a civil enforcement action, then the corporation counsel and such authorized person or attorney shall share authority for prosecuting the case. However, the corporation counsel may move to dismiss the action notwithstanding the objection of the person who submitted the proposed civil complaint provided such person has been served with an appropriate motion and the court has provided such person with an opportunity to be heard. The corporation counsel may also, subject to the approval of the comptroller, settle the action notwithstanding the objection of the person who submitted the proposed civil complaint if the court determines after providing such person with an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable.

3. The corporation counsel may apply to the court for and the court may issue an order restricting the participation of a person designated to commence a civil enforcement action in such litigation notwithstanding the objections of such person if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that such person's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden. Such restrictions may include, but need not be limited to: (i) limiting the number of witnesses such person may call, (ii) limiting the length of the testimony of such witnesses, (iii) limiting such person's cross-examination of witnesses, or (iv) otherwise limiting such person's participation in the litigation.

4. The corporation counsel may apply to the court for a stay of any civil enforcement action if it will interfere with any investigation or prosecution of a criminal matter arising out of the same facts.

h. Under no circumstances shall the city be bound by an act of a person designated to commence a civil enforcement action.

i. Awards from proceeds. 1. If the corporation counsel has elected to commence a civil enforcement action based on a proposed civil complaint, then the person or persons who submitted such proposed civil complaint collectively shall be entitled to receive between ten and twenty-five percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

2. If a person, or such person's attorney has been designated to commence a civil enforcement action based on

such person's proposed civil complaint, then such person shall be entitled to receive between fifteen and thirty percent of the proceeds recovered in such civil enforcement action or in settlement of such action.

3. The court shall determine the share of the proceeds to which a person submitting a proposed complaint is entitled, and may take into account the following factors:

(i) the extent to which the person who submitted the proposed civil complaint contributed to the prosecution of the action, either in time, effort or finances;

(ii) whether the civil enforcement action was based primarily on information provided by the person who submitted the proposed civil complaint, rather than information derived from public sources such as allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media;

(iii) any unreasonable delay by such person in submitting the proposed civil complaint;

(iv) the extent to which the allegations involve a significant safety issue;

(v) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action initiated the violation of section 7-803 of this chapter alleged in such action, in which case the percentage share of the proceeds of the action that such person would otherwise receive under this section may be reduced below the minimum percentages set forth in paragraphs one and two of this subdivision, taking into account the role of such person in advancing the case to litigation and any relevant circumstances including those pertaining to the violation; (vi) whether the person who submitted the proposed civil complaint that formed the basis of the civil enforcement action has been charged with criminal conduct arising from his or her role in the alleged violation of section 7-803 of this chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on such charges; and

(vii) fundamental fairness and any other factors the corporation counsel and the court deem appropriate.

j. Costs, expenses and attorneys' fees. 1. In any civil enforcement action commenced pursuant to this chapter, the corporation counsel, or a person designated to commence such civil enforcement action, if applicable, may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs. Costs and expenses shall include costs incurred by the department of investigation in investigating the false claim and prosecuting conduct relating thereto. All such expenses, attorneys' fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the city prevails in the action.

2. In a civil enforcement action commenced by a designated person or such person's attorney the defendant may apply for an amount of reasonable expenses, plus reasonable attorneys' fees, plus costs and the court may award such expenses, attorneys' fees and costs if it determines that such civil enforcement action was frivolous. All such expenses, attorneys' fees and costs shall be awarded directly against the person or person's attorney that commenced the action.

k. The city shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in submitting a proposed civil complaint or commencing or litigating a civil enforcement action pursuant to this section.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

The federal false claims act provides an excellent model for combating fraud by government contractors and other parties. Since the federal false claims act was substantially amended in 1986, the federal government has recovered billions of dollars under the act. Additionally, a number of states have enacted civil false claims statutes of their own in order to impede fraud in state programs and to protect state treasuries.

The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-805

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-805 Remedies of employees.

a. (1) Any officer or employee of the city of New York who believes that he or she has been the subject of an adverse personnel action, as such term is defined in paragraph one of subdivision a of section 12-113 of the administrative code of the city of New York; or

(2) any officer or employee of the city or state of New York, who believes that he or she has been the subject of a retaliatory action, as defined by section seventy-five-b of the civil service law; or

(3) any non-public employee who believes that he or she has been the subject of a retaliatory action by his or her employer, as defined by section seven hundred forty of the labor law because of lawful acts of such employee in furtherance of a civil enforcement action brought under this section, including the investigation, initiation, testimony, or assistance in connection with, a civil enforcement action commenced or to be commenced under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to: (i) an injunction to restrain continued discrimination, (ii) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

b. An employee described in subdivision a of this section may bring an action in any court of competent jurisdiction for the relief provided in this section.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

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[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

Section 1. Legislative findings and intent. The city of New York engages in annual disbursements of billions of dollars in public funds through one of the largest budgets in the United States, and is, therefore, desirous of preventing the payment of fraudulent claims by the city at taxpayers' expense. Compensation by the city of claims that are false or fraudulent has a considerable impact upon the city's treasury through the loss of untold amounts of public dollars.

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The Council therefore finds that the city of New York should enact legislation modeled on the federal false claims act, to enhance the city's ability to recover monetary damages from parties who file fraudulent claims for payment of city funds and to recover the substantial costs that are incurred in protecting the taxpayers against such fraud.

. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

§ 4. This local law shall take effect 90 days after it shall have been enacted into law, shall apply to claims filed or presented prior to, on or after such date, and shall remain in effect until the first day of June, 2012 when it shall be deemed repealed; provided, however, that such expiration date shall not apply to any civil enforcement action brought pursuant to section 7-804 of the administrative code of the city of New York that was commenced prior to such date but has not by such date reached a final disposition.

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CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-806 Limitation of actions; burden of proof.

a. A civil enforcement action shall be commenced no later than the latest following date: (i) six years after the date on which the violation of section 7-803 is committed, or (ii) three years after the date when facts material to the right of action are known or reasonably should have been known by the corporation counsel or the department of investigation, not to exceed ten years after the date on which the violation is committed.

b. In any civil enforcement action, all essential elements of the cause of action, including damages, shall be proven by a preponderance of the evidence.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

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NYC Administrative Code 7-807

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CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-807 Other law enforcement authority and duties.

This chapter shall not be construed as: (i) affecting the authority, or relieving the duty, of any federal, state or local law enforcement agency to investigate and prosecute suspected violations of law, (ii) preventing or prohibiting a person from voluntarily disclosing any information concerning a violation of section 7-803 to any such law enforcement agency, (iii) limiting any of the powers granted to the city, elsewhere in this chapter or under other laws, to investigate possible violations of this chapter and take actions against wrongdoers, or (iv) diminishing in any way the responsibility of city employees to report any wrongdoing to the commissioner of investigation pursuant to any executive order or statute.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

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[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall

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NYC Administrative Code 7-808

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-808 Annual report.

Not later than March first of each year following the year of enactment, the corporation counsel shall transmit to the mayor and the speaker of the council a report setting forth, with respect to the prior calendar year, the following information:

1. The number of proposed civil complaints submitted pursuant to section 7-804;

2. The number of proposed civil complaints resulting in the corporation counsel commencing a civil enforcement action based upon such submission;

3. The number of proposed civil complaints resulting in the corporation counsel designating the person, or such person's attorney, to act as a special assistant corporation counsel for purposes of commencing a civil enforcement action;

4. The disposition of each civil enforcement action filed, including

(i) whether the case was based on a proposed civil complaint; and

(ii) the monetary value of the award or settlement in each action commenced by the person who submitted a proposed civil complaint to the city; and

(iii) the monetary value of any award or settlement in each action commenced by the city.

5. The number of proposed civil complaints under review by the city and pending a determination by the corporation counsel as to the commencement of a civil enforcement action;

6. The number of proposed civil complaints for which the corporation counsel determined not to commence a civil enforcement action and a statistical summary of the reasons for such determinations; and

7. Any other information related to proposed civil complaints submitted pursuant to section 7-804 which the corporation counsel deems appropriate.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

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[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

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. . . . . § 3. Severability. If any provision of this local law is adjudged by any court of competent jurisdiction to be invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 7-809

Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-809 Comptroller.

Nothing in the local law that added this chapter is intended to modify, supersede or in any way diminish the powers granted to the comptroller pursuant to section ninety-three of the charter to settle and adjust all claims for the city.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

17

[Footnote 17]: * Chapter 8 added L.L. 53/2005 § 2, eff. Aug. 17, 2005 until June 1, 2012 when it shall be deemed repealed. Note provisions of L.L. 53/2005:

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***** Current through December 2009 ****

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Administrative Code of the City of New York

Title 7 Legal Affairs

CHAPTER 8 NEW YORK CITY FALSE CLAIMS ACT*17

§ 7-810 Regulations.

The corporation counsel and the commissioner of investigation shall promulgate such rules as are necessary to effectuate the purposes of this chapter.

HISTORICAL NOTE

Section added L.L. 53/2005 § 2, eff. Aug. 17, 2005 and repealed June 1,

2012. [See Chapter 8 footnote]

FOOTNOTES

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NYC Administrative Code 7-901

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Title 7 Legal Affairs

CHAPTER 9 PUBLIC ADMINISTRATORS*25

§ 7-901 Compensation.

The public administrators of the counties within the city shall receive as compensation ninety percent of the amount paid to the judges of the surrogate's court of the counties within the city.

HISTORICAL NOTE

Section added L.L. 104/2005 § 1, eff. Dec. 8, 2005.

FOOTNOTES

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[Footnote 25]: * Chapter 9 added L.L. 104/2005 § 1, eff. Dec. 8, 2005.

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NYC Administrative Code 8-101

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Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-101 Policy.

In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

HISTORICAL NOTE

Section amended L.L. 10/2008 § 2, eff. Mar. 26, 2008. [See Note 1]

Section amended L.L. 75/2003 § 1, eff. Dec. 22, 2003.

Section amended L.L. 11/1993 § 1 eff. Jan. 22, 1993

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § B1-1.0 added LL 55/1955 § 1

Amended LL 97/1965 § 1

Amended LL 61/1977 § 1

NOTE

1. Provisions of L.L. 10/2008:

Section 1. Legislative Intent. The Council hereby finds that some landlords refuse to offer available units because of the source of income tenants, including current tenants, plan to use to pay the rent. In particular, studies have shown that landlords discriminate against holders of section 8 vouchers because of prejudices they hold about voucher holders. This bill would make it illegal to discriminate on that basis.

CASE NOTES

¶ 1. The governmental policy against discrimination enjoys high statutory authority. In this proceeding involving the remedies awarded female NYC police officer against whom the NYC police department had engaged in a pattern of gender-based discrimination, the NYC human rights commission exceeded the limits of its remedial powers in directing the promotion of complainant to Police Captain before her promotional examination results were announced. Such promotion without establishing eligibility violated the Merit and Fitness Clause of the State Constitution (NY Constitution, Art. V § 6). The statutory purpose of the NYC human rights law, Administrative Code § 8-101 et seq. to combat gender-based discrimination must give way to higher law.-Matter of Beame v. DeLeon, 209 AD2d 252 modified, 87 NY2d 289 [1996].

¶ 2. Plaintiff employee's allegation that offices of the defendant relevant to the complaint are in New York City and White Plains, is sufficient, for pleading purposes, to show that at least part of the activity complained of took place in New York City and thus comes within the New York City Human Rights Law. Although the law does not provide for a private right of action for aggrieved persons prior to the effective date of September 16, 1991, where plaintiff alleges discriminatory practices of a continuing nature, the dates of occurrence can be deemed any time subsequent to the inception of the practices up until the time of cessation.-Batchelor v. Nynex Telesector Resources Group, 213 A.D.2d 189, 623 N.Y.S.2d 235 (1st Dept. 1995).

¶ 3. The mere existence of a seven year delay between the filing of a discrimination complaint and the final administrative determination, did not mandate dismissal of the complaint, absent a showing of actual prejudice by reason of the delay.-Louis Harris and Associates v. DeLeon, 84 N.Y.2d 698, 622 N.Y.S.2d 217 [1994].

¶ 4. In terms of proving a case, the same type of analysis that is used in a federal discrimination claim under Title VII of the Civil Rights Act of 1964 or the Age Discrimination in Employment Act (ADEA) will be used in a case brought under the New York City Human Rights Law. O'Sullivan v. New York Times, 37 F.Supp.3d 307 (S.D.N.Y. 1999).

¶ 5. Cases brought under the Human Rights Law are governed by a three year statute of limitations. Alimo v. Off-Track Betting Corp., 258 A.D.2d 306, 685 N.Y.S.2d 180 (App.Div. 1st Dept. 1999).

¶ 6. Evidence of a supervisor's alleged threat to retaliate against plaintiff for adopting a disabled child and taking a

six week leave to care for the child, taken together with the facts that plaintiff's job responsibilities were reduced and that her employment was later terminated, was sufficient to raise a jury question regarding discrimination under the statute. Smith v. Alexander & Alexander, Inc., 25 F.Supp.2d 404 (S.D.N.Y. 1998).

¶ 7. The city discrimination laws apply only if the alleged discrimination occurred within the City of New York. Where an employee was based in Westchester County, she could not maintain a claim arising out of an unwanted sexual advance which occurred during a company outing in New York City. Salvatore v. KLM Royal Dutch Airlines, 1999 Westlaw 796172 (S.D.N.Y. See also Lightfoot v. Union Carbide Corp., 1994 Westlaw 184670 (S.D.N.Y.), aff'd 110 F.3d 898 (2d Cir. 1997).

¶ 8. Plaintiffs had contracted with a PNE Media (a company that produces billboards) for the posting of billboards that denounced homosexuality as a sin under the Bible. The billboards were located in or near neighborhoods containing a significant number of lesbian and gay residents. Following several days of controversy, defendant Staten Island Borough President Guy Molinari faxed a letter to PNE regarding the billboards, and, before the day was out, PNE removed plaintiffs' signs from the billboards. Plaintiffs brought a civil rights action, alleging that Molinari's action violated their rights under the Free Exercise Clause of the First Amendment by criticizing the billboards' message as unnecessarily confrontational and offensive, and by creating an atmosphere of intolerance. In order to prevail on a Free Exercise Clause, plaintiffs had to establish that the object of the law was to infringe upon or restrict practices because of their religious motivation, or that its purpose was to suppress religion or religious conduct. It is not a violation of the Free Exercise Clause to enforce a generally applicable rule that burdens a religious practice, so long as the government can demonstrate a rational basis for the rule, policy or statute, and the burden is only an incidental effect rather than the object of the law. The general policy expressed in the Administrative Code against intolerance and bigotry furnished such a rational basis, in the absence of any evidence that Molinari's purpose was to single out plaintiffs' religious expression. Thus, the court dismissed the claim brought under the Free Exercise Clause. Okwedy v. Molinari, 69 Fed.Appx. 482 (2d Cir. 2003).

¶ 9. Plaintiff, a stock trader on the floor of the American Stock Exchange (AMEX), complained to AMEX that she had been sexually harassed by a competing floor trader. She later brought suit against AMEX, complaining, among other things, that AMEX encouraged sexual harassment by failing to conduct a proper investigation of her complaint. The court, however, held that the Securities Exchange Act of 1934 (15 U.S.C. §78f) pre-empted the field, and that she had to pursue whatever remedies were available under the federal law. Thus, the court dismissed the claim brought under the New York City Human Rights Law. Bantum v. American Stock Exchange, 7 A.D.3d 551, 777 N.Y.S.2d 137 (2d Dept. 2004), leave to appeal granted, 4 N.Y.3d 701, 790 N.Y.S.2d 647, 824 N.E.2d 48 (2004).

¶ 10. Public policy does not prohibit employment agreements which require the employee to take discrimination claims, including those under the NYC Admin. Code., to arbitration. Cicchetti v. Davis Selected Advisors, 2003 WL 22723015 (U.S. Dist. Ct. S.D.N.Y.).

¶ 11. The New York City Medical Examiner's Officer is a place of public accommodation within the meaning of the statute. Kellogg v. Office of the Chief Medical Examiner of the City of New York, 6 Misc.3d 666, 791 N.Y.S.2d 278 (Sup.Ct. Bronx Co. 2004).

¶ 12. Where a federal employee alleges discrimination on the basis of religion, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq. is the exclusive remedy. Where a federal employee alleges discrimination on the basis of disability, the Rehabilitation Act of 1973 (29 U.S.C. § 794, popularly known as "Section 504") is exclusive remedy. In either case, the employee cannot maintain an action under the New York City Human Rights Law. Garvin v. Potter, 367 F.Supp.2d 548 (S.D.N.Y. 2005).

¶ 13. The Transit Authority (TA) maintained that by virtue of Public Authorities Law § 1266(8), it was exempt from the application of the New York City Human Rights Law. Section 1266(8) states that no municipality or political subdivision would have jurisdiction over any of the facilities of the TA. The court, however, held that Section 1266(8)

exempted the TA only from local laws that conflict with the TA's status as an independent agency charged with the mission of providing transportation services. Since compliance with the prohibitions against discrimination would not interfere with the TA's function and purpose, the court held that the Public Authorities Law did not divest the court of jurisdiction to hear the discrimination claim. Bogdan v. New York City Transit Authority, 2005 WL 1161812 (S.D.N.Y.). See also Rios v. Metropolitan Transit Authority, 6 Misc.3d 1006(A), 2004 WL 3093154 (Sup.Ct. Richmond Co.) (similar result with respect to the Staten Island Rapid Transit Authority, which, like the TA, is an MTA subsidiary).

¶ 14. A registered domestic partner of a City employee does not have standing to assert the employee's right to challenge the City's medical benefits provisions as discriminatory. Rios v. Metropolitan Transit Authority, 6 Misc.3d 1006(A), 2004 WL 3093154 (Sup.Ct. Richmond Co.).

¶ 15. In one case, a landlord sought to evict tenants after they became disabled, unemployed and unable to pay the rent with their fixed Social Security income. The tenants had resided in the apartments for decades and now the landlord was refusing to accept their Section 8 vouchers. The Admin. Code of the City of NY 8-101 et seq. has been amended to prohibit landlords from rejecting or discriminating against otherwise eligible tenants or potential tenants based on "any lawful source of income." Income derived from Social Security, public assistance or housing assistance, including Section 8 vouchers, is a "lawful source of income." Changes were made to the NYC Human Rights Laws to reflect the fact that some landlords were refusing to offer available units to tenants, to prevent discrimination based on the type of income they were using to pay the rent. Section 8-107 was also amended to include other forms of discrimination such as race, gender, age, disability, marital states and sexual orientation. This section has also been amended to specify that denial of the right to sell, lease, rent, or any other housing accommodation constitutes unlawful discrimination, as does advertising or listing housing units as unavailable to recipients of public assistance. Plaintiffs' motion for summary judgment, granting an injunction and allowing them to remain in their apartments, was granted. Matter of Rizzuti v. Hazel Towers Co., LP 2008 NY Misc. Lexis 2176, 239 NYLJ 63 (Sup. Ct. NY County).

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NYC Administrative Code 8-102

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Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-102 Definitions.

When used in this chapter:

1. The term "person" includes one or more natural persons, proprietorships, partnerships, associations, group associations, organizations, governmental bodies or agencies, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful discriminatory practice" includes only those practices specified in sections 8-107 and 8-107.1 of this chapter.

5. For purposes of subdivisions one, two, and three of section 8-107 of this chapter, the term "employer" does not include any employer with fewer than four persons in his or her employ. For purposes of this subdivision, natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.

6. The term "commission" unless a different meaning clearly appears from the text, means the city commission on human rights created by this chapter.

7. The term "national origin" shall, for the purposes of this chapter, include "ancestry."

8. The term "educational institution" includes kindergartens, primary and secondary schools, academies, colleges, universities, professional schools, extension courses, and all other educational facilities.

9. The term "place or provider of public accommodation" shall include providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. Such term shall not include any club which proves that it is in its nature distinctly private. A club shall not be considered in its nature distinctly private if it has more than four hundred members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of non-members for the furtherance of trade or business. For the purposes of this section a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law shall be deemed to be in its nature distinctly private.

No club which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcement shall be deemed a private exhibition within the meaning of this section.

10. The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings. Except as otherwise specifically provided, such term shall include a publicly-assisted housing accommodation.

11. The term "publicly-assisted housing accommodations" shall include:

(a) Publicly-owned or operated housing accommodations.

(b) Housing accommodations operated by housing companies under the supervision of the state commissioner of housing and community renewal, or the department of housing preservation and development.

(c) Housing accommodations constructed after July first, nineteen hundred fifty, and housing accommodations sold after July first, nineteen hundred ninety-one:

(1) which are exempt in whole or in part from taxes levied by the state or any of its political subdivisions,

(2) which are constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine,

(3) which are constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(4) for the acquisition, construction, repair or maintenance for which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance.

(d) Housing accommodations, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state of any of

its political subdivisions or any agency thereof.

12. The term "family" as used in subparagraph four of paragraph a of subdivision five of section 8-107 of this chapter, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder," "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

13. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a business or professional unit or office in any building, structure or portion thereof.

14. The term "real estate broker" means any person who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale at auction, or otherwise, exchange, purchase or rental of an estate or interest in real estate or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

15. The term "real estate salesperson" means a person employed by or authorized by a licensed real estate broker to list for sale, sell or offer for sale at auction or otherwise to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rents for the use of real estate for or on behalf of such real estate broker.

16. (a) The term "disability" means any physical, medical, mental or psychological impairment, or a history or record of such impairment.

(b) The term "physical, medical, mental, or psychological impairment" means:

(1) an impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or

(2) a mental or psychological impairment.

(c) In the case of alcoholism, drug addiction or other substance abuse, the term "disability" shall only apply to a person who (1) is recovering or has recovered and (2) currently is free of such abuse, and shall not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

17. The term "covered entity" means a person required to comply with any provision of section 8-107 of this chapter.

18. The term "reasonable accommodation" means such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity's business. The covered entity shall have the burden of proving

undue hardship. In making a determination of undue hardship with respect to claims filed under subdivisions one or two of section 8-107 or section 8-107.1 of this chapter, the factors which may be considered include but shall not be limited to:

(a) the nature and cost of the accommodations;

(b) the overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

19. The term "occupation" means any lawful vocation, trade, profession or field of specialization.

20. The term "sexual orientation" means heterosexuality, homosexuality, or bisexuality.

21. The term "alienage or citizenship status" means:

(a) the citizenship of any person, or

(b) the immigration status of any person who is not a citizen or national of the United States.

22. The term "hate crime" means a crime that manifests evidence of prejudice based on race, religion, ethnicity, disability, sexual orientation, national origin, age, gender, or alienage or citizenship status.

23. The term "gender" shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

24. The term "partnership status" means the status of being in a domestic partnership, as defined by § 3-240(a) of the administrative code of the city of New York.

25. The term "lawful source of income" shall include income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers.

HISTORICAL NOTE

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

Section added chap 907/1985 § 1

Subd. 4 amended L.L. 75/2003 § 2, eff. Dec. 22, 2003.

Subd. 18 amended L.L. 75/2003 § 3, eff. Dec. 22, 2003.

Subd 19 added L.L. 59/1986 § 1 (added as subd 17)

Subd 21 added L.L. 52/1989 § 2 (added as subd 18)

Subd. 23 added L.L. 3/2002 § 2, eff. Apr. 30, 2002. [See Note 1]

Subd. 24 added L.L. 85/2005 § 2, eff. Oct. 3, 2005. [See Note 2]

Subd. 25 added L.L. 10/2008 § 3, eff. Mar. 26, 2008. [See § 8-101 Note 1]

DERIVATION

Formerly § B1-2.0 added LL 55/1955 § 1

Repealed and added LL 97/1965 § 2

Sub 17 added LL 90/1977 § 2

Sub 16 repealed and added LL 49/1981 § 2

Sub 17 repealed LL 49/1981 § 3

Sub 9 amended LL 63/1984 § 2

NOTE

1. Provisions of L.L. 3/2002 § 1:

Section 1. Legislative findings and intent. The City Council finds and declares that it is in the interest of the City of New York to protect its citizens from discrimination. Discrimination, prejudice, intolerance and bigotry directly and profoundly threaten the rights and freedom of New Yorkers. The City Council established the Human Rights Law to protect its inhabitants from these dangers. Included in the City's Human Rights Law is a prohibition of discrimination against individuals based on gender. The scope of this gender-based protection, however, requires clarification. This local law is intended to make clear that all gender-based discrimination-including, but not limited to, discrimination based on an individual's actual or perceived sex, and discrimination based on an individual's gender identity, self-image, appearance, behavior, or expression-constitutes a violation of the City's Human Rights Law.

Gender-based discrimination affects a broad range of individuals. But the impact of gender-based discrimination is especially debilitating for those whose gender self-image and presentation do not fully accord with the legal sex assigned to them at birth. For those individuals, gender-based discrimination often leads to pariah status including the loss of job, the loss of an apartment, and the refusal of service in public accommodations such as restaurants or stores. The impact of such discrimination can be especially devastating for those who endure other prejudices due to their race, ethnicity, national origin, or citizenship status, in addition to gender-based discrimination. In adopting this legislation, the City Council declares that the ability of all New Yorkers to work and to live free from invidious discrimination based on gender is the guiding principle of public policy and law.

2. Provisions of L.L. 85/2005:

Section 1. The purpose of this local law, which shall be known as the "Local Civil Rights Restoration Act of 2005," is to clarify the scope of New York City's Human Rights Law. It is the sense of the Council that New York City's Human Rights Law has been construed too narrowly to ensure protection of the civil rights of all persons covered by the law. In particular, through passage of this local law, the Council seeks to underscore that the provisions of New York City's Human Rights Law are to be construed independently from similar or identical provisions of New York state or federal statutes. Interpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil

rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise.

CASE NOTES FROM FORMER SECTION

¶ 1. Subpoena duces tecum issued by New York City Commission on Human Rights and directed to records of membership and of applications for membership of New York Athletic Club was quashed on ground that it was a private club and therefore excepted from jurisdiction of commission which pertains to a "place of public accommodation" but not to a club or place of accommodation which is in its nature distinctly private.-Matter of N.Y. Athletic Club v. Commission on Human Rights, 56 Misc. 2d 565, 289 N.Y.S. 2d 246 [1968].

CASE NOTES

¶ 1. Petitioner's dental office is not a "place of public accommodation" and thus not subject to the City's Human Rights Law where discriminatory practices are proscribed (Ad Code § 8-102(9)) in view of the facts that petitioner takes patients by referral only and does not advertise through the telephone directory or by any other means. Accordingly the NYC Commission on Human Rights lacks jurisdiction over petitioners practice under the City's Human Rights Law for failing to provide dental services to AIDS patient.-Sattler v. NY Commission on Human Rights, 147 Misc. 2d 189.

¶ 2. In Ad Cd § 8-102(2) sexual orientation is defined as heterosexuality, homosexuality or bisexuality. The term deals with sexual preferences and practices, not transsexualism.-Maffei v. Kolaeton Industry, 164 Misc. 2d 547 [1995].

¶ 3. A blind person proved that he was qualified for the position of telephone interviewer, the burden shifted to the employer to show that it could not accommodate him reasonably, Ad Cd § 8-102(18). The employer did not meet this burden and the refusal to modify its existing programs is discriminatory.-Harris & Assoc. v. DeLeon, 199 AD2d 78 aff'd 84 NY2d 698 [1994].

¶ 4. This section, which substantially limits the "private club" exception to the anti-discrimination laws, is constitutional as a valid exercise of police power. There is a compelling governmental interest in giving women and minorities access to facilities at which business is actually conducted. Moreover, the statute was not pre-empted by or inconsistent with state anti-discrimination laws. New York State Club Association v. City of New York, 69 N.Y.2d 211, 513 N.Y.S.2d 349 (1987).

¶ 5. It appears that domestic employees are excluded from coverage under the statute. Galonsky v. Williams, N.Y.L.J., July 7, 1998, page 27, col. 3, 1998 Westlaw 1050969 (Sup.Ct. New York Co.).

¶ 6. See Franklin v. Consolidated Edison Co., 1999 WL 796170 (U.S. Dist. Ct. S.D.N.Y.), discussed in the annotations for 8-107, regarding the definition of disability.

¶ 7. The New York City law on disability is broader than the federal law in terms of defining disability. It is possible to be "disabled" within the meaning of the City law without showing that the disability "substantially" limits a major life activity. Giordano v. City of New York, 274 F.3d 740 (2d Cir. 2001).

¶ 8. A notice of claim must be filed in the case of a discrimination claim against a municipal convention center operating corporation. In other words, the notice of claim requirement applies to all claims, not just to those that are "founded in tort." Aguilar v. New York Convention Center Operating Corp., 174 F.Supp.2d 49 (S.D.N.Y. 2001).

¶ 9. A defendant's wife did not count as an "employee" for purposes of determining whether or not defendant came within the definition of "employer." Guzman v. Lorenc, 293 A.D.2d 711, 741 N.Y.S.2d 424 (2d Dept. 2002).

¶ 10. A restaurant, a place of public accommodation under Administrative Code section 8-102(9), was found to

have engaged in discrimination by requiring an African American customer to pay for her food before receiving it, while three non-African American customers were not required to pay for their food until receiving their food orders. Respondents failed to demonstrate a legitimate, non-discriminatory motive for treating the African American customer differently. The administrative law judge recommended a fine of $2,000, which was modified to $10,000 by the Commission on Human Rights. On appeal, applying the principal of proportionality, the court reduced the fine to $5,000. **Comm'n on Human Rights v. Silver Dragon Restaurant,** OATH Index No. 677/03 (May 30, 2003), **modified on penalty,** Comm'n Dec. (July 28, 2003), Complaint No. M-P-R-3-1013639, **modified on penalty,** NYLJ, Mar. 31, 2004, at 24 (Sup. Ct. Kings Co.).

¶ 11. Individual employees named as respondents are liable as an "employer" only where they either "possess ownership interests in the employing company or have discretionary authority to make final personnel decisions." Supervisor who was not a decision maker in complainant's termination was not an employer; Director of Sales, who confirmed that he made the decision to terminate the complainant was an employer for liability purposes. Comm'n on Human Rights ex rel. Manning v. HealthFirst, LLC, OATH Index No. 462/05 (Mar. 15, 2006), adopted, Comm'n Dec. (May 10, 2006).

¶ 12. Commission rejected ALJ's ruling that an employer should be required to accept substandard performance from a disabled employee. However, where evidence showed that attaining 100% of the monthly sales goal was not an essential requisite of the position, terminating the complainant for failing to perform at that level was discriminatory and in violation of the Human Rights Law. Comm'n on Human Rights ex rel. Manning v. HealthFirst, LLC, OATH Index No. 462/05 (Mar. 15, 2006), adopted, Comm'n Dec. (May 10, 2006).

¶ 13. Court affirms Commission's order that landlord widen doors and install a ramp and a lift in the lobby to accommodate a disabled tenant, adopting the Commission's ruling that depreciation is a "tax fiction" which is irrelevant when determining whether the proposed accommodation would impose an undue hardship on the owner. Court upholds Commission's finding that the owner did not meet its burden of proving undue hardship where owner made a profit on the building for the past three years when depreciation is factored out. T.K. Management v. Gatling, Index No. 14255/05, 2005 N.Y. Misc. LEXIS 3593 (Sup. Ct. Queens Co. Nov. 2, 2005).

¶ 14. Police Department violated this section by refusing to allow traffic enforcement agent, who is a member of the Sikh faith, to wear a turban while working. The Department failed to prove that accommodating respondent would impose an undue hardship, where proof showed other agents wore head gear other than the uniform hat without sanction. Reinstatement ordered. Jaggi v. Police Dep't, OATH Index No. 1498/03 (Apr. 28, 2004), aff'd, Comm'n Dec. (June 29, 2004).

¶ 15. An employer is not required to accommodate an employee where it is unaware of his disability. Thus, an employee who keeps his disability hidden will not be successful in a subsequent claim under the disability laws. Nande v. JP Morgan Chase & Co., 17 Misc.3d 1103(A), 2007 WL 2792155 (Sup.Ct. New York Co.).

¶ 16. Section 8-102's protection against discrimination on the basis of disability protect an employee who is recovering from drug abuse and is free from such abuse. An employee is a current addict who was caught discussing the purchase of drugs and cannot use the statute to avoid termination of employment. Iannone v. ING Financial Services, LLC 2008 NY Slip Op. 2468, 49 AD3d 391, 853 NYS2d 339, 2008 NY App. Div. Lexis 2415 (App. Div. 1st Dept.), leave to appeal dismissed, 11 N.Y.3d 808, 868 N.Y.S.2d 586 (2008).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-103

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-103 Commission on human rights.

There is hereby created a commission on human rights. It shall consist of fifteen members, to be appointed by the mayor, one of whom shall be designated by the mayor as its chairperson and shall serve as such at the pleasure of the mayor. The chairperson shall devote his or her entire time to the chairperson's duties and shall not engage in any other occupation, profession or employment. Members other than the chairperson shall serve without compensation. Of the fifteen members first appointed, five shall be appointed for one year, five for two years and five for three years; thereafter all appointments to the commission shall be for a term of three years. In the event of the death or resignation of any member, his or her successor shall be appointed to serve for the unexpired period of the term for which such member had been appointed.

HISTORICAL NOTE

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § B1-3.0 added LL 55/1955 § 1

Amended LL 11/1962 § 2

Amended LL 60/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-104

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-104 Functions.

The functions of the commission shall be:

(1) To foster mutual understanding and respect among all persons in the city of New York;

(2) To encourage equality of treatment for, and prevent discrimination against, any group or its members;

(3) To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions; and

(4) To make such investigations and studies in the field of human relations as in the judgment of the commission will aid in effectuating its general purposes.

HISTORICAL NOTE

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § B1-4.0 added LL 55/1955 § 1

CASE NOTES

¶ 1. The New York City Commission on Human Rights has the power to issue a subpoena to union officials as part of its investigation of alleged discrimination in the construction trade industry. New York City Commission on Human Rights v. Cush, 180 A.D.2d 444, 579 N.Y.S.2d 98 (1st Dept. 1992).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-105

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-105 Powers and duties.

The powers and duties of the commission shall be:

(1) To work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving harmonious intergroup relations within the city of New York, and engage in other anti-discrimination activities.

(2) To enlist the cooperation of various groups, and organizations, in mediation efforts, programs and campaigns devoted to eliminating group prejudice, intolerance, hate crimes, bigotry and discrimination.

(3) To study the problems of prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby in all or any fields of human relationship.

(4) (a) To receive, investigate and pass upon complaints and to initiate its own investigations of:

(i) Group tensions, prejudice, intolerance, bigotry and disorder occasioned thereby.

(ii) Discrimination against any person or group of persons, provided, however, that with respect to discrimination alleged to be committed by city officials or city agencies, such investigation shall be commenced after consultation with the mayor. Upon its own motion, to make, sign and file complaints alleging violations of this chapter.

(b) In the event that any investigation undertaken pursuant to paragraph a of this subdivision discloses

information that any person or group of persons may be engaged in a pattern or practice that results in the denial to any person or group of persons of the full enjoyment of any right secured by this chapter, in addition to making, signing and filing a complaint upon its own motion pursuant to paragraph a of this subdivision, to refer such information to the corporation counsel for the purpose of commencing a civil action pursuant to chapter four of this title.

(5) (a) To issue subpoenas in the manner provided for in the civil practice law and rules compelling the attendance of witnesses and requiring the production of any evidence relating to any matter under investigation or any question before the commission, and to take proof with respect thereto;

(b) To hold hearings, administer oaths and take the testimony of any person under oath; and

(c) In accordance with applicable law, to require the production of any names of persons necessary for the investigation of any institution, club or other place or provider of accommodation.

(6) In accordance with the provision of subdivision b of section 8-114 of this chapter, to require any person or persons who are the subject of an investigation by the commission to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous year, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city.

(7) To issue publications and reports of investigations and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby.

(8) To appoint such employees and agents as it deems to be necessary to carry out its functions, powers and duties and to assign to such persons any of such functions, powers and duties; provided, however, that the commission shall not delegate its power to adopt rules, and, provided further, that the commission's power to order that records be preserved or made and kept pursuant to subdivision b of section 8-114 of this chapter and the commission's power to determine that a respondent has engaged in an unlawful discriminatory practice and to issue an order for such relief as is necessary and proper shall be delegated only to members of the commission. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury. The commission's appointment and assignment powers as set forth in this subdivision may be exercised by the chairperson of the commission.

(9) To recommend to the mayor and to the council, legislation to aid in carrying out the purpose of this chapter.

(10) To submit an annual report to the mayor and the council which shall be published in the City Record.

(11) To adopt rules to carry out the provisions of this chapter and the policies and procedures of the commission in connection therewith.

HISTORICAL NOTE

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § B1-5.0 added LL 55/1955 § 1

Sub 5 amended LL 37/1961 § 1

Sub 4 amended LL 45/1961 § 1

Sub 5 amended chap 100/1963 § 4

Amended LL 97/1965 § 3

Sub 5 amended LL 63/1984 § 4

CASE NOTES FROM FORMER SECTION

¶ 1. A petitioner accused of discriminatory renting practices may not secure the quashing of a subpoena of the Commission on Intergroup Relations on the grounds of self-incrimination. When he appears before the Commission, he may urge any constitutional objections to testifying.-Matter of Martin, 16 Misc. 2d 235, 188 N.Y.S. 2d 566 [1959].

¶ 2. The Commission on Human Rights, which was conducting an investigation into real estate practices known as block-busting in the East New York area of Brooklyn, acted within its authority in issuing a subpoena duces tecum requiring the production of certain records even though the records were not limited to respondent's transactions in the East New York area.-In re City of New York (Gross), 148 (79) N.Y.L.J. (10-23-62) 14, Col. 3 M.

¶ 3. Complaint which alleged that plaintiffs had contracted to buy stock of defendant cooperative corporation; that lease and by-laws of the cooperative required the consent of its board of directors; that the application for consent of the directors was rejected through the device of having no director move for its approval; that the sole motive for rejecting the application was because plaintiffs were Jewish; and that as a result plaintiffs had to buy another apartment at a higher cost and which sought compensation and punitive damages was dismissed on ground that statute prohibiting discrimination in housing provided administrative remedy and judicial remedies only on initiative of administrative agency and made no provision for private or individual remedies.-Bachrach v. 1001 Tenants Corp., 21 App. Div. 662, 249 N.Y.S. 2d 855 [1964], aff'd 15 N.Y. 2d 718, 256 N.Y.S. 8d 929, 205 N.E. 2d 196 [1965].

¶ 4. Commission was without jurisdiction to investigate alleged discriminatory practices in the construction industry where State Commission for Human Rights had asserted its jurisdiction over such subject matter.-Lowell v. Rueckert, 43 Misc. 2d 1025, 252 N.Y.S. 2d 646 [1963].

¶ 5. Provisions of the Admin. Code creating the Commission on Human Rights was not invalid as an unconstitutional usurpation of powers vested solely in the state by provisions of the Executive Law creating the State Commission.-City of New York v. Clafington, Inc., 40 Misc. 2d 547, 243 N.Y.S. 2d 437 [1963].

¶ 6. Complaint charging that defendants had refused to rent an apartment to complainant solely because of her race, and seeking to restrain defendants from further discriminatory acts was insufficient for failure to allege that the City had the legal capacity to sue, and to clearly demonstrate that the jurisdictional requirements for commencement of the action were complied with.-City of New York v. Clafington, Inc., Id.

¶ 7. The City Commissioner on Human Rights has no jurisdiction of discriminatory practices in an industry (the construction industry) being investigated by the State Commission for Human Rights. An agreement between an individual and the City Commission could not confer such jurisdiction. Application for warrant of apprehension of said individual was dismissed.-Lowell v. Rueckert, 43 Misc. 2d 1025, 252 N.Y.S. 2d 646 [1963].

¶ 8. Commission could permit amendment of complaint more than ninety days after occurrence of alleged discriminatory practice upon a showing of due cause.-In re Pullman Builders, 152 (32) N.Y.L.J. (8-13-64) 12, Col. 5 M.

¶ 9. Commission on Human Rights under its power to investigate could issue subpoenas to insurance company charged with discriminatory practices in regard to recruitment, hiring and promoting of minority group persons.-Liberty Mutual Ins. Co. v. City of New York Commission on Human Rights, 167 (25) N.Y.L.J. (2-4-72) 17, Col. 3 M.

¶ 10. The City Commission on Human Rights can initiate its own investigation of discrimination and file complaints alleging violations absent a third-party complaint.-Ungar v. N.Y. City Commission on Human Rights, 71 Misc. 2d 1048, 337 N.Y.S. 2d 629 [1972].

¶ 11. Commission on Human Rights has authority to inquire into alleged discrimination by the Board of Education which is a city agency.-Maloff v. City Commission on Human Rights, 38 N.Y. 2d 329, 342 N.E. 2d 563, 379 N.Y.S. 2d 788 [1975].

CASE NOTES

¶ 1. The NYC Transit Authority is under the jurisdiction of the NYC Commission on Human Rights. Authority of the commission to proceed against individuals and entities who discriminate, Ad Cd § 8-105, includes public authorities.-Levy v. Human Rights Commissioner, 85 NY2d 740 [1995].

¶ 2. The New York City Commission on Human Rights has the jurisdiction to hear a discrimination complaint against the New York City Transit Authority, even though the TA is a public authority created under state law.-Levy v. New York City Commission on Human Rights, 85 N.Y.2d 740, 628 N.Y.S.2d 245 [1995].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-106

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-106 Relations with city departments and agencies.

So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective heads to the commission for the carrying out of the functions herein stated. The head of any department or agency shall furnish information in the possession of such department or agency when the commission so requests. The corporation counsel, upon request of the chairperson of the commission, may assign counsel to assist the commission in the conduct of its investigatory or prosecutorial functions.

HISTORICAL NOTE

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § B1-6.0 added LL 55/1955 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-107

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-107 Unlawful discriminatory practices.

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants for its services to an employer or employers.

(c) For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(d) For any employer, labor organization or employment agency or an employee or agent thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national

origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

(e) The provisions of this subdivision and subdivision two of this section: (i) as they apply to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the federal employment retirement income security act of nineteen hundred seventy-four that is in compliance with applicable federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act; (ii) shall not preclude the varying of insurance coverages according to an employee's age; (iii) shall not be construed to affect any retirement policy or system that is permitted pursuant to paragraph (e) and (f) of subdivison three-a of section two hundred ninety-six of the executive law; (iv) shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purposes of this chapter.

(f) The provisions of this subdivision shall not govern the employment by an employer of his or her parents, spouse, domestic partner, or children; provided, however, that such family members shall be counted as persons employed by an employer for the purposes of subdivision five of section 8-102 of this chapter.

2. Apprentice training programs. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs or an employee or agent thereof:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review.

(b) To deny to or withhold from any person because of his or her actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status the right to be admitted to or participate in a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program.

(c) To discriminate against any person in his or her pursuit of such program or to discriminate against such a person in the terms, conditions or privileges of such program because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status.

(d) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for such program or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

3. Employment; religious observance. (a) It shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, his or her creed or religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day or the observance of any religious custom or usage, and the employer shall make reasonable accommodation to the religious needs of such person. Without in any way limiting the foregoing, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such person's religion, he or she observes as a sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided, however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time.

(b) "Reasonable accommodation", as used in this subdivision, shall mean such accommodation to an employee's

or prospective employee's religious observance or practice as shall not cause undue hardship in the conduct of the employer's business. The employer shall have the burden of proof to show such hardship.

4. Public accommodations. a. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, because of the actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status or that the patronage or custom of any person belonging to, purporting to be, or perceived to be, of any particular race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status is unwelcome, objectionable or not acceptable, desired or solicited.

b. Notwithstanding the foregoing, the provisions of this subdivision shall not apply, with respect to age or gender, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public policy.

c. The provisions of this subdivision relating to discrimination on the basis of gender shall not prohibit any educational institution subject to this subdivision from making gender distinctions which would be permitted (i) for educational institutions which are subject to section thirty-two hundred one-a of the education law or any rules or regulations promulgated by the state commissioner of education relating to gender or (ii) under sections 86.32, 86.33 and 86.34 of title forty-five of the code of federal regulations for educational institutions covered thereunder.

d. Nothing in this subdivision shall be construed to preclude an educational institution-other than a publicly-operated educational institution-which establishes or maintains a policy of educating persons of one gender exclusively from limiting admissions to students of that gender.

e. The provisions of this subdivision relating to disparate impact shall not apply to the use of standardized tests as defined by section three hundred forty of the education law by an educational institution subject to this subdivision provided that such test is used in the manner and for the purpose prescribed by the test agency which designed the test.

f. The provisions of this subdivision as they relate to unlawful discriminatory practices by educational institutions shall not apply to matters that are strictly educational or pedagogic in nature.

5. Housing accommodations, land, commercial space and lending practices. (a) Housing accommodations. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To discriminate against any person because of such person's actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or because of any lawful source of income of such person, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an

interest therein or in the furnishing of facilities or services in connection therewith.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or any lawful source of income, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(4) The provisions of this paragraph (a) shall not apply:

(1) to the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner members of the owner's family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

(2) to the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

(b) Land and commercial space. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or to withhold from any person or group of persons land or commercial space or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To discriminate against any person because of actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or an interest therein or in the furnishing of facilities or services in connection therewith.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or whether children are, may be or would be residing with such person, or any intent to make any such limitation, specification or discrimination.

(c) Real estate brokers. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space or an interest therein to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space or an interest therein to any person or group of persons because of the actual or perceived

race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons, or to represent that any housing accommodation, land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or an interest therein or any facilities of any housing accommodation, land or commercial space or an interest therein from any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or any lawful source of income, or to whether children are, may be or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(3) To induce or attempt to induce any person to sell or rent any housing accommodation, land or commercial space or an interest therein by representations, explicit or implicit, regarding the entry or prospective entry into the neighborhood or area of a person or persons of any race, creed, color, gender, age, disability, sexual orientation, marital status, partnership status, national origin, alienage or citizenship status, or a person or persons with any lawful source of income, or a person or persons with whom children are, may be or would be residing.

(d) Lending practices. It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city and if incorporated regardless of whether incorporated under the laws of the state of New York, the United States or any other jurisdiction, or any officer, agent or employee thereof to whom application is made for a loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space or an interest therein:

(1) To discriminate against such applicant or applicants because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such applicant or applicants or of any member, stockholder, director, officer or employee of such applicant or applicants, or of the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space, or because children are, may be or would be residing with such applicant or other person, in the granting, withholding, extending or renewing, or in the fixing of rates, terms or conditions of any such financial assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein.

(2) To use any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance, or in connection with the appraisal of any housing accommodation, land or commercial space or an interest therein, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status, or whether children are, may be, or would be residing with a person.

(e) Real estate services. It shall be an unlawful discriminatory practice to deny a person access to, or membership in or participation in, a multiple listing service, real estate brokers' organization, or other service because of

the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such person or because children are, may be or would be residing with such person.

(f) Real estate related transactions. It shall be an unlawful discriminatory practice for any person whose business includes the appraisal of housing accommodations, land or commercial space or interest therein or an employee or agent thereof to discriminate in making available or in the terms or conditions of such appraisal on the basis of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of any person or because children are, may be or would be residing with such person.

(g) Applicability; persons under eighteen years of age. The provisions of this subdivision, as they relate to unlawful discriminatory practices in housing accommodations, land and commercial space or an interest therein and lending practices on the basis of age, shall not apply to unemancipated persons under the age of eighteen years.

(h) Applicability; discrimination against persons with children. The provisions of this subdivision with respect to discrimination against persons with whom children are, may be or would be residing shall not apply to housing for older persons as defined in paragraphs two and three of subdivision (b) of section thirty-six hundred seven of title forty-two of the United States code and any regulations promulgated thereunder.

(i) Applicability; senior citizen housing. The provisions of this subdivision with respect to discrimination on the basis of age shall not apply to the restriction of the sale, rental or lease of any housing accommodation, land or commercial space or an interest therein exclusively to persons fifty-five years of age or older. This paragraph shall not be construed to permit discrimination against such persons fifty-five years of age or older on the basis of whether children are, may be or would be residing in such housing accommodation or land or an interest therein unless such discrimination is otherwise permitted pursuant to paragraph (h) of this subdivision.

(j) Applicability; dormitory residence operated by educational institution. The provisions of this subdivision relating to discrimination on the basis of gender in housing accommodations shall not prohibit any educational institution from making gender distinctions in dormitory residences which would be permitted under sections 86.32 and 86.33 of title forty-five of the code of federal regulations for educational institutions covered thereunder.

(k) Applicability; dormitory-type housing accommodations. The provisions of this subdivision which prohibit distinctions on the basis of gender and whether children are, may be or would be residing with a person shall not apply to dormitory-type housing accommodations including, but not limited to, shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children.

(l) Exemption for special needs of particular age group in publicly-assisted housing accommodations. Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the state division of human rights grants an exemption pursuant to section two hundred ninety-six of the executive law based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups; provided however, that this paragraph shall not be construed to permit discrimination on the basis of whether children are, may be or would be residing in such housing accommodations unless such discrimination is otherwise permitted pursuant to paragraph (h) of this section.

(m) Applicability; use of criteria or qualifications in publicly-assisted housing accommodations. The provisions of this subdivision shall not be construed to prohibit the use of criteria or qualifications of eligibility for the sale, rental, leasing or occupancy of publicly-assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program, or to prohibit the use of statements, advertisements, publications, applications or inquiries to the extent that they state such criteria or qualifications or request information necessary to determine or verify the eligibility of an applicant, tenant, purchaser,

lessee or occupant.

(n) Discrimination on the basis of occupation prohibited in housing accommodations. Where a housing accommodation or an interest therein is sought or occupied exclusively for residential purposes, the provisions of this subdivision shall be construed to prohibit discrimination in the sale, rental, or leasing of such housing accommodation or interest therein and in the terms, conditions and privileges of the sale, rental or leasing of such housing accommodation or interest therein and in the furnishing of facilities or services in connection therewith, on account of a person's occupation.

(o) Applicability; lawful source of income. The provisions of this subdivision, as they relate to unlawful discriminatory practices on the basis of lawful source of income, shall not apply to housing accommodations that contain a total of five or fewer housing units, provided, however:

(i) the provisions of this subdivision shall apply to tenants subject to rent control laws who reside in housing accommodations that contain a total of five or fewer units at the time of the enactment of this local law; and provided, however

(ii) the provisions of this subdivision shall apply to all housing accommodations, regardless of the number of units contained in each, of any person who has the right to sell, rent or lease or approve the sale, rental or lease of at least one housing accommodation within New York City that contains six or more housing units, constructed or to be constructed, or an interest therein.

6. Aiding and abetting. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.

7. Retaliation. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, or (v) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 of this chapter. The retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment, housing or a public accommodation or in a materially adverse change in the terms and conditions of employment, housing, or a public accommodation, provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

8. Violation of conciliation agreement. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section 8-115 of this chapter to violate the terms of such agreement.

9. Licenses and permits. It shall be an unlawful discriminatory practice:

(a) Except as otherwise provided in paragraph (c), for an agency authorized to issue a license or permit or an employee thereof to discriminate against an applicant for a license or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation or alienage or citizenship status of such applicant.

(b) Except as otherwise provided in paragraph (c), for an agency authorized to issue a license or permit or an employee thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for a license or permit or to make any inquiry in connection with any such application, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation or alienage or

citizenship status, or any intent to make any such limitation, specification or discrimination.

(c) Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license or permit from using age or disability as a criterion for determining eligibility for a license or permit when specifically required to do so by any other provision of law.

10. Criminal conviction. (a) It shall be unlawful discriminatory practice for any person to deny any license or permit or employment to any person by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-a of the correction law.

(b) Pursuant to section seven hundred fifty-five of the correction law, the provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter five of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" shall have the meaning given such terms in section seven hundred fifty of the correction law.

11. Arrest record. It shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the person involved, any arrest or criminal accusation of such person not then pending against that person which was followed by a termination of that criminal action or proceeding in favor of such person, as defined in subdivison two of section 160.50 of the criminal procedure law, in connection with the licensing, employment or providing of credit to such person; provided, however, that the prohibition of such inquiries or adverse action shall not apply to licensing activities in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law.

12. Religious principles. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rentals of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

13. Employer liability for discriminatory conduct by employee, agent or independent contractor. a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

(1) the employee or agent exercised managerial or supervisory responsibility; or

(2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or superivsory responsibility; or

(3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

d. Where liability of an employer has been established pursuant to this section and is based solely on the conduct of an employee, agent, or independent contractor, the employer shall be permitted to plead and prove to the discriminatory conduct for which it was found liable it had:

(l) Established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including but not limited to:

(i) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices;

(ii) A firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(iii) A program to educate employees and agents about unlawful discriminatory practices under local, state, and federal law; and

(iv) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

(2) A record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

e. The demonstration of any or all of the factors listed above in addition to any other relevant factors shall be considered in mitigation of the amount of civil penalties to be imposed by the commission pursuant to this chapter or in mitigation of civil penalties or punitive damages which may be imposed pursuant to chapter four or five of this title and shall be among the factors considered in determining an employer's liability under subparagraph three of paragraph b of this subdivision.

f. The commission may establish by rule policies, programs and procedures which may be implemented by employers for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors. Notwithstanding any other provision of law to the contrary, an employer found to be liable for an unlawful discriminatory practice based solely on the conduct of an employee, agent or person employed as an independent contractor who pleads and proves that such policies, programs and procedures had been implemented and complied with at the time of the unlawful conduct shall not be liable for any civil penalties which may be imposed pursuant to this chapter or any civil penalties or punitive damages which may be imposed pursuant to chapter four or five of this title for such unlawful discriminatory practice.

14. Applicability; alienage or citizenship status. Notwithstanding any other provision of this section, it shall not be an unlawful discriminatory practice for any person to discriminate on the ground of alienage or citizenship status, or to make any inquiry as to a person's alienage or citizenship status, or to give preference to a person who is a citizen or a national of the United States over an equally qualified person who is an alien, when such discrimination is required or when such preference is expressly permitted by any law or regulation of the United States, the state of New York or the city of New York, and when such law or regulation does not provide that state or local law may be more protective of aliens; provided, however, that this provision shall not prohibit inquiries or determinations based on alienage or

citizenship status when such actions are necessary to obtain the benefits of a federal program. An applicant for a license or permit issued by the city of New York may be required to be authorized to work in the United States whenever by law or regulation there is a limit on the number of such licenses or permits which may be issued.

15. Applicability; persons with disabilities.

(a) Requirement to make reasonable accommodation to the needs of persons with disabilities. Except as provided in paragraph (b), any person prohibited by the provisions of this section from discriminating on the basis of disability shall make reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.

(b) Affirmative defense in disability cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

(c) Use of drugs or alcohol. Nothing contained in this chapter shall be construed to prohibit a covered entity from (i) prohibiting the illegal use of drugs or the use of alcohol at the workplace or on duty impairment from the illegal use of drugs or the use of alcohol, or (ii) conducting drug testing which is otherwise lawful.

16. Applicability; sexual orientation. Nothing in this chapter shall be construed to:

a. Restrict an employer's right to insist that an employee meet bona fide job-related qualifications of employment;

b. Authorize or require employers to establish affirmative action quotas based on sexual orientation or to make inquiries regarding the sexual orientation of current or prospective employees;

c. Limit or override the present exemptions in the human rights law, including those relating to employment concerns employing fewer than four persons, as provided in subdivision five of section 8-102; owner-occupied dwellings, as provided in paragraph (a) of subdivision five of section 8-107; or any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, as provided in subdivision twelve of section 8-107 of this chapter;

d. Make lawful any act that violates the penal law of the state of New York; or

e. Endorse any particular behavior or way of life.

17. Disparate impact.

a. An unlawful discriminatory practice based upon disparate impact is established when:

(1) the commission or a person who may bring an action under chapter four or five of this title demonstrates that a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any group protected by the provisions of this chapter; and

(2) the covered entity fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to a significant business objective of the covered entity or does not contribute to the disparate impact; provided, however, that if the commission or such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, the commission or such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where the

commission or such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available to the covered entity and the covered entity fails to prove that such alternative policy or practice would not serve the covered entity as well. "Significant business objective" shall include, but not be limited to, successful performance of the job.

b. The mere existence of a statistical imbalance between a covered entity's challenged demographic composition and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

c. Nothing contained in this subdivision shall be construed to mandate or endorse the use of quotas; provided, however, that nothing contained in this subdivision shall be construed to limit the scope of the commission's authority pursuant to sections 8-115 and 8-120 of this chapter or to affect court-ordered remedies or settlements that are otherwise in accordance with law.

18. Unlawful boycott or blacklist. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, partnership status, sexual orientation or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes;

(b) Boycotts to protest unlawful discriminatory practices; or

(c) Any form of expression that is protected by the First Amendment.

19. Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.

20. Relationship or association. The provisions of this section set forth as unlawful discriminatory practices shall be construed to prohibit such discrimination against a person because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation or alienage or citizenship status of a person with whom such person has a known relationship or association.

HISTORICAL NOTE

Section amended L.L. 39/1991 § 1, eff. Sept. 16, 1991

(combined §§ 8-107 & 8-108 added chap 907/1985 § 1 and § 8-108.1 added L.L. 2/1986 § 2 and juxtaposed per chap 907/1985 § 14)

Section added chap 907/1985 § 1

Subd. 1 heading, open par amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 1 amended L.L. 52/1989 § 3

Subd. 1 par (a) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See

§ 8-102 Note 2]

Subd. 1 par (b) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 1 par (c) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 1 par (d) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 1 par (f) amended L.L. 27/1998 § 13, eff. Sept. 5, 1998

Subd. 2 heading, open par amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 2 amended (as Subd. 1-a) L.L. 52/1989 § 3

Subd. 2 par (b) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 2 par (c) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 2 par (d) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subds. 3, 3-a, 4 amended L.L. 52/1989 § 3 and L.L. 17/1986 § 1 were bracketed out of law L.L. 39/1991 § 1

Subd. 4 heading amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 4 amended (as Subd. 2) L.L. 52/1989 § 3

Subd. 4 par a amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 5 heading amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 5 amended L.L. 52/1989 § 3

Subd. 5 amended L.L. 17/1986 § 2

Subd. 5 par (a) heading amended L.L. 85/2005 § 3, eff. Oct. 3, 2005.

[See § 8-102 Note 2]

Subd. 5 par (a) open par amended L.L. 85/2005 § 3, eff. Oct. 3, 2005.

[See § 8-102 Note 2]

Subd. 5 par (a) subpar (1) amended L.L. 10/2008 § 4, eff. Mar. 26, 2008.

[See § 8-101 Note 1]

Subd. 5 par (a) subpar (1) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005.

[See § 8-102 Note 2]

Subd. 5 par (a) subpar (2) amended L.L. 10/2008 § 4, eff. Mar. 26, 2008.

[See § 8-101 Note 1]

Subd. 5 par (a) subpar (2) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005.

[See § 8-102 Note 2]

Subd. 5 par (a) subpar (3) amended L.L. 10/2008 § 4, eff. Mar. 26, 2008.

[See § 8-101 Note 1]

Subd. 5 par (a) subpar (3) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005.

[See § 8-102 Note 2]

Subd. 5 par (b) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 5 par (c) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See §8-102 Note 2]

Subd. 5 par (c) subpar (1) amended L.L. 10/2008 § 5, eff. Mar. 26, 2008.

[See § 8-101 Note 1]

Subd. 5 par (c) subpar (2) amended L.L. 10/2008 § 5, eff. Mar. 26, 2008.

[See § 8-101 Note 1]

Subd. 5 par (c) subpar (3) amended L.L. 10/2008 § 5, eff. Mar. 26, 2008.

[See § 8-101 Note 1]

Subd. 5 par (d) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 5 par (e) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 5 par (f) amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 5 par (o) added L.L. 10/2008 § 6, eff. Mar. 26, 2008. [See § 8-101 Note 1]

Subd. 7 amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 9 amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Subd. 14 (added as Subd. 11) L.L. 52/1989 § 4

Subd. 18 amended L.L. 85/2005 § 3, eff. Oct. 3, 2005. [See § 8-102 Note 2]

DERIVATION

Formerly § B1-7.0 added LL 97/1965 § 4

Sub 2 amended LL 41/1970 § 1

Sub 1 par b amended LL 16/1971 § 1

Sub 1-b added LL 74/1972 § 1

Sub 3 amended LL 7/1973 § 1

Sub 5 amended LL 7/1973 § 2

Sub 3 par d added LL 61/1977 § 2

Sub 3 pars a, b, c amended LL 61/1977 § 2

Sub 3-a pars a, b amended LL 61/1977 § 3

Sub 3-a par c relettered LL 61/1977 § 3 (formerly par c)

Sub 4 amended LL 61/1977 § 4

Sub 5 par e added LL 61/1977 § 5

Sub 5 pars b, c, d amended LL 61/1977 § 5

Sub 2 amended LL 63/1984 § 5

(Legislative findings, private clubs, business activity in, LL 63/1984

§ 1)

Sub 3 pars a, b, c amended LL 17/1986 § 1

Sub 5 amended LL 17/1986 § 2

NOTE

Provision of LL 52/1989 § 1

Section one. Declaration of legislative intent and findings. New York City is currently home to more than one million aliens. These individuals make a unique contribution to the stimulating economic and cultural diversity which is one of the City's primary features. As a city of immigrants, New York City has a special obligation to assist those who, like most of our ancestors, have come to our country seeking a better way of life. Even under the best of circumstances, newcomers to this country find it difficult to obtain housing, employment and other necessities. However, this difficulty is compounded when landlords, employers or other persons practice discrimination against aliens. Aliens are also especially vulnerable to exploitation by unscrupulous entrepreneurs in many areas of life. The entire City suffers when a substantial part of its population lacks adequate housing, insurance coverage, health care or education.

Recent changes in federal immigration law, intended in part to discourage the entry of undocumented aliens into the United States, have aroused fears among immigrants of a growing bias within the community against those who may look or sound foreign. It has come to the City's attention that such people have been asked to document their citizenship status when such documentation was not required by law. Inquiries of this nature indicate that not only aliens, but those suspected of being aliens, face the threat of discrimination. Such intolerance harms the City and aggravates the difficult adjustment to American life which every newcomer must make.

It is the intent of the Council to prevent aliens from being treated unfairly in housing, employment and other areas of life. This law prohibits discrimination against aliens unless such prohibition is contrary to Federal, State or City law. Victims of alienage-based discrimination will have recourse to the City Commission on Human Rights. Unless otherwise mandated by law, all aliens are entitled to and will be guaranteed equal treatment. Nothing in this local law is intended to or shall have the effect of contradicting the requirements of federal law concerning the employment and provision of benefits to aliens.

CASE NOTES FROM FORMER SECTION

¶ 1. The New York City law on human rights is constitutional.-Feigenbaum v. Comm. on Human Rights, 53 Misc. 2d 360 [1967].

¶ 2. A summary inquiry into an agreement between the Commission on Human Rights and a landlord which committed the landlord to make efforts to increase the number of non-white and Puerto Rican tenants in certain of its houses would not be ordered where petitioner's papers revealed no violation or neglect of duty by Commission. Moreover, this section was not intended to be used "to thwart public officials who are reasonably and conscientiously performing their duty."-Application of Larkin, 58 Misc. 2d 206, 295 N.Y.S. 2d 113 [1968].

¶ 3. The refusal of the owner to rent a housing accommodation to a person because of race, creed, color or national origin is an unlawful discriminatory practice and under this statute the owner is answerable for the acts of his employee even though done without his knowledge.-Commission of Human Rights v. Hardenbrook Realty Corp., 57 Misc. 2d 430, 292 N.Y.S. 2d 775 [1968].

¶ 4. Damages for discrimination, outrage and mental anguish as a result of discrimination were not warranted where complainant had been canvassing the area for an apartment, had filed other complaints before the Commission and had already obtained compensatory damages from another landlord as the business of collecting damages in the nature of fines should not be encouraged.-Id.

¶ 5. Hearing on charge that advertisements for public and private employment in South Africa constitute advertisements which are directly or indirectly discriminative as to race and color would not be enjoined as beyond the jurisdiction of the agency in that it related to the foreign affairs of the United States and hearing should proceed so that the jurisdictional and substantive issues could be explored.-Matter of N.Y. Times Co. v. City of N.Y. Commission on Human Rights, 76 Misc. 2d 17, 349 N.Y.S. 2d 940 [1973].

¶ 6. Order of Human Rights Commission holding that advertisements in newspaper for employment in the Republic of South Africa had been "expressive of discrimination" although no reference to race appeared in advertisements on theory that use of the words "South Africa" constituted an expression of discrimination was vacated since Commission was questioning the employment practices of a foreign government and order was an unjustified extension of its jurisdiction and powers.-N.Y. Times v. Commission on Human Rights, 79 Misc. 2d 1048, 362 N.Y.S. 2d 321 [1974], aff'd 49 App. Div. 2d 851, 374 N.Y.S. 2d 9 [1975]; aff'd 41 N.Y. 2d 345 [1977].

¶ 7. Commission did not act arbitrarily or unreasonably in finding no probable cause where petitioner, an American Indian, charged that her employer was guilty of reverse discrimination when it promoted her from teller to business representative to fulfill its E.E.O. requirements and that she suffered mentally and physically because she was not qualified to handle the duties of representative where there was no evidence in the record to support the charge.-In re Spinelli (Robinson Jr.) 182 (76) N.Y.L.J. (10-18-79) 6, Col. 1 T.

¶ 8. Proceeding to evict tenant on ground that she was violating a substantial obligation of the lease by living with an unrelated man dismissed on ground that lease provision which prohibits tenant's living arrangement constitutes discrimination on the basis of marital status.-Hudson View Properties v. Weiss, 106 Misc. 2d 251 [1980].

¶ 9. Female employee who filed complaint with Commission charging employer with discriminating against her on account of sex in violation of this section in that after her position was terminated because of employer's financial difficulties she was unable to obtain an executive sales position with employer and had initial burden of establishing a prima facie case of discrimination and after that was established employer had burden of showing that termination was for an independent legitimate reason that was not pretext for discrimination or substantially influenced by impermissible discrimination.-Burlington Industries v. N.Y.C. Human Rights Commission, 82 App. Div. 2d 415, 441 N.Y.S. 2d 821 [1981].

¶ 10. Error to refuse to dismiss petition in holdover proceeding in which landlord claimed violation of substantial obligation of tenancy in that tenant was allowing a person who was not a tenant to occupy the premises where tenant claimed that such action constituted discrimination in housing on the basis of marital status and the record did not indicate that the landlord, in seeking to enforce the restrictive covenant in the lease limiting occupancy to the tenant and members of the tenant's immediate family, had any interest in the marital status of tenant or the occupant of the apartment.-Hudson View Properties v. Weiss, 59 N.Y. 2d 733 [1983], reversing, 109 Misc. 2d 589 [1981].

¶ 11. "Single only" restriction in lease violates public policy of state since if tenant married or lived with a man without benefit of marriage subsequent to inception of lease restriction would constitute marital discrimination.-Leonidas Realty Corp. v. Brodowsky, 115 Misc. 2d 88 [1982].

¶ 12. Sexual harassment in the workplace violates § B1-7.0 regardless of whether the harasser threatens job reprisals.-Rudow v. N.Y.C. Commission on Human Rights, 123 Misc. 2d 709 [1984].

CASE NOTES FROM FORMER SECTION § 8-108.1

¶ 1. This section mandates that if a finding of immediate family status can be made without regard to the formalities of marriage, it must also be made without regard to sexual orientation. Therefore, respondents are entitled to rent-stabilization renewal leases in their own names as the survivors in a family like relationship.-Yorkshire Towers v. Harpster, 134 Misc. 2d 384 [1986].

¶ 2. Tenant and respondent had a homosexual relationship for 17 years. Respondent's claim to be de facto member of deceased's family entitled to continue rent-controlled occupancy must be heard. Any other determination would raise equal protection constitutional issues. Rent stabilization cases may not be reliable guides regarding "family".-Raynes Assoc. v. Augresani, 140 Misc. 2d 208 [1988].

CASE NOTES

¶ 1. Dentist engaged in discriminatory rental practices when he terminated agreement to lease operating space and equipment to another dentist who treated patients with acquired immune deficiency syndrome (AIDS). This violated § 8-107(5)(b) because it was a commercial space and § 8-108 because persons with AIDS are physically handicapped and $15,000 award was not excessive.-Barton v. N.Y.C. Comm. on Human Rights, 140 Misc. 2d 554 [1988].

¶ 2. Dental office is within jurisdiction of City Human Rights Commission for hearing in an unlawful discriminatory practice complaint, pursuant to §§ 8-107(2), 8-108. Patient with AIDS was refused further treatment. Dental office is a "place of public accommodation", § 8-102(9). However the dentists' decision to refer AIDS-infected persons elsewhere for treatment may constitute reasonable accommodation and is subject to judicial review.-Hurwitz v. New York City Commission on Human Rights, 142 Misc.2d 214, 538 N.Y.S.2d 1007, aff'd 159 A.D.2d 417, 553 N.Y.S.2d 323.

¶ 3. Staff housing lease agreements at Booth House premises, which provide for termination of employment and ancillary housing tenancy "without cause", would not be enforceable if they were unlawfully terminated because of a prior AIDS disability. This discrimination is prohibited by §8-108 [8-107 subd 15].-NY Infirmary v. Sarris, 154 Misc. 2d 798 [1993].

¶ 4. The Federal Fair Housing Act does not preempt state or local law regarding reasonable accommodations for handicapped or disabled persons in their residences. Both the Ad Cd and the federal act provide that it is unlawful for any person or entity to refuse to make reasonable accommodations to the handicapped, Ad Cd §8-107(5)(15), §8-102(18), 42 USC §3604(f), (3)(B). Petitioner's policy of refusing to expend corporate funds to construct or modify any improvements to the common grounds or areas of Bell Park Gardens to accommodate disabled residents is a clear violation.-Matter of United Nations Veterans Mut. Hous. No. 2 Corp. v. NYC Human Rights Comm., 207 AD2d 551 [1994].

¶ 5. A determination of the NYC Human Rights Commission that a hospital discriminated against a complainant by unlawfully withholding the accommodations, advantages or privileges of its facilities, Ad Cd §8-107(2), from her because her son has AIDS was affirmed by court and $25,000 in compensatory damages was awarded for mental anguish suffered when discriminatory conduct prevented her death bed visit.-Matter of Brooklyn Hospital Medical Center v. DeLeon, 208 AD 624 [1994].

¶ 6. Prohibition against discrimination because of sexual orientation does not apply to transsexualism. Maffei v. Kolaeton Industry, 164 Misc. 2d 547 [1995].

¶ 7. The NYC police department engaged in a pattern of gender-based discrimination. The NYC human rights commission, in ordering retroactive appointments for seniority purposes, had legal authority to back date appointments earlier than the effective date of the law that first prohibited gender-based discrimination, Administrative Code §8-107(1)(a). The sex-based discriminatory seniority system in NYPD had roots preceding the prohibition against sex discrimination and commission's remedy, to back date the seniority, was rationally related to the redress and prevention of recurrence of discrimination.-Matter of Beame v. DeLeon, 209 AD2d 252 modified 87 NY2d 289 [1996].

¶ 8. In a proceeding that petitioner discriminated because of blindness, the NYC Human Rights Commission was correct when it placed the burden on petitioner to show that it was unable to reasonably accommodate respondent or that respondent's proposals for accommodation imposed undue hardship.-Harris & Assoc. v. DeLeon, 199 AD2d 78 aff'd 84 NY2d 698 [1994].

¶ 9. Employer's act of contesting the complainant's right to receive unemployment benefits, after assuring complainant she would be entitled to such benefits, solely because she filed a complaint with the State Division of Human Rights, was a disadvantaging employment action for purpose of establishing a claim of retaliation. The conduct was actionable even though it occurred after the discharge of complainant.-Matter of Elect- chester Housing Project, Inc. v. Rosa, 639 N.Y.S.2d 848 (App.Div. 2nd Dept. 1996). Accord, Landwehr v. Grey Advertising, Inc., 211 A.D.2d 583, 622 N.Y.S.2d 17 (1st Dept. 1995).

¶ 10. The governmental policy against discrimination enjoys the highest statutory priority, based upon legislative findings that discrmination threatens the right and proper privileges of the City's institutions and endangers the institutions and foundations of a democratic state.-Beame v. DeLeon, 87 N.Y.2d 289, 639 N.Y.S.2d 272 (1995).

¶ 11. Court upheld a discrimination award by the Commission in favor of a tenant who was HIV-positive; $100,000 for mental anguish and a civil penalty of $75,000. The landlord, acting either himself or through others, burglarized the tenant's apartment, disabled door locks, turned off electricity, refused to accept timely rent checks, called the tenant "faggot" and stated that he hoped the tenant died of AIDS. The court noted that it was possible to recover for mental anguish based on the tenant's testimony alone, without proof of psychiatric treatment.-Matter of 119-121 East 97th Street Corp. v. NYC Commission on Human Rights, 642 N.Y.S.2d 638 (App.Div. 1st Dept. 1996).

¶ 12. The court annulled finding of discrimination, holding that there was insufficient proof of the claim. In order to prove that discharge was in retaliation for the bringing of a discrimination claim, claimant must produce evidence of a subjective retaliatory motive. For example, it could be shown that the filing of a discrimination claim was followed closely by discriminatory treatment, or that the employer engaged in a pattern of discriminatory treatment of fellow employees who filed similar complaints.-Matter of Pace University v. New York City Commission on Human Rights, 85 N.Y.2d 125, 623 N.Y.S.2d 765 [1995].

¶ 13. The complainant established a prima facie case of housing discrimination on the basis of race and national origin, where the property owner told the complainant (a West Indian woman) that the house was no longer available even though he continued to advertise it in a local newspaper and was showing the house and negotiating its sale with others.-Fugardi v. Angus, 216 A.D.2d 86, 628 N.Y.2d 77 (1st Dept. 1995).

¶ 14. It was not unlawful religious discrimination for a landlord to install electric locks in the doors to the front entrance of the building, even though an Orthodox Jewish tenant alleged that it impaired his ability to enter the building on the Jewish sabbath. He alleged that Jewish law forbade him from breaking an electric circuit on the sabbath. However, the mere fact that the landlord's act created an additional burden for this tenant (who had to arrange for non-Orthodox persons to open the door for him on the sabbath) did not render the act illegal.-Siegel v. Blair-Hall, Inc., 207 A.D.2d 539, 615 N.Y.S.2d 937 (2nd Dept. 1994).

¶ 15. A complaint alleging that the landlord unlawfully sought the removal of a subtenant because he treated AIDS patient was sufficient to state a cause of action under this section; it was sufficient if the patients were the indirect victims of discrimination.-Bernstein v. 1995 Associates, 185 A.D.2d 160, 586 N.Y.S.2d 115 (1st Dept. 1992).

¶ 16. To establish a prima facie case of retaliation, a complainant must prove (1) participation in protected activity known to the retaliator; (2) an employment action disadvantaging to the person engaged in the protected activity; (3) a causal connection between the protected activity and the adverse employment action. Refusal to offer a university faculty member any new teaching assignments because she refused to withdraw a sex discrimination case, constituted retaliation.-Pace University v. Commission on Human Rights, 200 A.D.2d 173, 611 N.Y.S.2d 835 (1st Dept. 1994).

¶ 17. An employer can be liable under this section where there is alleged hostile environment by reason of the employee's sex change operation. Without going into the medical changes undergone by the previously male employee, the court concluded that the complaint stated a cause of action based on gender discrimination. The court cited federal cases decided under Title VII for the definition of hostile environment-conduct that a reasonable person would find hostile or abusive.-Maffei v. Kolaeton Industry, Inc., 164 Misc.2d 546, 626 N.Y.S.2d 391 (Sup.Ct. New York Co. 1995).

¶ 18. Sexual harassment in the workplace is a violation of the city human rights law.-Rudow v. New York City Commission on Human Rights, 123 Misc.2d 709, 474 N.Y.S.2d 1005 (Sup.Ct. New York Co. 1984), aff'd 109 A.D.2d 1111, 487 N.Y.S.2d 453 (1st Dept. 1985).

¶ 19. A hostile work environment exists for purposes of the discrimination laws when the workplace was permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe and pervasive that as to alter the conditions of the victim's employment and create and abusive working environment (court's discussion was based on Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2[a][1], but the court stated that the indentical standard applied in sexual harassment claims under stated law). The court upheld a "hostile environment" claim which alleged that plaintiff's supervisor repeatedly made offensive sexual remarks to her over many months, inquired as to her sexual preferences, and arranged a trip for her to Boston, for a non-existent computer training seminar, where he raped her. It was also alleged that the defendant's president tolerated such misbehavior by impliedly warning plaintiff that her job was at stake if she refused to be "more understanding" of her supervisor. Espaillat v. Breli Originals, 227 A.D.2d 266, 642 N.Y.S.2d 875 (1st Dept. 1996).

¶ 20. The federal Airline Deregulation Act, 49 U.S.C. § 4713(b)(1), pre-empts an age discrimination action brought by pilots under local law. Abdu-Brisson v. Delta Airlines, 927 F.Supp. 108 (S.D.N.Y. 1996).

¶ 21. In order to maintain a claim for discrimination on the basis of sexual orientation, plaintiff must show that the defendant's actions were directed specifically against gay persons. Plaintiff alleged that a landlord unreasonably barred her from moving in with a tenant because of concern that she might later claim succession rights under rent regulation. However, since succession rights could just as easily arise between two people in a long term heterosexual relationship as it could from a long term gay relationship, the landlord's real motive (assuming the complaint's allegations are true) would be economic rather than a desire to discriminate against gay persons per se. Thus, the discrimination claim was dismissed. Costa v. David Frankel Realty, Inc., N.Y.L.J., Oct. 23, 1996, page 33, col. 6 (Sup.Ct. New York Co.).

¶ 22. A brokerage firm which employed plaintiff was not responsible for sexual harassment allegedly perpetrated by a client. In other words, the broker is not vicariously liable for the acts of the client. Rothman v. Halstead Property Co., N.Y.L.J., July 8, 1996, page 25, col. 5 (Sup. Ct. New York Co.).

¶ 23. A corporate employee who is directly involved in allegedly discriminatory acts against the plaintiff, can be personally liable under the New York City Human Rights Law. Cohen v. Majestic Athletic Wear, Ltd., N.Y.L.J., May 25, 1999, page 29, col. 2 (Sup.Ct. New York Co.).

¶ 24. A medical school had a housing policy under which two students could share an apartment, but under which a student could share an apartment with a non-student only if the non-student was the spouse of the student. Two lesbian women, who had unsuccessfully sought to share an apartment with their respective non-student partners, brought an action against the university. The court agreed that the university's policy was facially neutral (heterosexual partners could not share an apartment unless both were students or unless they were married). However, the court found that there was a triable issue as to whether the policy had a disparate impact upon gay persons. Defendants cited Hudson View Properties v. Weiss, 59 NY2d 733, 463 N.Y.S.2d 428 (1983), in which the court upheld a lease provision limiting occupancy of an apartment to the tenant, the tenant's spouse and the immediate family members of both of them. The court, however, said that **Hudson** held only that the policy did not on its face discriminate on the basis of marital status. In other words, the **Hudson**court did not consider whether a lease provision such as the one in **Levin**had an

impermissible disparate impact upon people in plaintiffs' position. In assessing whether or not there was disparate impact discrimination, it was appropriate to count not only single persons but also married persons. Levin v. Yeshiva University, 96 NY2d 484, 730 N.Y.S.2d 15 (2001).

¶ 25. Under the New York City Human Rights Law, as under the New York State Human Rights Law (Executive Law § 296(1)(a)), a corporate employee, even though holding a managerial title, is not personally subject to suit for discrimination if he or she does not have an ownership interest or have any power to do more than carry out personnel decisions made by others. However, a senior officer whose powers extend well beyond carrying out decisions made by others, can be personally liable under the Human Rights Law. Harrison v. Indosuez Corp., 6 F.Supp.2d 224 (S.D.N.Y. 1998).

¶ 26. Since the statute permits recovery for emotional distress caused by sexual harassment, the claimant in such a case should not be asserting a common law tort claim for intentional infliction of emotional distress. McIntyre v. Manhattan Ford, Lincoln-Mercury, Inc., 682 N.Y.S.2d 167 (App.Div. 1st Dept. 1998); 256 AD2d 269, appeal dismissed, 93 N.Y.2d 919, 691 N.Y.S.2d 383 (1999), leave to appeal denied, 94 N.Y.2d 753, 700 N.Y.S.2d 427 (1999).

¶ 27. An alleged victim of ethnic discrimination can assert claims under both the City Human Rights Law and the New York Executive Law (state law). However, an allegation of discrimination by reason of sexual orientation is covered only by the City law. Nacinovich v. Tullet & Tokyo-Forex, Inc., 257 A.D.2d 523, 685 N.Y.S.2d 17 (App.Div. 1st Dept. 1999).

¶ 28. The Port Authority of New York and New Jersey, as a bi-state agency, is not under subject to the administrative code provisions regarding discrimination. Rose v. Port Authority of New York and New Jersey, 13 F.Supp.2d 516 (S.D.N.Y. 1998).

¶ 29. In order to maintain a hostile work environment claim, plaintiff must show that the workplace is permeated with discriminatory intimidation, ridicule and insult. The discriminatory conduct must be so severe and pervasive that the plaintiff's employment conditions are altered. In order to maintain a claim for retaliation, plaintiffs must show that they engaged in a protected activity (i.e. making complaints about discrimination) and that the employer took adverse employment action against them because of said activity. Galonsky v. Williams, N.Y.L.J., July 7, 1998, page 27, col. 3 (Sup.Ct. New York Co.).

¶ 30. One court held that overmedication and acts of physical abuse directed developmentally disabled deaf persons constituted discrimination against disabled persons within the meaning of the city human rights law. Thus, where plaintiff contends that she was constructively discharged in retaliation for her making complaints about other employees who engaged in the above practices, she had a cause of action for retaliatory discharge within the meaning of the statute. Torge v. New York Society for the Deaf, 270 A.D.2d 153, 706 N.Y.S.2d 622 (1st Dept. 2000), leave to appeal denied, 95 N.Y.2d 768, 721 N.Y.S.2d 605 (2000).

¶ 31. The statute prohibits discrimination against an individual by reason of that person's disability. The Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) also prohibits discrimination against a non-disabled person by reason of the known disability of a person with whom the qualified individual is known to have a relationship or association ("association discrimination"). However, the New York City Human Rights Law does not cover association discrimination. Thus, plaintiff could not use the city statute to assert a claim that she lost her employment by reason of the fact that she was known to be caring for a disabled daughter. Abdel-Khalek v. Ernst & Young, LLP, N.Y.L.J., Mar. 11, 1999, page 32, col. 5 (U.S. Dist. Ct. S.D.N.Y.).

¶ 32. A plaintiff can support a claim of race discrimination by showing that similarly situated employees of a different race were treated more favorably than plaintiff. To be similarly situated, the other employees must have been subject to the same standards of performance evaluation and discipline as plaintiff, and must have engaged in conduct similar to that of plaintiff. Norville v. Staten Island University Hospital, 196 F.3d 89 (2d Cir. 1999).

¶ 33. In an age discrimination case, the mere fact that in an interview, the prospective employer asks the year of plaintiff's graduation from school, does not in itself give rise to an inference of age discrimination. Norville v. Staten Island University Hospital, 196 F.3d 89 (2d Cir. 1999).

¶ 34. In one case, an employee alleged that the employer engaged in retaliatory conduct by reason of the plaintiff employee's having complained about sexual harassment. The court said that normally, if corporate management exercised reasonable care to prevent and correct harassing behavior on the part of the offending employee, the corporation could avoid liability. Where, however, the alleged offender was a 50 percent shareholder in the employer and was obviously high in the corporate hierarchy, the above defense could not be used by the corporation. Randall v. Tod-Nik Audiology, Inc., 270 A.D.2d 38, 704 N.Y.S.2d 228 (App.Div. 1st Dept. 2000).

¶ 35. It was improper for an employer to refuse to hire the complainant by reason of out-of-state criminal charges that resulted in the equivalent of an adjournment in contemplation of dismissal. Johnson v. New York City Comm. on Human Rights, 270 A.D.2d 186, 706 N.Y.S.2d 18 (App.Div. 1st Dept. 2000).

¶ 36. In one case, a landlord brought an eviction proceeding, alleging that the tenant had engaged in bizarre behavior by shouting offensive epithets at other tenants. The court recognized that the case raised issues as to whether the tenant, who was mentally impaired, was being subjected to discrimination by reason of disability. However, in order to prevent eviction, the tenant's representative would have to produce expert testimony regarding, for example, the nature of the disability, the nature of medications taken by the tenant, and the treatment plan. In other words, it would have to be shown that medical personnel would be able to manage the situation so that the tenant would not engage in offensive behavior in the future. Kirso Realty Co. v. Brief, N.Y.L.J., Sept. 8, 1999, page 31, col. 3 (Civ.Ct. Richmond Co.).

¶ 37. An allegation that a female supervisor harassed a female subordinate after the breakup of a non-work-related romantic relationship, did not state a cause of action under the statute, because the discrimination was not on the basis of gender. Stallings v. U.S. Electronics, 270 A.D.2d 188, 707 N.Y.S.2d 9 (App.Div. 1st Dept. 2000).

¶ 38. Franklin v. Consolidated Edison Co., 1999 WL 796170 (U.S. Dist. Ct. S.D.N.Y.), contains extensive discussion of the law governing discrimination cases. Where a plaintiff alleges the existence of a hostile work environment, the requirements of 8-107 are similar to those of Title VII of the federal Civil Rights Act of 1964. The following must be shown: (A) the workplace was permeated by discrimination or intimidation that was sufficiently severe or pervasive as to alter the conditions of the work environment; and (B) there must be a specific basis to impute that conduct to the employer. In terms of requirement (B), the court considers such factors as: (1) severity; (2) frequency; (3) whether the conduct was physically threatening; (4) whether the conduct interfered with work; and (5) the psychological harm to the plaintiff. Plaintiff alleged here that a co-worker made sexual comments regarding her body, and made sexual jokes in her presence. The allegations clearly met requirement (A), but the question was whether requirement (B) had been met. Where a co-employee (other than a plaintiff's supervisor) engaged in sexual harassment, the employer was not liable unless it failed to provide any reasonable avenue of complaint, or unless the employer knew about the harassment and failed to take action. The court held that where the employer provided reasonable avenues of complaint, and there was no evidence that it knew about the harassment, it was not liable for the co-worker's conduct. Plaintiff contended that although the alleged harasser was nominally a co-worker, he was a de facto supervisor. The court, however, stated that even if the alleged harasser had been her supervisor, the employer could avoid liability by exercising reasonable care to prevent and promptly stop the harassment, and the employee failed to avail herself of corrective or preventive opportunities provided by the employer. Plaintiff also alleged that discrimination against her was based in part upon disability. The court compared and contrasted the city statute with the federal Americans With Disabilities Act (ADA). Unlike the ADA, the city law does not specifically require the employer to accommodate the disabled person. The City law's definition of disability is less stringent than that of the ADA. The City law defines disability as an "impairment" while the ADA defines disability as an impairment which affects a major life activity (see also, Mora v. Danka, 1999 Westlaw 777888 (U.S. Dist.Ct. S.D.N.Y., on this point). However, both the city law and the ADA will cover a claim that disabled persons have been subjected to disparate

treatment as compared to that afforded non-disabled persons. Under both the ADA and the city law, the claimant would have to show that he or she has a disability, was otherwise qualified to perform the basic functions of the position in question, and was subjected to discrimination by reason of disability.

¶ 39. In one case, a diplomat sued by reason of the refusal of a condominium board of managers to approve a lease of a unit to the diplomat. The court stated that one exception to the business judgment rule is that a condominium board of managers cannot violate the anti-discrimination laws. However, the court held that the board could lawfully require, as a condition of approving leases, that foreign diplomat lessees waive diplomatic immunity. This was necessary, the board said, because the by-laws stated that in the event of a default in paying common charges, the condominium could bring an eviction proceeding against the occupant of the unit. The lessee argued that under 8-107(n), the condominium could not discriminate against persons by reason of their occupations. However, the court said that although being a diplomat could be regarded as a form of occupation, the action of the board was not based on the work that diplomats perform but was based upon the financial concerns revolving around diplomatic immunity. The court noted that the board would have consented to the lease if the diplomat had been willing to waive immunity. Park Tower Holding Corp. v. Board of Managers, 500 Park Tower Condominium, N.Y.L.J., Aug. 5, 1999, page 26, col. 5 (Sup.Ct. New York Co.).

¶ 40. Plaintiff, who worked with disabled people, claimed that defendant terminated his employment by reason of his advocacy for those people. The court held that this allegation did not state a cause of action under the City human rights law. Apparently, it is only where an employee suffers adverse employment consequences as a result of his own disability that the statute comes into play. Torge v. New York Society for the Deaf, 707 N.Y.S.2d 6 (App.Div. 1st Dept. 2000); 270 AD2d 153 and leave to appeal denied, 95 N.Y.2d 768, 721 N.Y.S.2d 605 (2000).

¶ 41. The New York substantive law on punitive damages applies to a discrimination case under the Administrative Code, and the principles are similar to that of federal law. To recover such damages, it must be shown that defendant acted with malice or reckless indifference to plaintiff's rights. The employer must have had at least a perceived risk that its conduct would violate the law, but the conduct need not rise to a level that would be considered "egregious" or "outrageous." Greenbaum v. Svenska Handelsbaken, 67 F.Supp.2d 228 (S.D.N.Y. 1999); see also, Weissman v. Dawn Joy Fashions, Inc., 214 F.3d 224 (2d Cir. 2000).

¶ 42. The New York City and New York State prohibitions against discrimination on the basis of disability, parallel the federal anti-discrimination statutes. Plaintiff must plead (1) that he or she suffered from a disability; (2) that the plaintiff is otherwise qualified to perform the essential functions of the job; and (3) that the plaintiff suffered the alleged adverse employment actions because of the disability. It is not enough for the employer to show that employee's physical impairment is somehow related to the position sought. Unless it is shown that the employee's physical condition precludes him or her from performing the work, the disability is irrelevant to the job and cannot lawfully form the basis for denying him or her the job. Moreover, an employer can be liable even if it offers the employee an alternative position, if the alternative position pays substantially less and has substantially less promotion potential than the position that the employee sought. Shine v. Roosevelt Hospital, N.Y.L.J., Jan. 5, 2000, page 26, col. 5 (Sup.Ct. New York Co.).

¶ 43. In order to make a prima facie case of employment discrimination, plaintiff must show, among other things, that he or she suffered an adverse employment action. An adverse employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. In order to base a case upon constructive discharge, plaintiff must show that defendant made her working conditions so intolerable that she was forced to resign. A constructive discharge cannot be proven merely by evidence that an employee disagreed with the employer's criticisms of the quality of his work or did not receive a raise, or preferred not to continue working for that employer. Esterquest v. Booz-Allen & Hamilton, Inc., 2002 WL 237846 (S.D.N.Y.) (decided under Title VII of the Civil Rights Act of 1964 and the Administrative Code).

¶ 44. Plaintiff, who had suffered a mild heart attack, offered to return to work within 4 to 5 weeks. The employer refused to contact plaintiff's doctors to verify his claim that he could return to work soon, took the position that it could not afford to be short-handed, and terminated plaintiff's employment. After the employer fired him, he brought an action alleging discrimination on the basis of disability. The court noted that the Administrative Code contains no cap on punitive damages, unlike the Americans With Disabilities Act (ADA), which, for an employer of defendant's size, would have had an applicable cap of $100,000 in punitive damages. However, although the court found defendant's conduct could constitute unlawful discrimination (resulting in compensatory damages), the employer's conduct was not sufficiently reprehensible to warrant the imposition of punitive damages. Weissman v. Dawn Joy Fashions, Inc., 214 F.3d 224 (2d Cir. 2000).

¶ 45. The New York substantive law on punitive damages applies to a discrimination case under the Administrative Code, and the principles are similar to that of federal law. To recover such damages, it must be shown that defendant acted with malice or reckless indifference to plaintiff's rights. The employer must have had at least a perceived risk that its conduct would violate the law, but the conduct need not rise to a level that would be considered "egregious" or "outrageous." Greenbaum v. Svenska Handelsbaken, 67 F.Supp.2d 228 (S.D.N.Y. 1999); see also, Weissman v. Dawn Joy Fashions, Inc., 214 F.3d 224 (2d Cir. 2000).

¶ 46. Generally speaking, an isolated incident will not give rise to a "hostile environment" type of sexual harassment claim. If the alleged conduct, however, is extraordinarily severe, a single incident of sexual assault may create a hostile environment claim. Thus, the court sustained a complaint in which plaintiff alleged that while on a business trip, her immediate supervisor came into her room while she was sleeping and climbed into bed, attempting to kiss and touch her, and that on another occasions, the same supervisor exposed and fondled his genitals and attempted to make plaintiff touch him. San Juan v. Leach, 278 A.D.2d 299, 717 N.Y.S.2d 334 (App.Div. 2d Dept. 2000).

¶ 47. A corporate principal who personally participates in conduct giving rise to a discrimination claim, can be held personally liable for that conduct. Solomon v. Giorgio Armani Corp., N.Y.L.J., Oct. 6, 2000, page 36, col.6 (U.S.Dist.Ct., S.D.N.Y.).

¶ 48. In cases alleging discrimination based on disability, the employer may assert, as an affirmative defense, that the employee could not with reasonable accommodation satisfy the essential requisites of the job. Where an employee is chronically absent for long periods of time, and because the employee's job duties required regular attendance at work (she was a teacher), no reasonable accommodation existed which would have enabled her to perform the essential functions of the job. Under the circumstances, the defendant's action in "excessing" the employee from her high school did not constitute unlawful discrimination by reason of disability. Sirota v. New York City Board of Education, N.Y.L.J., Jan. 23, 2001, page 26, col. 5 (Sup.Ct. New York Co.).

¶ 49. According to a complaint based on racial discrimination, the African-American plaintiff was denied admission to the Stadium Club because her attire did not meet the club's dress code. After discussing the matter with Yankee personnel, she went back to her car and changed into attire that met the dress code, after which she was admitted to the club. While at the club, she observed non-minority women wearing the same type of attire that previously had caused her to be denied admission. The court held that though she ultimately was granted admission to the club, she nevertheless had a viable civil rights claim if she could prove that the Yankees had compelled her to meet dress requirements that non-minority women were not required to meet. Joseph v. New York Yankees Partnership, N.Y.L.J., Oct. 24, 2000, page 35, col. 5; 2000 WL 1559019 (U.S. Dist. Ct. S.D.N.Y.).

¶ 50. Admin. Code Secs. 8-107(13)(d) and (e) permit an employer to plead and prove various factors where liability for discriminatory conduct is based solely on the conduct of an employee, agent or independent contractor. Among the factors that can be pleaded is a "meaningful and responsive procedure for investigating complaints" and a"firm policy against such practices which is effectively communicated." These factors, however, are not a total defense to an employee's claim for punitive damages, but are only factors to be considered in mitigation of punitive damages. Thompson v. American Eagle Airlines, Inc., N.Y.L.J., Oct. 20, 2000, page 36, col. 3; 2000 WL 1505972 (U.S. Dist.Ct.

S.D.N.Y.).

¶ 51. In one case, Nike, a manufacturer of athletic apparel, helped to sponsor St. John's University athletic programs, in return for which university staff members were expected to wear Nike apparel. A former university employee, who had previously worked in connection with the university's athletic department, claimed that the university refused to rehire him by reason of his refusal to wear the apparel and by reason of his criticism of Nike's labor practices in foreign countries. Specifically, the employee, who was Catholic, believed that it was immoral for Catholics to endorse Nike products because, according to him, the foreign workers who produced those products labored under intolerable conditions. In other words, the employee alleged that St. John's which is a Catholic institution, discriminated against him because his view of Catholic morality differed from that of those of university administrators. The court, however, dismissed the discrimination claim. In order to have a viable discrimination claim, plaintiff must be a member of a protected class, the court said. The complaint, at best, alleged not that plaintiff was being singled out for being Catholic, but that plaintiff was not rehired because of political differences with other Catholics. Thus, he was not subject to discrimination by reason of membership in a protected class. Keady v. Nike, Inc., N.Y.L.J., Sept. 29, 2000, page 34, col. 6 (U.S. Dist. Ct., S.D.N.Y.).

¶ 52. The burden shifting analysis of McDonnell Douglas Corp. v. Green, 411 U.S. 792 applies to a claim of pregnancy discrimination under the New York City, Administrative Code. admin code. Yang v. Radix Apparel, N.Y.L.J., Jan. 9, 2001, page 35, col. 5 (U.S. Dist. Ct. S.D.N.Y.)

¶ 53. Sometimes, tenants who have been brought into court on holdover proceedings have asserted counterclaims based on unlawful discrimination. Where the holdover is dismissed, the tenant's counterclaim should also be dismissed, without prejudice to assertion of the claim in a plenary action. Smalkowski v. Vernon, 30 Housing Court Reporter 120C (Civ. Ct. Kings Co.).

¶ 54. In one case, a cooperative board of directors allegedly rejected a sale of the apartment to a young couple which was currently childless but which (in the opinion of the board) was likely to have children in the foreseeable future. This action was allegedly taken in an effort to keep out families with children. The court held that even though it was the prospective buyers, rather than the shareholder-seller, who were the subject of the alleged discrimination, the shareholder would have a cause of action against the cooperative under the New York City Human Rights Law. Axelrod v. 400 Owners Corp., 189 Misc.2d 461, 733 N.Y.S.2d 587 (Sup.Ct. New York Co. 2001).

¶ 55. A heterosexual former employee of a not-for-profit organization that serves people with AIDS, brought an action alleging discrimination on the basis of sexual orientation. She attempted to establish a case by describing the remarks of her former supervisor, who said that plaintiff lacked passion for the job because it "wasn't part of her community." Plaintiff alleged that this comment meant by implication that since the heterosexual community is not as severely afflicted with AIDS, heterosexuals such as plaintiff were not up to the job. The court, however, had an entirely different interpretation of the remarks. Apparently, the supervisor was expressing concern that plaintiff, who had no prior experience with AIDS, would have difficulty in relating to any AIDS patients. The court noted that the organization assisted anyone with AIDS, whether or not such person was gay. Thus, the court dismissed the action. Berner v. Gay Men's Health Crisis, 743 N.Y.S.2d 99 (App.Div. 1st Dept. 2002), 295 A.D.2d 119, 743 N.Y.S.2d 99 (1st Dept. 2002).

¶ 56. Where a discrimination claim is based upon failure to hire or failure to promote, plaintiff must show that she was qualified for the position in question. Whether plaintiff is qualified must be determined according to the criteria used by the employer. At the same time, while the conclusions of the employer are to be respected, the role of the qualification prong is simply to help eliminate the most common non-discriminatory reasons for the plaintiff's rejection. Plaintiff need only show that she possesses the basic skills required for the job. The test does not ask if she is the best qualified for the job-it only asks if she is qualified. Sandman v. Mediamark Research, Inc., 2002 WL 424660 (S.D.N.Y.).

¶ 57. A heterosexual former assistant stage manager alleged that she was subject to discrimination because of her sexual orientation (i.e. that the Metropolitan Opera's general manager refused to renew her contract and subjected her to a hostile working environment). The court agreed that if the other required elements of a discrimination claim are present, a heterosexual has a cause of action for discrimination on the basis of sexual orientation. The fact that discrimination against heterosexuals is not as pervasive as that against gay persons does not change the clear wording of the statute nor does it lessen the impact of such prejudices on the individuals involved. The court, however, dismissed the action for failure to prove a case. In the absence of specific remarks demeaning her sexuality, plaintiff should have offered evidence regarding different treatment given to gay persons as opposed to heterosexual persons in this mixed-orientation environment. It is not enough to say that she does not know of any gay persons who were treated poorly. Plaintiff complained that the presence in the office of photographs of naked men created a hostile working environment. While the court agreed that such photographs were inappropriate for an office setting, it found that the pictures could be offensive to both gay and heterosexual persons, and did not constitute discrimination specifically directed at heterosexuals. Brennan v. Metropolitan Opera Assn, 284 A.D.2d 66, 729 N.Y.S.2d 77 (1st Dept. 2001).

¶ 58. In one case, a plaintiff brought a federal action under 42 U.S.C. Sec. 1985 (conspiracy to deprive him of civil rights) and added a cause of action under Adm. Code Sec. 8-107, which claim could be heard in federal court by virtue of pending jurisdiction. The Second Circuit held that where the District Court dismissed the Sec. 1985 claim, it should not have retained jurisdiction of the 8-107 claim but should have dismissed that claim without prejudice to assertion in state court, the court that could better hear the claim. Keady v. Nike Inc., 2001 WL 116833 (U.S. Ct. of Appeals, 2d Cir.), 23 Fed.Appx. 29, 160 Educ. Law Reports 765.

¶ 59. In one case, a plaintiff alleged that the employer retaliated against her by reason of her having filed a discrimination claim based on disability. The court said that in order to state a claim of retaliation, plaintiff must show that he or she engaged in a protected activity; the employer was aware of that activity; that an adverse employment action occurred; and that a causal link exists between the protected activity and the adverse employment action. In order for plaintiff to show that she engaged in protected activity, it is not required that she was actually disabled, so long as she possessed a good faith reasonable belief that the employer's actions violated the law. Where a daughter and mother were employed by the same agency, a daughter who allegedly suffered an adverse employment action by reason of her writing a letter in support of her mother's disability complaint, was held to have a viable claim for retaliation. Sacay v. Research Foundation of the City University of New York, 193 F.Supp.2d 611 (E.D.N.Y. 2002).

¶ 60. In a mixed motive case (in this particular case, sex and national origin), a plaintiff must demonstrate that a prohibited discriminatory factor plays a motivating part in a challenged employment decision. Once the plaintiff has established that fact, the burden shifts to the employer to prove by a preponderance of evidence that it would have made the same decision anyway. Ames v. Cartier, Inc., N.Y.L.J., Apr. 23, 2002, page 27, col.1 (U.S. Dist. Ct. S.D.N.Y.). (The court analyzed the case under Title VII of the Civil Rights Act of 1964, but said that the same analysis applied to discrimination claims under the City law).

¶ 61. Since the statutory definition of "disability" under the New York City Human Rights Law is not as stringent as that under the federal Americans With Disabilities (ADA) claim, a dismissal of the federal claim is not necessarily dispositive of the claims under the City law. Grecius v Liz Claiborne, Inc., N.Y.L.J., Feb. 27, 2002, page 30, col. 4 (U.S. Dist. Ct., S.D.N.Y.), 2002 WL 244598.

¶ 62. Plaintiff, a former employee, sued after he was terminated, following an accusation of sexual harassment. He then brought a claim alleging disparate treatment. Plaintiff was able to meet the first three tests of disparate treatment (work satisfactory, he was member of protected class, and he was subject to adverse employment action) by alleging that although he and the female employee supposedly both engaged in talk of a sexual nature, he was the only one subject to disciplinary action. Defendant argued that he could not maintain an action because he had not shown that any female employee accused of sexual harassment was treated better than he was, but the court disagreed. First, disparate treatment did not require analysis of treatment given to someone who had been in an identical position to plaintiff. Second, while disparate treatment is one way of establishing discrimination, it is not the only way. In other words, he

had a potential cause of action for discrimination on the basis of gender, whether or not he and the female employee were similarly situated. Nevertheless, the court dismissed the disparate impact claim because of lack of proof. Plaintiff had argued that the company's policy of disciplining the subjects of sexual harassment charges, without conducting a fair and adequate investigation, while facially neutral, had a disparate impact upon men since the large majority of sexual harassment cases involve accusations against men rather than women. His problem is that instead of analyzing the positions taken by his company with respect to men and women accused of sexual harassment, he merely quoted general statistics, taken from a website of the federal Equal Employment Opportunity Commission (EEOC) regarding percentages of sexual harassment complainants and respondents in terms of gender. Iglesias v. Citibank, N.Y.L.J., May 24, 2002, page 18, col. 5 (Sup.Ct. New York Co.).

¶ 63. In order for racist comments, slurs and jokes to give rise to a hostile work environment, there must be more than a few isolated incidents of racial enmity, i.e. instead of sporadic racial slurs, there must be a steady barrage of opprobrious racial comments. Curtis v. Citibank, 2002 WL 27780 (U.S. Dist. Ct., S.D.N.Y.).

¶ 64. To establish a claim for discrimination, plaintiff must show that he or she sustained an adverse employment action by reason of the disability. At the very least, the employer must have had knowledge of the disability.

Woolley v. Broadview Networks, N.Y.L.J., Mar. 5, 2003, page 27, col. 4 (U.S. Dist.Ct. S.D.N.Y.).

¶ 65. A reasonable accommodation for an employee with a disability might include reassignment to a vacant position for which he or she is qualified, but the employer does not have to create a new position. Moreover, employers are required only to provide a reasonable accommodation, and are not required to provide the particular accommodation required by the employee. Romanello v. Shiseido Cosmetics, N.Y.L.J., Oct. 15, 2002, page 37, col. 5 (U.S. Dist.Ct., S.D.N.Y.), 2002 WL 31190169.

¶ 66. Where a plaintiff alleges a retaliatory discharge, the New York City Human Rights Law has the same standard as Title VII of the Civil Rights Act of 1964. A plaintiff must show that he or she engaged in a protected activity; that the employer was aware of the activity; that the employer took an adverse action against him or her; and that there was a causal connection between the adverse employment activity and the adverse employment action. Once a prima facie case is made out, the burden shifts to the defendant, who must articulate a legitimate, non-discriminatory reason for its adverse action. If the defendant meets its burden, the plaintiff must then prove that the defendant's proffered reason was a pretext for retaliation, i.e. that its actual motive was impermissible retaliation for plaintiff's protected activity. To establish that plaintiff was engaged in a protected activity, the plaintiff must show that he or she had a good faith and reasonable belief that the challenged acts violated the law. Protected activities include informal as well as formal complaints, and complaints to management. Evidence offered by plaintiff in support of the prima facie case may be considered in determining whether the employer's proffered reason was pre-textual, but the reverse is not true; evidence of pretext cannot be used to create a prima facie case in the first instance.

One way for plaintiff to establish a prima facie case is to show that he or she was treated differently from similarly situated persons outside of the protected class. In order to be deemed similarly situated, the other employee must be similarly situated in all material respects, i.e. must have dealt with the same supervisor, must have been subject to the same standards and must have engaged in the same conduct without such differentiating of mitigating circumstances as would distinguish their conduct or the employer's treatment of them for it.

Where a supervisor who took an adverse employment action against plaintiff is the same person who hired him a relatively short period of time beforehand (known as "same actor" defense), this creates an inference that the adverse action was not motivated by a discriminatory motive. Spiegler v. Israel Discount Bank, 2003 WL 21488040 (U.S. Dist.Ct., S.D.N.Y.)

¶ 67. Some discrimination case plaintiffs allege an adverse employment action, even though they have not lost any pay or fringe benefits by reason of the adverse action. To constitute an adverse employment action, a change in working

conditions must be "materially adverse." A materially adverse change must be more disruptive than a mere inconvenience or an alteration of job responsibilities. A lateral transfer that does not result in reduction in pay or benefits does not constitute an adverse employment action so long as that transfer does not alter the terms and conditions of plaintiff's employment in a materially negative way. (A transfer to a less prestigious unit that has fewer opportunities for professional growth might be considered an adverse action.) Where the employer's own policies differentiate between positions that, in theory, have the same rank (e.g. where employees who desire a certain assignment must apply for it), this constitutes some evidence that the transfer to a "less desirable" position is an adverse employment action. A denial of an assignment that would have given plaintiff a steady day shift, as opposed to more irregular hours, might constitute an adverse employment action. Moreover, where the employer's choice of assignments denies the employee the opportunity to use his or her specialized skills, that would constitute an adverse action (e.g. where a police officer skilled in dealing with domestic violence issues is given an assignment that provides no opportunity to use his or her skills).

The discriminatory animus of intermediate supervisors who have an input in the decision-making process will not give rise to liability, if the supervisor with final authority bases an adverse employment action exclusively on an independent evaluation. However, the employer will be liable where the decision-maker "rubber stamps" the recommendation of the subordinates; in such cases, the decision maker is considered to be a conduit of the subordinates' improper motive. If the discriminatory animus of an intermediate supervisor plays a substantial role in the final decision (this need not be the sole factor), the bias of the intermediate supervisor will give rise to liability. Fullard v. City of New York, 2003 WL 21414312 (U.S. Dist.Ct., S.D.N.Y.)(case described Title VII standard, and said that the Administrative Code was similar; although the court ultimately held that plaintiff had failed to make out a prima facie case, its statements of law may be helpful to future discrimination plaintiffs).

¶ 68. A complaint which alleges that plaintiff was "harassed, shunned and subjected to an intimidating work environment," and which does not set forth specific actions of the employer which materially changed the terms and conditions of employment, does not set forth an actionable claim for retaliation. Quarles v. Bronx-Lebanon Hospital Center, 228 F.Supp.2d 377 (S.D.N.Y. 2002).

¶ 69. A Japanese employee in the New York office of the Tokyo Metropolitan Government (TMG) filed a complaint against the TMG and the Governor of Tokyo in his individual capacity. The court held that in the absence of any allegations of wrongful conduct by the governor himself, no cause of action existed against him in his individual capacity. Kato v. Ishihara, 239 F.Supp.2d 359 (S.D.N.Y. 2002).

¶ 70. The American Stock Exchange is a public accommodation within the meaning of Section 8-107. Bantum v. American Stock Exchange LLC, N.Y.L.J., Apr. 17, 2003, at 24, col. 3 (Sup.Ct. Queens Co.).

¶ 71. A corporate employee is not subject to suit under the statute if he or she is not shown to have any ownership interest or any power to do more than carry out the personnel decisions made by others. Kadesh v. United Airlines, N.Y.L.J., Mar. 4, 2003, at 31, col. 4 (U.S. Dist.Ct. S.D.N.Y), 2003 WL 435632.

¶ 72. A court rejected a claim by the Transit Authority that Public Authorities Law §1266(8) made the TA exempt from the City Human Rights Law. Reilly v. Transport Workers' Union, N.Y.L.J., Jan. 2, 2003, page 18, col. 5 (Sup.Ct. New York Co.).

¶ 73. Under the New York City Human Rights Law, a claim of discrimination based on sexual orientation is established when it is demonstrated that a policy or practice of a covered entity results in a disparate impact to the detriment of any protected group, and the covered entity fails to plead and prove as an affirmative defense that the policy or practice at issue bears a significant relationship to a significant business objective or does not contribute to the disparate impact. Reilly v. Transport Workers' Union, N.Y.L.J., Jan. 2, 2003, page 18, col. 5 (Sup.Ct. New York Co.).

¶ 74. A co-employee of the plaintiff can be liable for discrimination, along with the employer, but only if the

co-employee acts with or on behalf of the employer in hiring, firing, paying, or in administering the terms and conditions of employment, i.e. in some agency or supervisory capacity. Priore v. New York Yankees, 307 A.D.2d 67, 761 N.Y.S.2d 608 (1st Dept. 2003), leave to appeal denied, 1 N.Y.3d 504, 775 N.Y.S.2d 781, 807 N.E.2d 894 (2003).

¶ 75. To state a prima facie case of employment discrimination due to a disability, a plaintiff must show that he or she suffers from a disability and that the disability caused the behavior for which he or she was terminated. Once a prima facie case is established, the burden shifts to the employer to demonstrate that the disability prevented the employee from performing the duties of the job in a reasonable manner, or that the employee's termination was motivated by a legitimate non-discriminatory reason. If the employer establishes that it had legitimate non-discriminatory reasons for discharging the plaintiff from employment, the burden shifts back to the plaintiff to raise a triable issue of fact as to whether the stated reasons were pre-textual. In one case, the employer established its prima facie right to judgment as a matter of law, by showing that the plaintiff's narcolepsy prevented him from performing his duties as a resident in anesthesiology despite the hospital's reasonable attempt to accommodate his needs. Timashpolsky v. State University of New York Health Science Center at Brooklyn, 306 A.D.2d 271, 761 N.Y.S.2d 94 (2d Dept. 2003).

¶ 76. A participant in a workfare program does not qualify as an employee for purposes of bringing a sexual harassment suit. McGee v. City of New York, N.Y.L.J., Aug. 27, 2002, page 18, col. 2, 2002 WL 1969260 (Sup.Ct. New York Co.).

¶ 77. In one case, a female law firm associate alleged that she was subjected to discrimination because she served an income execution on the firm after her ex-husband (who was a partner) failed to pay child support and maintenance. The court held that these allegations did not set forth a claim for discrimination on the basis of marital status. The law firm's negative response to her occurred because she sued one of the partners for maintenance, not because of her status as a divorced woman. Shapiro v. Zevnik , N.Y.L.J., Aug. 30, 2002, page 18, col. 1 (Sup.Ct. New York Co.).

¶ 78. In one case, plaintiff was discharged as a bus driver after defendant's physicians found that he was color blind. In order to have a cause of action for discrimination based on a perceived ("regarded as") disability, plaintiff must show that he was able, with reasonable accommodation, to perform the essential requisites of the job. Where plaintiff was unable to distinguish between certain colors (and thus potentially would not recognize red or yellow lights), and the retention of such driver would have violated state and federal regulations for bus driver certification, plaintiff could not recover based on his discharge. Shannon v. New York City Transit Authority, 332 F.3d 95 (2d Cir. 2003).

¶ 79. In a discrimination case, plaintiff alleged that defendant unlawfully engaged in sexual stereotyping when two supervisors complained to her about her personal appearance. Allegedly, the supervisors told her that she wore a type of makeup which exaggerated the appearance of her lips, and that her makeup application was inappropriate for the corporate environment, in which women were expected to wear "discreet and subtle" makeup. Plaintiff's theory was that defendant required women to have a facial appearance which was not required of male employees. The court, however, held that plaintiff had failed to make out a case of sex discrimination. For one thing, the same supervisors who hired her were involved in the decision to discharge her, which undercut the claim that the adverse employment action was gender-based. Moreover, it was not unlawful to have some differences between men and women in terms of appearance standards (e.g. analogous cases under Title VII have upheld hair length requirements for men, even though those requirements did not apply to women). Moreover, although the standards were different for men and women, both men and women were subject to stringent standards. For example, women had to wear certain types of makeup, while men were forbidden to have long hair, earrings or beards. Plaintiff failed to establish that the grooming standards were applied in a discriminatory manner. Romanello v. Shiseido Cosmetics, N.Y.L.J., Oct. 15, 2002, page 37, col. 5 (U.S. Dist.Ct., S.D.N.Y.)

¶ 80. In one racial discrimination case, the court set forth some significant substantive elements of a discrimination claim and of a retaliation claim. Where an employer offers a legitimate non-discriminatory motive for taking adverse employment action against plaintiff (in this case, plaintiff's allegedly serious lapses in documenting

charts, and her failure to document the medical basis for plaintiff's request for a leave in order to take care of an allegedly sick family member), and plaintiff fails to show that the reason given was a pretext for discrimination, defendant is entitled to summary judgment dismissing the claim. Moreover, a mere allegation by plaintiff that African-Americans were treated differently from other employees, which is unsupported by evidence showing the disparate treatment, will not be sufficient to withstand defendant's motion for summary judgment. Furthermore, the alleged occurrence of a few incidents of racial epithets (the details of which the parties sharply disputed) were not enough to establish a claim for a hostile racial environment. What is required is harassment sufficiently severe or pervasive as to alter the conditions of employment and create an abusive working environment. In other words, racist statements do not give rise to a cause of action unless they unreasonably interfere with plaintiff's job performance. Plaintiff's complaints that she was required to share an office with another person, that her caseload was increased due to an organizational change and understaffing, and the imposition of exacting demands regarding chart documentation, were not the types of things that a reasonable person would find to be an abusive environment. Finally, the court rejected plaintiff's claim the adverse employment actions taken against her violated statutory prohibitions against retaliation. To be actionable, the alleged retaliation must have been in response to a **protected activity.**Although the plaintiff had made complaints to higher management regarding the conduct of immediate supervisors, none of those complaints mentioned racial discrimination. Thus, the complaints to the employer cannot be deemed protected activity for purposes of the discrimination statutes related to retaliation.

Not every on-the-job dispute that arises between people of different races constitutes employment discrimination. Animosity on the job is not actionable, but unequal treatment based on race is actionable.

In order to have a discrimination complaint, there must have been an adverse employment action. An adverse employment action requires a materially adverse change in the terms and conditions of employment. To be materially adverse, a change in working conditions must be more disruptive than a mere inconvenience or alteration of job responsibilities. For example, a demotion involving a decrease in salary, a less distinguished title, a material reduction in benefits, or a material reduction in responsibilities, may be an adverse employment action. Forrest v. Jewish Guild for the Blind, 309 A.D.2d 546, 765 N.Y.S.2d 326 (1st Dept. 2003), aff'd 3 N.Y.2d 295, 786 N.Y.S.2d 382, 819 N.E.2d 998 (2004).

As described in the special note at the beginning of the annotations, the Williams case expanded the types of cases in which liability may attach under the New York City Human Rights Law (NYCHRL), even though there may have been an insufficient basis for liability under the New York Executive Law or Title VII of the Civil Rights Act of 1964. Williams mentioned Forrest as one of the cases whose result might have been different had the amended version of the NYCHRL been in effect at the time in question.

¶ 81. A single instance of discrimination is sufficient for a finding of a violation of the anti-discrimination laws. Silver Dragon Restaurant v. City Commission on Human Rights, N.Y.L.J., Mar. 31, 2004, at 24, col. 3 (Sup.Ct. Kings Co)(restaurant allowed Caucasian customers to receive food without paying for it in advance, but required an African-American customer to pay for her food in advance).

¶ 82. Where an age discrimination claim is based on disparate treatment, when comparing plaintiff to another employee (comparator), a case can be made out even if the comparator is within the protected class covered by the age discrimination statute, so long as the comparator is significantly younger than plaintiff. Spiegler v. Israel Discount Bank of New York, 2003 WL 21983018 (S.D.N.Y.)(case however, was dismissed by reason of plaintiff's failure to prove that the employer had a discriminatory motive for its actions).

¶ 83. The anti-discrimination laws prohibit harassment against employees who engage in protected activity. The term protected activity refers to action taken to protest or oppose statutorily prohibited discrimination. To establish a retaliation claim, the plaintiff need not prove the merits of the underlying discrimination claim, but only that he was acting under a good faith, reasonable belief that a violation existed. In terms of adverse employment actions allegedly taken in retaliation for engaging in protecting activity, the action need not involve termination or reduced wages or

benefits, but could involve less flagrant reprisals. However, the reprisals must be more than mere unpleasantness. Disciplinary memoranda (known informally as being "written up") or negative evaluations can be adverse employment actions if they affect employment decisions like promotions, wages or termination. In terms of proving that the adverse employment action was the result of retaliation, plaintiff can make out a case indirectly, by showing that the protected activity was followed closely by adverse treatment, or directly, through evidence of specific retaliatory animus directed against plaintiff by defendant. If plaintiff bases a case on timing alone, the timing must be very close. Knight v. City of New York, 303 F.Supp2d 485 (S.D.N.Y. 2004), aff'd 147 Fed. Appx. 221 (2d Cir. 2005).

¶ 84. In one age discrimination case, plaintiff alleged that he was subject to discrimination because he had slowed down in his work, gained weight and tended to perspire. The court, however, said that, even assuming that these factors were correlated with age, these facts, without more, did not amount to a claim of age discrimination. There was no claim that defendant unfairly stereotyped him because of age. Moreover, there were no claims that plaintiff was replaced by someone younger, that other older workers were discharged, or that anyone at the Pierre ever made disparaging comments about his age. Thus, plaintiff did not make out a prima facie case of discrimination. Even if plaintiff had made out a prima facie case, the employer proffered a non-discriminatory reason for plaintiff's discharge. A financial consultant's report concluded that two employees had been stealing, and the employer fired both of them. Plaintiff alleged that the consultant's report was erroneous and that the accusation of theft was merely a pretext for age discrimination. The court, however, rejected the pretext claim. Although plaintiff was 52 years old at the time of his discharge, the other fired employee was 20 years younger, thus negating the claim that the firings were based on age. Rodriguez v. Pierre New York, FRC, 299 F.Supp.2d 214 (S.D.N.Y. 2004)

¶ 85. In one case, an employee made out a prima facie case of pregnancy discrimination, showing that before announcing her pregnancy, she had received salary increases and promotions, that the company hired a full-time replacement for her while she was out on maternity leave, and that the company sent her a severance package approximately two weeks before she was due to return from maternity leave. In response, the employer said that due to a downturn in the economy, the company was forced to reduce staff. The court held that the employer needed only to proffer some legitimate non-discriminatory reason for its actions, that there was no need to assess the credibility of the proffered reason at that stage, nor did the employer have to show that it actually relied on this reason. The burden now shifted back to plaintiff to show pretext. At that point, the court said, the question was not whether unlawful discrimination was the sole reason for the discharge but whether, based on the evidence in the record, a rational jury could find that, despite any legitimate ground it might have had, unlawful discrimination played a motivating role in the employer's decision to take the adverse action. Where plaintiff showed at least some evidence of pretext, her case survived the employer's motion for summary judgment even though there was no reason to doubt that there had been downturns in the employer's industry. Batka v. Prime Charter, Ltd., 301 F.Supp.2d 308 (S.D.N.Y. 2004).

¶ 86. In a university gender discrimination case, a claim cannot be made out against the former dean of the school, where plaintiff could not show that the dean, who left less than a year after plaintiff was hired, personally participated in the adverse employment actions that led to the lawsuit. One factor was that the decision denying plaintiff tenure was made more than two years after the dean left the school. Hirsch v. Columbia Univ. College of Physicians and Surgeons, 293 F.Supp.2d 372 (S.D.N.Y. 2003).

¶ 87. A non-profit organization, which offered prevention and education services relating to HIV/AIDS in the Latino community, leased space, and was required to share the common areas, such as restrooms, with the other commercial tenants on the floor. Plaintiff alleged that the landlord's agent refused to renew the lease due to various complaints that plaintiff's transgender clients were using common area bathrooms that did not coincide with their biological sex. The tenant sued the landlord, alleging that the landlord's refusal to renew the lease violated the Administrative Code. The court dismissed the action with leave to replead. The complaint alleged not that the transgender persons were selectively excluded from the bathrooms, which might trigger the Human Rights Law, but that they were excluded on the same basis as all biological males and/or females were excluded from certain bathrooms-their biological sexual assignment. The court found that the landlord's designation of restroom use, applied uniformly, on the basis of "biological gender" was not discrimination.

Hispanic AIDS Forum v. Estate of Bruno, 16 A.D.3d 294, 792 N.Y.S.2d 43 (1st Dept. 2005).

Hispanic Aids Forum v. Bruno 16 Misc.3d 960, 839 N.Y.S.2d 691 (Sup.Ct. New York Co. 2007) was a follow-up to the Appellate Division decision which had held that it was not illegal to bar males from bathrooms designated for females, and to bar females from bathrooms designated for males. However, the building in question also had one or more single-user bathrooms. The landlord barred transgender individuals from using these bathrooms, even though their presence did not disturb any other persons. The court held that as to the single-user bathrooms, plaintiff had a viable cause of action for discrimination on the basis of disability (gender identity disorder).

¶ 88. Discrimination plaintiffs often combine federal claims (e.g., Title VII or the Age Discrimination in Employment Act) with state-claims (such as Section 8-107). The federal court can bootstrap the state cases onto the federal claims by virtue of the doctrine of pendent jurisdiction. However, where the federal court dismisses the federal claims, the state claims will likely also be dismissed, without prejudice to the prosecution of those claims in state court. Baca v. City of New York, N.Y.L.J., July 24, 2003, at 27, col. 1 (U.S. Dist.Ct. S.D.N.Y.), 2003 WL 21638211.

¶ 89. At an administrative hearing, a restaurant, a place of public accommodation under Administrative Code section 8-102(9), was found to have engaged in discrimination against an African American customer by asking her to pay for her food before receiving it, while three non-African American customers were not required to pay for their food until receiving their food orders. Respondents failed to demonstrate a legitimate, non-discriminatory motive for treating the African American customer differently. The administrative law judge recommended a fine of $2,000, which was modified to $10,000 by the Commission on Human Rights. On appeal, applying the principal of proportionality, the court reduced the fine to $5,000. **Comm'n on Human Rights v. Silver Dragon Restaurant,** OATH Index No. 677/03 (May 30, 2003), **modified on penalty,** Comm'n Dec. (July 28, 2003), Complaint No. M-P-R-3-1013639, **modified on penalty,** NYLJ, Mar. 31, 2004, at 24 (Sup. Ct. Kings Co.).

¶ 90. A restaurant argued that it should not be strictly liable for the discriminatory actions of an employee, relying on section 8-107(13), which provides that employers are not strictly liable for actions of employees in employment and apprentice training programs. As the restaurant was charged with violating section 8-107(4), relating to public accommodations, an affirmative defense was unavailable. **Comm'n on Human Rights v. Silver Dragon Restaurant,** OATH Index No. 677/03 (May 30, 2003), **modified on penalty,** Comm'n Dec. (July 28, 2003), Complaint No. M-P-R-3-1013639, **modified on penalty,** NYLJ, Mar. 31, 2004, at 24 (Sup. Ct. Kings Co.).

¶ 91. Civil penalties to be imposed by the Commission on Human Rights for unlawful discriminatory practices, pursuant to section 8-126 of the Administrative Code, are not to exceed fifty thousand dollars to vindicate the public interest. In view of a restaurant's undisputed mitigating evidence of no complaints of prior or subsequent discriminatory actions, an administrative law judge recommended a $2,000 penalty, which was modified to $10,000 by the Commission on Human Rights. On appeal, applying the principal of proportionality, the court reduced the fine to $5,000. **Comm'n on Human Rights v. Silver Dragon Restaurant,** OATH Index No. 677/03 (May 30, 2003), **modified on penalty,** Comm'n Dec. (July 28, 2003), Complaint No. M-P-R-3-1013639, **modified on penalty,** NYLJ, Mar. 31, 2004, at 24 (Sup. Ct. Kings Co.).

¶ 92. In one case, a female employee who was 72 years of age, sued for age discrimination after her employment was terminated during a process that the employer described as corporate downsizing. Plaintiff sought to introduce certain remarks as evidence of discrimination. An employee, who was not plaintiff's supervisor, gave his wife some jewelry as a gift, and told plaintiff that if she were twenty years younger, blond and beautiful she would get a similar gift. The court held that such a stray remark, whether or not made by a decision-maker, would not in itself be sufficient to constitute evidence of discrimination. In determining whether a comment is probative evidence of discrimination or is a mere stray remark, a court considers the following: (1) who made the remark-was it a decision-maker, supervisor or lower-level co-worker?; (2) the relationship, if any, between the remark and the employment; (3) the content of the remark-whether a reasonable juror could view the remark as being discriminatory; and (4) the context in which the remark was made-whether the remark was related to the decision-making process. The remark is considered to be

evidence of discrimination where it is made either by a decision-maker or a person whose recommendation is sought by the decision-maker, and where it is made close in time to the adverse employment action. Conversely, stray remarks tend to be those that were made by a non-decision-maker, or made by a decision-maker but not related to the decision process, or, although they were made by a decision-maker, were unrelated to the decision process or well removed in time from the adverse decision. Since the remarks were not evidence of discrimination, the court dismissed the action. One factor against a finding of age discrimination was that plaintiff was 64 years of age when she was first hired. Plaintiff had worked as an executive assistant. At the time that one executive for whom she had worked left the office, she was given another executive assistant position. She was 70 years old at the time. At the time that the second executive left, there were no other executive assistant positions available in the company. Moreover, during the downsizing process, other much younger executive assistants, whose executives had left the firm, were also laid off. Seltzer v. Dresdner, Kleinwort, Wasserstein, Inc., 356 F.Supp.2d 288 (S.D.N.Y. 2005).

¶ 93. A tugboat captain, who was required to take drug and alcohol tests after the boat ran aground, did not have a viable cause of action for discrimination on the basis of disability. The statute does not protect employees from disciplinary action based on alcohol or drug use. Smith v. McAllister Towing of New York, Inc., 361 F.Supp.2d 348 (S.D.N.Y. 2005).

¶ 94. In one case, evidence of persistent negative comments about plaintiff employee's Muslim religion, which comments increased after the September 11, 2001 terrorist attack on the World Trade Center, was held to be sufficient to establish a discrimination case (religion and national origin) based on hostile work environment and constructive discharge. There was a triable issue as to whether the workplace was permeated with discriminatory intimidation, ridicule and insult that was sufficiently severe as to alter the conditions of plaintiff's employment. However, the court held that a single remark, in which plaintiff was called a "prostitute," was insufficient to constitute discrimination based on sex. Kaptan v. Danzig, 19 A.D.3d 456, 796 N.Y.S.2d 706 (2d Dept. 2005).

¶ 95. In a proceeding brought under CPLR Article 78, petitioner charged that the selection of the Mosholu golf course, located in Van Cortlandt Park, Bronx, New York, as the preferred site for a water treatment chemical plant, violated the anti-discrimination statutes. It was alleged that the anticipated adverse affect on air quality violated the rights of minority persons in the community. The court, however, declined to extend the definition of "public accommodation" to the air quality of a particular borough or neighborhood. To the extent that petitioner asserted that the Dept. of Environmental Protection (DEP) was the provider of "advantages or privileges" of air quality and park space, the court rejected the claim, since DEP did not "provide" air quality or park space. Moreover, the discrimination claim was not properly brought within the context of an Article 78 proceeding. Bronx Environmental Health and Justice, Inc. v. New York City Dept. of Environmental Protection, 8 Misc.3d 1002(A), 2005 WL 1389360 (Table) (Sup.Ct. Queens Co.).

¶ 96. One of plaintiff's co-workers accused the corporate owner of sexual harassment. The owner hired an attorney to investigate the allegation. The attorney interviewed plaintiff, and then prepared a draft affidavit for his signature, based on the information he provided. She then mailed the draft affidavit to the plaintiff with instructions for him to sign it and return it to her. She further requested that plaintiff let her know if the affidavit was incorrect in any way, in which case she would make the requested corrections and send him a new version. Plaintiff's employment was terminated for failure to cooperate in the investigation, after he refused to sign the affidavit or to indicate what, if anything, in the affidavit was inaccurate. When plaintiff brought suit under Section 8-107, the court dismissed the action. To assert a claim for retaliatory discharge, an employee fired for refusing to participate in the employer's investigation of discrimination must show that the employer pressured him or her to give false statements or to provide evidence that he or she did not possess. Since defendant did not violate the foregoing standard, there was no basis for the action. Nieves v. Admiral Heating & Cooling, Inc., 17 A.D.3d 331, 792 N.Y.S.2d 584 (2d Dept. 2005).

¶ 97. Plaintiff was injured in an automobile accident which was unrelated to employment. She sued after the employer refused to extend her medical leave. In dismissing the case, the court said that although extensions of medical leave can constitute a reasonable accommodation for an employee with a disability, the employer is not required to hold

an injured employee's position indefinitely while the employee attempts to recover. Although a specific return date is not required to render an accommodation "reasonable," the request for additional time should, at the least, make it clear that the accommodation will allow the employee to perform her job. In other words, where the employee is asking for leave, the supporting physician's statement should indicate that, given the additional time off, the employee will be able to return to work and perform the necessary functions of the employment. McKenzie v. Meridian Capital Group, Inc., 8 Misc.3d 1005(A), 2005 WL 1490141 (Sup.Ct. Kings Co.).

¶ 98. Unlike the New York State Human Rights Law, the New York City Human Rights Law grants standing to those who have been discriminated against by virtue of their association with a disabled person. Thus, a corporate tenant can maintain a cause of action against a building owner who has refused to provide a reasonable accommodation for the tenant's executive director, who has a disability. Both the building owner and the managing agent (even though the latter is an independent contractor) can be liable. Bartman v. Shenker, 5 Misc.3d 856, 786 N.Y.S.2d 696 (Sup.Ct. New York Co.).

¶ 99. Where a woman alleges that she was discharged because of her sex, a necessary element of her prima facie case is that she was replaced by a male. Where plaintiff's replacement was female, and two of the three persons hired since plaintiff's termination were female, a court would normally hold that plaintiff had failed to make out a prima facie case. However, a female can make out a case of discriminatory discharge, even if she has been replaced by a woman, where she can show that she was discharged because she did not conform to her employer's stereotypical expectation of women in her position (e.g., if the supervisor complained about plaintiff's choice of clothes). Moreover, a plaintiff can prove a prima facie case where it can be shown that she and male colleagues committed the same acts and only she is terminated because of them (in this case, however, the court found that the acts committed by her were not the same as those committed by male colleagues). Chauvancy v. Dresdner Bank AG, 5 Misc.3d 1006(A), 2004 WL 2375413 (Sup.Ct. New York Co.).

¶ 100. The Whistleblowing Statute (Labor Law § 740), provides that institution of an action under that law shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation under the common law. Plaintiff claimed that she was discharged partly because she reported unlawful financial activities of the employer to governmental authorities and partly because of age discrimination. The court held that the waiver provision under the Whistleblower Law covered only the whistleblowing claims and did not preclude plaintiff from bringing an action for age discrimination. Reddington v. Staten Island University Hospital, 2005 WL 1458450 (U.S. Dist. Ct. E.D.N.Y.).

¶ 101. A hostile work environment may be shown in one of two ways. A plaintiff must demonstrate either that a single incident was extraordinarily severe, or that a series of incidents were sufficiently continuous and converted to have altered the conditions of the working environment. Incidents that are relatively minor and infrequent will not meet the standard for a discriminatorily hostile environment. Isolated remarks are not sufficient to sustain a hostile environment claim. Moreover, a plaintiff alleging that he or she was subject to a hostile work environment must also prove that the conduct at issue was not merely tinged with offensive connotations, but actually constituted discrimination because of sex or other protected category. Olle v. Columbia Univ., 332 F.Supp.2d 599 (S.D.N.Y. 2004), 136 Fed. Appx. 383 (2d Cir. 2005).

¶ 102. The termination of an actor's employment, pursuant to the "morals" clause of his employment contract, following his arrest for selling cocaine, did not constitute unlawful discrimination. Nader v. ABC Televison, 330 F.Supp.2d 345 (S.D.N.Y. 2004).

¶ 103. An employer is liable for the discriminatorily abusive working environment created by a supervisor if the supervisor uses his actual or apparent authority to further the harassment, or if he was otherwise aided in accomplishing the harassment by the existence of the agency relationship. An employer who has notice that the employee is being harassed (notice is presumed where a supervisor is responsible for the harassment) has a duty to take reasonable steps to eliminate the harassment. The employer may avoid liability, however, by establishing that it took reasonable steps to

remedy the problem, and that the harassed employee unreasonably failed to avail himself of the corrective measures provided by the employer. Conversely, where a low-level supervisor does not rely on the supervisory authority to carry out the harassment, or the harassment is perpetrated by plaintiff's co-workers, the employer will not be liable unless the employer either provided no reasonable avenue for complaint or knew of the harassment and did nothing about it. Note: the above description referred to the federal Title VII claim, but the court stated that similar standards applied to the New York City Human Rights Law claim. Millin v. McClier Corp., 2005 WL 351100 (U.S. Dist. Ct., S.D.N.Y.).

¶ 104. A few minor or mild incidents of biased remarks, even if they are not in themselves enough to constitute a hostile environment, may permit a fact-finder to infer racial, ethnic, and/or religiously based motivation for a more serious discriminatory difference in treatment. For example, a complaint alleging that plaintiff, who was Jamaican and a Rastafarian, was placed in a trailer which had stench, vermin and extreme heat, and that the conditions persisted for several months, stated a cause of action for hostile environment. Plaintiff used a series of mild but arguably race-based or religious-based remarks to establish a racial or religious motive for the employer's placement of him in the trailer. Millin v. McClier Corp., 2005 WL 351100 (U.S. Dist. Ct., S.D.N.Y.).

¶ 105. Claims of religious discrimination under Admin. Code § 8-107 are analyzed in a manner similar to claims brought under the federal Title VII. An employer cannot discriminate against an employee on the basis of the employee's religion, unless the employer can show that it cannot reasonably accommodate the employee's religious needs without undue hardship on the conduct of the employer's business. In order to establish a claim of religious discrimination, the plaintiff must allege that he or she has a bona fide religious belief that conflicts with an employment requirement, that he or she informed the employer of this belief, and that he or she was disciplined for failure to comply with the conflicting employment requirement. Then, the burden shifts to the employer, who must show that it could not reasonably accommodate the plaintiff without sustaining undue hardship. Although a court cannot determine the truth of plaintiff's religious beliefs, it can determine the sincerity of those beliefs. Rivera v. Choice Courier Systems, Inc., 2004 WL 1444852 (U.S. Dist. Ct. E.D.N.Y.).

¶ 106. In order to establish a claim of discrimination by reason of pregnancy, plaintiff must show (1) that she was a member of the protected class (i.e., that she was pregnant at the time in question); (2) that she satisfactorily performed the duties required by the position; (3) that she was discharged;and (4) that the position remained open and was ultimately filled by a non-pregnant employee. In terms of the second element, plaintiff need not show perfect performance or even average performance, but need only make the minimal showing that she possessed the basic skills necessary for the job. Plaintiff can establish a prima facie case, in part, by showing that negative comments about her work performance began only after the employer learned that she was pregnant. Hill v. Dale Electronics, N.Y.L.J., Dec. 28, 2004, at 22, col. 3, 2004 WL 2937832 (U.S. Dist. Ct. S.D.N.Y.).

¶ 107. In one case, the court held that a landlord could not be compelled to waive the no-pet clause of a lease to accommodate the psychological needs of the tenant's daughter, who allegedly suffered from anxiety and depression. Although there was testimony that the daughter had some episodes of inability to sleep, difficulty in paying attention at school, or hiding food instead of eating it, these were insufficient to show that the daughter was limited in a major life activity for purposes of the discrimination laws protecting persons with disabilities. Moreover, the daughter's therapist admitted that the dog was not essential to the daughter's use of the apartment, and that if he had known of the no-pet clause of the lease, he would not have suggested to the patient that she get a dog. Contello Towers II Corp. v. NYC Dept. of HPD, N.Y.L.J., Nov. 19, 2004, at 17, col. 1 (Sup.Ct. Kings Co.).

¶ 108. Where a discrimination claim arises out of plaintiff's discharge and his replacement with a younger worker, plaintiff must show that the employer knew that the replacement was significantly younger. Woodman v. WWOR-TV, Inc., 411 F.3d 69 (2d Cir. 2005).

¶ 109. A collective bargaining agreement between a union and the Staten Island Rapid Transit Operating Authority (SIRTOA) did not provide medical benefits for additional persons such as the domestic partners of employees. Two women, one of whom was a SIRTOA employee, had a domestic partnership which was registered with

the City Clerk. The employee challenged the medical benefits provision as being unlawful discrimination on the basis of sexual orientation. The court held that the contract was not discriminatory on its face against gay persons, since it denied medical benefits to any domestic partners, whether they were gay or heterosexual. Plaintiff further claimed that even if the statute did not create unlawful disparate treatment between gay and heterosexual persons, it had a disparate impact upon gay persons. In response to the disparate impact claim, the SIRTA set forth a valid business reason for the practice, i.e., the enormous cost of providing medical benefits for non-employees. Once the defendant asserted this business objective, it became incumbent upon plaintiff to show that there was an available alternative policy or practice that would enable the defendant to achieve its business objective. Since plaintiff was unable to demonstrate a viable alternative, the disparate impact claim was dismissed. Rios v. Metropolitan Transit Authority, 6 Misc.3d 1006(A), 2004 WL 3093154 (Sup.Ct. Richmond Co.) (similar result with respect to the MTA).

¶ 110. Where a claim of discrimination by reason of disability arises out of the employer's denial of an extension of a medical leave, the employee must show that he or she would have been able to return to work if the requested extension had been granted. McKenzie v. Meridian Capital Corp., N.Y.L.J., May 9, 2005, at 20, col. 1, 8 Misc.3d 1005(A), 2005 WL 1490141 (Sup.Ct. New York Co.). See also Raisley v. First Manhattan Co., N.Y.L.J., Sept. 13, 2004, at 18, col. 1, 4 Misc.3d 1022(A), 2004 WL 2059539 (Sup.Ct. New York Co.).

¶ 111. In an age discrimination case arising out of a discharge from employment, plaintiff must show that he was qualified for the position. Where plaintiff was employed as a driver for several years, and had received satisfactory performance evaluations, the mere fact that plaintiff was involved in an accident resulting in a fatality (his vehicle hit a bicycle) did not render him per se unqualified. Belardo v. Con-Way Transportation Services, 2005 WL 885016 (U.S.Dist.Ct. E.D.N.Y.).

¶ 112. An employer's actions in objective to the provision of unemployment benefits to a former employee is not considered an adverse employment action for purposes of the statutory prohibitions against retaliation. Belardo v. Con-Way Transportation Services, 2005 WL 885016 (U.S.Dist.Ct. E.D.N.Y.).

¶ 113. The mere fact that plaintiff, a 70-year-old professor, was discharged and replaced by a professor in her early forties does not establish a case for age discrimination. Plaintiff failed to allege any ageist remarks or other behavior evidencing age discrimination. Chapkines v. New York University, N.Y.L.J., Feb. 3, 2005, at 22, col. 1, 2005 WL 167603 (U.S.Dist.Ct. S.D.N.Y.).

¶ 114. In Press v. Veterinary Centers of America (VCA) 10 Misc.3d 1079(A), 814 N.Y.S.2d 892 (Sup.Ct. Richmond Co. 2006), plaintiff sought money damages resulting from her termination of employment, alleging age discrimination and hostile work environment. Plaintiff worked as a receptionist and was 44 years old at the commencement of employment. Plaintiff was involved in two disputes, the first being with the veterinary assistant, who told the office manager that plaintiff was verbally abusive to him when he asked her to clean the waiting room after a puppy had defecated on the floor. According to the employer's policy, all employees shared a responsibility to keep the waiting room clean. At the time plaintiff was asked to clean the floor, there was no one in the waiting room area, and no phone responsibilities to attend to. The office manager approached plaintiff with the allegations made by the veterinary assistant. The plaintiff intimated that the veterinary assistant was lying. Plaintiff recorded her conversations with her supervisor, and suggested that she read books on human behavior and lying. The office manager arranged a meeting between the receptionist and the veterinary assistant, but the meeting did not take place because the plaintiff insisted that the veterinary assistant apologize first.

The meeting was rescheduled and subsequently held. This time, the veterinarian was also in attendance. Plaintiff secretly taped this meeting and again accused the office manager of siding with the assistant. The doctor spoke with the operations director of the veterinary center, and it was decided that plaintiff be terminated. Plaintiff claimed age discrimination, stating that the veterinary assistant and the office manager were much younger than she.

The court granted summary judgment in favor of the defendant, dismissing the complaint. The court said that

even assuming that plaintiff's proof was legally sufficient to raise a presumption that she was discharged under circumstances giving rise to an inference of discrimination, VCA established a prima facie right to dismissal by offering a legitimate reason for discharge based upon plaintiff's conduct leading up to the meetings, both of which were aborted by plaintiff's disruptive behavior and an apparent reluctance to work with her supervisors in attempting a good faith resolution of her difficulties with a fellow employee. Since plaintiff failed to show that the proffered reason for the discharge was false or that they were a pretext for age discrimination, plaintiff's case lacked merit.

¶ 115. Petitioner established employment discrimination based on disability. Damages awarded included $33,333 for lost income and $10,000 for mental anguish. Comm'n on Human Rights ex rel. Manning v. HealthFirst, LLC, OATH Index No. 462/05 (Mar. 15, 2006), adopted, Comm'n Dec. (May 10, 2006).

¶ 116. Court affirms Commission's order that landlord widen doors and install a ramp and a lift in the lobby to accommodate a disabled tenant, adopting the Commission's ruling that depreciation is a "tax fiction" which is irrelevant when determining whether the proposed accommodation would impose an undue hardship on the owner. Court upholds Commission's finding that the owner did not meet its burden of proving undue hardship where owner made a profit on the building for the past three years when depreciation is factored out. T.K. Management v. Gatling, Index No. 14255/05, 2005 N.Y. Misc. LEXIS 3593 (Sup. Ct. Queens Co. Nov. 2, 2005).

¶ 117. Police Department violated this section by refusing to allow traffic enforcement agent, who is a member of the Sikh faith, to wear a turban while working. The Department failed to prove that accommodating respondent would impose an undue hardship, where proof showed other agents wore head gear other than the official uniform hat without sanction. Reinstatement ordered. Jaggi v. Police Dep't, OATH Index No. 1498/03 (Apr. 28, 2004), aff'd, Comm'n Dec. (June 29, 2004).

¶ 118. Pelton v. 77 Park Ave. Condominiums, 38 A.D.3d 1, 825 N.Y.S.2d 29 (1st Dept. 2006). Managing agents of condominium are normally not liable under the discrimination laws, absent some sort of independent tortious act, since they are considered to be agents for a disclosed principal. Moreover, the individual members of the board of directors are not liable for disability discrimination so long as they have exercised honest judgment under the business judgment rule with respect to the "handicapped accessible" accommodation requested by a disabled resident.

¶ 119. Public Authorities Law § 1266(8) exempts the New York City Transit Authority from liability under the New York City Human Rights Law. Tang v. NYC Transit Auth., 16 Misc.3d 703, 842 N.Y.S.2d 261 (Sup.Ct. Kings Co. 2007) (plaintiff had sought to bring a retaliation claim under § 8-107).

¶ 120. Generally, the question of whether a complainant is an employee (i.e. entitled to the protection of the anti-discrimination law) or an independent contractor (not entitled to coverage) is generally one of fact, and an allegation that the complainant is an employee is generally not rejected at the pleadings stage. The ultimate determination will rest on evidence as to whether the defendant exercised either control only over the results achieved or whether it also exercised control over means used to achieve the results. Banks v. Correctional Services Corp., 475 F.Supp.2d 189 (E.D.N.Y. 2007).

¶ 121. In one disability discrimination case, plaintiff suffered a shoulder injury during a robbery. She had been a direct care counselor with the Cerebral Palsy Association (CPA), which provides services to persons with severe developmental disabilities. Plaintiff's duties involved assisting patients with activities of daily life, including lifting/transferring, toileting, dressing, bathing, feeding, etc. After the injury, she was medically advised to refrain from lifting more than ten pounds. She wrote a letter to CPA describing the shoulder disability. She asked for a reasonable accommodation for her disability, since she allegedly could not lift patients without assistance. She pointed out that patients who needed lifting comprised less than ten per cent of her patient load. She asked either that she be assigned only patients who did not require lifting, or that she be provided with a Hoyer lift (which CPA had available) which would assist her in lifting patients. She provided a doctor's note indicating that she could lift patients safely so long as she could use an electronically controlled Hoyer lift. Defendant, however, claimed that they could not offer either of the

requested accommodations, and that ability to lift at least 50 pounds was an essential function of the job.

The court began its analysis by pointing to the state and federal disability statutes. The Local Civil Rights Restoration Act (Local Law 85 of 2005) states that interpretation of state or federal statutes with similar wording to the New York City Human Rights Law (NYCHRL) may be used to interpret the NYCHRL, but that similarly worded statutes are to be construed as a floor below which the NYCHRL cannot fall, rather than a ceiling above which the local law cannot rise. Therefore, to the extent that similarly worded federal or New York State laws (Executive Law) contain definitions of disability more restrictive than that employed by the NYCHRL, the court will not apply the state or federal laws.

In order to state a prima facie case of employment discrimination due to a disability, under either the NYCHRL or the Executive Law, plaintiff must show that he or she suffers from a disability and that the disability caused the behavior for which he or she was terminated. Moreover, plaintiff has the burden of establishing that he or she proposed a reasonable accommodation and that the defendant refused to make such an accommodation. Moreover, the obligation of reasonable accommodation is limited to the employer's knowledge of the disability that needs to be accommodated. On the other hand, where the employee does notify the employer of a disability, the employer has the responsibility to investigate the employee's request for accommodations and determine their feasibility. There should be an interactive process here between employer and employee. D'Avilar v. Cerebral Palsy Association of New York, 2007 WL 3072452 (Sup.Ct. Kings Co.).

¶ 122. A complainant under the disability laws cannot successfully maintain that he was "otherwise qualified" for employment, when he stated in a Social Security Disability benefits application that he was unable to work, and that statement was submitted just after he received notice of termination of employment. Kendall v. Fisse, 149 Fed. Appx. 19 (2nd Cir. 2005).

¶ 123. Under the City Human Rights Law, an individual supervisor who sexually harassed plaintiff can be personally liable, even though the employer declared Chapter 11 bankruptcy and the plaintiff settled with the employer. The City law provides this remedy even though plaintiff could not have recovered against the supervisor under the State Human Rights Law. Sanabria v. M. Fabrikant & Sons 2008 NY Mis. Lexis 2400, 239 NYLJ 77 (Sup. Ct. NY 2008).

¶ 124. The New York City Human Rights Law is to be liberally and independently construed with the aim of making it even more protective, in some cases, than the federal or state counterparts. The state and federal laws serve as a floor, not a ceiling. Nonetheless, the three laws are similar, and employ many of the same standards of recovery, and standards of proof. Where a plaintiff alleges, for example, national origin discrimination, he establishes a prima facie case by showing that he is a member of a protected group, that he is qualified for the position, and was subject to adverse employment action under circumstances giving rise to an inference of discrimination. In order to win summary judgment, defendant would have to show either that he does not have a prima facie case, or would have to offer a non-discriminatory reason for the adverse action. The burden then shifts back to the employee to show there is a material issue of fact (1) as to whether the employer's asserted reason the action is false or unworthy of belief, and (2) that it is more likely than not that plaintiff's national origin was the real reason for the discrimination.

In this case, plaintiff, who was Egyptian, claimed that he was constructively discharged when his supervisor asked him to resign, and said that if he did not resign, he would be fired if he came in even one minute late. The court held that this statement, even if made, would not constitute constructive discharge. Plaintiff had been chronically late for work, which would have given the employer good cause for discharge.

The court held that the supervisor's threat to fire him was not discriminatory, in that non-Egyptian employees who were chronically late were also threatened with discharge. Moreover, where, as here, the same supervisor who hired him (knowing his national origin) is involved in the alleged adverse employment action, this gives rise to an inference that discrimination was not the motive for the action (see Carlton v. Mystic Transp., 202 F.3d 129 (2d Cir.), cert denied 530 U.S. 1261, 120 S.Ct. 2718, 147 L.Ed.2d 983 (2000), decided under Title VII).

Requiring an employee to work extra hours, for which he was paid additional salary, is not an adverse employment action.

An adverse employment action is no less than a materially adverse change in the terms and conditions of employment. Such change must be more disruptive than a mere inconvenience or an alteration of job responsibilities. A materially adverse change would be, for example, termination, a demotion evidenced by a decrease in salary, a less distinguished title, a material reduction in benefits, or significantly diminished job responsibilities. A refusal to promote could also be an adverse employment action.

An isolated incident where a supervisor makes fun of an employee's foreign accent is not in itself sufficient to constitute a hostile environment. To establish a hostile environment, the employee would have to allege the manner, frequency and context of the conduct. In other words, the incidents must be more than episodic, and must be sufficiently continuous and concerted in order to be deemed pervasive (e.g. in a case alleging a hostile racial environment, racist remarks taken together with a noose or Ku Klux Klan robe might be sufficient to constitute a hostile racial environment). Hanna v. NY Hotel Trades Council and Hotel Assoc. of NYC Health Center Inc. 18 Misc.3d 436, 851 NYS2d 818 (Sup. Ct. NY County).

¶ 125. A recruiter was allegedly unable to drive following an accident. She asked that the employer accommodate her disability by assigning Staten Island trips to other employees. The court however, held that where the Staten Island recruiting trips were an integral part of the job, the employer did not have to accommodate the employee by re-assigning Staten Island trips to others. Millicent Jones v. St. Joseph's College et al. 2007 NY Slip Op. 10470, 46 AD3d 467, 847 NYS2d 584, 2007 NY App. Div. Lexis 13283 (App. Div. 1st Dept.).

¶ 126. A Jet Blue Airlines flight attendant was fired after three other flight attendants brought a complaint against the plaintiff, stating that he was in the "jump seat" for the entire flight. He appeared to be watching TV and at one point, fell asleep, the complainants charged. When confronted by Jet Blue officials, plaintiff said that "he could have been praying." According to plaintiff, who was a devout Catholic, he was engaging in silent prayer with his eyes closed, and that Jet Blue discriminated against him by not accommodating his religious beliefs. However, the court dismissed the case. First, plaintiff failed to show that he ever demanded a particular religious accommodation. Second, Jet Blue did not have to waive its "no sleeping rule" to accommodate plaintiff. Crew members can neither sleep nor appear to be sleeping on duty, and must be watching the cabin at all times, in order to assist passengers or deal with suspicious situations. In short, plaintiff could have engaged in silent prayer without closing his eyes or putting on a headset or being out of the view of the cabin. Hogan v. Jet Blue 2007 NY Slip Op. 52324U, 17 Misc.3d 1137A, 856 NYS2d 24 (Queens Cty.).

¶ 127. In 14 Penn Plaza LLC v. Pyett, 129 S.Ct. 1456 (2009), the court held that a clearly worded collective bargaining agreement, under which employees' age discrimination claims would be sent to arbitration, was enforceable.

¶ 128. Negative evaluations, accompanied by negative consequences, such as demotion, diminution of wages or other tangible loss, may constitute an adverse employment action. However, the mere fact that plaintiff was provided with a used computer, that he was not invited to become a member of a particular committee, or that his administrative assistant had to contact another supervisory person regarding assignments given to the assistant by plaintiff, was not adverse employment actions. Whaley v. City of New York, 2008 U.S. Dist. Lexis 35156 (S.D.N.Y.), 2008 Wl 6141014.

¶ 129. The First Amendment does not protect a defense contractor against a racial harassment discrimination claim under § 8-107. Doe v. City of New York, 583 F.Supp.2d 444 (S.D.N.Y. 2008).

¶ 130. Although sexual harassment cases under Admin. Code Sec. 8-107 apply the same principles as those applied in Title VII cases, the City law is more protective of employees than the federal law. For example, under the federal law and New York Executive Law, plaintiff must show that the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment, while under the City law, liability is

determined by the existence of unequal treatment and questions of severity and frequency are reserved for consideration of damages. Condonation of an act of sexual harassment may implicate an employer in the discriminatory acts of its employee. Condonation consists of a knowing, after-the-fact forgiveness or acceptance of an offense. Moreover, an employer's calculated inaction in response to discriminatory conduct may, as readily as affirmative conduct, indicate condonation. However, condonation may be disproved by a showing that the employer reasonably investigated a complaint and took corrective action. An employer who merely offers the employee transfer to another location (allegedly a less desirable one, according to the complainant in this case) will not avoid a charge of condonation; in other words, something should be done about the harassment itself.

In terms of discrimination cases based on retaliation, the City law is more liberal than the federal law. Under the federal law, retaliation must involve some kind of materially adverse change in the terms and conditions of employment, while under the City law, retaliation can involve any act which would be reasonably likely to deter a person from engaging in protected activity (e.g., changing the location of plaintiff's locker or warning her about allegedly excessive use of sick days might not qualify as retaliation under the federal law but might qualify under the City law). Selmanovic v. NYSE Group, 2007 U.S. Dist. Lexis 94963 (S.D.N.Y.).

¶ 131. An employee who brings a retaliatory discharge case under Labor Law Sec. 740 has elected his remedy and will not be able to maintain a claim under Admin. Code § 8-107. Moreover, the plaintiff failed to state a cause of action for failure to promote in violation of the Admin. Code of the City of NY § 8-107. The standards for establishing unlawful discrimination under the relevant law are the same as those governing title VII. Plaintiff failed to state a cause of action for failure to promote because he did not specify any specific instance where appellants refused to promote him to a position for which he applied, and for which he was qualified. Thus, the court granted summary judgment to defendant in a case alleging national origin discrimination. Deshpande v. TJH Medical Services, 52 AD3d 648, 861 N.Y.S.2d 697 (2d Dept. 2008), leave to appeal denied, 12 N.Y.3d 304, 879 N.Y.S.2d 50 (2008).

¶ 132. See Matter of Rizzuti v. Hazel Towers Co., LP 2008 NY Misc. Lexis 2176, 239 NYLJ 63 (Sup. Ct. NY County), discussed in § 8-101 and in § 8-107, note 15.

¶ 133. In 2005, the City Council enacted the Civil Rights Restoration Act of 2005, Admin. Code §8-130, which amended the New York City Human Rights Law to state the law shall be construed liberally for the accomplishment of its unique broad and remedial purposes, regardless of whether state and federal civil rights law has been so construed. Thus, in some cases, causes of action brought under the NYCHRL will be sustained even though causes of action brought under the similarly worded provisions of the state and federal civil rights laws have been dismissed. For example, conduct that is not severe enough to constitute a hostile work environment under federal law might suffice under the NYCHRL. Williams v. City of New York, reported under note 135, is the first appellate application of the law. Thus, although NYCHRL cases filed before the effective date of the statute (October 3, 2005) are still subject to the more stringent standards of the New York State Human Rights Law (Executive Law) and Title VII of the Civil Rights Act of 1964.

¶ 134. Admin. Code §8-107[5][a][1]-[2], also known as Local Law 10, amended the Code to provide that an owner could not refuse to lease a property because of a lawful source of income of the prospective lessee, and may not discriminate against any person by reason of such lawful source of income. The term "lawful source of income" includes Section 8 vouchers. See Admin. Code. §8-102(25). One landlord contended that the law applied only to prospective tenants or to tenants whose landlord had previously agreed to accept Section 8 benefits, but the court disagreed and held that a landlord could not discriminate against either an existing or prospective tenant who was using Section 8 benefits. Moreover, the J-51 tax abatement program (Admin. Code §11-243) provides that landlords who are accepting J-51 benefits cannot discriminate against tenants who are eligible for Section 8. The practical effect of Local Law 10 is that the landlord must accept Section 8 tenants, whether or not it is accepting J-51 benefits. The only class of tenants who are not protected by Local Law 10 are those in buildings with five or fewer units. Thus, with the limited exception described above, all New York City tenants eligible for Section 8 are protected from discrimination, even though the federal Section 8 law, 42 USC Sec. 1437[t][l][A], would no longer require landlords to accept all Section 8

tenants. Timkovsky v. 56 Bennett, LLC, 2009 N.Y. Misc. Lexis 345, 2009 WL 445097 (Sup. Ct. NY Co.).

¶ 135. The Second Department has held that landlords violated Sec. 11-243 by refusing to accept a Section 8 voucher. The court did not require the tenants to demonstrate that they could not otherwise afford to rent the apartment, even though they had already been residing there for many years. Since Local Law 10 contains substantially similar language to the J-51 law (11-243), the result is the same under either law. Any other result would be inconsistent with Local Law 10, whose purpose is to prevent discrimination based on any "lawful source of income." Kosoglyadov v. 3130 Brighton Seventh, LLC, 54 A.D.3d 822, 863 N.Y.S.2d 777 (2d Dept. 2008).

¶ 136. The Civil Rights Restoration Act of 2005, effective Oct. 3, 2005, makes a significant change in substantive rights governing New York City cases. The law provides that the New York City Human Rights Law (NYCHRL) should be liberally construed, even though state and federal civil rights statutes containing similar language have been more strictly construed. The new law was analyzed in Williams v. City of New York, 61 A.D.3d 62, 872 N.Y.S.2d 27 (1st Dept. 2009). Under the old law, the substantive standards were no more liberal than those under state law or Title VII. Under the new law, however, state and federal law constitute a floor, not a ceiling, in terms of rights. In other words, the NYCHRL standard cannot be less than that of the state and federal law but can be greater than that provided by state or federal law.

Williams, who commenced this action in 2001, alleged that she was sexually harassed in 1997. She was employed as a heating plant technician and was responsible for maintaining the heating system of an NYCHA housing project. Allegedly, plaintiff's supervisor told her, after she requested facilities to take a shower, "You can take a shower at my house." Plaintiff alleged a second incident occurring in 1998, where sex-based remarks were made in her presence, although not directed to her. Plaintiff interpreted some of those remarks as being complimentary to a co-worker but disparaging to the supervisor's own wife. Plaintiff further alleged that the NYCHA retaliated against her for making complaints about discrimination; it assigned her work outside of her regular duties. She was required to strip and wax the boiler room office floor, a task that took two workdays. She also alleged that she was required to perform work in the field and to respond to tenant complaints, work she claimed was customarily given to utility staff. Despite all the adverse events that she complained about, in 2004 she was promoted to Assistant Superintendent.

Under the amended version of §8-107, an act of retaliation need not result in a materially adverse change in employment, but must have been likely to deter a person from engaging in protective activity. The conduct complained of need not be "severe" or "pervasive," but the plaintiff must show that she was treated less well than other employees. The court held that Williams' claim of retaliation was not viable. The tasks in question (stripping floor, handling tenant complaints) were only briefly assigned to her, and were also sometimes assigned on an "out of title" basis to employees who had not complained about discrimination. A petty slight or trivial inconvenience will not give rise to a claim of retaliation, even under the new law.

¶ 137. Quite a few discrimination cases brought under federal law also include, by way of pendent jurisdiction, causes of action brought under the New York City Human Rights Law (NYCHRL). Federal courts sometimes previously glossed over claims brought under the NYCHRL, assuming that those claims were governed by substantially the same standards as those brought under federal law. However, the Williams case, decided by the New York courts (see note 135) has made it clear that causes of action under the NYCHRL have a more liberal standard than those under state and federal law. In Dixon v. City of New York, 2009 U.S. Dist. Lexis 35096. 2009 WL 1117478 (U.S. Dist. Ct., E.D.N.Y.), which was decided after Williams, the court had to consider a hostile work environment claim. It held that, although a hostile work environment must involve more than "petty slights or trivial inconveniences," the conduct in question need not reach the "severe" or "pervasive" level that would have to exist in a federal Title VII case.

¶ 138. Where an employer promptly addresses an employee's complaints of hostile environment sexual harassment, the employee does not have a viable complaint for sexual harassment. In this case, the employee's supervisor was charged with making offensive remarks and touching her thigh and buttocks. The employer properly responded, the court said, by suspending the supervisor for 20 days and barring the supervisor from having any

supervisory contact with the employee for a period of one year. The court noted that the case was filed in 2004, before the effective date of the Restoration Act (§8-130) and thus was governed by the more stringent Title VII liability standard. Barnum v. New York City Transit Authority, 878 N.Y.S.2d 454 (2d Dept. 2009).

¶ 139. The NYCHRL is limited to reach discriminatory actions performed in the City of New York. However, in one age discrimination case, where an employee of a New York company was based in Atlanta, and where the employee was on a business trip in West Virginia when he received a call from a New York executive of the company, terminating his services, the New York courts had jurisdiction over the NYCHRL claim. Hoffman v. Parade Publications, ____ AD3d ____ , 878 N.Y.S.2d 320 (1st Dept. 2009).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-107.1

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-107.1 Victims of Domestic Violence, Sex offenses or Stalking.

1. Definitions. Whenever used in this chapter the following terms shall have the following meanings:

a. "Acts or threats of violence" shall include, but not be limited to, acts, which would constitute violations of the penal law.

b. "Victim of domestic violence" shall mean a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.

c. "Victim of sex offenses or stalking" shall mean a victim of acts which would constitute violations of article 130 of the penal law, or a victim of acts which would constitute violations of sections 120.45, 120.50, 120.55, or 120.60 of the penal law.

d. Practices "based on," "because of," "on account of," "as to," "on the basis of," or "motivated by" an individual's "status as a victim of domestic violence," or "status as a victim of sex offenses or stalking" include, but are not limited to, those based solely upon the actions of a person who has perpetrated acts or threats of violence against the individual.

2. Unlawful discriminatory practices. It shall be an unlawful discriminatory practice for an employer, or an agent

thereof, to refuse to hire or employ or to bar or to discharge from employment, or to discriminate against an individual in compensation or other terms, conditions, or privileges of employment because of the actual or perceived status of said individual as a victim of domestic violence, or as a victim of sex offenses or stalking.

3. Applicability; actual or perceived victims of domestic violence, sex offenses or stalking.

(a) Requirement to make reasonable accommodation to the needs of victims of domestic violence, sex offenses or stalking. Except as provided in paragraph (c), any person prohibited by this section 8-107.1 from discriminating on the basis of actual or perceived status as a victim of domestic violence or a victim of sex offenses or stalking shall make reasonable accommodation to enable a person who is a victim of domestic violence, or a victim of sex offenses or stalking to satisfy the essential requisites of a job provided that the status as a victim of domestic violence or a victim of sex offenses or stalking is known or should have been known by the covered entity.

(b) Documentation of status. Any person required by paragraph (a) to make reasonable accommodation may require a person requesting reasonable accommodation pursuant to paragraph (a) to provide certification that the person is a victim of domestic violence, sex offenses or stalking. The person requesting reasonable accommodation pursuant to paragraph (a) shall provide a copy of such certification to the covered entity within a reasonable period after the request is made. A person may satisfy the certification requirement of this paragraph by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the individual seeking a reasonable accommodation or that individual's family or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence. All information provided to the covered entity pursuant to this paragraph, including a statement of the person requesting a reasonable accommodation or any other documentation, record, or corroborating evidence, and the fact that the individual has requested or obtained a reasonable accommodation pursuant to this section, shall be retained in the strictest confidence by the covered entity, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation; or otherwise required by applicable federal, state or local law.

(c) Affirmative defense in domestic violence, sex offenses or stalking cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

HISTORICAL NOTE

Section amended L.L. 75/2003 § 4, eff. Dec. 22, 2003.

Section added L.L. 1/2001 § 2, effective Jan. 5, 2001. [See Note]

NOTE

Provisions of L.L. 1/2001 § 1:

Section 1. Legislative findings and intent. The City Council finds and declares that domestic violence is a widely recognized problem in New York City. Indeed, New York City Police Department statistics indicate that although the overall crime rate has decreased in recent years incidents of domestic violence have increased. However, little attention has been paid to the impact of domestic violence on the work lives of victims and on the City economy as a whole. In recent years, a growing body of evidence has documented the devastating impact of domestic violence on the ability of victims-over 90% of whom are women-to participate fully in the economy. Yet a victim's capacity to escape an abusive relationship is dependent in large part on economic factors such as finding and keeping a job and gaining economic security and independence. One study found that over one half of women surveyed who were victims of domestic violence stayed with their abusers because they lacked alternative resources with which to support themselves and their

children. Other studies have determined that between twenty-four and fifty-two percent of battered women surveyed had lost their jobs at least in part due to domestic violence, which included harassment by the batterers both on and off the job.

Employers are also affected by domestic violence. It has been estimated that absenteeism caused by domestic violence costs the nation's employers between three and five billion dollars annually. In a survey conducted by Roper Starch Worldwide for the Women's Work Program at Liz Claiborne Inc., forty percent of the senior executives at Fortune 1000 companies surveyed reported that domestic violence had a harmful effect on their company's productivity, and sixty-six percent believed that their company's financial performance would benefit by addressing the issue. In response several corporations have established policies and programs to assist employees struggling with domestic violence and the State of New York has enacted legislation that established an executive office to develop model domestic violence policies for counties, state agencies and private employers as well as an advisory council to develop strategies for domestic violence prevention (N.Y. Exec Law § 575). Further, the State of Maine has enacted legislation requiring employers to provide unpaid leaves of absence to victims of domestic violence, and similar legislation has been enacted in the City of Miami and is pending in the State of Pennsylvania.

Because they are embarrassed or because they fear losing their jobs, victims are often reticent about informing their employers about incidents of domestic violence or about requesting simple accommodations that might assist them in fulfilling their job duties. A growing body of anecdotal evidence suggests that the fear of negative employment actions such as demotion, suspension, loss of pay and/or benefits or termination against employees who have revealed that they are victims of domestic violence is not unwarranted. For example victims of domestic violence have been terminated or demoted after requesting simple protective measures such as time off or flexible hours to confer with an attorney or a domestic violence counselor, obtain an order of protection or obtain medical or other services for themselves or family members.

The City Council finds that it is in the best interests of the City of New York to protect the economic viability of victims of domestic violence and to support their efforts to gain independence from their abusers. Victims of domestic violence who are receiving medical treatment or therapy for the physical and/or psychological effects of domestic violence may be covered under the disability provisions of sections 8-102(16) and 8-107 of the Human Rights Law. However, not all victims of domestic violence need or obtain such treatment and would therefore not be considered disabled. Further, many victims of domestic violence do not consider themselves disabled.

Accordingly, the Council further finds that in order to enable victims of domestic violence to speak with their employers without fear of reprisal, about a domestic violence incident or about possible steps that will enhance their ability to perform their job without causing undue hardship to the employer, the Human Rights Law should be amended to provide employment discrimination protection for New Yorkers who are actual or perceived victims of domestic violence.

CASE NOTES

¶ 1. An employee of the New York City Department of Corrections was on sick leave. The sick leave policy required that (with certain exceptions) she stay at the residence address on file with the Department. When the Department sought to ascertain her whereabouts, she was not at the address she had given to the Department. Instead, she was at a shelter for victims of domestic violence, where she had gone (along with her children) after her boyfriend abused her. The court held that, under the circumstances, the termination of the employee by reason of the alleged abuse of sick leave policy violated the statutory prohibition on discrimination against victims of domestic violence. Reynolds v. Fraser, 5 Misc.3d 758, 781 N.Y.S.2d 885 (Sup.Ct. New York Co.).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-109

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-109 Complaint.

(a) Any person aggrieved by an unlawful discriminatory practice or an act of discrimatory harassment or violence as set forth in chapter six of this title may, by himself or herself or such person's attorney, make, sign and file with the commission a verified complaint in writing which shall: (i) state the name of the person alleged to have committed the unlawful discriminatory practice or act of discriminatory harassment or violence complained of, and the address of such person if known; (ii) set forth the particulars of the alleged unlawful discriminatory practice or act of discriminatory harassment or violence; and (iii) contain such other information as may be required by the commission. The commission shall acknowledge the filing of the complaint and advise the complainant of the time limits set forth in this chapter.

(b) Any employer whose employee or agent refuses or threatens to refuse to cooperate with the provisions of this chapter may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

(c) Commission-initiated complaints. The commission may itself make, sign and file a verified complaint alleging that a person has committed an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter six of this title.

(d) The commission shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent of his or her procedural rights and obligations as set forth herein.

(e) The commission shall not have jurisdiction over any complaint that has been filed more than one year after

the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title occurred.

(f) The commission shall not have jurisdiction to entertain a complaint if:

(i) the complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice as defined by this chapter or an act of discriminatory harassment or violence as set forth in chapter six of this title with respect to the same grievance which is the subject of the complaint under this chapter, unless such civil action has been dismissed without prejudice or withdrawn without prejudice; or

(ii) the complainant has previously filed and has an action or proceeding before any administrative agency under any other law of the state alleging an unlawful discriminatory practice as defined by this chapter or an act of discriminatory harassment or violence as set forth in chapter six of this title with respect to the same grievance which is the subject of the complaint under this chapter; or

(iii) the complainant has previously filed a complaint with the state division of human rights alleging an unlawful discriminatory practice as defined by this chapter or an act of discriminatory harassment or violence as set forth in chapter six of this title with respect to the same grievance with is the subject of the complaint under this chapter and a final determination has been made thereon.

(g) In relation to complaints filed on or after September first, nineteen hundred ninety one, the commission shall commence proceedings with respect to the complaint, complete a thorough investigation of the allegations of the complaint and make a final disposition of the complaint promptly and within the time periods to be prescribed by rule of the commission. If the commission is unable to comply with the time periods specified for completing its investigation and for final disposition of the complaint, it shall notify the complainant, respondent, and any necessary party in writing of the reasons for not doing so.

(h) Any complaint filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended complaint with the commission and serving a copy thereof upon all parties to the proceeding.

(i) Whenever a complaint is filed pursuant to paragraph (d) of subdivision five of section 8-107 of this chapter, no member of the commission nor any member of the commission staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where express permission has been first obtained in writing from the lender and the borrower to such publication; provided, however, that the name of any borrower and a specific description of the collateral for any loan to such borrower may, if otherwise relevant, be introduced in evidence in any hearing before the commission or any review by a court of competent jurisdiction of any order or decision by the commission.

HISTORICAL NOTE

Section amended L.L. 11/1993 § 2 eff. Jan. 22, 1993

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

Subd. (g) amended L.L. 85/2005 § 4, eff. Oct. 3, 2005. [See § 8-102

Note 2]

DERIVATION

Formerly § B1-8.0 added LL 97/1965 § 4

Sub 2 pars b, c amended LL 62/1973 § 1

Sub 2 par c amended LL 63/1984 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. City Commission after a hearing on the merits was granted temporary injunction enjoining landlord from renting apartment until after final determination by Commission of a charge of discrimination.-Matter of City Comm. on Human Rights v. Wurman, 52 Misc. 2d 1095, 277 N.Y.S. 2d 310 [1967].

¶ 2. While Commission on Human Rights on an order to show cause supported by an affidavit may be granted a temporary injunction to restrain landlord from renting apartment until Commission determines whether landlord is discriminating against Negroes even though no action has been commenced, temporary injunction will not be issued where affidavit is based on hearsay.-Matter of City Comm. on Human Rights v. Regal Gardens, Inc., 53 Misc. 2d 318, 278 N.Y.S. 2d 739 [1967].

¶ 3. Section should not be interpreted so as to grant payment of compensatory damages to the person aggrieved for humiliation and mental anguish without also granting landlord compensatory damages for losses occasioned by delayed action of the Commission in event that order is entered in favor of landlord. Intent of Legislature was to permit an award of damages only to the extent of actual money loss occasioned by complainant and not for other subjective injuries.-Matter of Weynberg v. Commission on Human Rights, 56 Misc. 2d 1, 287 N.Y.S. 2d 1002 [1968].

¶ 4. Where petitioners engaged in unlawful discriminatory practices in that their agent revoked permission for tenants to sublease when tenants wanted to sublease to an interracial couple Commission had power to award couple $500 compensatory damages for humiliation, outrage and mental anguish and to release the tenants from the obligations of the lease.-Herman v. Booth, 158 (121) N.Y.L.J. (12-26-67) 13, Col. 5 F.

¶ 5. Where defendant engaged in discriminatory practice in refusing to sell a house to complainants he would be compelled to offer house at price of $38,490 which was price at which it was originally advertised in 1964. Although house may have appreciated in value defendant cannot be permitted to take advantage of his wrong in refusing to sell at that time. An allowance of $2,500, however, would be made for repairs in putting the house into as close to its original condition as possible.-City of New York v. Vitucci, 158 (69) N.Y.L.J. (10-6-67) 13, Col. 5 T.

¶ 6. Where complainant contracted with an estate to purchase an apartment subject to approval of the corporate owner and approval was refused and complainant alleged that such disapproval was because he was Jewish an injunction was granted restraining respondents from conveying the apartment to any one other than complainant pending the hearing with leave to have the injunction vacated if the Commission failed to render a decision by a certain date with potential liability of the estate fixed at $10,000 if discrimination charges were found to be without merit where there was an initial finding of Commission that a further hearing was justified.-City Comm. on Human Rights v. 6 East 72 St. Corp., 165 (124) N.Y.L.J. (6-29-71) Col. 3 F.

¶ 7. Commission can issue investigatory subpoenas in connection with the filing of a complaint charging petitioner with discrimination in recruiting, hiring and promoting minority group persons provided the Commission is reasonably satisfied that there is a basis for the charge asserted and that the complaint sets forth particulars sufficient to furnish the employer with adequate notice of the alleged discriminatory practices.-Liberty Mut. Insur. Co. v. City of New York Commission on Human Rights, 31 N.Y. 2d 1044, 294 N.E. 2d 855, 342 N.Y.S. 2d 70 [1973].

¶ 8. Provisions of this section which permit "any persons" who are aggrieved to file a complaint covers non-residents who come into New York for business or pleasure. Walston & Co. v. N.Y. City Commission on Human Rights, 41 App. Div. 2d 238, 342 N.Y.S. 2d 459 [1973].

¶ 9. Where complainant employee, a black woman, had been discharged for a low production rate, subpoena

which sought to have employer produce personnel file of another employee, a white woman, would be quashed where other employee's file was not shown to be relevant to complainant's allegations of discrimination.-Matter of McIntosh (Group Health, Inc.), 178 (74) N.Y.L.J. (10-17-77) 12 Col. 6 B.

¶ 10. Employee who was a registered representative of a member of the New York Stock Exchange and who filed a complaint with the New York City Commission on Human Rights claiming discrimination because of sex could not be compelled to arbitrate the dispute under the terms of Stock Exchange Form U4 which was executed by both parties when employee began her employment and which provides for arbitration of any controversy arising out of employment since enforcement of the policy objectives of Title B, ch. 1 are the province of the courts.-Wertheim v. Halpert, 65 App. Div. 2d 726 [1978].

CASE NOTES

¶ 1. Dentist serving acquired immune deficiency syndrome (AIDS) patients had his lease terminated. He has standing to complain as an "aggrieved party", pursuant to § 8-109(1).-Barton v. N.Y.C. Comm. on Human Rights, 140 Misc. 2d 554 [1988].

¶ 2. A seven year delay in processing a discrimination complaint did not prejudice petitioner or mandate dismissal of complaint. The statute at the time, former Ad Cd §B1-8.0(2) now §8-109, provided that "after the filing of any complaint, the commission shall make prompt investigation in connection therewith." Such language is directory only and delay in the agency's compliance does not dismiss the case.-Harris & Assoc. v. DeLeon, 199 AD2d 78 aff'd 84 NY2d 698 [1994].

¶ 3. The court sustained an award of $10,000 for humiliation and mental anguish caused by discrimination. Obstfeld v. Brandon, 180 A.D.2d 638, 580 N.Y.S.2d 1018 (2nd Dept. 1992).

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§ 8-111 Answer.

a. Within thirty days after a copy of the complaint is served upon the respondent by the commission, the respondent shall file a written, verified answer thereto with the commission, and the commission shall cause a copy of such answer to be served upon the complainant and any necessary party.

b. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial.

c. Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the commission unless good cause to the contrary is shown.

d. All affirmative defenses shall be stated separately in the answer.

e. Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended in accordance with the rules of the commission.

f. Any necessary party may file with the commission a written, verified answer to the complaint, and the commission shall cause a copy of such answer to be served upon the complainant, respondent and any other necessary party.

g. Any answer filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the

commission by filing such amended answer with the commission and serving a copy thereof upon the complainant and any necessary party to the proceeding.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

DERIVATION

Formerly § B1-10.0 added LL 97/1965 § 4

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NYC Administrative Code 8-112

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§ 8-112 Withdrawal of complaints.

a. A complaint filed pursuant to section 8-109 of this chapter may be withdrawn by the complainant in accordance with rules of the commission at any time prior to the service of a notice that the complaint has been referred to an administrative law judge. Such a withdrawal shall be in writing and signed by the complainant.

b. A complaint may be withdrawn after the service of such notice at the discretion of the commission.

c. Unless such complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint shall be without prejudice:

(i) to the continued prosecution of the complaint by the commission in accordance with rules of the commission;

(ii) to the initiation of a complaint by the commission based in whole or in part upon the same facts; or

(iii) to the commencement of a civil action by the corporation counsel based upon the same facts pursuant to chapter four of this title.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

DERIVATION

Formerly § B1-11.0 added LL 97/1965 § 4

CASE NOTES

¶ 1. The filing of a complaint with the City Commission on Human Rights constitutes an election of remedies, which precludes the employee from bringing an action seeking relief for a violation of Labor Law § 194. Jones v. Gilman Paper Co., 166 A.D.2d 294, 564 N.Y.S.2d 121 (1st Dept. 1990).

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§ 8-113 Dismissal of complaint.

a. The commission may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:

(1) commission personnel have been unable to locate the complainant after diligent efforts to do so;

(2) the complainant has repeatedly failed to appear at mutually agreed upon appointments with commission personnel or is unwilling to meet with commission personnel, provide requested documentation, or to attend a hearing;

(3) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the commission;

(4) the complainant is unwilling to accept a reasonable proposed conciliation agreement;

(5) prosecution of the complaint will not serve the public interest; and

(6) the complainant requests such dismissal, one hundred eighty days have elapsed since the filing of the complaint with the commission finds (a) that the complaint has not been actively investigated, and (b) that the respondent will not be unduly prejudiced thereby.

b. The commission shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent, if the complainant requests such dismnissal, unless the commission has conducted an

investigation of the complaint or has engaged the parties in conciliation after the filing of the complaint.

c. In accordance with the rules of the commission, the commission shall dismiss a complaint if the complaint is not within the jurisdiction of the commission.

d. If after investigation the commission determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall dismiss the complaint as to such respondent.

e. The commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.

f. The complainant or respondent may, within thirty days of such service, and in accordance with the rules of the commission, apply to the chairperson for review of any dismissal pursuant to this section. Upon such application, the chairperson shall review such action and issue an order affirming, reversing or modifying such determination or remanding the matter for further investigation and action. A copy of such order shall be served upon the complainant, respondent and any necessary party.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

Subd. d amended L.L. 11/1993 § 3 eff. Jan. 22, 1993

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NYC Administrative Code 8-114

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§ 8-114 Investigations and investigative record keeping.

a. The commission may at any time issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence relating to any matter under investigation or any question before the commission. The issuance of such subpoenas shall be governed by the civil practice law and rules.

b. Where the commission has initiated its own investigation or has conducted an investigation in connection with the filing of a complaint pursuant to this chapter, the commission may demand that any person or persons who are the subject of such investigation (i) preserve those records in the possession of such person or persons which are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city, and (ii) continue to make and keep the type of records made and kept by such person or persons in the ordinary course of business within the year preceding such demand which are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city. A demand made pursuant to this subdivision shall be effective immediately upon its service on the subject of an investigation and shall remain in effect until the termination of all proceedings relating to any complaint filed pursuant to this chapter or civil action commenced pursuant to chapter four of this title or if no complaint or civil action is filed or commenced shall expire two years after the date of such service. The commission's demand shall require that such records be made available for inspection by the commission and/or be filed with the commission.

c. Any person upon whom a demand has been made pursuant to subdivision b of this section may, pursuant to procedures established by rule of the commission, assert an objection to such demand. Unless the commission orders otherwise, the assertion of an objection shall not stay compliance with the demand. The commission shall make a determination on an objection to a demand within thirty days after such an objection is filed with the commission,

unless the party filing the objection consents to an extension of time.

d. Upon the expiration of the time set pursuant to such rules for making an objection to such demand, or upon a determination that an objection to the demand shall not be sustained, the commission shall order compliance with the demand.

e. Upon a determination that an objection to a demand shall be sustained, the commission shall order that the demand be vacated or modified.

f. A proceeding may be brought on behalf of the commission in any court of competent jurisdiction seeking an order to compel compliance with an order issued pursuant to subdivision d of this section.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-115

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-115 Mediation and conciliation.

a. If in the judgment of the commission circumstances so warrant, it may at any time after the filing of a complaint endeavor to resolve the complaint by any method of dispute resolution prescribed by rule of the commission including, but not limited to, mediation and conciliation.

b. The terms of any conciliation agreement may contain such provisions as may be agreed upon by the commission, the complaint and the respondent, including a provision for the entry in court of a consent decree embodying the terms of the conciliation agreement.

c. The members of the commission and its staff shall not publicly disclose what transpired in the course of mediation and conciliation efforts.

d. If a conciliation agreement is entered into, the commission shall embody such agreement in an order and serve a copy of such order upon all parties to the conciliation agreement. Violation of such an order may cause the imposition of civil penalties under section 8-124 of this chapter. Every conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not required to further the purposes of this chapter.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

CASE NOTES

¶ 1. A man filed a discrimination claim with the New York City Human Rights Commission, alleging that an employer failed to hire him because he was gay and suspected of being infected with the HIV virus. When claimant entered into a conciliation agreement, the City revealed the details of the agreement to the public. He then sued the City, contending that the City's action violated his right to privacy (42 U.S.C. § 1983). The court held that plaintiff had a constitutional right to privacy regarding his condition as HIV positive, and that the filing of the claim did not give rise to a per se waiver of the right of privacy. The court remanded the case, for a determination, among other things, as to whether the City's interest in disseminating information outweighed the claimant's need for privacy.-Doe v. City of New York, 15 F.3d 264 (2nd Cir. 1994).

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NYC Administrative Code 8-116

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-116 Determination of probable cause.

a. Except in connection with commission-initiated complaints which shall not require a determination of probable cause, where the commission determines that probable cause exists to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall issue a written notice to complainant and respondent so stating. A determination of probable cause is not a final order of the commission and shall not be administratively or judicially reviewable.

b. If there is a determination of probable cause pursuant to subdivision a of this section in relation to a complaint alleging discrimination in housing accommodations, land or commercial space or an interest therein, or if a commission-initiated complaint relating to discrimination in housing accommodations, land or commercial space or an interest therein has been filed, and the property owner or the owner's duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations, land or commercial space or an interest therein for a period of ten days from the date of such request the commission may cause to be posted for a period of ten days from the date of such request, in a conspicuous place on the land or on the door of such housing accommodations or commercial space, a notice stating that such accommodations, land or commercial space are the subject of a complaint before the commission and that prospective transferees will take such accommodations, land or commercial space at their peril. Any destruction, defacement, alteration or removal of such notice by the owner or the owner's agents or employees shall be a misdemeanor punishable on conviction thereof by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both.

c. If a determination is made pursuant to subdivision a of this section that probable cause exists, or if a

commission-initiated complaint has been filed, the commission shall refer the complaint to an administrative law judge and shall serve a notice upon the complainant, respondent and any necessary party that the complaint has been so referred.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

Subd. a amended L.L. 11/1993 § 4 eff. Jan 22, 1993

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-117 Rules of Procedure.

The commission shall adopt rules providing for hearing and pre-hearing procedure. These rules shall include rules providing that the commission, by its prosecutorial bureau, shall be a party to all complaints and that a complainant shall be a party if the complainant has intervened in the manner set forth in the rules of the commission. These rules shall also include rules governing discovery, motion practice and the issuance of subpoenas. Wherever necessary, the commission shall issue orders compelling discovery. In accordance with the commission's discovery rules, any party from whom discovery is sought may assert an objection to such discovery based upon a claim of privilege or other defense and the commission shall rule upon such objection.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-118

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-118 Noncompliance with discovery order or order relating to records.

Whenever a party fails to comply with an order of the commission pursuant to section 8-117 of this chapter compelling discovery or an order pursuant to section 8-114 of this chapter relating to records the commission may, on its own motion or at the request of any part, and, after notice and opportunity for all parties to be heard in opposition or support, make such orders or take such action as may be just for the purpose of permitting the resolution of relevant issues or disposition of the complaint without unnecessary delay, including but not limited to:

(a) An order that the matter concerning which the order compelling discovery or relating to records was issued be established adversely to the claim of the noncomplying party;

(b) An order prohibiting the noncomplying party from introducing evidence or testimony, cross-examining witnesses or otherwise supporting or opposing designated claims or defenses;

(c) An order striking out pleadings or parts thereof;

(d) An order that the noncomplying party may not be heard to object to the introduction and use of secondary evidence to show what the withheld testimony, documents, other evidence or required records would have shown; and

(e) Infer that the material or testimony is withheld or records not preserved, made, kept, produced or made available for inspection because such material, testimony or records would prove to be unfavorable to the noncomplying party and use such inference to establish facts in support of a final determination pursuant to section 8-120 of this chapter.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-119

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-119 Hearing.

a. A hearing on the complaint shall be held before an administrative law judge designated by the commission. The place of any such hearing shall be the office of the commission or such other place as may be designated by the commission. Notice of the date, time and place of such hearing shall be served upon the complainant, respondent and any necessary party.

b. The case in support of the complaint shall be presented before the commission by the commission's prosecutorial bureau. The complainant may present additional testimony and cross-examine witnesses, in person or by counsel, if the complainant shall have intervened pursuant to rules established by the commission.

c. The administrative law judge may, in his or her discretion, permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.

d. Evidence relating to endeavors at mediation or conciliation by, between or among the commission, the complainant and the respondent shall not be admissible.

e. If the respondent has failed to answer the complaint within the time period prescribed in section 8-111 of this chapter, the administrative law judge may enter a default and the hearing shall proceed to determine the evidence in support of the complaint. Upon application, the administrative law judge may, for good cause shown, open a default in answering, upon equitable terms and conditions, including the taking of an oral answer.

f. Except as otherwise provided in section 8-118 of this chapter, the commission by its prosecutorial bureau, a

respondent who has filed an answer or whose default in answering has been set aside for good cause shown, a necessary party, and a complainant or other person who has intervened pursuant to the rules of the commission, may appear at such hearing in person or otherwise, with or without counsel, cross-examine witnesses, present testimony and offer evidence.

g. The commission shall not be bound by the strict rules of evidence prevailing in courts of the state of New York. The testimony taken at the hearing shall be under oath and shall be transcribed.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-120 Decision and order.

a. If, upon all the evidence at the hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the commission shall find that a respondent has engaged in any unlawful discriminatory practice or any act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice or acts of discriminatory harassment or violence. Such order shall require the respondent to take such affirmative action as, in the judgment of the commission, will effectuate the purposes of this chapter including, but not limited to:

(1) hiring, reinstatement or upgrading of employees;

(2) the award of back pay and front pay;

(3) admission to membership in any respondent labor organization;

(4) admission to or participation in a program, apprentice training program, on-the-job training program or other occupational training or retraining program;

(5) the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges;

(6) evaluating applications for membership in a club that is not distinctly private without discrimination based on race, creed, color, age, national origin, disability, marital status, partnership status, gender, sexual orientation or

alienage or citizenship status;

(7) selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;

(8) payment of compensatory damages to the person aggrieved by such practice or act; and

(9) submission of reports with respect to the manner of compliance.

(7) selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;

(8) payment of compensatory damages to the person aggrieved by such practice or act; and

(9) submission of reports with respect to the manner of com- pliance.

b. If, upon all the evidence at the hearing, and upon the findings of fact and conclusions of law recommended by the administrative law judge, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, and any necessary party and on any complainant who has not intervened an order dismissing the complaint as to such respondent.

HISTORICAL NOTE

Section amended L.L. 11/1993 § 5, eff. Jan. 22, 1993

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

Subd. a amended L.L. 85/2005 § 5, eff. Oct. 3, 2005. [See § 8-102

Note 2]

CASE NOTES

¶ 1. The New York City Human Rights Commission is given broad remedial powers to take actions against discrimination and may order the "hiring, reinstatement or upgrading of employees" and the "award of back pay", Administrative Code §8-120(a)(1), (2). The retroactive se- niority ordered here is unquestionably a proper remedy for past discrimination.-Matter of Beame v. DeLeon, 209 AD2d 252 modified, 87 NY2d 289 [1996].

¶ 2. City Human Rights Commission can award retroactive seniority as a remedy for discrimination.-Beame v. DeLeon, 87 N.Y.2d 289, 639 N.Y.S.2d 272 [1995].

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NYC Administrative Code 8-121

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§ 8-121 Reopening of proceeding by commission.

The commission may reopen any proceeding, or vacate or modify any order or determination of the commission, whenever justice so requires, in accordance with the rules of the commission.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

NYC Administrative Code 8-122

Administrative Code of the City of New York

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-122 Injunction and temporary restraining order.

At any time after the filing of a complaint alleging an unlawful discriminatory practice under this chapter or an act of discriminatory harrassment or violence as set forth in chapter six of this title, if the commission has reason to believe that the respondent or other person acting in concert with respondent is doing or procuring to be done any act or acts, tending to render ineffectual relief that could be ordered by the commission after a hearing as provided by section 8-120 of this chapter, a special proceeding may be commenced in accordance with article sixty-three of the civil practice law and rules on behalf of the commission in the supreme court for an order to show cause why the respondent and such other persons who are believed to be acting in concert with respondent should not be enjoined from doing or procuring to be done such acts. The special proceeding may be commenced in any county within the city of New York where the alleged unlawful discriminatory practice or act of discriminatory harassment or violence was committed, or where the commission maintains its principal office for the transaction of business, or where any respondent resides or maintains an office for the transaction of business, or where any person aggrieved by the unlawful discriminatory practice or act of discriminatory harassment or violence resides, or, if the complaint alleges an unlawful discriminatory practice under paragraphs (a), (b) or (c) of subdivision five of section 8-107 of this chapter, where the housing accommodation, land or commercial space specified in the complaint is located. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording the commission, the person aggrieved and the respondent and any person alleged to be acting in concert with the respondent an opportunity to be heard, the court may grant appropriate injunctive relief upon such terms and conditions as the court deems proper.

HISTORICAL NOTE

Section amended L.L. 11/1993 § 6, eff. Jan. 22, 1993

Section added L.L. 30/1991 § 1, eff. Jan. 22, 1993

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NYC Administrative Code 8-123

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Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-123 Judicial review.

a. Any complainant, respondent or other person aggrieved by a final order of the commission issued pursuant to section 8-120 or section 8-126 of this chapter or an order of the chairperson issued pursuant to subdivision f of section 8-113 of this chapter affirming the dismissal of a complaint may obtain judicial review thereof in a proceeding as provided in this section.

b. Such proceeding shall be brought in the supreme court of the state within any county within the city of New York wherein the unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or act of discriminatory harassment or violence or to take other affirmative action resides or transacts business.

c. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing, before the commission, and the issuance and service of a notice of motion returnable before such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such relief as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order annulling, confirming or modifying the order of the commission in whole or in part. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

d. Any part may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and materials evidenced and seeking findings thereon, provided such party shows

reasonable grounds for the failure to adduce such evidence before the commission.

e. The findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole.

f. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding.

g. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing.

h. A proceeding under this section must be instituted within thirty days after the service of the order of the commission.

HISTORICAL NOTE

Section renumbered and amended L.L. 39/1991 § 1, Sept. 16, 1991

(formerly § 8-110)

Section added chap 907/1985 § 1

Subd. b amended L.L. 11/1993 § 7, eff. Jan. 22, 1993

CASE NOTES FROM FORMER SECTION

¶ 1. Determination of Commission on Human Rights that landlord had refused to rent her an apartment because she was a Negro was upheld as based upon sufficient evidence. Court found that the Commission had power to set aside a lease entered into by the landlord and another to obstruct and impede the Commission in the enforcement of its functions.-Feigenbaum v. Comm. on Human Rights, 53 Misc. 2d 360, 278 N.Y.S. 2d 652 [1967].

¶ 2. Where apartment was leased to an innocent party while proceeding charging discrimination was pending order of Commission directing landlord to lease apartment to claimant would not be enforced as "the order would be harsh and inequitable as to the present tenant." The court pointed out that the Commission has another remedy, namely, the power to impose compensatory damages to the person aggrieved remitted the matter to the Commission.-Commission on Human Rights v. City Builders, Inc., 53 Misc. 2d 1, 277 N.Y.S. 2d 434 [1967].

¶ 3. Finding of Commission that landlord had knowledge that applicant was a Negro and that landlord had illegally discriminated against him was not supported by sufficient evidence where finding was based on a telephone conversation in which the superintendent was told that applicant was employed by the River House.-Riverdale Associates v. Booth, 51 Misc. 2d 403, 273 N.Y.S. 2d 291 [1966].

¶ 4. Finding of discrimination was supported by sufficient evidence and claim of landlord that she was the victim of a "concerted scheme designed and carried out" by the members of a civil rights group was disposed of on ground that without resorting to such methods a charge of discrimination often could never be substantiated.-Matter of Wurman v. Commission on Human Rights, 53 Misc. 2d 979, 281 N.Y.S. 2d 198 [1967].

¶ 5. Charge by complainant that taxi driver with unblemished record of 38 years of employment by one employer had driven off when he observed a Negro woman standing with a white man did not warrant a finding of discrimination

based on race where no words nor even a glance were exchanged between any of the parties other than the hailing of a cab by the white complainant and driver denied seeing either of complainants.-Lisa v. Booth, 157 (122) N.Y.L.J. (6-26-67) 15, Col. 4 M, aff'd 291 N.Y.S. 2d 1000 [1968].

¶ 6. Order directing landlord to notify complainant of first availability of apartment was too broad in that there was no limitation upon complainant's time to refuse offer and order was modified to give complainant five days after offer to exercise his right to rent.-Commission of Human Rights v. Hardenbrook Realty Corp., 57 Misc. 2d 430, 292 N.Y.S. 2d 775 [1968].

¶ 7. Order of New York Commission on Human Rights ordering landlord to offer complainant next available apartment comparable in size and rental to another stated apartment in building was too broad in that there was no limitation upon complainant's time to refuse the offer. Court ordered complainant to exercise his right of rental by certified mail within five days after an offer to rent had been sent by certified mail.-Hiltzik v. Booth, 159 (115) N.Y.L.J. (6-13-68) 18, Col. 1 F, modified on other grds., 31 App. Div. 2d 972, 299 N.Y.S. 2d 602 [1969].

¶ 8. Application for an injunction by City Commission on Human Rights restraining landlord pendente lite from renting apartment subject to controversy was denied where complainant was an unmarried unemployed minor who was not a recipient of public assistance and no adult offered to execute a lease on her behalf or guarantee payment of the rent as under these circumstances refusal to rent would appear to be a matter of business policy rather than of racial prejudice.-City Commission on Human Rights v. Sickles Corner Building Corp., 160 (123) N.Y.L.J. (12-26-68) 2, Col. 4 F.

¶ 9. Order of Commission on Human Rights requiring landlord to pay complaining tenant the sum of $420 as compensatory damages and to cease from discriminating because of race, color, creed or national origin in rental of housing accommodations was within statutory authority of Commission and not an abuse of discretion where Commission found after a hearing that the landlord refused to renew lease because tenants were Jewish.-In re Commission on Human Rights (Cartselos) 160 (12) N.Y.L.J. (7-17-68) 12, Col. 7 T.

¶ 10. This section which declares that in seeking judicial review of an order of the Commission on Human Rights a proceeding shall be brought in the supreme court provides an exclusive review procedure by a specified court and an Article 78 proceeding cannot be maintained.-Maloff v. City Commission on Human Rights, 45 AD2d 834, 357 N.Y.S. 2d 513 [1974].

¶ 11. City Commission on Human Rights had power to award damages against principal of school in his individual capacity in action for sex discrimination in employment.-Maloff v. City Commission on Human Rights, 46 N.Y. 2d 902 [1979].

¶ 12. On judicial review findings of the Commission as to facts are conclusive if supported by sufficient evidence on the record considered as a whole, sufficient evidence meaning substantial evidence.-Burlington Industries v. N.Y.C. Human Rights Commission, 82 App. Div. 2d 415, 441 N.Y.S. 2d 821 [1981].

CASE NOTES

¶ 1. A discrimination award to an HIV-positive tenant was upheld. The findings of the Commission are conclusive if supported by sufficient evidence as a whole. Sufficient evidence is such relevant proof as a reasonable mind may accept as adequate to support the conclusive. Essential attributes are relevance and a probative character. Such evidence is marked by its substance, its solid nature and ability to inspire confidence. Substantial evidence does not arise from bare surmise, conjecture, speculation or rumor.-Matter of 119-121 East 97th Street Corp. v. NYC Commission on Human Rights, 642 N.Y.S.2d 638 (App. Div. 1st Dept. 1996).

¶ 2. Where there is a CPLR Article 78 challenge to a determination made by the Commission, the standard of review is substantial evidence. It is less than a preponderance of evidence, and a practical test is found in measuring the

evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury. The court should not seek contrary evidence, proceed to weigh the total evidence and then make its own factual findings.-Pace University v. Commission on Human Rights, 200 A.D.2d 173, 611 N.Y.S.2d 835 (1st Dept. 1994).

¶ 3. Although the Human Rights Commission may award damages for mental anguish suffered as the result of discrimination, the damages must be reasonably related to the wrongdoing of the employer. Thus, the court reduced a mental anguish award from $12,000 to $7,500, an amount which the court found to be comparable with awards for similar injuries.-School Board of Education of the Chapel of the Redeemer Lutheran Church v. New York City Human Rights Commission, 188 A.D.2d 653, 591 N.Y.S.2d 531 (2nd Dept. 1992).

¶ 4. This section creates a review procedure for challenges to decisions of the New York City Commission on Human Rights. Any application for judicial review of a final order of the Commission must be brought within 30 days after service of the order. United African Movement v. NYC Commission on Human Rights, N.Y.L.J., Mar. 9, 1999, page 27, col. 1 (Sup.Ct. New York Co.).

¶ 5. An Article 78 proceeding seeking review of a decision of the New York City Human Rights Commission will be heard by the Supreme Court, not by the Appellate Division. City Human Rights Commission v. Salinas Realty Corp., 183 Misc.2d 897, 705 N.Y.S.2d 885 (Sup.Ct. New York Co. 2000).

¶ 6. In one case, the Commission on Human Rights imposed a civil penalty of $10,000 on a restaurant which had compelled an African-American customer to pay for her food in advance while allowing Caucasian customers to receive food without paying for it in advance. The court reduced the penalty to $5,000, noting, among other things, that the restaurant had never before been cited for civil rights violations. Silver Dragon Restaurant v. City Commission on Human Rights, N.Y.L.J., Mar. 31, 2004, at 24, col. 3 (Sup.Ct. Kings Co).

¶ 7. Under the laws governing municipal home rule, Municipal Home Rule Law § 11(2), the City Council had the power to shorten to 30 days the period in which an aggrieved claimant can challenge a determination of "no cause" made by the City Human Rights Agency (the normal period for Article 78 proceedings is four months under CPLR 217). Okoumou v. Community Agency for Senior Citizens, 17 Misc.3d 827, 842 N.Y.S.2d 881 (Sup.Ct. Richmond Co. 2007).

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NYC Administrative Code 8-124

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CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-124 Civil penalties for violating commission orders.

Any person who fails to comply with an order issued by the commission pursuant to section 8-115 or section 8-120 of this chapter shall be liable for a civil penalty of not more than fifty thousand dollars and an additional civil panalty of not more than one hundred dollars per day for each day that the violation continues.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-125

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-125 Enforcement.

a. Any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the commission pursuant to this chapter, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing penalties pursuant to section 8-124 of this chapter, or for such other relief as may be appropriate, may be initiated in any court of competent jurisdiction on behalf of the commission. In any such action or proceeding, application may be made for a temporary restraining order or preliminary injunction, enforcing and restraining all persons from violating any provisions of any such order, or for such other relief as may be just and proper, until hearing and determination of such action or proceeding and the entry of final judgment or order thereon. The court to which such application is made may make any or all of the orders specified, as may be required in such application, with or without notice, and may make such other or further orders or directions as may be necessary to render the same effectual.

b. In any action or proceeding brought pursuant to subdivision a of this section, no person shall be entitled to contest the terms of the order sought to be enforced unless that person has timely commenced a proceeding for review of the order pursuant to section 8-123 of this chapter.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-126

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-126 Civil penalties imposed by commission for unlawful discriminatory practices or acts of discriminatory harassment or violence.

a. Except as otherwise provided in subdivision thirteen of section 8-107 of this chapter, in addition to any of the remedies and penalties set forth in subdivision a of section 8-120 of this chapter, where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest, impose a civil penalty of not more than one hundred and twenty-five thousand dollars. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act or where the commission finds that an act of discriminatory harassment or violence as set forth in chapter six of this title has occurred, the commission may, to vindicate the public interest, impose a civil penalty of not more than two hundred and fifty thousand dollars.

b. A respondent that is found liable for an unlawful discriminatory practice or an act of discriminatory harassment or violence, as set forth in chapter six of this title, may, in relation to the determination of the appropriate amount of civil penalties to be imposed pursuant to subdivision a of this section, plead and prove any relevant mitigating factor.

c. In addition to any other penalties or sanctions which may be imposed pursuant to any other law, any person who knowingly makes a material false statement in any proceeding conducted, or document or record filed with the commission, or record required to be preserved or made and kept and subject to inspection by the commission pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars.

d. An action or proceeding may be commenced in any court of competent jurisdiction on behalf of the

commission for the recovery of the civil penalties provided for in this section.

HISTORICAL NOTE

Section amended L.L. 11/1993 § 8, eff. Jan. 22, 1993

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

Subd. a amended L.L. 85/2005 § 6, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-127

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-127 Disposition of civil penalties.

a. Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the city.

b. Notwithstanding the foregoing provision, where an action or proceeding is commenced against a city agency for the enforcement of a final order issued by the commission pursuant to section 8-120 of the code after a finding that such agency has engaged in an unlawful discriminatory practice and in such action or proceeding civil penalties are sought for violation of such order, any civil penalties which are imposed by the court against such agency shall be budgeted in a separate account. Such account shall be used solely to support city agencies' anti-bias education programs, activities sponsored by city agencies that are designed to eradicate discrimination or to fund remedial programs that are necessary to address the city's liability for discriminatory acts or practices. Funds in such account shall not be used to support or benefit the commission. The disposition of such funds shall be under the direction of the mayor.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-128

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Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-128 Institution of actions or proceedings.

Where any of the provisions of this chapter authorize an application to be made, or an action or proceeding to be commenced on behalf of the commission in a court, such application may be made or such action or proceeding may be instituted only by the corporation counsel, such attorneys employed by the commission as are designated by the corporation counsel or other persons designated by the corporation counsel.

HISTORICAL NOTE

Section added L.L. 39/1991 § 1, eff. Sept. 16, 1991

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NYC Administrative Code 8-129

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-129 Criminal penalties.

In addition to any other penalties or sanctions which may be imposed pursuant to this chapter or any other law, any person who shall wilfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of any duty under this chapter, or shall wilfully violate an order of the commission issued pursuant to section 8-115 or section 8-120 of this chapter, shall be guilty of a misdemeanor and be punishable by imprisonment for not more than one year, or by a fine of not more than ten thousand dollars, or by both; but the procedure for the review of the order shall not be deemed to be such wilful conduct.

HISTORICAL NOTE

Section renumbered and amended L.L. 39/1991 § 1, eff. Sept. 15, 1991

(formerly § 8-111)

Section added chap 907/1985 § 1

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NYC Administrative Code 8-130

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Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-130 Construction.

The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.

HISTORICAL NOTE

Section amended L.L. 85/2005 § 7, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Section renumbered and amended L.L. 39/1991 § 1, eff. Sept. 16, 1991 (formerly § 8-112)

Section added chap 907/1985 § 1

CASE NOTES

¶ 1. The Restoration Act, which provides in effect calls for a more liberal construction of civil rights under the NYCHRL than would be available under state and federal law, applies only to causes of action brought after its effective date in 2005 check date. Barnum v. New York City Transit Authority, ____ A.D.3d ____ , 878 N.Y.S.2d 454 (2d Dept. 2009). See also the explanatory note at the beginning of the annotations to Section 8-107.

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NYC Administrative Code 8-131

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Title 8 Civil Rights

CHAPTER 1 COMMISSION ON HUMAN RIGHTS*20

§ 8-131 Applicability.

The provisions of this chapter which make acts of discriminatory harassment or violence as set forth in chapter six of this title subject to the jurisdiction of the commission shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty.

HISTORICAL NOTE

Section added L.L. 11/1993 § 9, eff. Jan. 22, 1993

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-201

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-201 Declaration of policy.

It is hereby declared to be the policy of the city of New York and the purpose of this chapter to promote fair dealing in real estate transactions, to maintain community stability and security, and to foster racial and social harmony.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-1.0 added chap 493/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-202

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-202 Definitions.

As used in this chapter:

1. "Chairperson" means the chairperson of the New York city commission on human rights.

2. "Commission" means the New York city commission on human rights.

3. "Dwelling or real property" means one, two, three or four family residences, and any vacant land which is offered for sale or lease for the construction or location thereon of any such residence.

4. "Legal notice" means publication daily for one week in a newspaper of general circulation within the city of New York and written notice to all real estate brokers in the area.

5. "Real estate broker" means a real estate broker as defined in article twelve-A of the real property law of the state of New York.

6. "Real estate dealer" means any firm, partnership, association, corporation or person which or who has within the preceding twelve months, sold, traded or exchanged two or more dwellings other than, in the case of a person, such person's own residence.

7. "Real estate office" means an office or other place of business which is primarily engaged in the business of selling, buying, leasing, or renting real property; listing real property for sale, purchase, lease or rental; or providing brokerage services in connection with such selling, buying, leasing, renting, or listing.

8. "Solicitation" means requesting, inviting, or inducing by any means, including, but not limited to:

(a) going in or upon the property of the person to be solicited, except when invited by such person;

(b) communicating with the person to be solicited by mail, telephone, telegraph or messenger service, except when requested by such person;

(c) canvassing in streets or other public places;

(d) distributing handbills, circulars, cards or other advertising matter;

(e) using loudspeakers, soundtrucks, or other voice-amplifying equipment;

(f) displaying signs, posters, billboards, or other advertising devices other than signs placed upon a real estate office for the purpose of identifying the occupants and services provided therein, provided, however, that the term "solicitation" shall not include advertising in newspapers of general circulation, magazines, radio, television, or telephone directories.

9. "Block, neighborhood or area" means any forty square blocks within the city of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-2.0 added chap 493/1970 § 1

Subs 3, 8, 9 amended chap 454/1972 § 1

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NYC Administrative Code 8-203

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-203 Unlawful real estate practices.

1. It shall be unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer, except in honest reply to an unprompted question by a prospective buyer or seller:

(a) to represent, for the purpose of inducing or discouraging the purchase, sale, or rental, or the listing for purchase, sale, or rental, of any real property, that a change has occurred or will or may occur in the racial or religious composition of any block, neighborhood, or area.

(b) to represent, implicitly or explicitly, for the purpose of inducing or discouraging the purchase, sale, or rental or the listing for purchase, sale, or rental of any real property, that the presence of persons of any particular race, religion or ethnic background in an area will or may result in:

(1) a lowering of property values in the area;

(2) change in the racial, religious or ethnic composition of the area;

(3) an increase in criminal or anti-social behavior in the area; or

(4) a change in the racial, religious or ethnic composition of schools or other public facilities or services in the area.

2. It shall be unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer:

(a) to make any misrepresentation in connection with the purchase, sale, or rental of any real property, that there will or may be physical deterioration of dwellings in any block, neighborhood or area.

(b) to refer to race, color, religion or ethnic background in any advertisement offering or seeking real property for purchase, sale or rental.

3. It shall be unlawful for any person, firm, partnership, association, or corporation, to knowingly aid, abet, or coerce the commission of any act made unlawful by subdivisions one and two of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-3.0 added chap 493/1970 § 1

Sub b amended chap 454/1972 § 2

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NYC Administrative Code 8-204

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-204 Non-solicitation areas.

1. The commission may designate an area as a non-solicitation area for a period of up to one year upon making written findings based on substantial evidence introduced at a public hearing that:

(a) practices made unlawful by section 8-203 of this chapter, the inducement or encouragement by brokers or dealers of the use of fraudulent mortgage applications for the purchase of dwellings, or the direction based on race, creed, color or national origin by brokers or dealers of prospective purchasers or applicants to dwellings, or an unusually great incidence of solicitation are consistently occurring within the area, and that

(b) such practices are causing, or are likely to cause, residents within the area to believe that:

(1) property values in the area are declining, or about to decline rapidly; or

(2) the area is experiencing, or is about to experience:

(i) a declining level of maintenance of its housing stock; or

(ii) an increase in criminal behavior; or

(iii) a change in the racial, religious or ethnic composition of the schools in the area; or

(3) the area is experiencing, or is about to experience, a material change in its racial, religious or ethnic composition; and

(c) therefore, the temporary prohibition in the area of the real estate activities described in section 8-205 of this chapter is necessary to prevent a material change in the area's racial, religious or ethnic composition.

2. The commission may extend one or more times the designation of a non-solicitation area made pursuant to subdivision one of this section for a period of up to one year upon making written findings, based on substantial evidence introduced at a public hearing, that such extension is necessary to achieve the designation's purpose, as described in paragraph (c) of subdivision one of this section, provided, however, that no extension may be granted which, together with the original designation and all previous extensions, will maintain a non-solicitation area for a continuous period greater than two years. The public hearing on any extension shall be held not more than thirty days before the day on which the designation or earlier extension is scheduled to expire.

3. (a) The commission shall promptly announce by legal notice each designation made pursuant to subdivision one of this section and each extension made pursuant to subdivision two of this section, describing the area to which it applies by references to named streets and landmarks. Any designation shall take effect upon the completion of the publication required for legal notice. Any extension shall take effect at the time at which the designation or earlier extension would otherwise expire.

(b) The commission shall maintain, and make available to all interested persons, a current listing of designated non-solicitation areas.

4. The commission may, at any time, terminate the designation of a non-solicitation area made pursuant to subdivision one of this section or the extension of a designation made pursuant to subdivision two of this section upon making findings, based on substantial evidence introduced at a public hearing, that the continuation of the designation or its extension is no longer necessary to achieve the designation's purpose, as described in this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-4.0 added chap 493/1970 § 1

Sub 1 par a amended chap 454/1972 § 3

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NYC Administrative Code 8-205

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-205 Activities prohibited with respect to non-solicitation areas.

It shall be unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer to solicit, directly or indirectly, the sale, purchase, or rental of any dwelling located within a non-solicitation area.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-5.0 added chap 493/1970 § 1

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NYC Administrative Code 8-206

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Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-206 Hearings; rules; enforcement.

1. The commission may conduct investigations, studies, and hearings concerning practices and activities governed by this chapter. In conducting hearings, the commission shall have the power to subpoena witnesses, to compel their attendance, to administer oaths, to examine witnesses under oath, and to require the production of documents. A written record shall be made of every such hearing.

2. The commission shall have the authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this chapter.

3. The chairperson or his or her designated representative shall have the power to enforce the provisions of this chapter by signing criminal complaints against any person, firm, partnership, association, or corporation for violation of this chapter.

4. The chairperson shall report to the secretary of state of New York all violations of this chapter by real estate brokers and salespersons.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-6.0 added chap 493/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-207

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-207 Violations.

Any person, firm, partnership, association, or corporation convicted of violating this chapter shall be guilty of a class A misdemeanor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-7.0 added chap 493/1970 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-208

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 2 CERTAIN UNLAWFUL REAL ESTATE PRACTICES*21

§ 8-208 Civil remedies.

1. (a) Any owner of real property who is induced to sell his or her property through or to a real estate broker or real estate dealer by acts committed by such broker or dealer in violation of section 8-203 or section 8-205 of this chapter may institute a civil action against such broker or dealer.

(b) If, in an action instituted pursuant to this subdivision, judgment is rendered in favor of plaintiff, such plaintiff shall be awarded as damages

(i) the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of the first subsequent arm's length sale, exchange, or transfer of the property, or, if defendant acted as a broker, the amount of any commissions received by defendant through the sale, exchange, or transfer of plaintiff's property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant, and may in addition be awarded reasonable attorneys' fees and court costs; or

(ii) if the defendant has not realized any gains as defined in this subdivision, an amount equal to the difference between the price for which plaintiff sold his or her property and the fair market value at the time of the sale, or the fair market value of the property at the time the action is commenced, whichever difference is greater, and may in addition be awarded reasonable attorneys' fees and court costs.

2. (a) Any buyer, through or from a real estate broker or real estate dealer, of real property the last owner of which, excluding such broker or dealer, was induced to sell, exchange or transfer his or her property by acts committed by such broker or dealer in violation of section 8-203 or section 8-205 of this chapter may institute a civil action against

such broker or dealer.

(b) If, in an action instituted pursuant to paragraph (a) of this subdivision, judgment is rendered in favor of plaintiff, the plaintiff shall be awarded as damages the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of such plaintiff's purchase of the property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant, and may in addition be awarded reasonable attorneys' fees and court costs.

3. With respect to the sale, exchange or transfer of any property, the liability of a broker or dealer created by subdivision two of this section shall be independent of and additional to the liability of such broker or dealer created by subdivision one of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C1-8.0 added chap 493/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-301

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 3 CIVIL RIGHTS DEMONSTRATION PROTECTION

§ 8-301 Legislative declaration.

It is hereby found that the letter and spirit of the constitution of the United States are being violated in some jurisdictions under color of law with the result that persons from this city and state, as well as from other states, are being subjected to discriminatory treatment in the exercise of their constitutional rights because of race or because they seek the removal of unconstitutional barriers to equal rights.

Such persons, sometimes referred to as freedom riders and sit-ins, intent upon peaceful resistance to discrimination, segregation and the achievement of the constitutional rights of all persons in all jurisdictions of the United States, have suffered the stigma of criminal proceedings. It is hereby declared to be the policy of the city to remove or to neutralize by affording to such residents appropriate relief to the fullest extent possible, the effect upon residents of this city of such criminal proceedings, resulting from the attempted use of public transportation facilities and other places of public accommodation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA51-1.0 added LL 49/1962 § 1

Renumbered chap 100/1963 § 676

(formerly § AA41-1.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-302

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 3 CIVIL RIGHTS DEMONSTRATION PROTECTION

§ 8-302 Removal of disability or disqualification.

Notwithstanding any provision of this code to the contrary, no person shall be denied any license, right, benefit or privilege extended by this code, or suffer any other disability or disqualification thereunder, or be denied the right of employment by the city of New York, solely because of any arrest, apprehension, detention, indictment or other accusation, arraignment, trial, conviction or any other aspect of conviction or adjudication of a crime had under the jurisdiction of the courts of any state or of the United States, which is founded on an act or acts arising out of any peaceful demonstration or other peaceful activity, the object of which is to resist discriminatory treatment in any place of public accommodation as defined by section forty of the civil rights law, or to achieve equal rights for all persons regardless of race, creed, color or national origin.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA51-2.0 added LL 49/1962 § 1

Renumbered chap 100/1963 § 676

(formerly § AA41-2.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-401

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 4 CIVIL ACTION TO ELIMINATE UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-401 Legislative declaration.

The council finds that certain forms of unlawful discrimination are systemic in nature rooted in the operating conditions or policies of a business or industry. The council finds that the existence of systemic discrimination poses a substantial threat to, and inflicts significant injury upon, the city that is economic, social and moral in character, and is distinct from the injury sustained by individuals as an incident of such discrimination. The council finds that the potential for systemic discrimination exists in all areas of public life and that employment, housing and public accommodations are among the areas in which the economic effects of systemic discrimination are exemplified. The existence of systemic discrimination impedes the optimal efficiency of the labor market by, among other things, causing decisions to employ, promote or discharge persons to be based upon reasons other than qualifications and competence. Such discrimination impedes the optimal efficiency of the housing market and retards private investments in certain neighborhoods by causing decisions to lease or sell housing accommodations to be based upon discriminatory factors and not upon ability and willingness to lease or purchase property. The council finds that the reduction in the efficiency of the labor, housing and commercial markets has a detrimental effect on the city's economy, thereby reducing revenues and increasing costs to the city. The council finds that such economic injury to the city severely diminishes its capacity to meet the needs of those persons living and working in, and visiting, the city. The council finds further that the social and moral consequences of systemic discrimination are similarly injurious to the city in that systemic discrimination polarizes the city's communities, demoralizes its inhabitants and creates disrespect for the law, thereby frustrating the city's efforts to foster mutual respect and tolerance among its inhabitants and to promote a safe and secure environment. The council finds that the potential consequences to the city of this form of discrimination requires that the corporation counsel be expressly given the authority to institute a civil action to enforce the city's human rights law so as to supplement administrative means to prevent or remedy injury to the city.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept, 16, 1991

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-402

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 4 CIVIL ACTION TO ELIMINATE UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-402 Civil action to eliminate unlawful discriminatory practices.

a. Whenever there is reasonable cause to believe that a person or group of persons is engaged in pattern or practice that results in the denial to any person of the full enjoyment of any right secured by chapter one of this title, a civil action on behalf of the commission or the city may be commenced in a court of competent jurisdiction, by filing a complaint setting forth facts pertaining to such pattern or practice and requesting such relief as may be deemed necessary to insure the full enjoyment of the rights described in such chapter, including, but not limited to, injunctive relief, damages, including punitive damages, and such other types of relief as are specified in subdivision a of section 8-120 of this title. Nothing in this section shall be construed to prohibit (i) an aggrieved person from filing a complaint pursuant to section 8-109 of chapter one of this title or from commencing a civil action pursuant to chapter five of this title based upon the same facts pertaining to such a pattern or practice as are alleged in the civil action, or (ii) the commission from filing a commission-initiated complaint pursuant to section 8-109 of chapter one of this title alleging a pattern or practice of discrimination, provided that a civil action prusuant to this section shall not have previously been commenced.

b. A civil action commenced under this section must be commenced within three years after the alleged discriminatory practice occurred.

c. Such action may be instituted only by the corporation counsel, such attorneys employed by the city commission on human rights as are designated by the corporation counsel or other persons designated by the corporation counsel.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-403

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 4 CIVIL ACTION TO ELIMINATE UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-403 Investigation.

The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to section 8-402 of this chapter, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-404

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 4 CIVIL ACTION TO ELIMINATE UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-404 Civil penalty.

In any civil action commenced pursuant to section 8-402 of this chapter, the trier of fact may, to vindicate the public interest, impose upon any person who is found to have engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by chapter one of this title a civil penalty of not more than two hundred fifty thousand dollars. In relation to determining the appropriate amount of civil penalties to be imposed pursuant to this section a liable party may plead and prove any relevant mitigating factor. Any civil penalties so recovered pursuant to this chapter shall be paid into the general fund of the city. Nothing in this section shall be construed to preclude the city from recovering damages, including punitive damages, and other relief pursuant to section 8-402 of this chapter in addition to civil penalties.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-502

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 5 CIVIL ACTION BY PERSONS AGGRIEVED BY UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-502 Civil action by persons aggrieved by unlawful discriminatory practices.

a. Except as otherwise provided by law, any person claiming to be aggrieved by an unlawful discriminatory practice as defined in chapter one of this title or by an act of discriminatory harassment or violence as set forth in chapter six of this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence. For purposes of this subdivision, the filing of a complaint with a federal agency pursuant to applicable federal law prohibiting discrimination which is subsequently referred to the city commission on human rights or to the state division of human rights pursuant to such law shall not be deemed to constitute the filing of a complaint under this subdivision.

b. Notwithstanding any inconsistent provision of subdivision a of this section, where a complaint filed with the city commission on human rights or the state division on human rights is dismissed by the city commission on human rights pursuant to subdivisions a, b or c of section 8-113 of chapter one of this title, or by the state division of human rights pursuant to subdivision nine of section two hundred ninety-seven of the executive law either for administrative convenience or on the grounds that such person's election of an administrative remedy is annulled, an aggrieved person shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed.

c. The city commission on human rights and the corporation counsel shall each designate a representative authorized to receive copies of complaints in actions commenced in whole or in part pursuant to subdivision a of this section. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, the plaintiff shall serve a copy of the complaint upon such authorized representatives.

d. A civil action commenced under this section must be commenced within three years after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title occurred. Upon the filing of a complaint with the city commission on human rights or the state division of human rights and during the pendency of such complaint and any court proceeding for review of the dismissal of such complaint, such three year limitations period shall be tolled.

e.*22 Notwithstanding any inconsistent provision of this section, where a complaint filed with the city commission on human rights or state division of human rights is dismissed for administrative convenience and such dismissal is due to the complainant's malfeasance, misfeasance or recalcitrance, the three year limitation period on commencing a civil action pursuant to this section shall not be tolled. Unwillingness to accept a reasonable proposed conciliation agreement shall not be considered malfeasance, misfeasance or recalcitrance.

e.* The provisions of this section which provide a cause of action to persons claiming to be aggrieved by an act of discriminatory harassment or violence as set forth in chapter six of this title shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty.

f. In any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party costs and reasonable attorney's fees. For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Subd. a amended L.L. 11/1993 § 10, eff. Jan. 22, 1993

Subd. b amended L.L. 85/2005 § 8, eff. Oct. 3, 2005. [See § 8-102

Note 2]

Subd. c amended L.L. 85/2005 § 8, eff. Oct. 3, 2005. [See § 8-102

Note 2]

Subd. d amended L.L. 11/1993 § 12, eff. Jan. 22, 1993

Subd. e added L.L. 11/1993 § 11, eff. Jan. 22, 1993

(laid out second)

Subd. f amended L.L. 85/2005 § 8, eff. Oct. 3, 2005. [See § 8-102

Note 2]

CASE NOTES

¶ 1. New York City has the authority to create a private cause of action for unlawful discrimination with punitive damages pursuant to Ad Cd § 8-502 which are not inconsistent with the State Human Rights Law. Such section allows for recovery of damages for age discrimination.-Hirschfield v. Institutional Investor, 208 AD2d 380 [1994].

¶ 2. The State Human Rights Law (Executive Law Art. 15) was not intended to preempt local antidiscrimination legislation. Ad Cd § 8-502 which allows recovery of compensatory and punitive damages for sex discrimination is not inconsistent with or preempted by the State Human Rights Law. The city has the authority to allow punitive damages.-Bracker v. Cohen, 204 AD2d 115 [1994].

¶ 3. The City has the authority to create a private right of action for unlawful discrimination (age discrimination in this case) with punitive damages as a remedy. The City law is not inconsistent with the State Human Rights Law.-Hirschfeld v. Institutional Investor, 208 A.D.2d 380, 617 N.Y.S.2d 11 (1st Dept. 1994); accord, Bracker v. Cohen, 204 A.D.2d 115, 612 N.Y.S.2d 113 (1st Dept. 1994).

¶ 4. The failure of a subtenant to give notice to the City Commission on Human Rights and the City Corporation Counsel of a claim based on discrimination did not bar a civil action against the landlord. The court noted that unlike some other condition precedent statutes, this statute did not contain words such as "no action shall be commenced unless . . . " or similar words.-Bernstein v. 1995 Associates, 630 N.Y.S.2d 68 (App.Div. 1st Dept. 1995).

¶ 5. The failure of the plaintiff to serve a copy of the complaint upon the City Corporation Counsel and the City Commission on Human Rights prior to commencement of the lawsuit does not require dismissal of the suit. To dismiss the employee's claims and have them refiled the following day (Corporation Counsel and the Commission were given copies of the papers soon after commencement of the lawsuit) would be to exalt form over substance and would be wasteful. McNulty v. New York City Finance Department, 941 F.Supp. 452 (S.D.N.Y. 1996). Accord, Kim v. Dial Services International, 1997 Westlaw 5902, S.D.N.Y.

¶ 6. The failure to serve a discrimination claim upon the City Corporation Counsel and the City Human Rights Commission does not mandate dismissal of a claim under the statute. The notice requirement is designed merely to apprise the appropriate agencies of the action, but is not a condition precedent to suit. Teller v. America West Airlines, 659 N.Y.S.2d 314, 240 A.D.2d 727 (App.Div. 2d Dept. 1997).

¶ 7. The claimant's failure to serve the City Commissioner of Human Rights is not fatal to a claim under the New York City Human Rights Law. Naftchi v. New York University, 14 F.Supp.2d 473 (S.D.N.Y. 1998); Westphal v. Catch Ball Products Corp., 953 F.Supp. 475 (S.D.N.Y. 1997).

¶ 8. In determining attorneys' fees to be awarded in a discrimination case, a lodestar amount is calculated from the product of a reasonable hourly rate and the number of hours reasonably expended by each attorney. In calculating the number of hours, a court should not reimburse excessive or redundant work. Moreover, the court may refuse to reimburse travel expenses for out of town counsel where experienced local counsel would have sufficed. Greenbaum v. Svenska Handelsbanken, 998 F.Supp. 301 (S.D.N.Y. 1998).

¶ 9. Once a person has filed a complaint with the New York City Human Rights Commission, he or she is deemed to have elected a remedy, and will not be permitted to bring a court action, unless and until the agency proceeding has been dismissed as a matter of "administrative convenience." Where the agency dismisses the case at the request of the complainant, the complainant is now deemed dismissed as a matter of "administrative convenience" even if the statutory phrase is not expressly used, and the complainant is free to sue in court. Silver v. Mt. Sinai School of Medicine, N.Y.L.J., Oct. 13, 1998, page 28, col. 2 (Sup.Ct. New York Co.).

¶ 10. The State of New York is not an "aggrieved" party eligible to recover punitive damages under the city human rights laws. People of the State of New York v. Garban LLC, 1999 Westlaw 496182 (Sup.Ct. New York Co.).

¶ 11. The private right of action created under the statute applies only to claims arising after the effective date of the law. Lopez v. New York City Health & Hosps. Corp., 270 A.D.2d 466, 705 N.Y.S.2d 279 (App.Div. 1st Dept. 2000).

¶ 12. The City Administrative Code and federal Title VII standards on punitive damages are substantially

identical. Punitive damages are imposed only where there is malice or reckless indifference to the statutory rights of the aggrieved person. There must be an element of conscious wrongdoing, i.e., the defendant must have had some knowledge that the conduct in question could give rise to liability. Where a court finds that the employer was unaware of the law, the employee might obtain compensatory damages but not punitive damages. Robinson v. Instructional Systems, 80 F.Supp.2d 203 (S.D.N.Y. 2000).

¶ 13. Punitive damages are available under the NYC Human Rights Law, and in determining whether such damages are warranted, the court uses the same standard as that used in Title VII of the Civil Rights Act of 1964. Under Title VII, punitive damages are limited to cases in which the employer has engaged in intentional discrimination and has done so with malice or with reckless indifference to the protected rights of the aggrieved individual. Malice and reckless indifference refer to the employer's knowledge that it may be acting in violation of the law, not its awareness that it is engaging in discrimination. A "positive element of conscious wrongdoing" is required for an award of punitive damages. Where it was standard company policy not to offer severance packages to any employee unless that employee released all claims, the company's refusal to offer severance benefits to plaintiff, who had a pending employment discrimination claim, did not constitute conduct so outrageous as to warrant an award of punitive damages. Farias v. Instructional Systems, Inc., 259 F.3d 91 (2d Cir. 2001).

¶ 14. If a complainant consults with Equal Employment Opportunity Commission (EEOC) as to how and where to file sex harassment complaint, and EEOC suggests that she files with the New York State Division of Human Rights, the "election of remedies rule" will still apply. The exception applies only where the case is actually filed with the EEOC, which then files it by automatic referral with the New York State Division of Human Rights (NYSDHR). In other words, York, who filed her charge with the NYSDHR after seeking the EEOC's advice about where to file, did not suffer from the forced-election predicament that the exception is intended to remedy. Under 8-502, once the plaintiff brings the case before the NYSDHR, he or she can appeal only to the Supreme Court (Article 78) and cannot bring a plenary action. York v. Assn of the Bar of the City of New York, 286 F.3d 122 (2d Cir. 2002).

¶ 15. A litigant is barred from bringing an action under the 8-502 election of remedies provision only with respect to the charges that were brought before the administrative agency. Thus, where a person brought a racial or disability claim with the State Division of Human Rights, but an additional charge of discrimination on the basis of national origin was not brought before the agency, the national origin claim can be asserted in a plenary action. Benjamin v. New York City Dept. of Health, 2002 WL 485731 (U.S. Dist. Ct., S.D.N.Y.).

¶ 16. Isolated stray remarks, by a co-employee who is not a decision maker with respect to plaintiff's employment, are not sufficient to make out a case for employment discrimination. Magnan v. Manhattan Eye, Ear and Throat Hospital, N.Y.L.J., Mar. 22, 2001, page 23, col. 3 (U.S. Dist. Ct., S.D.N.Y.).

¶ 17. In awarding attorneys' fees under the New York City Human Rights Law, the court can use principles similar to those applied in case under Title VII of the Civil Rights Act of 1964. Under federal law, reasonable attorneys' fees are determined by using the "lodestar" method, which calculates attorneys' fees by multiplying the number of hours spent on the litigation by a reasonable hourly rate. Among the factors considered are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the "undesirability of the case; (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. The amount, if any, that the client agreed to pay as a fee is not decisive. In order to be entitled to attorneys' fees, the client must be the prevailing party in the litigation. Where a jury finds for the plaintiff on the central allegation in the case, i.e. that plaintiff was harassed and subsequently discharged by reason of his sexual orientation, plaintiff qualifies as a prevailing party. This was so even though the court significantly reduced the damages from the figure awarded by the jury. Bell v. Helmsley, N.Y.L.J., Apr. 2, 2003, page 20, col. 3, 2003 WL 21057630 (Sup.Ct. New York Co.).

¶ 18. In Bell v. Helmsley, N.Y.L.J., Mar. 10, 2003, page 21, col. 5, 2003 WL 1453108 (Sup. Ct. New York Co.), Justice Walter Tolub provided an extensive discussion of punitive damages in the context of a discrimination claim. Punitive damages, the court said, are not a game of lotto, and the defendant's status as a multi-billionaire does not make her a "pinata" to poke a stick at in the hopes of hitting a "jackpot." It is the duty of the court to keep punitive damages within reasonable bounds, considering the purpose to be achieved as well as the bad faith of the defendant. Although compensatory damages and punitive damages are typically awarded at the same time by the same decision-maker, they serve distinct purposes. The former are intended to redress the concrete loss that plaintiff has suffered by reason of the defendant's wrongful conduct, while the latter are designed to punish the defendant and deter future wrongdoing. A jury's assessment of compensatory damages is a factual determination, while punitive damages are an expression of moral condemnation. After considering the relevant factors, the court reduced a $10 million award to $500,000.

¶ 19. The three-year statute of limitations is tolled during the pendency of an administrative complaint. Forrest v. Jewish Guild for the Blind, 309 A.D.2d 546, 765 N.Y.S.2d 326 (1st Dept. 2003), aff'd, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004).

¶ 20. In one disability discrimination case, plaintiff was permitted to maintain a claim for emotional distress, even though the Civil Service Commission had previously denied a claim for back pay. The Civil Service Commission would not, in any event, have had the power to adjudicate a claim for emotional distress. Varone v. City of New York, 2003 WL 21787475 (S.D.N.Y.).

¶ 21. Section 8-502 applies only where the alleged discriminatory acts took place within the City of New York. Thus, a plaintiff who worked for defendant in Rockland County New York, New Jersey and Florida is not covered by the statute. Santos v. Costco Wholesale, 271 F.Supp.2d 565 (S.D.N.Y. 2003).

¶ 22. The Second Circuit Court of Appeals certified questions to the New York Court of Appeals, regarding a plaintiff's right to attorneys' fees where he or she is the prevailing party in a discrimination case but is awarded only nominal damages. In Farrar v. Hobby, 506 U.S. 103, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992), the Supreme Court held that a plaintiff in a federal civil rights case who obtains only nominal damages is the "prevailing party," for purposes of an award of attorneys' fees, only if the litigation served a significant public purpose. The Second Circuit asked the New York Court of Appeals to determine whether the same rule applied to cases brought under the New York City Human Rights Law, and the Court of Appeals said that the same rule did apply. Plaintiffs, who identified themselves as pre-operative transsexuals, brought an action alleging that they were harassed by store employees while shopping at Toys "R" Us, brought suit in federal court, using both Title VII and the New York City Human Rights Law. Plaintiffs sought $100,000 each in damages. Ultimately, although the jury found that defendant had violated the civil rights law, it awarded only $1 in damages to each plaintiff. Plaintiffs applied to the District Court for a six-figure attorneys' fees award. The District Court, while noting that attorneys' fees were available under Farrar, to parties recovering nominal damages only in unusual cases, found that this was an unusual case, in that it was the first public accommodation discrimination case to proceed to trial under the New York City Human Rights Law and the first case in which the rights of transsexuals were asserted and vindicated. In addition, at the time this action was commenced, it was unclear whether the law covered transsexuals, since the law had not yet been amended to contain a specific reference to transsexuals. 3 N.Y.3d 421, 788 N.Y.S.2d 281, 821 N.E.2d 519 (2004). After the decision of the New York Court of Appeals, the case went back to the Second Circuit. The Second Circuit did not decide whether the litigation had met the public purpose rule, and remanded the case for further factual fndings. McGrath v. Toys "R" Us, Inc., 409 F.3d 513 (2d Cir. 2005).

¶ 23. In one case, a female employee sought recovery of the pay differential between her salary and the salary of male employees that she claimed to be similarly situated. The three-year statute of limitations applied. Each receipt of a paycheck is the basis of a separate cause of action for which suit must be brought during the limitations period. Thus, the employee could seek recovery of pay differentials covering salary periods within the three-year period prior to the commencement of the action, but not for periods more than three years before the commencement of the action. The employer argued that even the paychecks received within the three-year period could not give rise to a viable cause of

action, because the employees that she used as comparators (in an effort to show gender discrimination) had left the company more than three years prior to the commencement of the action. The court, however, held that these employees could be used as comparators, even though the evidence related to a pre-limitations period. In other words, the three-year statute limits how much pay the employee can recover, but does not limit how far back in time the employee can go in providing evidence of discrimination. Kent v. Papert Companies, 309 A.D.2d 234, 764 N.Y.S.2d 675 (1st Dept. 2003).

¶ 24. For purposes of the statute of limitations, a claim for hostile work environment, which is subject to the continuing violations exception, involves a series of separate acts which collectively constitute an unlawful employment practice, and will not be time barred if all the acts constituting the claim are part of the same unlawful practice and at least one discriminatory act falls within the filing period. Hughes v. United Parcel Service, Inc., N.Y.L.J., July 26, 2004, at 18, col. 1, 2004 WL 2059768 (Sup.Ct. New York Co.).

¶ 25. The statute does not provide for liability in case of the alleged mishandling of a corpse. A corpse is not a "person" within the meaning of the statute. Kellogg v. Office of the Chief Medical Examiner of the City of New York, 6 Misc.3d 666, 791 N.Y.S.2d 278 (Sup.Ct. Bronx Co. 2004).

¶ 26. A person who files a discrimination complaint with the New York State Division of Human Rights is barred from relitigating that claim under the New York City Human Rights Law. Fleury v. New York City Transit Authority, 2004 WL 2810107 (U.S.Dist.Ct. E.D.N.Y.).

¶ 27. Where it is claimed that incidents constituting a hostile work environment are part of one unlawful employment practice, the action must be brought within the limitations period applicable to the last act alleged. Arthur v. Standard & Poor's Corp., N.Y.L.J., Feb. 25, 2005, at 18, col. 1, 6 Misc.3d 1033(A), 2005 WL 545882 (Sup.Ct. New York Co.).

¶ 28. This section does not provide authority to award attorney's fees to a complainant's private attorney where the complainant has filed a complaint with the Commission. Comm'n on Human Rights ex rel. Manning v. HealthFirst, LLC, OATH Index No. 462/05 (Mar. 15, 2006), adopted, Comm'n Dec. (May 10, 2006).

¶ 29. The State Human Rights Law applies only to sexual orientation discrimination claims arising on or after January 16, 2003 (Exec. Law Sec. 296(1)(a)). Thus, where a complainant allegedly suffered discrimination on the basis of sexual orientation during the year 2002, he does not get the benefit of the state human rights law. Moreover, where the cause of action arose in Nassau County, he cannot use the City Human Rights Law. Wilder v. Newman, 167 Fed. Appx. 828 (2nd Cir. 2006).

¶ 30. Attorneys' fees for successful highly experienced and effective counsel in discrimination cases can run as high as $550 per hour. It is arguable that attorneys' fees should be reduced where only some of their claims were successful. However, if the work done in connection with the successful claims is inextricably intertwined with the work performed on the unsuccessful claims, the court may award the entire fee. The court also held that the rate of interest on a back pay claim under the City Human Rights Law (in federal court on the basis of diversity jurisdiction) is nine percent, the normal New York rate. Insinga v. Cooperative Centrale Raiffeisen Boerenleenbank, 478 F.Supp.2d 508 (S.D.N.Y. 2007).

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NYC Administrative Code 8-602

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 6 DISCRIMINATORY HARASSMENT OR VIOLENCE*23

§ 8-602 Civil action to enjoin discriminatory harassment or violence; equitable remedies.

a. Whenever a person interferes by threats, intimidation or coercion or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any person of rights secured by the constitution or laws of the United States, the constitution or laws of this state, or local law of the city and such interference or attempted interference is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, whether children are, may or would be residing with such victim, marital status, partnership status, disability, or alienage or citizenship status as defined in chapter one of this title, the corporation counsel, at the request of the city commission on human rights or on his or her own initiative, may bring a civil action on behalf of the city for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

b. An action pursuant to subdivision a may be brought in any court of competent jurisdiction.

c. Violation of an order issued pursuant to subdivision a of this section may be punished by a proceeding for contempt brought pursuant to article nineteen of the judiciary law and, in addition to any relief thereunder, a civil penalty may be imposed not exceeding ten thousand dollars for each day that the violation continues.

HISTORICAL NOTE

Section amended L.L. 11/1993 § 13, eff. Jan. 22, 1993

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Subd. a amended L.L. 85/2005 § 9, eff. Oct. 3, 2005. [See § 8-102 Note 2]

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NYC Administrative Code 8-603

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 6 DISCRIMINATORY HARASSMENT OR VIOLENCE*23

§ 8-603 Discriminatory harassment; civil penalties.

a. No person shall by force or threat of force, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, partnership status, disability or alienage or citizenship status, as defined in chapter one of this title.

b. No person shall knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, partnership status, or whether children are, may be, or would be residing with such victim, disability or alienage or citizenship status, as defined in chapter one of this title.

c. Any person who violates subdivision a or b of this section shall be liable for a civil penalty of not more than one hundred thousand dollars for each violation, which may be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction.

HISTORICAL NOTE

Section amended L.L. 85/2005 § 10, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Section amended L.L. 11/1993 § 13, eff. Jan. 22, 1993

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-604

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 6 DISCRIMINATORY HARASSMENT OR VIOLENCE*23

§ 8-604 Disposition of civil penalties.

Any civil penalties recovered by the corporation counsel pursuant to this chapter shall be paid into the general fund of the city.

HISTORICAL NOTE

Section amended L.L. 11/1993 § 13, eff. Jan. 22, 1993

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-701

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 7 DISCRIMINATORY BOYCOTTS

§ 8-701 Legislative declaration.

Boycotts or blacklists that are based on a person's race, color, creed, age, national origin, alienage or citizenship status, marital status, partnership status, gender, sexual orientation, or disability pose a menace to the city's foundation and institutions. In contrast to protests that are in reaction to an unlawful discriminatory practice, connected with a labor dispute or associated with other speech or activities that are protected by the first amendment discriminatory boycotts cause havoc, divide the citizenry and do not serve a legitimate purpose. The council declares that discriminatory boycotts are a dangerously insidious form of prejudice and hereby establishes a procedure for expeditiously investigating allegations of this type of prejudice, assuring that the council and mayor are duly alerted to the existence of such activity and combating discriminatory boycotts or blacklists.

HISTORICAL NOTE

Section amended L.L. 85/2005 § 11, eff. Oct. 3, 2005. [See § 8-102 Note 2]

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-702

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 7 DISCRIMINATORY BOYCOTTS

§ 8-702 Definitions.

When used in this chapter

(1) The term "discriminatory boycott or blacklist" means any act that is an unlawful discriminatory practice under subdivision eighteen of section 8-107 of chapter one of this title.

(2) The term "commission" means the New York city commission on human rights.

(3) The term "council" means the council of the city of New York.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-703

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 7 DISCRIMINATORY BOYCOTTS

§ 8-703 Investigative reporting requirements.

The following requirements shall apply to all complaints alleging that a discriminatory boycott or blacklist is occurring:

(1) The commission shall begin an investigation within twenty-four hours of the filing of a complaint which alleges that a discriminatory boycott or blacklist is occurring.

(2) Within three days after initiating such an investigation, the commission shall file a written report with the mayor. The report shall state:

(a) the allegations contained in the complaint;

(b) whether the commission has reason to believe a discriminatory boycott or blacklist is taking place; and

(c) steps the commission has taken to resolve the dispute.

(3) If it is stated within the report described in subdivision two of this section that the commission has reason to believe that a discriminatory boycott or blacklist has taken place, within thirty days after filing such report, the commission shall file a second report with the mayor and the council. This second report shall contain:

(a) a brief description of the allegations contained in the complaint;

(b) a determination of whether probable cause exists to believe a discriminatory boycott or blacklist is taking

place;

(c) a recitation of the facts that form the basis of the commission's determination of probable cause; and

(d) if the boycott or blacklist is continuing at the date of the report, a description of all actions the commission or other city agency has taken or will undertake to resolve the dispute.

(4) If a finding of probable cause is not contained in the report required by subdivision three of this section and the boycott or blacklist continues for more than twenty days subsequent to the report's release, then, upon demand of the mayor or council the commission shall update such report. Report updates shall detail:

(a) whether or not the commission presently has probable cause to believe a discriminatory boycott or blacklist is taking place; and

(b) all new activity the commission or other city agency has taken or will undertake to resolve the dispute.

(5) If the commission determines that the disclosure of any information in a report required by this section may interfere with or compromise a pending investigation or efforts to resolve the dispute by mediation or conciliation, it shall file the report without such information and state in the report the reasons for omitting such information.

HISTORICAL NOTE

Section added L.L. 39/1991 § 2, eff. Sept. 16, 1991

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NYC Administrative Code 8-801

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-801 [Short title.]**25

This local law shall be known as the "access to reproductive health services act."

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-802

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-802 Definitions.

For the purposes of this chapter:

a. "Reproductive health care facility" shall mean any building, structure or place, or any portion thereof, at which licensed, certified, or otherwise legally authorized persons provide health care services or health care counseling relating to the human reproductive system.

b. "Person" shall mean an individual, corporation, not-for-profit organization, partnership, association, group or any other entity.

c. "Obstruct or block" shall mean to physically hinder, restrain, impede, strike, shove, grab, kick or otherwise subject a person to unwanted physical contact, or attempt to do the same.

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-803

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-803 Prohibition of activities to prevent access to reproductive health services.

a. It shall be unlawful for any person, with the intent to prevent any other person from obtaining or rendering, or assisting in obtaining or rendering, any reproductive health care service or counseling (1) to physically obstruct or block such other person from entering into or exiting from the entryway or exit of a reproductive health care facility, or the premises in which such a facility is located; (2) to follow and harass such other person in or about a public place or places or to engage in a course of conduct or repeatedly commit acts when such behavior places such other person in reasonable fear of physical harm; or (3) to physically damage a reproductive health care facility so as to significantly disrupt its operation, or attempt to do the same.

b. Violations. Any person who shall violate any provision of subdivision a of this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars or imprisonment not to exceed six months, or both, for a first conviction under this section. For a second and each subsequent conviction under this section, the penalty shall be a fine not to exceed five thousand dollars or imprisonment not to exceed one year, or both.

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

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Administrative Code of the City of New York

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NYC Administrative Code 8-804

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-804 Civil cause of action.

Any person whose ability to obtain or render, or assist in obtaining or rendering reproductive health care or counseling, has been interfered with in violation of paragraphs one or two of subdivision (a) of section 8-803, and any owner or operator of a reproductive health care facility or owner of premises in which such a facility is located, where there has been a violation of subdivision (a) of section 8-803, may bring a civil action in any court of competent jurisdiction for any or all of the following relief:

1. injunctive relief;

2. treble the amount of actual damages suffered as a result of such violation, including where applicable, damages for pain and suffering and emotional distress, or damages in the amount of five thousand dollars, whichever is greater; and

3. attorneys' fees and costs.

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

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Administrative Code of the City of New York

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NYC Administrative Code 8-805

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-805 Civil action by city of New York to enjoin interference with access to reproductive health services.

The corporation counsel may bring a civil action on behalf of the city in any court of competent jurisdiction for injunctive and other appropriate equitable relief in order to prevent or cure a violation of subdivision a of section 8-803.

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-806

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-806 Joint and several liability.

If it is found, in any action brought pursuant to the provisions of this chapter, that two or more of the named defendants acted in concert pursuant to a common plan or design to violate any provision of subdivision a of section 8-803, such defendants shall be held jointly and severally liable for any fines or penalties imposed or any damages awarded.

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

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Administrative Code of the City of New York

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NYC Administrative Code 8-807

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 8 PREVENTION OF INTERFERENCE WITH REPRODUCTIVE HEALTH SERVICES*24

§ 8-807 Construction.

a. No provision of this chapter shall be construed or interpreted so as to limit the right of any person or entity to seek other available criminal penalties or civil remedies. The penalties and remedies provided under this chapter shall be cumulative and not exclusive.

b. No provision of this chapter shall be construed or interpreted so as to prohibit expression protected by the First Amendment of the Constitution of the United States or section eight of article one of the Constitution of the State of New York.

c. No provision of this chapter shall be construed or interpreted so as to limit the lawful exercise of any authority vested in the owner or operator of the reproductive health care facility, the owner of the premises in which such facility is located, or a law enforcement officer of New York City, New York State or the United States acting within the scope of his or her official duties.

HISTORICAL NOTE

Section added L.L. 3/1994 § 2, eff. Apr. 29, 1994

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-901

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-901 Short Title.

This local law shall be known as the "Victims of Gender-Motivated Violence protection Act".

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-902

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-902 Declaration of Legislative Findings and Intent.

Gender-motivated violence inflicts serious physical, psychological, emotional and economic harm on its victims. Congressional findings have documented that gender-motivated violence is widespread throughout the United States, representing the leading cause of injuries to women ages 15 to 44. Further statistics have shown that three out of four women will be the victim of a violent crime sometime during their lives, and as many as four million women a year are victims of domestic violence. Senate hearings, various task forces and the United States Department of Justice have concluded that victims of gender-motivated violence frequently face a climate of condescension indifference and hostility in the court system and have documented the legal system's hostility towards sexual assault and domestic violence claims.

Recognizing this widespread problem, Congress in 1994 provided victims of gender-motivated violence with a cause of action in federal court through the Violence Against Women Act (VAWA) (42 USC §13981). In a May 15, 2000 decision, the United States Supreme Court held that the Constitution provided no basis for a federal cause of action by victims of gender-motivated violence against their perpetrators either under the Commerce Clause or the Equal Protection Clause of the Fourteenth Amendment. In so ruling the Court held that it could "think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims."

In light of the void left by the Supreme Court's decision, this Council finds that victims of gender-motivated violence should have a private right of action against their perpetrators under the Administrative Code. This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence.

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-903

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-903 Definitions.

For purposes of this chapter:

a. "Crime of violence" means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction.

b. "Crime of violence motivated by gender" means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-904

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-904 Civil Cause of Action.

Except as otherwise provided by law, any person claiming to be injured by an individual who commits a crime of violence motivated by gender as defined in section 8-903 of this chapter, shall have a cause of action against such individual in any court of competent jurisdiction for any or all of the following relief:

1. compensatory and punitive damages;
2. injunctive and declaratory relief;
3. attorneys' fees and costs;
4. such other relief as a court may deem appropriate.

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-905

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-905 Limitations.

a. A civil action under this chapter must be commenced within seven years after the alleged crime of violence motivated by gender as defined in section 8-903 of this chapter occurred. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the civil procedure law and rules, a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to seven years after the inability to commence the action ceases.

b. Except as otherwise permitted by law, nothing in this chapter entitles a person to a cause of action for random acts of violence unrelated to gender or for acts that cannot be domonstrated, by preponderance of the evidence, to be motivated by gender as defined in Section 8-903.

c. Nothing in this section requires a prior criminal complaint, prosecution or conviction to establish the elements of a cause of action under this chapter.

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

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NYC Administrative Code 8-906

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-906 Burden of Proof.

Conviction of a crime arising out of the same transaction, occurrence or event giving rise to a cause of action under this chapter shall be considered conclusive proof of the underlying facts of that crime for purposes of an action brought under this chapter. That such crime was a crime of violence motivated by gender must be proved by a preponderance of the evidence.

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-907

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 9*28 ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-907 Severability.

If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

HISTORICAL NOTE

Section added L.L. 73/2000 § 1, eff. Dec. 19, 2000.

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NYC Administrative Code 8-1001

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1001 Short title.

This chapter shall be known and may be cited as the "Equal Access to Human Services Act of 2003."

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10 footnote]

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Administrative Code of the City of New York

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NYC Administrative Code 8-1002

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§8-1002 Definitions.

For purposes of this chapter, the following terms have the following meanings:

a. "Agency" means the human resources administration/department of social services, including any part, subdivision, field office or satellite facility thereof.

b. "Agency office" means a job center, food stamp office, medical assistance program office, or other part, subdivision, field office or satellite facility of the agency or agency contractor office that performs a covered function.

c. "Agency contractor" means any contractor that enters into a covered contract with the agency.

d. "Agency personnel" means bilingual personnel or interpreter personnel who are employees of the agency.

e. "Bilingual personnel" means agency, agency contractor, or other contractor employees, not including work experience program participants, who provide language assistance services in addition to other duties.

f. "Contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor or services.

g. "Contractor" means any individual, sole proprietorship, partnership, joint venture or corporation or other form of doing business that enters into a contract.

h. "Covered contract" means a contract between the agency and a contractor to perform a covered function.

i. "Covered function" means any of the following functions:

1. Benefits or services offered or provided at agency offices;

2. Benefits or services provided by agency contractors to provide employment services in connection with participation of individuals engaged in activities required by sections 335 through 336-c of the social services law;

3. Home care services; and

4. Determinations regarding eligibility for subsidized child care.

j. "Covered language" means Arabic, Chinese, Haitian Creole, Korean, Russian or Spanish.

k. "Document" means the following forms and notices developed by the agency:

i. Application forms and corresponding instructional materials;

ii. Notices that require a response from the participant;

iii. Notices that concern the denial, termination, reduction, increase or issuance of a benefit or service;

iv. Notices regarding the rights of participants to a conference and fair hearing; and

v. Notices describing regulation changes that affect benefits.

l. "Interpretation services" means oral, contemporaneous interpretation of oral communications.

m. "Interpreter personnel" means agency, agency contractor, or other contractor employees, not including work experience program participants, whose sole responsibility is to provide language assistance services.

n. "Language assistance services" means interpretation services and/or translation services provided by bilingual personnel or interpreter personnel to a limited English proficient individual in his/her primary language to ensure their ability to communicate effectively with agency or agency contractor personnel.

o. "Limited English proficient individual" means an individual who identifies as being, or is evidently, unable to communicate meaningfully with agency or agency contractor personnel because English is not his/her primary language.

p. "Other covered agency" means the administration for children's services; the department of homeless services; the department of health and mental hygiene; and all functions served by the agency that are not covered functions, including any part, subdivision, field office or satellite facility thereof.

q. "Primary language" means the language in which a limited English proficient individual chooses to communicate with others.

r. "Translation services" means oral explanation or written translation of documents.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10

footnote]

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NYC Administrative Code 8-1003

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1003 Language assistance services.

a. The agency and all agency contractors shall provide free language assistance services as required by this chapter to limited English proficient individuals.

b. When a limited English proficient individual seeks or receives benefits or services from an agency office or agency contractor, the agency office or agency contractor shall provide prompt language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The agency office or agency contractor shall meet its obligation to provide prompt language assistance services for purposes of this subdivision by ensuring that limited English proficient individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.

c. Where an application or form requires completion in English by a limited English proficient individual for submission to a state or federal authority, the agency or agency contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter.

d. The agency shall make all reasonable efforts to provide language assistance services in person by bilingual personnel.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10

footnote]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-1004

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1004 Translation of Documents.

The agency shall translate all documents into every covered language as of the first day of the sixtieth month after the effective date of the local law that added this chapter.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10 footnote]

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NYC Administrative Code 8-1005

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1005 Notices.

a. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by the agency or an agency contractor, the agency or agency contractor shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the agency or agency contractor shall inform the individual in his/her primary language of the right to free language assistance services.

b. The agency shall provide in all application and recertification packages an $8^{1}/_{2}$ inch × 11 inch or larger notice advising participants that free language assistance services are available at its offices and where to go if they would like an interpreter. This notice shall appear in all covered languages.

c. The agency and each agency contractor shall post conspicuous signs in every covered language at all agency offices and agency contractor offices informing limited English proficient individuals of the availability of free language assistance services.

d. Other covered agencies. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by an other covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10

footnote]

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NYC Administrative Code 8-1006

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1006 Screening and training.

The agency and each agency contractor shall screen bilingual personnel and interpreter personnel for their ability to provide language assistance services. The agency and each agency contractor shall provide annual training for bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10 footnote]

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NYC Administrative Code 8-1007

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1007 Recordkeeping.

a. No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, the agency and each agency contractor shall maintain records of the primary language of every individual who seeks or receives benefits or services from the agency or agency contractor. At a minimum, the agency and each agency contractor shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by agency, agency contractor or contractor, agency office, type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the agency, disaggregated by language translated or interpreted by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

b. Other covered agencies. No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance

required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10

footnote]

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-1008

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1008 Implementation.

a. The agency shall phase in language assistance services for covered functions as follows:

1. As of the first day of the twenty-fourth month after the effective date of the local law that added this chapter, no less than 20% of covered functions provided by agency offices.

2. As of the first day of the forty-eighth month after the effective date of the local law that added this chapter, no less than 40% of covered functions provided by agency offices.

3. As of the first day of the sixtieth month after the effective date of the local law that added this chapter, 100% of covered functions provided by agency offices.

b. Contractors.

1. In all covered contracts entered into or renewed after January 1, 2005, the contractor shall certify that it shall make available language assistance services and maintain and provide access to records as required by this chapter.

2. Every covered contract must contain a provision in which the contractor acknowledges that the following responsibilities constitute material terms of the contract:

(a) to provide language assistance services as required by this chapter; (b) to comply with the recordkeeping requirements set forth in this chapter;

(c) to provide the city access to its records for the purpose of audits or investigations to ascertain compliance with the provisions of this section, to the extent permitted by law; and

(d) to provide evidence to the city that the contractor is in compliance with the provisions of this section, upon request.

3. If an agency contractor enters into a subcontract agreement to provide any benefits or services under a covered contract, that subcontract will be considered a covered contract for purposes of this section and the provisions of this section will bind the subcontractor. Each contractor is required to include the contract provision set forth in paragraph 2 of this subdivision in any such subcontract agreement.

c. Implementation plans. Within eight months of the effective date of the local law that added this chapter, the agency and each other covered agency shall develop an implementation plan that describes how and when the agency or other covered agency will meet the requirements imposed by this chapter. The agency and each other covered agency shall publish a copy of its implementation plan.

d. Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter before the date set forth in subdivision a of this section. The implementation update for every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained by this chapter.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10

footnote]

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-1009

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1009 Rules.

The agency and each other covered agency shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of this chapter.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10 footnote]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-1010

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1010 Miscellaneous.

a. Nothing in this chapter precludes the agency or an agency contractor from providing language assistance services beyond those required by this chapter.

b. Nothing in this chapter precludes a limited English proficient individual from having an adult volunteer, relative, spouse or domestic partner accompany him/her to provide language assistance services with the agency office or agency contractor, provided that the agency office or agency contractor informs a limited English proficient individual of the availability of free language assistance services and the agency remains responsible for ensuring effective communication.

c. This chapter does not apply to any contract with an agency contractor entered into or renewed prior to January 1, 2005.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10

footnote]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 8-1011

Administrative Code of the City of New York

Title 8 Civil Rights

CHAPTER 10 EQUAL ACCESS TO HUMAN SERVICES*29

§ 8-1011 Severability.

If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which shall continue in full force and effect.

HISTORICAL NOTE

Section added L.L. 73/2003 § 2, eff. Feb. 5, 2004. [See Chapter 10 footnote]

NOTE

The following four City Departments published plans to implement Local Law 73/2003.

City Record Oct. 7, 2004

ADMINISTRATION FOR CHILDREN'S SERVICES

Local Law 73 Implementation Plan

Introduction

This implementation plan presents the steps that the New York City Administration for Children's Services (ACS) will take in order to ensure compliance with Local Law 73 of 2003.

This plan also shows ACS's commitment to provide meaningful access to all individuals seeking benefits and services, including individuals with limited English proficiency. Individuals should not face obstacles to receiving social services for which they may be eligible because they do not speak English. The purpose of this plan is to ensure that persons eligible for social services receive them and to avoid the possibility that a person who attempts to access services will face discrimination based on the language he or she speaks.

It is the policy of the City of New York to promote access to its services to all City residents who are in need of and entitled to them. ACS, therefore, provides child welfare and child care services to the children and families of New York City without regard to immigration status or proficiency in English.

The mission of ACS is to ensure the safety of all the children of New York, which includes those with limited proficiency in English. ACS believes that the safety, permanency and well-being of children is best achieved through a Neighborhood Based Services approach that seeks to provide every child and family with culturally, linguistically and need-driven services within their communities. ACS is committed to providing high-quality child welfare and child care services and enhancing family engagement in these services. Promoting access to services through language assistance is critical for workers to interact effectively with families and improve outcomes for the children and families.

ACS is making progress in its efforts to provide limited English-proficient clients with timely access to our services through various methods, including using a contracted interpretation and translation service, and providing forms and important information documents in various languages.

Mayor Michael R. Bloomberg signed Local Law 73 into law on December 22, 2003 to ensure access of City services to all New Yorkers. Local Law 73 of 2003 or, the "Equal Access to Human Services Act of 2003", seeks to increase access to critical City services for New Yorkers whose primary language is not English. Many elements of Local Law 73 pertain exclusively to the Human Resources Administration (HRA), which is listed as "[t]he Agency" for purposes of this law. ACS, the Department of Homeless Services (DHS) and the Department of Health and Mental Hygiene (DOHMH) are listed as "other covered agencies" in Local Law 73; as such, ACS, DHS, and DOHMH have specific obligations pursuant to Local Law 73 that are different from those enumerated for HRA.

1. Indentification of Primary Language

Relevent Portion of Law:

Upon initial contact, whether by telephone or in person with an individual seeking benefits and/or services offered by an other covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

"Primary language" means the language in which a limited English-proficient individual chooses to communicate with others.

Implementation Plan:

A. ACS created the ACS Language Identification Card in 2004. The ACS Language Identification Card, which is laminated for extended use, contains translation in twenty-eight languages in order to facilitate language identification. The languages selected for inclusion on the card represent the most commonly encountered languages by ACS child welfare staff.

B. The ACS Language Identification Card was distributed in May 2004 to all staff members at ACS who have

direct contact with individuals seeking ACS benefits and/or services, along with the recently published Administration for Children's Services Immigration and Language Guidelines for Child Welfare Staff ("Guidelines"). Both tools were created to assist child welfare staff in meeting the unique challenges posed by the diverse needs of New York City's immigrant and limited English proficient communities and to increase access to ACS services for all New York City children and families. The last two pages of the Guidelines contain a reproduction of the ACS Language Identification Card.

C. The Guidelines include specific instructions for complying with Local Law 73. These instructions state that upon initial contact with a family, ACS child welfare staff are to determine the primary language of the family members through utilization of the ACS Language Identification Card, and further they are to notify the individuals of the available language assistance services and to offer them an interpreter. ACS will issue to all affected program areas a directive reiterating these requirements and specifying the data collection requirements related to Local Law 73 by the end of calendar year 2004.

D. ACS is exploring the possibility of and necessary resources for expanding its current interpretation and translation contract to offer language assistance services to help staff identify a client's language when the ACS Language Identification Card is ineffective because a client's primary language falls outside of those represented on the ACS Language Identification Card and/or the client is illiterate.

2. Notice Regarding Free Language Assistance

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by an other covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

Implementation Plan:

A. When an individual is determined to have a primary language other than English, staff will inform the individual of available language assistance services in the individual's primary language by using the Language Identification Card, directly using the individual's parimary language, or using the interpreter service.

B. As needed, ACS will post multilingual signage in those offices and other appropriate service sites where clients are served advising clients of the availability of language assistance.

3. Language Assistance Services

Implementation Plan:

A. Once the primary language of a child or family served by ACS is determined, interpretation and translation services can be arranged through ACS's existing contracts which are available to ACS's Division of Child Protection (DCP), and have been used by other ACS divisions based on identified need. An internal memorandum was issued November 3, 2003 outlining the procedures for obtaining interpretation and translation services in over 140 languages. These services are available twenty-four hours a day, seven days a week for Child Protective Services staff within DCP.

B. ACS is in the process of determining the feasibility of and necessary resources for expanding the current language assistance contract to serve the remainder of the agency. In accordance with an expanded contract, ACS will develop and implement a training program for the remainder of the ACS direct service staff regarding language access services and ACS will update and reissue the internal memorandum for agency-wide distribution on availability of language assistance services.

4. Quality Assurance Measures

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Implementation Plan:

ACS's Office of Quality Improvement, in conjunction with other relevant program areas, will devise a plan by end of calendar year 2005 to establish a methodology and process for assuring that primary language determinations are recorded property and that documents are translated accurately and disseminated properly.

5. Training

Implementation Plan:

A. To ensure that the ACS Language Identification Card is used and that interpretation/translation services are offered to children and families, ACS has incorporated Local Law 73 directives into the Common Core training, which is provided through the Satterwhite Academy, ACS's training center for its child welfare staff.

The following steps have been taken to introduce the Immigration and Language Guidelines for Child Welfare Staff and facilitate its implementation into casework practice within the following curricula of ACS's trainings:

o Common Core, Supervisory Common Core, and the CPS Specialty:

1. The Culture modules, or appropriate sections of the curriculum, were enhanced with an introduction and review of the Immigration and Language Guidelines for Child Welfare Staff booklet

2. Tools in the booklet, such as the language Identification Care, are referenced and discussed

3. Memorandum-the official Immigration and Language Guidelines for Child Welfare Staff memorandum on Special Immigrant Juvenile Status is distributed and discussed

4. The form, Referral for Foster care Immigration Law Services, is provided as a handout and discussed

5. The ACS Immigration and Language Issues Reference List is provided separately as a handout, referenced and discussed

6. The Immigration and Language Guidelines for Child Welfare Staff booklet is distributed and displayed on the resource table

7. Immigration and Language Guidelines are referenced in the Legal part of the curricula, presented by training

attorney

o Immigrant Issues curriculum:

1. Immigration and Language Guidelines for Child Welfare Staff is the focal point of the training

2. Official ACS policy on immigration and language presented and practiced.

3. Immigration and Language Guidelines for Child Welfare Staff booklet is distributed and discussed

o Core phase II, Legal Issues training:

1. Legal aspects of the Immigration and Language Guidelines for Child Welfare Staff are presented, including Special Immigrant Juvenile Status

2. Immigration and Language Guidelines for Child Welfare Staff booklet is distributed

o "Resource Table in Classrooms"

1. Immigration and Language Guidelines for Child Welfare Staff booklet is available in sufficient amount in every classroom during Core phase II trainings

A. As a next step, the Satterwhite Academy will conduct a debriefing of all training and curriculum staff on the Immigration and Language Guidelines and related child welfare policies. The Academy will review all remaining curricula and determine where revisions related to LL 73 are appropriate.

B. ACS will develop a plan to ensure the training of all staff that have direct contact with individuals seeking ACS benefits and/or services. This training plan will be developed by the end of calendar year 2005.

6. Recordkeeping and Monitoring

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Implementation Plan:

A. ACS Management Information Systems (MIS) proposes to implement an automated recording and reporting system to support Local Law 73. When appropriate analyst and programming resources become available, MIS would launch a project to implement a long-term solution for Local Law 73 record-keeping and reporting requirements.

B. The project will follow standard systems development life cycle, which includes six phases: initiation,

analysis, design, construction, implementation, and maintenance.

C. In conjunction with analysis and implementation of the long-term system, ACS will advance a phased approach to comply with Local Law 73 requirements. A description of short-term, interim and long-term plans follows:

1. Short-Term Plan

During Local Law 73 implementation meetings, program area representatives identified at which points of contact with individuals seeking ACS services and/or benefits would require Local Law 73 notification and record-keeping.

The short-term plan for record-keeping, scheduled to start on January 1, 2005, includes the following steps, completed and in-progress.

o DCP staff will be required to complete the language field in Connections, the statewide child welfare information system. This would collect data on a significant portion of the population that ACS serves.

The New York State Office of Children and Family Services ("OCFS") has been notified that ACS required their assistance in complying with Local law 73. MIS is doing an impact assessment in conjunction with the OCFS regarding this. Specifically, ACS is asking that the additional languages contained in the ACS Language Identification Card be captured in Connections. Current languages covered are: Native American language, Chinese, Creole, English, French, German, Hindi, Hebrew, Italian, Japanese, Korean, Polish, Portuguese, Russian, American Sign Language, Spanish, and Vietnamese.

o MIS and other relevant ACS program areas will identify and develop mechanisms to comply with Local Law 73 recordkeeping requirements by the required time frames. Staff will be trained in accordance with these processes.

o MIS will require analysts and programmers for this project.

2. Interim Plan

Reporting of data collected from January 1, 2005 through December 31, 2005 will begin on April 1, 2006. MIS will work with the program areas to devise a method for collecting data that will begin to be collected on January 1, 2005. Updates will appear in the Implementation Update, scheduled to be distributed on or about April 1, 2005.

3. Long Term Plan

Resources permitting, MIS can launch a project for development of the Local Law 73 record-keeping and reporting project. The project will have six phases: Initiation, analysis, design, construction, implementation, and maintenance.

MIS has started analysis by compiling the points of contact for ACS program staff. During the next phase MIS analysts would work with program areas to further define how contact occurs, which current data processing systems are used, and which data processing systems are in development mode.

In the second phase, analysis, the user determines what he or she needs or wants the system to do. At this stage, the MIS analyst will work with program areas as they define the optimal method for capturing Local Law 73 required data at points of contact.

The third phase, design, determines how the user will achieve his or her objectives. The program area team members and MIS will participate in defining workflow, refining the need for data elements, system requirements and reports.

There is an on-going agency-wide project to build an Integrated Case Management System at ACS, in conjunction with the releases of Connections and phasing out of legacy ACS systems. The Local Law 73 requirements will be incorporated in this planning.

During MIS's preliminary investigation of system needs to capture Local Law 73 data elements, MIS has referred to extensive work done previously for the Child Protective Services (CPS) Intake and Assignment Processes. A review of this analysis reveals the systems currently in use as Connections, WMS/NYS, WMS/NYC, ACCIS, ACRS +, and CCRS. ACS MIS will work with OCFS to coordinate requirements with new releases of Connections and phasing out of WMS/NYS, WMS/NYC and CCRS. Request for this has been made to OCFS in Albany. These systems do not collect child care data. The local system for child care, ACCIS, is being analyzed to determine what modifications are required.

Building on analysis that preceded this project, the long-term project will consult with and revise the documents that identify how data are collected and processed at several key points in the Intake and Assignment process. These documents include information about forms used and screens used in the CPS Intake Process.

Once the data collection system is in place, training on the system will ensue for ACS employees who have direct contact with individuals seeking ACS services or benefits.

D. For tracking of bilingual personnel, ACS will record and track bilingual personnel hired and develop a registry of bilingual personnel that can potentially be used as translators at their locations. The Office of Personnel will work with the relevant program areas regarding placement of bilingual personnel in critical areas of contacts. ACS will modify the existing telephone directory to include fields needed to track personnel and develop procedures. A field will be added to record language spoken. ACS will develop a procedure to identify bilingual personnel in order to record this data. ACS anticipates that the recording and sorting of this data will be operational by 2006.

7. Coordination

ACS has created an inter-divisional workgroup to coordinate the implementation of Local Law 73. ACS is also exploring resources to enable the creation of a staff position for immigration and language issues which will include responsibility for ensuring compliance with Local Law 73. This staff member will also coordinate data collection and be responsible for drafting and finalizing implementation updates and the reports that are to be published.

8. Implementation Updates and Annual Reports

Relevant Portion of Law:

Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter before the date set forth in subdivision a of this section. The implementation update for every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained by this chapter.

Implementation Plan:

ACS's Local Law 73 Implementation Workgroup will continue to meet regularly to refine and further the

subsequent implementation plans and address future issues that would include implementation updates and publishing of annual reports.

City Record Oct. 7, 2004

HOMELESS SERVICES DEPARTMENT

Local Law 73 of 2003 Preliminary

Implementation Plan

Introduction

This implementation plan presents the steps that the New York City Department of Homeless Services (DHS) will take in order to ensure compliance with Local Law 73 of 2003.

This plan also shows DHS' commitment to provide meaningful access to all individuals seeking benefits and services, including individuals with limited English proficiency. Individuals should not face obstacles to receiving social services for which they may be eligible because they do not speak English. The purpose of this plan is to ensure that persons eligible for social services receive them and to avoid the possibility that a person who attempts to access services will face discrimination based on the language he or she speaks.

DHS serves a diverse population encompassing people with many different primary languages. Some of these individuals are unable to communicate in English. It is the responsibility of DHS staff to communicate to applicants and clients their rights and responsibilities as well as DHS policies.

Mayor Michael R. Bloomberg signed Local Law 73 into law on December 22, 2003 to ensure access of City services to all New Yorkers. Local Law 73 of 2003 or, the "Equal Access to Human Services Act of 2003", seeks to increase access to critical City services for New Yorkers whose primary language is not English. Many elements of Local Law 73 pertain exclusively to the Human Resources Administration ("HRA"), which is listed as "[t]he Agency" for purposes of this law. ACS, the Department of Homeless Services ("DHS") and the Department of Health and Mental Hygiene ("DOHMH") are listed as "other covered agencies" in Local Law 73; as such, ACS, DHS, and DOHMH have specific obligations pursuant to Local Law 73 that are different from those enumerated for HRA.

DHS' language access policy is not limited to the measures set forth in this plan. Work is currently underway on a broader policy that will formalize DHS' commitment to access for the culturally and linguistically diverse communities of New York City. The upcoming policy will also highlight our commitment to protecting the privacy of our clients and the confidentiality of any data we may collect.

1. Identification of Primary Language

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by another covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

"Primary language" means the language in which a limited English proficient individual chooses to communicate with others.

Implementation Plan:

A. DHS workers shall screen all applicants for shelter to determine the primary language of the applicant.

B. When an individual is determined to have a primary language other than English, personnel shall inform the individual of available language assistance services in the individual's primary language by using the Language Identification Card, directly using the individual's primary language, or using an interpreter service.

C. If a worker has difficulty determining a client's primary language, the worker should use the Language Identification Card.

D. Once the applicant/client indicates he/she needs an interpreter, the DHS worker should immediately document the applicant's native language on the screening sheet.

2. Notice Regarding Free Language Assistance

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by an other covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

Implementation Plan:

A. DHS facilities shall post and maintain signage regarding the legal right to free language assistance by December 2007.

B. DHS will develop procedures to identify commonly encountered languages at individual sites by December 2007.

C. Signage will be translated into these commonly encountered languages and placed at all central points of contact, within the following intake centers: the Bronx Emergency Assistance Unit (EAU), the Adult Family Intake Center (AFIC), the Bellevue Adult facility for Men, and the adult women intake centers-Brooklyn Women's Assessment, Franklin Assessment Shelter, and Jamaica Armory Assessment.

D. Signage shall also be placed in all DHS shelter placement facilities. Signage should be posted at facility entrances and admitting and waiting areas.

3. Language Assistance Services

Implementation Requirements:

A. DHS will track language assistance requests to assess language assistance needs for particular facilities.

B. DHS will provide access to a private telephone interpretation service at all DHS facilities. A telephone in each facility will be designated for the use of this interpretation service. Designated telephones should have either speaker capability or equipped for the use of headsets.

C. Once the applicant/client indicates he/she needs an interpreter, DHS staff will immediately document the applicant's native language in the applicant/client's case record. Where possible DHS will assign the applicant to a bilingual caseworker who is fluent in the applicant/client's language.

D. Where a bilingual worker is not available, DHS staff may request assistance from a designated DHS Language Liaison.

E. If an appropriate interpreter still cannot be located the Language Liaison shall authorize the use of a private telephone interpretation service.

F. Personnel should never require an individual to use family members or friends as interpreters.

4. Quality Assurance Measures

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Plan Requirements:

A. DHS will devise quality assurance methods for testing the accuracy of primary language recording by October 2006.

B. DHS will provide quality assurance for translations through the selection of qualified vendors and the development of reference materials, to improve accuracy and consistency of translated documents by October 2006.

C. DHS will develop protocols to ensure proper dissemination of accurately translated materials to individuals in need of language assistance by December 2007.

5. Training

Plan Requirements:

A. DHS will train all appropriate personnel, including management, supervisors, and personnel who have direct contact with limited English proficient individuals, on protocol for delivery of language services by December 2007.

B. DHS will orient new staff and trainees on the availability of interpreter services by December 2007.

C. DHS will provide or contract to provide, training in how to elicit and record applicants'/clients' primary languages to all appropriate personnel, including management, supervisors and personnel who have direct contact with limited English proficient individuals. This training will be provided by October 2006.

D. Protocols will be developed for providing notification of the availability of interpretation services. The protocols will be disseminated throughout DHS and adapted for the needs of each program. This training will be provided by October 2006.

6. Recordkeeping and Monitoring

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the parimary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Plan Requirements:

A. DHS will maintain records of the primary language, race, and ethnicity of every individual served and the type of language assistance provided to clients.

B. DHS will maintain records of bilingual personnel disaggregated by language translated or interpreted by such personnel, as well as by office location.

C. DHS will perform periodic reviews to ensure that language assistance needs and requests are properly documented.

7. Coordination

A. DHS will designate a Language Assistance Coordinator to ensure compliance with Local Law 73 and this implementation plan.

8. Implementation Updates and Annual Reports

Relevant Portion of Law:

Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter before the date set forth in subdivision a of this section. The implementation update for every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained by this chapter.

Plan Requirements:

A. DHS will collect the above information from the covered programs, and produce an annual report, beginning 60 months from the effective date of the law.

B. Prior to the effective date for producing annual reports (60 months), DHS will produce implementation updates every year. These reports will provide updates about our implementation of the plan, and detail any changes in

the plan.

C. The implementation update for 2005 (which will be released in 2006), and all reports thereafter, will include information on the number of limited English proficient people served, disaggregated by language and by agency office.

City Record Oct. 25, 2004

HEALTH AND MENTAL HYGIENE DEPARTMENT

New York City Department of Health and Mental Hygiene

Local Law 73 Implementation Plan

Introduction

This implementation plan presents the steps that the New York City Department of Health and Mental Hygiene (DOHMH) will take in order to ensure compliance with Local Law 73 of 2003.

This plan also shows DOHMH's commitment to provide meaningful access to all individuals seeking benefits and services, including individuals with limited English proficiency. Individuals should not face obstacles to receiving social services for which they may be eligible because they do not speak English. The purpose of this plan is to ensure that persons eligible for social services receive them and to avoid the possibility that a person who attempts to access services will face discrimination based on the language he or she speaks.

The mission of DOHMH is to protect and promote the health and mental health of all New Yorkers, which includes those with limited proficiency in English. DOHMH currently strives to ensure that limited English proficient (LEP) clients receive meaningful and timely access to our services through various methods, including employing appropriate bilingual staff, providing intake forms and important health information documents in various languages, and using a contracted telephone interpretation service.

1. Identification of Primary Language

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by an other covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's parimary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

"Primary language" means the language in which a limited English proficient individual chooses to communicate with others.

Implementation Plan:

A. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by DOHMH, the employee shall determine the primary language of such individual and whether the person prefers an interpreter or translation assistance.

B. Employees should use Language Identification Cards to determine a client's primary language. Employees can ask the client to point to his or her primary language on the Language Identification Card. DOHMH will provide clinics and other appropriate service sites with Language Identification Cards. It is planned that all appropriate sites will have a supply of language identification cards by the end of calendar year 2005.

C. If an employee has difficulty determining a client's primary language, the employee shall first use the Language Identification Card and then, if necessary, shall contact the Language Assistance Coordinator of the telephonic interpretation service for assistance.

2. Notice Regarding Free Language Assistance

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by an other covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.

Implementation Plan:

A. Once the primary language of a client has been determined, using language identification cards or other appropriate means, the client shall be informed of his/her right to free language assistance services in his/her primary language by DOHMH staff or interpreters, or using the language identification card.

B. DOHMH will post multilingual signage in clinics and other appropriate service sites advising clients of the availability of language assistance. These posters will be made available by DOHMH Office of Cross Cultural Communications. The posters are available from our contracted telephone interpretation service. Signage is planned to be posted up in clinics by the end of calendar year 2005.

C. Protocols will be developed for answering telephone calls and providing notification of the availability of interpretation services. The protocols will be disseminated throughout DOHMH and adapted for the needs of each programs. This training will be provided by the end of calendar year 2007.

3. Language Assistance Services

Implementation Plan:

A. DOHMH will develop protocols for delivery of language services for LEP clients.

B. DOHMH Office of Cross-Cultural Communications will assembly and distribute a "Language Access Toolkit," including guidelines for staff providing service to LEP clientele and resources to facilitate communications during the encounter. Options will include direct service by bilingual staff, interpretation by staff, the DOHMH Volunteer Language Bank, and telephone interpretation. All sites will have access to telephone interpretation through the existing agency contract. Resources in the toolkit will include language identification tools, contact information for community organizations, and other references. Guidelines will also specify standard operating procedures for determining language preferences. Information contained in the toolkits will also be made available on the DOHMH intranet.

C. As staffing and available language skills will vary at each clinic site, each program will adapt the communications protocol to prioritize responses depending upon program or site-specific capacity. Guidelines will discuss benefits and caveats of various options. Community demographics, including information on languages spoken and immigrant populations represented in the catchment area, will be included.

D. DOHMH will distribute the Language Access Toolkit by July 2005.

E. DOHMH translates materials into multiple languages. As requested by individual programs and sometimes by other agencies, the Cross-Cultural Communications unit (CCC) solicits translations and review by qualified translators. In FY04, CCC translated over 300 documents, up from 230 in FY03. CCC works with its vendors and

clients to improve accuracy and appropriateness of Translations. In recent years, the agency has translated health materials into over 20 languages. Fact sheets on West Nile virus have been available in 17 languages. Other materials from Oral Health, School Health, and HealthStat have been produced in more than five languages. Individual bureaus attempt to develop materials that reflect the linguistic profile of its clientele. The TB Control Bureau provides materials in several languages including Spanish, Chinese, Haitian Creole, Russian, and French, and has added patient brochures in several new languages, including Hindi, Urdu, and Bengali. The agency recently licensed machine translation technology from the Pan American Health Organization to assist with the translation of health information into Spanish. All Health Bulletins and most press releases are now translated into Spanish and Chinese, and in some cases, other languages as deemed appropriate. The agency will improve multilingual access to its public website over the coming year.

4. Quality Assurance Measures

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Implementation Plan:

A. DOHMH will devise quality assurance methods for testing the accuracy of primary language recording.

B. DOHMH currently provides quality assurance for translations, through the selection of qualified vendors; reviews by independent translators; and the development of reference materials, such as glossaries, to improve accuracy and consistency of translated documents. DOHMH will also establish periodic reviews by language review panels for the most requested languages. Periodic review panels will be established by the end of calendar year 2005.

5. Training

Implementation Plan:

A. DOHMH will provide, or contract to provide, to all appropriate personnel in covered programs, training in how to elicit (using language identification cards) and record clients' primary languages. This training will be provided by the end of calendar year 2006.

B. Protocols will be developed for answering telephone calls and providing notification of the availability of interpretation services. The protocols will be disseminated throughout DOHMH and adapted for the needs of each programs. This training will be provided by the end of calendar year 2007.

C. DOHMH will train all appropriate personnel on protocol for delivery of language services.

6. Record Keeping and Monitoring

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language:

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Implementation Plan:

A. "Ongoing benefits and services." The Department's programs encompass areas of disease control, environmental health, epidemiology, health care access and improvement, health promotion and disease prevention, and mental hygiene services, serving the more than 8 million people who live in New York City. Certain programs see clients on an ongoing basis. Those programs will be covered by thius portion of the plan."[1]:

B. DOHMH programs that serve individuals seeking "ongoing benefits and services" shall maintain records of the primary language of every individual. Certain programs already track clients' primary languages. Other programs will change client intake procedures to track this information. Programs will also track the type of language assistance provided to clients.

C. Record Keeping of Bilingual/Interpreter Personnel. COHMH programs that serve individuals seeking "ongoing benefits and services" will keep records of the number of bilingual personnel disaggregated by language translated or interpreted by such personnel, as well as by office location.

[1] Many of DOHMH's services are contracted. Contracted services are not covered by the law.

7. Coordination

DOHMH will designate a Language Assistance Coordinator to ensure compliance with Local Law 73 and this implementation plan.

8. Implementation Updates and Annual Reports

Relevant Portion of Law:

Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter before the date set forth in subdivision a of this section. The implementation update for every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained

by this chapter.

Implementation Plan:

A. DOHMH will collect the above information from the covered programs, and produce an annual report, beginning 60 months from the effective date of the law.

B. Prior to the effective date for producing annual reports (60 months), DOHMH will produce implementation updates every year. These reports will provide updates about our implementation of the plan, and detail any changes in the plan.

9. Use of Friends & Family Members as Interpreters

It is DOHMH's policy that personnel should never require an individual to use family members or friends as interpreters.

City Record Oct. 25, 2004

HUMAN RESOURCES ADMINISTRATION DEPARTMENT

Local Law 73 Implementation Plan

Introduction

This implementation plan presents the steps that the New York City Human Resources Administration/Department of Social Services (HRA/DSS) has taken and will take in order to be in compliance with Local Law 73 of 2003. This plan is a continuation of HRA/DSS's commitment to provide meaningful access to all individuals seeking benefits and services, including individuals with limited English proficiency.

HRA/DSS has a long history of providing the public with language services assistance. In continuing this tradition of serving limited English proficient individuals within the City, HRA/DSS created a dedicated unit in 2000, the Office of Refugee and Immigrant Affairs (ORIA), to monitor the Agency's client contact points, centralize contract management of translation and interpretation contracts, assist program areas in drafting and implementing policies regarding service to limited English speaking ability (LESA) customers, contract for testing of prospective bilingual workers, and provide training to Agency staff on LESA related matters.

1. Identification of Primary Language

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by the agency or an agency contractor, the agency or agency contractor shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the agency or agency contractor shall inform the individual in his/her primary language of the right to free language assistance services.

"Primary language" means the language in which a limited English proficient individual chooses to communicate with others.

Implementation Plan:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by HRA/DSS, the employee shall determine the primary language of such individual and whether the person requires language assistance services.

Of those making the initial contact by telephone, the majority call 311 or HRA's InfoLine where bilingual staff are available and have access to telephone interpreter services for languages not spoken by staff.

For individuals presenting in person, and for whom the language is not immediately recognized, employees will utilize the Language Card to make the determination. The HRA Language Card Form W-194 (6/27/03) instructs employees, "If you do not know the language of the person who wants your help, use this card. The person can point to the language needed and you can arrange for an interpreter."

The Language Card then proceeds to ask in 17 languages (Albanian, Arabic, Bosnian, Simplified Chinese, Traditional Chinese, Creole, French, Hebrew, Hindi, Italian, Khmer, Korean, Russian, Spanish, Urdu, Vietnamese, and Yiddish), including the covered languages, "do you speak . . . please be seated. I will call an interpreter for you."

The Family Independence Administration (FIA), with assistance from ORIA, developed LESA procedures for staff at all Job Centers, Non Public Assistance Food Stamp Centers, and the Special Needs Region to determine the primary language and the need for language assistance by LESA applicants and clients. These procedures also can serve as a template for each Agency program area to adapt to its particular program specifications.

2. Notice Regarding Free Language Assistance

Relevant Portion of Law:

Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by the agency or an agency contractor, the agency or agency contractor shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the agency or agency contractor shall inform the individual in his/her primary language of the right to free language assistance services.

The agency shall provide in all application and recertification packages an $8^1/_2$ inch × 11 inch or larger notice advising participants that free language assistance services are available at its offices and where to go if they would like an interpreter. This notice shall appear in all covered languages.

The agency and each agency contractor shall post conspicuous signs in every covered language at all agency offices and agency contractor offices informing limited English proficient individuals of the availability of free language assistance services.

Implementation Plan:

A. The majority of HRA/DSS public offices currently have 11×17 posters stating inassistance. Signs are printed the following languages: English, Albanian, Arabic, Bosnian/Serbo-Croatian, Chinese, Haitian Creole, French, Hebrew, Hindi, Italian, Khmer, Korean, Russian, Spanish, Vietnamese, and Yiddish. "If you do not speak English, interpreting services are available. If you would like an interpreter and one has not been provided for you, please contact . . ." Plans are being developed for the dissemination of posters to the balance of the HRA/DSS offices as well as to HRA/DSS contractors. Of those making the initial contact by telephone, the majority call 311 or HRA's InfoLine where bilingual staff are available and have access to telephone interpreter services for languages not spoken by staff.

B. All public assistance HRA/DSS centers have LESA Liaisons whose names are listed on the posters and are designated to procure interpreter services for an applicant/participant. LESA Liaisons are authorized to have a bilingual worker assigned to assist the client, call for a contracted telephone interpreter, or order a contracted on-site interpreter to report to the location.

C. All public assistance and food stamps application kits currently contain an insert advising of the availability of free language services.

3. Language Assistance Services

Relevant Portion of Law:

When a limited English proficient individual seeks or receives benefits or services from an agency office or agency contractor, the agency office or agency contractor shall provide prompt language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The agency office or agency contractor shall meet its obligation to provide prompt language assistance services for purposes of this subdivision by ensuring that limited English proficient individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.

Where an application or form requires completion in English by a limited English proficient individual for submission to a state or federal authority, the agency or agency contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter, as wet out in internal policies and procedures.

The agency shall make all reasonable efforts to provide language assistance services in person by bilingual personnel.

The agency shall translate all documents into every covered language as of the first day of the sixtieth month after the effective date of the local law that added this chapter.

"Covered language" means Arabic, Chinese, Haitian Creole, Korean, Russian or Spanish.

The agency shall phase in language assistance services for covered functions as follows:

1. As of the first day of the twenty-fourth month after the effective date of the local law that added this chapter, no less than 20% of covered functions provided by agency offices.

2. As of the first day of the forty-eight month after the effective date of the local law that added this chapter, no less than 40% of covered functions provided by agency offices.

3. As of the first day of the sixtieth month after the effective date of the local law that added this chapter, 100% of covered functions provided by agency offices.

Contractors:

1. In all covered contracts entered into or renewed after January 1, 2005, the contractor shall certify that it shall make available language assistance services and maintain and provide access to records as required by this chapter.

2. Every covered contract must contain a provision in which the contractor acknowledges that the following responsibilities constitute materials terms of the contract:

a. to provide language assistance services as required by this chapter;

b. to comply with the record keeping requirements set forth in this chapter;

c. to provide the city access to its records for the purposes of audits or investigations to ascertain compliance with the provisions of this section, to the extent permitted; and

d. to provide evidence to the city that the contractor is in compliance with the provisions of this section, upon request.

3. If an agency contractor enters into a subcontract agreement to provide any benefits or services under a covered contract, that subcontract will be considered a covered contract for purposes of this section and the provisions of this section will bind the subcontractor. Each contractor is required to include the contract provision set forth in paragraph 2 of this subdivision in any such subcontract agreement.

"Covered contract" means a contract between the agency and a contractor to perform a covered function.

"Covered function" means any of the following functions:

1. Benefits or services offered or provided at agency offices;

2. Benefits or services provided by agency contractors to provide employment services in connection with participation of individuals engaged in activities required by sections 335 through 336-c of the social services law;

3. Home care services; and

4. Determinations regarding eligibility for subsidized childcare.

Implementation Plan:

A. Before the enactment of Local Law 73, HRA/DSS was in the process of translating its food stamp-related, city-generated, client-contact forms into nine languages. The languages are Spanish, Arabic, Chinese, French, Haitian Creole, Korean, Russian, Vietnamese and Yiddish. These languages were identified as the most common foreign languages of HRA/DSS food stamp customers in a survey conducted by HRA/DSS in the fall of 2001. Almost all client contact forms and informational brochures are available in Spanish.

B. The Agency has invested in technology solutions to provide customers with computer-generated notices in English, Spanish, Arabic, Chinese, French, Haitian Creole, Korean, Russian, Vietnamese, and Yiddish.

C. HRA/DSS's Office of Constituent and Community Affairs manages the Infoline Call Center, a crucial telephone "help line" available to the general public seeking information on all HRA/DSS programs. Infoline posters, Form W-184 (revised 01/04) are 11×17 posters in English, Spanish, Arabic, Chinese, Korean, Haitian Creole, and Russian, which state, "For assistance with any HRA Program-Call This Toll-Free Number." These posters are conspicuously posted in all waiting rooms throughout the Agency where people present themselves in person for assistance.

D. Homebound applicants may call the Infoline number to request an application or a home visit. Automated information is available 24 hours a day through a multilingual toll-free service. During business hours, Infoline is staffed by bilingual representatives who are available to answer questions in English, Spanish, Russian, Chinese, and Vietnamese. Language access for all other languages is provided with the help of the Agency's telephone interpreter contracts.

E. Certain Agency human services contracts already require language access for participants, and as of January 2005, any new or renewed contracts will contain said language. All HRA/DSS contracts conform to current Procurement Policy Board Rules.

F. ORIA contacted program areas throughout HRA/DSS from February 2004-September 2004 to notify them of the passage of Local Law 73. ORIA asked each program area to fill out a survey to identify "documents," as defined by this law, which includes city-generated:

o Application forms and corresponding instructional materials

o Notices that require a response from the participant

- Notices that concern the denial, termination, reduction, increase or issuance of a benefit or service
- Notices regarding the rights of participants to a conference and or fair hearing
- Notices describing regulation changes that affect benefits.

ORIA is presently in the second phase of HRA/DSS's implementation process, to rank documents by frequency of use. This information will be used to set the order in which as-yet-untranslated documents will be translated. This task will be conducted from September 2004-February 2005. In its third and final phase, based on identification of documents in Phase 2, HRA will have met or exceeded the translation schedule outlined in the matrix below:

LL 73 Eff. date 12 months after eff. date 24 months after eff. date 48 months after eff. date 60 months after eff. date

February 5, 2004 February 1, 2005 February 1, 2006 February 1, 2008 February 1, 2009

City-generated Forms and Documents Translated 10% Complete 20% Complete 40% Complete 100% Complete

Program Area:

Family Independence Administration 10% 20% 40% 100%

Medical Insurance Community Services Administration 10% 20% 40% 100%

Office of Policy and Program Development 10% 20% 40% 100%

Office of Revenue and Investigation 10% 20% 40% 100%

Customized Assistance Services 10% 20% 40% 100%

Cumulative Percentage 10% 20% 40% 100%

4. Quality Assurance Measures

Relevent Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, the agency and each agency contractor shall maintain records of the primary language of every individual who seeks or receives benefits or services from the agency or agency contractor. At a minimum, the agency and each agency contractor shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by agency, agency contractor or contractor, agency office, type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the agency, disaggregated by language translated or interpreted by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

The agency and each agency contractor shall screen bilingual personnel and interpreter personnel for their ability to provide language assistance services. The agency and each agency contractor shall provide annual training for

bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.

Implementation Plan:

A. ORIA monitors HRA/DSS's contact points to assess whether primary language determinations are recorded properly and whether documents are translated accurately and disseminated properly.

B. ORIA contracts for testing of the oral, written and reading language skills of prospective bilingual employees.

C. ORIA currently reviews Agency aggregate coding of LESA cases to identify potential errors by searching for anomalies. Possible miscodes are referred to centers for investigation and, if appropriate, corrective action. This process is continuing under Local Law 73.

D. ORIA currently performs case file reviews using professional standards for sampling and data analysis. In the future case file reviews meeting professional standards will be designed and implemented to fulfill the requirements imposed by Local Law 73.

E. ORIA reviews the assignment of LESA cases semi-monthly to identify trends and ensure that LESA cases are being matched to available bilingual staff. This process is continuing under Local Law 73.

F. HRA/DSS will conductany recruitment of bilingual staff based on the data shared by ORIA which tracks the number of bilingual staff assigned to cases. All prospective bilingual hires will be tested as outlines above.

G. HRA contracts with a quality assurance firm to review the accuracy of vendor provided translations.

5. Training

Relevant Portion of Law:

The agency and each agency contractor shall provide annual training for bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.

Implementation Plan:

ORIA provides training to HRA/DSS staff on matters related to limited English speaking ability customers, including the utilization of contracted interpretation services (telephone and on-site).

6. Record Keeping and Monitoring

Relevant Portion of Law:

No later than the first day of the sixtieth month after the effective date of the local law that added this chapter, the agency and each agency contractor shall maintain records of the primary language of every individual who seeks or receives benefits or services from the agency or agency contractor. At a minimum, the agency and each agency contractor shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by agency, agency contractor or contractor, agency office, type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the agency, disaggregated by language translated or interpreted by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

Implementation Plan:

A. ORIA tracks the percentage and number of limited English speaking ability customer cases within the Family Independence Administration.

B. ORIA receives data semi-monthly for analysis of the number of LESA coded cases. Current data reflects that 15.6% of cases at Agency Job Centers are coded for Spanish and 3.5% for other languages; 13.59% of Food Stamp only cases are coded for Spanish and 5.35% are coded for other languages.

C. Based on the tracking of bilingual workers and the number of LESA cases, ORIA issues a bimonthly report on the Agency's performance.

7. Coordination

ORIA serves as the coordinating body within HRA/DSS to ensure compliance with Local Law 73 and this implementation plan.

8. Implementation Updates and Annual Reports

Relevant Portion of Law:

Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter beofre the date set forth in subdivision f of this section. The implementation update for every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained by this chapter.

Implementation Plan:

A. Before the effective date for producing annual reports (60 months), HRA/DSS will produce implementation updates every year. These reports will provide updates about our implementation of the plan, and detail any changes in the plan.

B. The implementation update for 2005 (which will be released in 2006), and all reports thereafter, will include information on the number of limited English proficient people served, disaggregated by language and by agency office.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-101

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-101 City correctional institutions.

The commissioner of correction may designate any institution or part thereof under the jurisdiction of the commissioner for the safekeeping of persons committed to the department of correction. The commissioner may also designate any institution or part thereof under his or her jurisdiction for the safekeeping of female prisoners only. Officers charged with the transportation of persons committed to the department of correction shall deliver them to the institution or part thereof as may be directed by the commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(1)-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 453

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-102

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-102 Buildings for common jails.

The board of estimate by resolution may designate from time to time any building or buildings within the city to be the common jails of such city or of any of the counties therein. The building or buildings so designated shall be such common jails until changed by a like resolution of such board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 67(2)-3.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 24

(formerly § 69-3.0)

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-103

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-103 Segregation of prisoners on Hart's Island.

The lands and buildings on Hart's Island shall be utilized for the segregation of prisoners transferred thereto by the commissioner of correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(1)-2.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-104

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-104 Transfer of inmates by commissioner of correction.

The commissioner of correction shall have power to transfer prisoners from any prison or correctional institution under his or her control to any other prison or correctional institution under the jurisdiction of the department.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(1)-4.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Under the provisions of this section and § 623 of the Charter, the Commissioner of Correction is empowered to transfer prisoners from any prison under her control to another prison or correctional institution under the jurisdiction of the Department of Correction. Hence, the Commissioner had full authority to transfer adolescent from one house of detention to another house and the exercise of that authority did not violate any constitutional rights of the adolescent or his attorney and mere inconvenience relating to visitation which may be caused to adolescent or his attorney was not sufficient to condemn the transfer, which was based on enlightened policy with respect to youthful offenders.-Bach v. Kross, 8 Misc. 2d 257, 165 N.Y.S. 2d 1014 [1957]; aff'd 4 App. Div. 2d 1017, 169 N.Y.S. 2d 416 [1958].

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-105

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-105 Commitment of witnesses in criminal proceedings.

The commissioner of correction shall have authority concerning the care and custody of witnesses in criminal proceedings committed to the institutions under the commissioner's charge. Upon the recommendation of the district attorney, the commissioner of correction may transfer such witnesses from one institution under the commissioner's charge to another such institution.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(1)-6.0 added chap 929/1937 § 1

Amended chap 100/1963 § 455

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-106

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-106 Legislative intent; narcotics treatment program.

The charter empowers the council as the legislative body of the city of New York to pass laws "for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants."

One of the major problems facing New York today, and one which involves almost every one of the above enumerated powers is the narcotics problem.

There has been no abatement in the seriously burgeoning scourge of narcotic addiction in New York city despite the nineteen hundred sixty-two White House conference on narcotics and drug abuses and the nineteen hundred sixty-five Gracie Mansion conference on narcotics addiction, the enactment and administration of article nine of the mental hygiene law, and the various legislative expressions of interest and concern on federal, state and city levels.

It has also been adequately demonstrated that the incarceration of an addict after an arrest and trial without a specific modality of medical and/or social therapy, even with the involvement of multi-million dollar expense and capital funding, offers no solution to the problem and even the establishment of many so-called "half-way houses" dealing with after-care and the social needs of the drug addict have failed.

Sufficient studies have been made to determine that a program of treatment which blocks out the craving, narcotic hunger and euphoria associated with heroin is successful and by giving maintenance dosages of methadone hydrochloride as a complete substitute for heroin, we can start to drive down the rate of narcotics addiction in our city.

Between December nineteen hundred sixty-seven and April nineteen hundred sixty-eight, the city prison at Rikers Island, was used for a demonstration project for the use of methadone hydrochloride to combat heroin addiction. This voluntary program involved twelve hard core, intractable, recidivist addicts, with multiple arrest and long conviction records and it achieved remarkable results.

One of the conclusions of the final report of this demonstration project reveals that a large number of the four thousand to five thousand addict prisoners would be willing to accept methadone maintenance treatment if it were available. The applicants for interviews in the prison were so numerous that all could not be interviewed. Letters from prisoners still continue to arrive requesting treatment.

Despite the demonstrated success of the program, it is being abandoned. The final report reflects the reason for not continuing and expanding the program to realistic dimensions; that reason is the unavailability of funds. This conclusion is difficult to comprehend in view of the multi-million dollar funding of other programs, which have neither revealed any new solutions nor have they demonstrated any degree of achievement.

It is not anticipated that this legislation will solve the problem. Hopefully, it will reverse the ever mounting spiral of heroin addiction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(2)-1.0 added LL 47/1969 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-107

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-107 Narcotics treatment program.

a. The commissioner of correction shall establish a program for the treatment of heroin addicts through the use of methadone hydrochloride therapy. The program shall be available on a voluntary basis only to such inmates as apply, subject to a medical evaluation, before acceptance, of their need for such treatment.

b. The commissioner of correction shall provide for the continuance of such treatment by establishing parole procedures and after-care evaluation and implementation after the incarceration has terminated, during the period of parole.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(2)-2.0 added LL 47/1969 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. A methadone maintenance program established pursuant to this section did not have to be made available to prisoners during their entire period of incarceration when made available for two to three weeks to persons who when arrested are identified as methadone maintenance patients and when methadone detoxification is made available for about one week to persons who are identified as narcotics addicts when arrested.-Lynott v. McGrath, 66 Misc. 2d 631,

322 N.Y.S. 2d 214 [1971].

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-108

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-108 Health services.

The New York city health and hospital corporation shall arrange for and make available facilities for outpatient treatment and suitable amenities for the continuance of social therapy for all persons who have received such treatment in conformance with section 9-107 of this code. Such continued treatment shall be voluntary, and shall commence upon the discharge of such persons from any penal institution and/or upon the termination of any period of parole.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1714-1.0 added LL 47/1969 § 2

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-109

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-109 Classification.

The commissioner of correction shall so far as practicable classify all felons, misdemeanants and violators of local laws under the commissioner's charge, so that the youthful or less hardened offenders shall be segregated from the older or more hardened offenders. The commissioner of correction may set apart one or more of the penal institutions for the custody of such youthful or less hardened offenders, and he or she is empowered to transfer such offenders thereto from any penal institution of the city. The commissioner of correction is empowered to classify the transferred inmates, so far as practicable, with regard to age, nature of offense, or other fact, and to separate or group such offenders according to such classification.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-1.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-110

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-110 Instruction.

The commissioner of correction may establish and maintain schools or classes for the instruction and training of the inmates of any institution under the commissioner's charge.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-2.0 added chap 929/1937 § 1

Amended LL 50/1942 § 69

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-111

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-111 Libraries.

a. The commissioner of correction is empowered to set aside in the city prison a sufficient space for the purposes of installing a library for the inmates. The commissioner of correction may do likewise in any other place in which persons are held for infractions of the law pending a determination by a court.

b. The commissioner of correction is authorized to accept contributions of books, pamphlets and periodicals. All such contributions shall be recorded and catalogued; an account thereof shall be kept and a report concerning the same shall be made to the commissioner of correction at least once in each calendar year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-3.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-112

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-112 Suspension of members of the uniformed force.

Where a member of the uniformed force shall be charged with the commission of a crime, he or she may be suspended without pay for the duration of the time that said criminal charges are pending final disposition. If the member is found not guilty of such criminal charges he or she shall be paid full back pay for the period of suspension. However, after the final disposition of said criminal charges no member of the uniformed force shall be suspended without pay for more than thirty days while awaiting disposition of departmental charges against such member. If the member is found not guilty of the departmental charges such member shall be paid full back pay for the period he or she had been suspended while awaiting disposition of the departmental charges against such member. In the event an award of back pay is made pursuant to this section, the amount of any salary or income earned by the member of the uniformed force during the period of suspension shall be deducted from the award.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-3.1 added LL 33/1976 § 1

CASE NOTES

¶ 1. This section, which authorizes the suspension without pay of members of the uniformed service (other than

New York City police officers) charged with a crime for so long as it takes to dispose of criminal charges, violates Civil Service Law § 75, which prohibits the suspension without pay of a civil service employee for more than 30 days. Thus, the court granted a petition to rescind a longer term suspension. Meringolo v. Jacobson, N.Y.L.J., July 7, 1997, page 26, col. 4 (Sup.Ct. New York Co.), aff'd 256 A.D.2d 20, 680 N.Y.S.2d 521 (1st Dept. 1998), motion for leave to appeal dismissed, 93 N.Y.2d 948, 694 N.Y.S.2d 342 (1999).

¶ 2. Admin. Code §9-112 conflicts with the earlier enacted Civil Service Law §75(3), which provides that a civil servant may not be suspended without pay for more than 30 days pending the hearing and determination of charges of incompetency or misconduct. However, Civil Service Law §§76(4) and 201(2), when read together, permit a public employer and an employee organization to supplement, modify or replace §75(3). Where there is such an agreement, an employee can be suspended without pay for more than 30 days, pending a hearing. Seabrook v. Kerik, 5 A.D.3d 223, 772 N.Y.S.2d 822 (1st Dept. 2004), leave to appeal denied, 3 N.Y.3d 603, 782 N.Y.S.2d 697, 816 N.E.2d 570 (2004).

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-113

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-113 Resignation by members of the uniformed force of the department of correction.

Absence, without leave and without an explanation, of any member of the force for five consecutive work days shall be deemed and held to be a resignation, and the member so absent shall, at the expiration of such period, cease to be a member of the force and be dismissed therefrom.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-3.2 added LL 33/1976 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-114

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-114 Discipline of inmates.

a. Officers in any institution in the department of correction shall use all suitable means to defend themselves, to enforce discipline, and to secure the persons of inmates who shall:

1. Neglect or refuse to perform the work assigned by the officer in charge of the institution.

2. Wilfully violate the rules and regulations established by the commissioner of correction.

3. Resist or disobey any lawful command.

4. Offer violence to any officer or to any other prisoner.

5. Injure or attempt to injure any such institution or the appurtenances thereof or any property therein.

6. Attempt to escape.

7. Combine with any one or more persons for any of the aforesaid purposes.

b. The officers in any institution of the department of correction shall not inflict any blows upon a prisoner except in self-defense or to supress*27 a revolt or insurrection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-4.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

27

[Footnote 27]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-115

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-115 Correction officers (women) in prisons for women.

a. Women correction officers shall have charge of and shall supervise all female prisoners and all parts of prisons occupied by such prisoners, or such parts thereof as the officer in command shall designate to be under their supervision. At least one woman correction officer shall be on duty in each prison as long as any female prisoner is detained therein.

b. Women correction officers shall search all women visiting any part of such prisons, except as otherwise ordered by the commissioner. Only women correction officers shall be admitted to the corridor or cells of the female prisoners without the consent of the officer in charge of the prison.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-5.0 added chap 929/1937 § 1

Amended chap 100/1963 § 456

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-116

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-116 Three platoon system.

a. Unless expressly otherwise provided, whenever used in this section, the following terms shall mean and include:

1. Custodial officer shall mean and include any and all correction officers (male), any and all captains, any and all correction officers (female), and any and all supervising correction officers (female). For the purposes of this section each of the titles enumerated herein shall constitute a single employee classification.

2. Working cycle shall mean and include that period of time within which each custodial officer in an employee classification at an institution shall be assigned to the same number of each of the normal tours of duty. Working cycles may vary as between institutions, and may vary as to the different employee classifications in the same or different institutions, but in no case may a working cycle exceed one calendar year in duration.

b. The commissioner of correction or other officer or officers having the management, control or direction of the department of correction shall divide all the custodial officers in each employee classification into three platoons at each institution. No one of such platoons nor any member thereof shall be assigned to more than one tour of duty, to consist of not more than ten consecutive hours in each consecutive twenty-four hours, excepting only that in the event of riots, prison breaks or other similar emergencies, so many of said platoons or of the members thereof as may be necessary, may be continued on duty for such hours as may be necessary. For the purpose of changing tours of duty and for the necessary time consumed therein, said platoons or members thereof shall be continued on duty until relieved.

c. Tours of duty shall commence at midnight, eight o'clock ante meridian and four o'clock post meridian of each consecutive twenty-four hours. Such tours of duty shall hereinafter be designated as normal tours of duty. At the

discretion of the warden or other officer or officers in charge of an institution, other tours of duty may be created. Such tours of duty shall hereinafter be designated as miscellaneous tours of duty.

Within each complete working cycle at each institution, every custodial officer in the same employee classification shall be assigned to the same number of each of the normal tours of duty. For the purpose of such assignment of normal tours of duty as hereinbefore prescribed, miscellaneous tours of duty which commence at or after seven o'clock ante meridian and at or before eleven o'clock ante meridian shall be considered to be a part of that normal tour of duty which commences at eight o'clock ante meridian; miscellaneous tours of duty which commence after eleven o'clock ante meridian and before eight o'clock post meridian shall be considered to be a part of that normal tour of duty which commences at four o'clock post meridian; miscellaneous tours of duty which commence at or after eight o'clock post meridian and before seven o'clock ante meridian shall be considered to be a part of that normal tour of duty which commences at midnight.

All normal tours of duty which commence at midnight or at four o'clock post meridian, and all miscellaneous tours of duty which shall be considered a part of these normal tours of duty as hereinbefore prescribed, shall be changed at least once in every calendar month.

Every member of each platoon shall be entitled to at least one calendar day of rest upon the completion of every six tours of duty. This day of rest shall not be deferred longer than one calendar week after such member has become entitled thereto.

None of the foregoing provisions of this section shall apply to or govern the rotation of tours of duty of custodial officers who may be detailed or assigned to an institution wherein no inmates are detained overnight.

Where in any single institution the total number of custodial officers in any single employee classification is less than four in number, none of the foregoing provisions of this section shall apply to or govern the rotation of tours of duty of members of such employee classification in said institution.

None of the foregoing provisions of this section shall apply to or govern the rotation of tours of duty of custodial officers who may be detailed or assigned to what shall hereinafter be known and designated as the special duty squad at each institution, provided, however, that the number of custodial officers detailed or assigned to a special duty squad at any single institution may not exceed twenty-five per centum of the total number of custodial officers employed at the said institution; provided, however, that custodial officers detailed or assigned to special duty squads may be assigned only to that normal tour of duty commencing at eight o'clock ante meridian, or to miscellaneous tours of duty constituting a part of such normal tour of duty; and provided further, however, that throughout the department of correction the total number of custodial officers detailed or assigned to steady tours of duty, whether as members of special duty squads or otherwise, shall not exceed fifteen per centum of the total number of custodial officers employed in the department of correction. None of the foregoing provisions of this subdivision shall apply to or govern the rotation of tours of duty of custodial officers who may be detailed or assigned to steady tours of duty for reasons of management efficiency, which reasons shall presumptively include the subdivision of a facility and/or unit into smaller units of management.

d. All custodial officers shall be allowed a vacation period as may be authorized in leave regulations promulgated by the mayor. During an emergency, as defined herein, the vacation period may be withheld for such length of time as may be necessary. Upon cessation of such emergency each of such custodial officers from whom a vacation or a portion of a vacation shall have been withheld during such emergency, shall receive within six months from such cessation a leave of absence with pay commensurate with the number of days of such vacation withheld.

e. Repealed.

f. All general or specific laws inconsistent with this section or with any part thereof are hereby repealed; provided, however, that this section shall in no manner affect any provisions of said law concerning furlough or leave of

absence or exempting members of the department of correction from obligation to wear uniform when not on actual duty.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended L.L. 43/2006 § 1, eff. Dec. 9, 2006.

Subd. e repealed L.L. 43/2006 § 2, eff. Dec. 9, 2006.

DERIVATION

Formerly § 623(4)-5.1 added LL 110/1939 § 1

Sub d amended LL 48/1957 § 1

Sub d amended chap 100/1963 § 457

Sub b amended LL 51/1973 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-117

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-117 Composition of uniformed force of department of correction; uniforms.

a. The uniformed force of the department of correction shall consist of the following ranks:

1. Correction officers.

2. Captains.

3. Assistant deputy wardens.

4. Deputy wardens.

5. Wardens.

b. 1. The composition of the uniformed force as established by this section shall be altered only by the creation therein of new positions or ranks the appointments to which shall be made only from a list promulgated as the result of a promotion examination. In such examination only members of the uniformed force shall be eligible to compete.

2. The duty of maintaining the custody and supervision of persons detained or confined by the department of correction shall be performed solely by members of the uniformed force and shall not be delegated, transferred or assigned in whole or in part to private persons or entities.

3. Nothing in this subdivision shall limit in any way persons who are or will be employed by or under contract with the department of correction from maintaining incidental supervision and custody of an inmate, where the primary

duties and responsibilities of such persons and contractors consist of administering or providing programs and services to persons detained or confined in any of its facilities; nor shall anything in this subdivision be construed to limit or affect the existing authority of the mayor and commissioner to appoint non-uniformed persons, whose duties include overall security of the department of correction, to positions of authority.

c. The uniforms to be worn by the members of the force shall be prescribed by the commissioner of correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended chap 629/2003 § 1, eff. Sept. 30, 2003 and deemed in

full force andd effect on and after Sept. 17, 2002.

Subd. b amended chap 535/2002 § 1, eff. Sept. 17, 2002.

DERIVATION

Formerly § 623(4)-5.2 added LL 10/1943 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Petitioner, captain in the Department of Correction, qualified in a civil service examination for deputy warden. Thereafter a new position of assistant deputy warden was created, and candidates were certified from the list for deputy warden. Since no list had been promulgated for this new position, certifications were properly made from the deputy warden list.-Matter of Kaffaro v. Schechter, 7 Misc. 2d 518, 162 N.Y.S. 2d 642 [1957].

¶ 2. A series of offenses committed by petitioner while in the Navy plus a conviction for disorderly conduct could be considered collectively so as to justify termination of employment of petitioner at end of six months' probation period as correction officer.-Matter of Kearney (Kross), 142 (70) N.Y.L.J. (10-7-59) 12, Col. 6 F.

¶ 3. A department head has discretion to make specific assignments within a grade level and the language of this section is broad enough to authorize the elimination by the director of personnel of four prior titles and the creation of a new title encompassing the eliminated titles.-Lenihan v. City of New York, 85 App. Div. 2d 562 [1981].

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-117.1

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-117.1 Receipt of line of duty pay.

a. A correction officer of the department of correction shall be entitled pursuant to this section to the full amount of his or her regular salary for the period of any incapacity due to illness or injury incurred in the performance and discharge of duty as a correction officer, as determined by the department.

b. Nothing in this section shall be construed to affect the rights, powers and duties of the commissioner pursuant to any other provision of law, including, but not limited to, the right to discipline a correction officer by termination, reduction of salary, or any other appropriate measure; the power to terminate an appointee who has not completed his or her probationary term; and the power to apply for ordinary or accident disability retirement for a correction officer.

c. Nothing in this section shall be construed to require payment of salary to a correction officer who has been terminated, retired, suspended or otherwise separated from service by reason of death, retirement or any other cause.

d. A decision as to eligibility for benefits pursuant to this section shall not be binding on the medical board or the board of trustees of any pension fund in the determination of eligibility for an accident disability or accidental death benefit.

e. As used in this section the term "incapacity" shall mean the inability to perform full, limited, or restricted duty.

HISTORICAL NOTE

Section added LL 98/1989 § 1, eff. Dec. 20, 1989 and retroactive to Jan. 1, 1989

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-118

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-118 Commissaries.

a. The commissioner of correction may establish a commissary in any institution under the commissioner's jurisdiction for the use and benefit of the inmates and employees thereof. All moneys received from the sales of such commissaries shall be paid over semi-monthly to the commissioner of finance without deduction. Except as otherwise provided in this subdivision, the provisions of section 12-114 of the code shall apply to every officer or employee who receives such moneys in the performance of his or her duties in any such commissary. The accounts of the commissaries shall be subject to supervision, examination and audit by the comptroller and all other powers of the comptroller in accordance with the provisions of the charter and code.

b. All moneys received from the sales from such commissaries shall be kept in a separate and distinct fund to be known as the commissary fund. Such fund shall be used for:

1. The purchase of all merchandise for resale in such commissaries;

2. The purchase of supplies, materials, and equipment for such commissaries;

3. The furnishing of work or labor to be done for such commissaries; and

4. All other costs and expenses of operating such commissaries other than the salaries of officers and employees employed in such commissaries.

c. Any surplus remaining in the commissary fund after deducting all items described in subdivision b hereof

shall be used for the general welfare of the inmates of the institutions under the jurisdiction of the department of correction. In the event such fund at any time exceeds one hundred thousand dollars, the excess shall be transferred to the general fund.

d. All expenditures for items described in paragraph one of subdivision b of this section shall be made upon vouchers issued by the commissioner of correction and subject to audit by the comptroller. All other expenditures described in subdivision b and subdivision c of this section shall be made by the commissioner in accordance with schedules approved by the mayor or of the director of the budget acting in accordance with a delegation of power from the mayor. All supplies, materials, equipment and merchandise to be furnished and all work or labor to be done, the cost of which is payable from the commissary fund, shall be furnished or provided in accordance with the provisions of chapter one of title six of the charter and of the code.

e. The salaries of the employees of such commissaries shall be fixed by the mayor.

f. Any officer or employee, whose duties in connection with the commissary fund involve possession of or control over funds, shall execute a bond to the city for the faithful performance of his or her duties in such sum as may be fixed and with sureties to be approved by the comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-5.3 added LL 17/1956 § 2

Amended chap 100/1963 § 458

Sub b amended LL 67/1973 § 1

Sub e amended LL 67/1973 § 2

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-119

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-119 Requisitions.

The chief officer of any institution under the charge of the commissioner of correction shall make his or her requisitions in writing upon the commissioner for all articles such officer deems necessary to be used in such institution. Such officer shall keep an accurate account thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-6.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-120

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-120 Reports of subordinate officers.

The chief officer of any institution under the charge of the commissioner of correction shall report once in each week to the commissioner of correction. Such report shall set forth:

1. The number of persons who have been received, discharged or transferred.
2. The number who have become sick or who have died.
3. The number remaining in the institution under the charge of such chief officer.
4. The discipline which has been maintained.
5. The quantity and kind of labor performed.
6. Such other information as the commissioner of correction requires.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-7.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-121

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-121 Records of inmates of institutions.

The commissioner of correction shall keep and preserve a proper record of all persons who shall come under the commissioner's care or custody, and of the disposition of each, with full particulars as to the name, age, sex, color, nativity and religious faith, together with a statement of the cause and length of detention. Except as otherwise provided by law, the records kept pursuant to this section shall be public and shall be open to public inspection.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 623(4)-8.0 added chap 929/1937 § 1

Renumbered LL 50/1942 § 70

(formerly § 623(4)-8.0)

CASE NOTES FROM FORMER SECTION

¶ 1. The Commissioner of Correction was directed to make records of petitioner's past confinement available for inspection and copying under this section, so that petitioner could use them in a coram nobis proceeding he wanted to institute.-Parker v. Kross, 41 Misc. 2d 241, 245 N.Y.S. 2d 94 [1963].

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-122

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-122 Labor of prisoners in other agencies; correction officers.

A correction officer or correction officers from the department of correction shall at all times direct and guard all inmates of any of the institutions in the department of correction who are performing work for any other agency.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 625-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 459

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-123

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-123 Cultivation of land.

The commissioner of correction may use for agricultural purposes all the lands under his or her jurisdiction which are capable of cultivation and which are not otherwise occupied or utilized.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 625-2.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-124

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-124 Manufacturing fund.

The establishment of a fund to be known as "manufacturing fund, department of correction," is authorized. The comptroller is directed to place in such fund all moneys received or realized through the sale of articles manufactured by the department of correction. The comptroller is authorized to charge against such fund any voucher received from the department of correction for the purchase of materials, supplies, equipment, repairs, replacements and royalties on manufacturing industry machines to be used in its manufacturing industries. The comptroller is further directed to transfer to the general fund of the city at the end of each calendar year any sums remaining in such manufacturing fund in excess of seventy-five thousand dollars of the unencumbered balance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 625-3.0 added chap 929/1937 § 1

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-125

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-125 Civil jail.

a. The commissioner of correction shall have custody of civil prisoners and the prisons wherein they are confined.

b. The commissioner of correction may keep in any place or places under the commissioner's jurisdiction persons lawfully committed to his or her custody without regard to the county wherein such persons may have been arrested. Any such person who is entitled to the liberties of the jail must be admitted to the jail liberties of the county wherein such person was originally arrested.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-11.0 added LL 4/1942 § 3

Amended chap 553/1942 § 1

Amended chap 189/1977 § 3

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-126

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-126 Jurisdiction of commissioner of correction over civil prisoners.

Any part of the institutions under the jurisdiction of the commissioner of correction which shall be set aside for the accommodation of prisoners detained by civil process shall be under the control of such commissioner of correction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1032-11.1 added chap 929/1937 § 1

Renumbered and amended LL 4/1942 § 4

(formerly § 623(1)-5.0)

Amended chap 189/1977 § 4

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-127

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-127 Housing,30 employment and sobriety needs.

a. The department of correction and the department of homeless services shall develop a process for identifying individuals who repeatedly are admitted to city correctional institutions and who, in addition, either immediately before their admission to or after their release from such institutions, are housed in shelter provided by the department of homeless services.

b. The department of correction shall collect, from any sentenced inmate who will serve, after sentencing, ten days or more in any city correctional institution, information relating to such inmate's housing, employment and sobriety needs. The department of correction shall, with the consent of such inmate, provide such information to any social service organization that is providing discharge planning services to such inmate under contract with the department of correction. For the purposes of this section and sections 9-128 and 9-129 of this title, "discharge planning" shall mean the creation of a plan for post-release services and assistance with access to community-based resources and government benefits designed to promote an inmate's successful reintegration into the community.

HISTORICAL NOTE

Section added L.L. 54/2004 § 2, eff. July 1, 2005 with special provisions

including expiration and repeal. [See Note 1]

NOTE

1. Provisions of L.L. 54/2004:

Section 1. Declaration of legislative findings and intent. The Department of Correction handles approximately 108,000 admissions each year, and manages an average daily inmate population of more than 14,000 individuals. Of the 108,000 admissions, approximately 80,000 are discharged into the community; the remaining inmates are sent to state prison.

Those entering and being discharged from city jails suffer from many social problems: 32% read below a fifth grade level, 20% required detoxification services upon admission to jail, 30% end up in the city shelter system, 29% of inmates receiving mental health services are diagnosed with severe mental illness, and 63% of inmates will be rearrested within three years of release. It is in the best interests of the people of the City of New York, these inmates, their families, and the communities these inmates will return to that attempts be made to address the employment, sobriety and housing problems that keep the same people coming back to jail. Effective discharge planning is crucial to achieving this goal.

In order for discharge planning to be effective, inmates must be in the custody of the Department of Correction for sufficient time to receive meaningful assistance and must have a known discharge date for which the Department can plan. Approximately 80% of people admitted to the Department of Correction, however, are detainees whose dates of discharge are unknown, which results in release with no advance notice. Moreover, a great number of sentenced inmates are sentenced to time already served, or to such short lengths of stay that effective interventions are impractical. In 2003, approximately 44% of inmates were released in seven days or less. As a result, discharge planning should be focused on inmates who will serve at least 30 days in the city's jails, with efforts directed at other inmates as resources permit.

New York City has established the Discharge Planning Project, a multi-agency and multi-provider initiative to address re-entry issues. Government participants include the Department of Correction, the Department of Probation, the Department of Homeless Services, the Human Resources Administration, the Department of Health and Mental Hygiene, and the Office of the Criminal Justice Coordinator. These agencies are working cooperatively with many not-for-profit service providers and advocacy organizations in a combined effort to produce better post-incarceration outcomes. The efforts of the project have led to numerous important initiatives, including transitional employment programs, a screening assessment to determine the employment, substance abuse, and housing needs of new inmates, streamlined procedures for obtaining birth certificates and social security cards, case management in the community and a refocusing of efforts towards sentenced inmates.

The Council finds that assisting inmates in accessing social services and government benefits will improve their ability to re-integrate into the community. The Council further finds that codifying into law recent initiatives of city agencies will ensure the long-term continuation and expansion of such efforts. Accordingly, the Council declares that it is reasonable and necessary to mandate the provision of certain discharge planning services.

. . . . . .

§ 3. This local law shall take effect on July 1, 2005, except that the commissioner of correction and the commissioner of homeless services shall take all actions necessary to implement this local law on or before the date upon which it shall take effect. This local law shall expire and be deemed repealed on June 30, 2015, provided that the commissioner of correction provides written notice to the council in the first six months of the year 2014 that this local law will expire without further action by the council. If the commissioner does not provide such notice by June 30, 2014, this local law shall expire and be deemed repealed one year following the date on which the council receives such notice.

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

30

[Footnote 30]: ** Section expires and is repealed June 30, 2015 per L.L. 54/2004 § 3. See Note 1.

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***** Current through December 2009 ****

NYC Administrative Code 9-128

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-128 Applications31 for government benefits.

a. The department of correction shall make applications for government benefits available to inmates by providing such applications in areas accessible to inmates in city correctional institutions.

b. The department of correction shall provide assistance with the preparation of applications for government benefits and identification to sentenced inmates who will serve, after sentencing, thirty days or more in any city correctional institution and who receive discharge planning services from the department of correction or any social services organization under contract with the department of correction, and, in its discretion, to any other inmate who may benefit from such assistance.

c. Notwithstanding any other provision of law, any person born in the city of New York and sentenced to ninety days or more in a New York city correctional facility who will serve, after sentencing, thirty days or more in a New York city correctional facility, shall be provided by the department before or at release, or within two weeks thereafter if extenuating circumstances exist, at no cost to such person, a certified copy of his or her birth certificate to be used for any lawful purpose; provided that such person has requested a copy of his or her birth certificate from the department at least two weeks prior to release. Upon such request, the department shall request such certificate from the department of health and mental hygiene in a form and manner approved by the commissioner of the department of health and mental hygiene. The department shall inform such person of his or her ability to receive such certificate pursuant to the provisions of this subdivision within three days of his or her admission to a sentencing facility. No person shall receive more than one birth certificate without charge pursuant to this subdivision.

HISTORICAL NOTE

Section added L.L. 54/2004 § 2, eff. July 1, 2005 with special provisions including expiration and repeal. [See § 9-127 Note 1]

Subd. c added L.L. 64/2007 § 1, eff. Mar. 30, 2008.

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

31

[Footnote 31]: ** Section expires and is repealed June 30, 2015 per L.L. 54/2004 § 3. See § 9-127 Note 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 9-129

Administrative Code of the City of New York

Title 9 Criminal Justice

CHAPTER 1 DEPARTMENT OF CORRECTION*26

§ 9-129 Reporting.

The commissioner of correction shall submit a report to the mayor and the council by October first of each year regarding implementation of sections 9-127 and 9-128 of this title and other discharge planning efforts, and, beginning October first, two thousand eight and annually thereafter, regarding recidivism among inmates receiving discharge planning services from the department of correction or any social services organization under contract with the department of correction.

HISTORICAL NOTE

Section added L.L. 54/2004 § 2, eff. July 1, 2005 with special provisions

including expiration and repeal. [See § 9-127 Note 1]

FOOTNOTES

26

[Footnote 26]: * Formerly Chapter 25 added chap 929/1937 § 1.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-101

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-101 Communication of alarms.

The owners and proprietors of all manufactories, hotels, tenement houses, apartment houses, office buildings, boarding and lodging-houses, warehouses, stores and offices, theatres and music halls, and the authorities or persons having charge of all hospitals and asylums, and of the public schools and other public buildings, churches and other places where large numbers of persons are congregated for purposes of worship, instruction or amusement, and all piers, bulkheads, wharves, pier sheds, bulkhead sheds or other waterfront structures, shall provide such means of communicating alarms of accident or danger to the police department, as the police commissioner may prescribe.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 434a-36.0 added chap 929/1937 § 1

Amended LL 50/1942 § 40

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-102

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-102 Permit for equipping automobiles with radio receiving sets capable of receiving signals on frequencies allocated for police use; fee.

a. It shall be unlawful for any person to equip an automobile with a radio receiving set capable of receiving signals on the frequencies allocated for police use, or use or possess an automobile so equipped, without a permit issued by the police commissioner, in his or her discretion, and in accordance with such regulations as the commissioner may prescribe. Such permit shall expire one year from the date of issuance thereof, unless sooner revoked by the commissioner, and shall not be transferred from the vehicle in which it was installed at the time the license was issued. The annual fee shall be twenty-five dollars for each automobile so equipped. A permit may be renewed upon the payment of a like sum and under like conditions.

b. The police commissioner is authorized, in his or her discretion, to issue permits for radio receiving sets capable of receiving signals on the frequencies allocated to police use to employees of federal, state and municipal bureaus and departments without requiring the payment of the annual fee herein provided.

c. Violations. Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not more than twenty-five dollars, or imprisonment for thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 434a-37.0 added chap 929/1937 § 1

Sub c added LL 172/1939 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. Police Commissioner's denial to petitioner of permit to equip his automobile with a short wave radio receiving set so that he might receive police signals, **held** not arbitrary, where policy of Commissioner was to grant permits only to photographers regularly employed on the photographers' staff of metropolitan newspapers, whereas petitioner had recently organized a private venture and was not employed by any newspaper. Commissioner claimed that to approve the application would open the door to numerous free lance photographers, resulting in interference with the police at the scene of crime and emergency.-Stafford v. Monaghan, 129 (84) N.Y.L.J. (5-1-53) 1463, Col. 7 T.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-103

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-103 Use of devices to decode coded police transmission via radio or television prohibited.

a. It shall be unlawful in the city of New York for any person to unscramble or decode or possess or use any instrument or article capable of unscrambling or decoding, scrambled or coded police broadcasts by radio or television, unless such person is duly authorized to do so by permit issued by the police commissioner of the city of New York.

b. A person who violates this section is guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 434a-38.0 added LL 24/1963 § 1

CASE NOTES

¶ 1. Where petitioner had written letters containing threats of violence and destruction of property against a neighbor who petitioner claimed regularly created noise disturbances despite many complaints, the Police Department had a rational basis for denying petitioner's application for a rifle or shotgun permit. Petitioner argued that he wrote those letters without intention to carry it out, and merely wanted to call attention to his noise complaints, but the Police Department properly rejected that argument, finding that the mere making of the threats demonstrated that petitioner lacked the temperament or character necessary to possess a rifle or shotgun. Farrell v. New York City Police Dept., 301

A.D.2d 390, 753 N.Y.S.2d 469.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-104

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-104 Suppression of gaming and other houses.

If any two or more householders shall report in writing, over their signatures, to the police commissioner or to a deputy police commissioner, that there are good grounds, stating the same, for believing any house, room or premises within the city to be kept or used as a common gambling-house, common gaming-room, or common gaming premises, for playing for wagers of money at any game of chance therein, or to be kept or used for lewd and obscene purposes or amusements, or the deposit or sale of lottery tickets or lottery policies, it shall be lawful for the police commissioner or either of the commissioner's deputies to authorize, in writing, any member or members of the force to enter the same who may forthwith arrest all persons there found offending against law, but none other; and seize all implements of gaming or lottery policies, and convey any person so arrested before a judge of the criminal court, and bring the articles so seized to the office of the property clerk. It shall be the duty of such police commissioner or deputy police commissioner to cause such arrested person to be rigorously prosecuted, and such articles seized to be destroyed, as the orders, rules and regulations of the commissioner shall direct.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-1.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-105

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-105 Duties re-elections.

It shall be the duty of the police force, or any member thereof, to prevent any booth, or box, or structure for the distribution of tickets at any election from being erected or maintained within one hundred fifty feet of any polling place within the city, and summarily to remove any such booth, box or structure, or to close and prevent the use thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-3.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-106

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-106 Reporting and depositing lost money or property.

a. Any person who finds any lost money or property of or exceeding the value of ten dollars shall report such finding to and deposit such money or property in a police station house within ten days after the finding thereof. Such money or property shall thereupon be transmitted to the property clerk who shall make entry of such deposit in his or her records. Such money or property as shall remain in the custody of the property clerk for a period of three months without a lawful claimant entitled thereto shall be turned over to the person who found and deposited the same. If the person who so found and deposited such money or property shall not appear and claim the same within thirty days after notice by registered mail of the expiration of said three months' period, such money or property shall, in the case of money, be paid into the general fund of the city established pursuant to section one hundred nine of the charter, and in the case of property be sold at public auction after having been advertised in "the City Record" for a period of ten days and the proceeds of such sale shall be paid into such fund.

b. Any person who shall violate, or refuse, or neglect to comply with any provision of this section, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment not exceeding one year, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 503/1995 § 8, eff. Aug. 2, 1995

DERIVATION

Formerly § 435-4.1 added LL 65/1941 § 1

Amended LL 47/1943 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff, who found a valuable bracelet and a few days thereafter learned, through a newspaper advertisement in which a "liberal reward" was offered, that it belonged to defendant, **held** not to have set forth a cause of action for recovery of a reward, on theory of services rendered in returning the bracelet to the true owner, since this was an act which the plaintiff was required to perform by law, and therefore there was no consideration for the offer of the reward.-Rheinhauer v. DeKreiges, 188 Misc. 747, 67 N.Y.S. 2d 211 [1946].

¶ 2. On submission of controversy as to whether the safe deposit company or the lessee of safe deposit box was entitled to possession of package of U.S. currency found by the lessee in examining booth of the safe deposit company, the City of New York should have an opportunity to be heard with respect to applicability to the situation of Admin. Code § 435-4.1, relating to the reporting and depositing of lost money or property.-Cohen v. Manufacturers Safe Deposit Co., 297 N.Y. 266, 78 N.E. 2d 604 [1948].

¶ 3. Money which was found by lessee of one of plaintiff's safe deposit boxes while attending at plaintiff's vault wherein his particular box was situated, was directed to be deposited with the Property Clerk of the City of New York, pursuant to Admin. Code § 435-4.1. Determination of action brought by plaintiff safe deposit company against representative of the deceased finder would be held in abeyance pending running of the statutory period during which the money would be held by the Property Clerk.-Mfrs. Safe Deposit Co. v. Cohen, 193 Misc. 900, 85 N.Y.S. 2d 650 [1948], reversed, 277 App. Div. 854, 98 N.Y.S. 2d 197 [1950] on grounds trial of issue was required.

¶ 4. Where a safe deposit company maintained a branch bank and safe deposit at 125th Street with the main office and major portion of the premises being the bank's, but with two rooms entering through the bank's office being operated by the safe deposit company, and in the first of these rooms, which was the one nearest the door, the safe deposit company's representative, on the day in question and on several days prior thereto, had been soliciting new accounts and selling U.S. Bonds, such use of the room was deemed a public one and the room was deemed to constitute public premises within the meaning of this section. Hence, money found by customer on the floor of the first room was required to be turned over to the Property Clerk of the City of New York to be held in accordance with obligations under the law, and if no true owner appeared, it was to be given to the finder.-Manufacturers Safe Deposit Company v. Cohen, 200 Misc. 334, 101 N.Y.S. 2d 820 [1950]. See also 297 N.Y. 266, 78 N.E. 2d 604 [1948].

¶ 5. Since the criminal statutes exposing a finder of lost property to possible prosecution are in derogation of common law, they are strictly construed. In the absence of a conviction, the Court could not ignore the presumption of innocence and the question of credibility should have been submitted to the jury.-Reif v. The Insurance Company of North America, 33 Misc. 2d 961, 223 N.Y.S. 2d 101 [1961].

¶ 6. A person who, after finding a ring, keeps it without complying with the provisions of this section, nonetheless has an insurable interest in the ring.-Reif v. The Insurance Company of North America, 33 Misc. 2d 961, 223 N.Y.S. 2d 101 [1961].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-107

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-107 Yellow flashing lights on volunteer emergency vehicles.

a. Definitions. 1. "Volunteer vehicles". Any commercial or privately owned non-commercial vehicle, the owner or operator of which is enrolled as a member of a duly recognized organization whose function is to volunteer assistance to the New York city police department in the patrolling of New York city roadways.

2. "Assistance". Serving in any highway patrol activity to keep traffic moving, direct traffic around accidents, check on stalled cars.

b. Regulation. A flashing yellow light which must be revolving, rotating, flashing, oscillating or constantly moving light, may be affixed to a duly recognized volunteer vehicle, and such light may be displayed on such recognized volunteer vehicle when said vehicle is engaged in rendering assistance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-5.0 added LL 20/1976 § 1

NYC Administrative Code 10-108

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-108 Regulation of sound devices or apparatus.

a. Legislative declaration. It is hereby declared that the use or operation of any radio device or apparatus or any device or apparatus for the amplification of sounds from any radio, phonograph or other sound-making or sound-producing device, or any device or apparatus for the reproduction or amplification of the human voice or other sounds, in front of or outside of any building, place or premises, or in or through any window, doorway or opening of such building, place or premises, abutting or adjacent to a public street, park or place, or in or upon any vehicle operated, standing or being in or upon any public street, park or place, where the sounds therefrom may be heard upon any public street, park or place, or from any stand, platform or other structure, or from any airplane or other device used for flying, flying over the city, or on a boat or on the waters within the jurisdiction of the city, or anywhere on or in the public streets, parks or places, is detrimental to the health, welfare and safety of the inhabitants of the city, in that such use or operation diverts the attention of pedestrians and vehicle operators in the public streets, parks and places, thus increasing traffic hazards and causing injury to life and limb. It is hereby further declared that such use or operation disturbs the public peace and comfort and the peaceful enjoyment by the people of their rights to use the public streets, parks and places for street, park and other public purposes and disturbs the peace, quiet and comfort of the neighboring inhabitants. Therefore, it is hereby declared as a matter of legislative determination that the prohibition of such use or operation for commercial or business advertising purposes and the proper regulation of such use and operation for all other purposes is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their rights to use the public streets, parks and places for street, park and other public purposes and to secure the peace, quiet and comfort of the city's inhabitants. It is hereby further declared as a matter of legislative determination that the expense of supervising and regulating the use and operation of such sound devices and apparatus for purposes other than commercial and business advertising

purposes should be borne by the persons using or operating such devices and apparatus and that the requirement of a nominal fee for the issuance of a permit for such use and operation as hereinafter prescribed is intended to defray the expenses of regulating such use or operation for the health, welfare and safety of all the people.

b. Definitions. As used in this section: 1. The term "public holidays" shall mean those days expressly set forth in section twenty-four of the general construction law.

2. The term "sound device or apparatus" shall mean any radio device or apparatus, or any device or apparatus for the amplification of any sounds from any radio, phonograph, or other sound-making or sound-producing device, or any device or apparatus for the reproduction or amplification of the human voice or other sounds;

3. The phrase "to use or operate any sound device or apparatus in, on, near or adjacent to any public street, park or place," shall mean to use or operate or cause to be used or operated any sound device or apparatus in front or outside of any building, place or premises, or in or through any window, doorway or opening of such building, place or premises, abutting on or adjacent to a public street, park or place, or in or upon any vehicle operated, standing or being in or on any public street, park or place, where the sounds therefrom may be heard upon any public street, park or place, or from any stand, platform or other structure, or from any other airplane or other device used for flying, flying over the city, or on a boat or on the waters within the jurisdiction of the city, or anywhere on the public streets, parks or places.

c. Use and operation of the sound devices and apparatus for commercial and business advertising purposes. It shall be unlawful for any person to use or operate any sound device or apparatus in, on, near or adjacent to any public street, park or place, for commercial and business advertising purpose.

d. Use and operation of sound devices and apparatus for other than commercial and business advertising purposes; permit required. It shall be unlawful for any person to use or operate any sound device or apparatus, in, on, near or adjacent to any public street, park or place, unless such person shall have first obtained a permit to be issued by the police commissioner in the manner hereinafter prescribed and unless the police commissioner shall comply with the provisions of this section and the terms and conditions prescribed in such permit.

e. Applications. Each applicant for a permit to use or operate a sound device or apparatus in, on, near or adjacent to any public street, park or place shall file a written application with the police commissioner, at the police precinct covering the area in which such sound device or apparatus is to be used or operated, at least five days prior to the date upon which such sound device or apparatus is to be used or operated. Such application shall describe the specific location in which such sound device or apparatus is proposed to be used or operated, the day and the hour or hours during which it is proposed to be used or operated, the volume of sound which is proposed to be used measured by decibels or by any other efficient method of measuring sound, and such other pertinent information as the police commissioner may deem necessary to enable the police commissioner to carry out the provisions of this section.

f. Issuance of permit; terms. The police commissioner shall not deny a permit for any specific time, location or use, to any applicant who complies with the provisions of this section, except for one or more of the reasons specified in subdivision g hereof or for non-payment of the fee prescribed in subdivision h hereof, or to prevent overlapping in the granting of permits, provided, however, that a permit issued for multiple days shall be issued only for multiple days within a period of five consecutive calendar days and only at the same location. Each permit issued pursuant to this section shall describe the specific location in which such sound device or apparatus may be used or operated thereunder, the exact period of time for which such apparatus or device may be operated in such location, the maximum volume of sound which may be employed in such use or operation and such other terms and conditions as may be necessary, for the purpose of securing the health, safety, comfort, convenience and peaceful enjoyment by the people of their right to use the public streets, parks or places for street, park or other public purposes, protecting the health, welfare and safety of the inhabitants of the city, and securing the peace, quiet and comfort of the neighboring inhabitants.

g. Special restrictions. The police commissioner shall not issue any permit for the use of a sound device or

apparatus:

1. In any location within five hundred feet of a school, courthouse or church, during the hours of school, court or worship, respectively, or within five hundred feet of any hospital or similar institution;

2. In any location where the commissioner, upon investigation, shall determine that the conditions of vehicular or pedestrian traffic or both are such that the use of such a device or apparatus will constitute a threat to the safety of pedestrians or vehicular operators;

3. In any location where the commissioner, upon investigation, shall determine that conditions of overcrowding or of street repair or other physical conditions are such that the use of a sound device or apparatus will deprive the public of the right to the safe, comfortable, convenient and peaceful enjoyment of any public street, park or place for street, park or other public purposes, or will constitute a threat to the safety of pedestrians or vehicle operators;

4. In or on any vehicle or other device while it is in transit;

5. Between the hours of ten p.m. and nine a.m.; or

6. Between the hours of eight p.m. or sunset, whichever is later, and nine a.m. on weekdays and between the hours of eight p.m. or sunset, whichever is later, and ten a.m. on weekends and public holidays, in any location within fifty feet of any building that is lawfully occupied for residential use. The distance of fifty feet shall be measured in a straight line from the point on the exterior wall of such building nearest to any point in the location for which the permit is sought.

h. Fees. Each applicant for a single-day permit issued under the provisions of this section shall pay a fee of forty-five dollars for the use of each such sound device or apparatus and each applicant for a multiple-day permit issued under the provisions of this section shall pay a fee of forty-five dollars for the use of each such sound device or apparatus for the first day and a fee of five dollars for the use of each such sound device or apparatus for each additional day up to a maximum of four additional days, provided, however, that permits for the use of such sound devices or apparatus shall be issued to any bureau, commission, board or department of the United States government, the state of New York, and the city of New York, without fee.

i. Exceptions. The provisions of this section shall not apply to the use or operation of any sound device or apparatus by any church or synagogue on or within its own premises, in connection with the religious rites or ceremonies of such church or synagogue.

j. Violations. 1. Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or imprisonment for thirty days, or both.

2. Any person who shall violate any provision of this section, any rule promulgated pursuant thereto or the terms of a permit issued pursuant to subdivision f of this section, shall be liable for a civil penalty recoverable in a civil action brought in the name of the police commissioner or the commissioner of environmental protection or in a proceeding before the environmental control board in an amount of two hundred fifty dollars for the first violation, five hundred dollars for the second violation and seven hundred fifty dollars for the third and each subsequent violation. However, any person who commits a fourth and any subsequent violation within a period of six months shall be classified as a persistent violator and shall be liable for a civil penalty of one thousand dollars for each such violation.

k. Rules. The police commissioner shall have the power to make such rules as may be necessary to carry out the provisions of this section.

l. The police department and the department of environmental protection shall have the authority to enforce the provisions of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b par 1 added L.L. 13/1996 § 2, eff. Feb. 20, 1996

Subd. b pars 2, 3 renumbered L.L. 13/1996 § 2, eff. Feb. 20, 1996

(formerly pars 1, 2)

Subd. f amended L.L. 56/1996 § 1, eff. June 27, 1996

Subd. g pars 4, 5 amended L.L. 13/1996 § 3, eff. Feb. 20, 1996

Subd. g par 6 added L.L. 13/1996 § 4, eff. Feb. 20, 1996

Subd. h amended L.L. 56/1996 § 2, eff. June 27, 1996

Subd. h amended LL 39/1990 § 1 eff. July 1, 1990

Subd. j amended L.L. 13/1996 § 5, eff. Feb. 20, 1996

Subd. k amended L.L. 13/1996 § 6, eff. Feb. 20, 1996

Subd. l added L.L. 13/1996 § 7, eff. Feb. 20, 1996

DERIVATION

Formerly § 435-6.0 added chap 929/1937 § 1

Sub g added LL 172/1939 § 7

Sub g added LL 55/1941 § 2

Sub h relettered LL 50/1942 § 44

(formerly sub g added LL 172/1939 § 7)

Repealed and added LL 64/1948 § 1

NOTE

Provisions of L.L. 13/1996 § 1:

Section 1. Declaration of legislative findings and intent. It is hereby declared that the use and operation of sound amplification devices and apparatus in proximity to residential buildings disturb the peace, quiet and comfort of the inhabitants of those buildings. Further regulation of sound amplification devices and apparatus used and operated in proximity to residential buildings is necessary to ensure that residents may enjoy the normal activities associated with the morning and evening hours affected by this legislation, such as the quiet enjoyment of one's home. It is the intention of the Council to protect the health, well-being, privacy and comfort of the inhabitants of residential buildings by limiting the unwelcome noise caused by the use and operation of sound amplification devices and apparatus when their use and operation occurs within fifty feet of such buildings. Nevertheless, the police commissioner would be authorized to issue permits for the use and operation of sound amplification devices and apparatus within fifty feet of residential buildings for at least eleven hours per day on weekdays and at least ten hours per day on weekends and public holidays.

CASE NOTES FROM FORMER SECTION

¶ 1. Complaint, in action for declaratory judgment of unconstitutionality of Admin. Code § 435-6.0, which proposes to regulate the use of mechanically amplified sound upon and adjacent to public streets, parks and places, **held** insufficient with respect to plaintiffs who were merely alleged to manufacture and sell sound equipment, as the law did not restrict the manufacture and sale of such equipment but merely the use and operation thereof. Such plaintiffs failed to allege facts indicating that their rights were curtailed or directly affected by the statute, even though they did allege that the market for their equipment had been drastically curtailed. However, as to plaintiffs who actually operated devices and apparatus apparently interdicted by the statute, the complaint was sufficient as a matter of pleading.-Gold Sound, Inc. v. City of N.Y., 195 Misc. 291, 89 N.Y.S. 2d 860 [1949].

¶ 2. On motion to dismiss complaint in action for a declaratory judgment as to unconstitutionality of Admin. Code § 435-6.0, regulating use of mechanically amplified sound upon and adjacent to public streets, parks and places, Court would not be justified in taking judicial notice of concrete situations likely to arise under the statute. A pronouncement of the merits of the legislation would have to await the joinder of issue.-Id.

¶ 3. Motion of defendant to dismiss complaint for violation of this section in that he was operating a sound amplification device without a permit on the ground that this section constitutes an illegal infringement of the right to free speech because it requires that an application for a permit be made five days prior to its use was denied when police department rules and procedures provide for waiver of the five day provision under certain circumstances and hence the question of constitutionality requires a trial as to factual matters.-People v. Hinman, 86 Misc. 2d 685 [1976].

CASE NOTES

¶ 1. Plaintiff, a street musician, played a musical instrument that required a sound amplification device. He challenged the permit fees on constitutional grounds, complaining, among other things, of the fact that musicians performing under certain City-sponsored programs were exempted from paying the fee. The court held that the exemption of City-sponsored musicians from paying the fee did not constitute a violation of the First Amendment, so long as the City did not choose the sponsored musicians on the basis of their speech. Turley v. City of New York, 167 F.3d 757 (2d Cir. 1999). Turley subsequently brought a suit relating to the city's restrictions on the decibel level of street musicians' music. The court held that under the City's sound regulations, the City could lawfully impose an 85 decibel level at 10 feet, and was not required to increase the decibel level to 95 decibels, which had been the amount sought by Turley. The court held that it was lawful for the City to regulate amplified music to prevent excessive noise, limit congestion and insure public safety. However, the court said, the regulations had to be justified without reference to the content of speech, had to be narrowly tailored to achieve a legitimate governmental interest and had to leave open some adequate alternative channels for communication of information. Turley complained that corporate sponsored events were being allowed higher decibel levels than were permitted during his performances. The court held that this was not unlawful-there was a rational basis for the distinction, in that corporate events involved more players and larger audiences and frequently involved the closing off of streets. However, the court did uphold one aspect of Turley's challenge. It agreed that in measuring the decibel level of his performances, the city improperly excluded extraneous noises which were not caused by him (in other words, the City should have been measuring only how much noise was added by his performance). The court agreed that this practice gave City officials unfettered discretion, and potentially could lead to content-based discrimination. Thus, the court issued an injunction against the city's practice. Turley v. Giuliani, 86 F.Supp.2d 291 (S.D.N.Y. 2000).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-110

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-110 Processions and parades.

a. Permits. A procession, parade, or race shall be permitted upon any street or in any public place only after a written permit therefor has been obtained from the police commissioner. Application for such permit shall be made in writing, upon a suitable form prescribed and furnished by the department, not less than thirty-six hours previous to the forming or marching of such procession, parade or race. The commissioner shall, after due investigation of such application, grant such permit subject to the following restrictions:

1. It shall be unlawful for the police commissioner to grant a permit where the commissioner has good reason to believe that the proposed procession, parade or race will be disorderly in character or tend to disturb the public peace;

2. It shall be unlawful for the police commissioner to grant a permit for the use of any street or any public place, or material portion thereof, which is ordinarily subject to great congestion or traffic and is chiefly of a business or mercantile character, except, upon loyalty day, or upon those holidays or Sundays when places of business along the route proposed are closed, or on other days between the hours of six thirty post meridian and nine ante meridian;

3. Each such permit shall designate specifically the route through which the procession, parade or race shall move, and it may also specify the width of the roadway to be used, and may include such rules and regulations as the police commissioner may deem necessary;

4. Special permits for occasions of extraordinary public interest, not annual or customary, or not so intended to be, may be granted by the commissioner for any street or public place, and for any day or hour, with the written approval of the mayor;

5. The chief officer of any procession, parade or race, for which a permit may be granted by the police commissioner, shall be responsible for the strict observance of all rules and regulations included in said permit.

b. Exemptions. This section shall not apply:

1. To the ordinary and necessary movements of the United States army, United States navy, national guard, police department and fire department; or

2. To such portion of any street as may have already been, or may hereafter be duly, set aside as a speedway; or

3. To processions or parades which have marched annually upon the streets for more than ten years, previous to July seventh, nineteen hundred fourteen.

c. Violations. Every person participating in any procession, parade or race, for which a permit has not been issued when required by this section, shall, upon conviction thereof, be punished by a fine of not more than twenty-five dollars, or by imprisonment for not exceeding ten days, or by both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended L.L. 76/1995 § 1, eff. Sept. 28, 1995. Amendment

expires and is repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

DERIVATION

Formerly § 435-9.0 added chap 929/1937 § 1

Sub 2 amended LL 11/1958 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Under Admin. Code § 435-9.0, Police Commissioner **held** without power to grant a permit to the United Labor and People's May Day Committee to parade on Eighth Avenue between 39th and 17th Streets, on Friday, May 1, between 2:30 and 8:00 o'clock P.M., since Eighth Avenue between 39th and 17th Streets is ordinarily subject to great congestion and is chiefly of a business or mercantile character, and the parade was not one which marched annually upon the streets more than ten years previous to July 7, 1914. That there have been May Day parades in New York and elsewhere in this country since 1890 was insufficient to bring the parade within the statutory exemption.-George Kern, Inc. v. Monaghan, 129 (80) N.Y.L.J. (4-27-53) 1390, Col. 7 T.

¶ 2. The granting of a permit to the Federation of Hispanic Societies for a parade to be held on a Sunday was not arbitrary. Evidence showed that the Commissioner had made a thorough investigation prior to the granting of the permit and there was no reason to believe that the parade would be disorderly or unlawful.-Matter of Colon, 139 (75) N.Y.L.J. (4-17-58) 6, Col. 5 M.

CASE NOTES

¶ 1. A challenge to the constitutionality of the permit law is now pending. The plaintiffs represent an organization known as the Million Marijuana March, which is dedicated to the legalization of marijuana for medicinal purposes. Plaintiffs allege that the law gives the Police Commissioner an overly broad discretion as to whether or not to grant a

permit, and that the mechanism for judicial review is inadequate. The Second Circuit remanded the case to the District Court, and declined to determine the issues as a matter of law. However, the court made certain important threshold determinations. One was that the statute provided for prior restraint on speech, and thus was subject to stringent constitutional standards. Moreover, the court held that the plaintiff had standing to challenge that portion of law that allowed for waiver of restrictions for occasions of "extraordinary public interest (Adm Code. 10-110(a)(4)), under which (allegedly) politically popular organizations had obtained permits. McDonald v. Safir, 206 F.3d 183 (2d Cir. 2000).

¶ 2. No permit is necessary for a group to gather and demonstrate on a city sidewalk, so long as no sound amplification is issued and the demonstration does not involve a parade or procession. Metropolitan Council on Housing v. Safir, N.Y.L.J., June 14, 2000, page 40, col. 5 (U.S. Dist.Ct. S.D.N.Y.).

¶ 3. An accusatory instrument which charges a violation of this statute must set forth the following elements: (1) that the person was part of a parade, procession or race; (2) that such parade, procession or race took place upon a public street or roadway; and (3) that the person did not have a permit issued by the Police Commissioner to participate in such parade, procession or race. The accusatory instrument was sufficient, where it alleged that the officer observed the defendant walking with over 100 other persons on a public street and that defendant did not have a permit. People v. James, 7 Misc.3d 363, 793 N.Y.S.2d 871 (Crim.Ct. New York Co.).

¶ 4. In one case, an accusatory instrument stated that the officer observed the defendant on a bicycle in the street among numerous other people also on bicycles, but does not state that defendant did not have a parade permit at the time she engaged in the conduct in question. The court held that the accusatory instrument failed to establish a key element of the statute and therefore failed to establish a prima facie case. Thus, the court dismissed the charges. See also, People v. Cohen, 6 Misc.3d 1019(A), 2005 WL 293510, N.Y.L.J., Feb. 17, 2005, at 19, col. 1 (Crim.Ct. New York Co.).

¶ 5. The ordinance was found to be content neutral, and thus did not constitute a violation of the free speech clauses of the state or federal Constitution. People v. James, 7 Misc.3d 363, 793 N.Y.S.2d 871 (Crim.Ct. New York Co.). See also, People v. Cohen, 6 Misc.3d 1019(A), 2005 WL 293510, N.Y.L.J., Feb. 17, 2005, at 19, col. 1 (Crim.Ct. New York Co.).

¶ 6. An accusatory instrument under the statute must specify the particular illegal actions taken by the defendant. It is not sufficient to state merely that defendant happened to be present in the area when a group of persons were arrested for violating the law. People v. Munoz, N.Y.L.J., May 4, 2004, at 27, col. 1 (Crim.Ct. New York Co.).

¶ 7. A large group of people marching on the sidewalk could be deemed a "procession" for purposes of the restrictions contained in this section. Allen v. City of New York, 2007 WL 24796 (U.S. Dist. Ct. E.D.N.Y.).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-111

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-111 Locks on motor vehicles.

a. It shall be unlawful for any person driving or in charge of a motor vehicle to permit it to stand unattended for more than three minutes on the streets or thoroughfares of the city, without first stopping the engine, locking the ignition and removing the key.

b. Violations. Any person who violates the provisions of this section, upon conviction thereof, shall be punished by a fine of not more than five dollars or imprisonment not to exceed two days, or both. Whenever a police officer shall find a motor vehicle standing in violation of this provision, the officer may remove the ignition key therefrom and, in the event that the owner or operator thereof is not present, shall deliver it to the nearest patrol precinct station house within one hour after removing same to be held for and returned to such owner or operator. In the event the key is so delivered to a station house, the officer shall attach to the vehicle a tag stating where the key may be reclaimed.

c. The provisions of this section shall not apply to any person driving or in charge of an omnibus operated under a franchise of the city of New York, which has clearly marked on its exterior the name of its owner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-17.0 added LL 82/1949 § 1

Sub c added LL 40/1951 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Provisions of this section were applicable to a vehicle parked on land leased by defendant from city on an area referred to in the leasing agreement as a "marginal street."-Watts v. Colonial Sand & Stone Co., 31 N.Y. 2d 685, 289 N.E. 2d 180, 337 N.Y.S. 2d 260 [1972].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-112

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-112 Parking of trailers in vacant lots.

It shall be unlawful to park any automobile trailer or house car for living or sleeping purposes in any vacant lot unless the owner or operator of such trailer or house car shall have obtained the written permission of the owner of such vacant lot and there has been full compliance with the provisions of the health code. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-9.1 added LL 44/1939 § 1

Amended chap 100/1963 § 397

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-113

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-113 Parking of motor vehicles in vacant lots.

It shall be unlawful to park any motor vehicle in any vacant lot for which a driveway across the sidewalk has not been authorized pursuant to the provisions of the code. Any person who shall violate the provisions of this section and the owner of any motor vehicle parked in violation of this section by any person using the same with the permission, express or implied, of said owner, shall be guilty of an offense punishable by a fine of not to exceed fifty dollars or by imprisonment not to exceed ten days or by both such fine and imprisonment.

The provisions of this section shall not apply to parking lots or parking spaces referred to in section 20-322 of the code.

An appearance ticket charging violation of this section may be issued and served pursuant to the provisions of article one hundred fifty of the criminal procedure law.

HISTORICAL NOTE

Section amended L.L. 76/1995 § 2, eff. Sept. 28, 1995. Amendments

expire and are repealed May 1, 1996, as per L.L. 21/1996, section

reverts to previous language

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-9.2 added LL 34/1953 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-114

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-114 Street shows.

a. It shall be unlawful to give any exhibition of climbing or scaling on the front or exterior of any house or building.

b. It shall likewise be unlawful for any person, from any window or open space of any house, or building, to exhibit to the public upon the street, or the sidewalk thereof, any performance of puppet or other figures, ballet or other dancing, comedy, farce, show with moving figures, play or other entertainment.

c. Violations. Any person who shall violate any provision of this section, upon conviction thereof, shall be punished by a fine of not more than twenty-five dollars, or imprisonment for thirty days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-10.0 added chap 929/1937 § 1

Sub c added LL 172/1939 § 9

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-115

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-115 Solicitation of pedestrians by pullers-in.

a. It shall be unlawful for any person to stand, or cause or permit any person to stand on the sidewalk or street in front of, or in the entrance or hallway of any store or building for the purpose of calling the attention of passersby to goods, wares or merchandise displayed or on sale in such store or any other store or building, or to solicit patronage for any business or service, or to attempt by word of mouth or gesture, or by the distribution of handbills or other printed matter, or by the use of mechanical or sound making devices, to entice or persuade passersby to enter such store or building, or any other store or building, or to accept the services of any business.

b. Any person who shall violate any provision of this section shall, upon conviction thereof, be punished by a fine of not more then fifty dollars, imprisonment for not exceeding ten days, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-10.1 added LL 29/1939 § 1

Section number and heading amended LL 50/1942 § 45

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 435-10.1, making it unlawful for any person to stand on the sidewalk or street in front of or in the entrance of any store or building for purpose of calling attention of passersby to merchandise on sale in the store or building, or to solicit patronage for any business or service, or by word of mouth, gesture, handbills or use of sound-making devices to entice passersby into any store or building, **held** to constitute a valid exercise of the police power of the municipality, aimed at elimination of the practices of "pullers in", and was not unconstitutional on alleged grounds that it was arbitrary, discriminatory, vague and indefinite.-People (Crennan) v. Patrick, 171 Misc. 705, 14 N.Y.S. 2d 249 [1939].

¶ 2. Admin. Code § 435-10.1, prohibiting solicitation in front of stores, **held** constitutional as a reasonable regulation of the use of public streets. Furthermore, the law was not discriminatory as it applied equally to all of a class.-In re Dinino (Valentine), 54 N.Y.S. 2d 800 [1939].

¶ 3. Defendant who, in vestibule of certain premises, set up a portable counter covered with gloves which he sold to pedestrians, who necessarily stood on the sidewalk while making purchases, **held** guilty of violation of Admin. Code § 435-10.1.-People (Crennan) v. Patrick, 171 Misc. 705, 14 N.Y.S. 2d 249 [1939].

¶ 4. Where the retail fur shop of defendant's employer had a wide, deep, entrance vestibule flanked on either side by display windows, and complainant was standing in this entrance arcade inspecting fur coats on display in the window when she was approached by the defendant-salesman who asked her if she were interested in a fur coat and then motioned her into the store to show her a few coats, there was no violation of Admin. Code § 435-10.1, prohibiting the solicitation of pedestrians by pullers-in. The complainant was not a "passer-by" or "pedestrian" as she stood in the vestibule, and defendant in persuading her to enter the store, was not a "puller-in".-People v. Realmato, 294 N.Y. 45, 60 N.E. 2d 201 [1945].

¶ 5. Admin. Code § 435-10.0 was intended for the protection of those persons only who were on the public street or sidewalk, and not those who had already entered into a quasi-customer relationship by turning from the street into some part of the business premises.-People v. Realmato, 294 N.Y. 45, 60 N.E. 2d 201 [1945].

¶ 6. The vestibule was not, because of use by pedestrians, to be deemed subject to regulations just like a street.-Id.

¶ 7. Section 435-10.1 was not intended to interdict peaceful, orderly solicitation by a merchant of persons who had entered such a vestibule on the merchant's private property.-Id.

¶ 8. Section 435-10.1, if read so as to make criminal the solicitation of complainant while she stood in the vestibule of defendant's store, would be of very doubtful constitutionality.-People v. Realmato, 294 N.Y. 45, 60 N.E. 2d 201 [1945].

¶ 9. To sustain a conviction for violating Admin. Code § 435-10.1, prohibiting the solicitation of pedestrians by "pullers-in", the person solicited must be a pedestrian or passer-by on the public street at the time of solicitation and not on the private premises of the solicitor, and the defendant must personally accost and personally urge the prospective customer with direct and personal solicitation.-People v. Lewis, 185 Misc. 364, 57 N.Y.S. 2d 35 [1945].

¶ 10. Defendants who stood in front of the entrances of their respective premises on the principal avenue of Coney Island, and while over the building line but on their private property called out to passersby on the public street to come in and have their photographs taken, and in addition to making outcries by mouth, with accompanying gestures, used mechanical sound devices, **held** not to have violated Admin. Code § 435-10.1, as defendants were merely crying their own wares in their own establishments, the outcries were made while standing on private property, and they did not personally accost and personally approach the pedestrians with direct and personal importunities. Their acts were simply those of barkers and hawkers.-Id.

CASE NOTES

¶ 1. § 10-115 prohibiting the use of "pullers-in" to advance sales in stores is unconstitutional infringement on First Amendment rights as overly extensive. More properly it might regulate the practice during certain hours. This does not involve the issue of street vending.-State v. Hall, 142 Misc. 2d 532 [1989].

¶ 2. Plaintiff challenged the constitutionality of Admin. Code §10-115, which prohibits public solicitation of passerby for commercial purposes. The court held that the complete ban on commercial speech was so broad as to be unconstitutional on its face. The City did not claim that the statute as written was constitutional on its face, but sought to graft onto the statute certain New York City Police Department guidelines which limited enforcement of the law to cases where the solicitation was being done in an "aggressive manner." The court held that it was not required to graft Police Department guidelines onto the statute when assessing its constitutionality. Accordingly, the court granted a preliminary injunction against the enforcement of the statute. HX Magazine v. City of New York, N.Y.L.J., Sept. 26, 2002, page 28, col. 5, 2002 WL 31059318 (U.S. Dist.Ct. S.D.N.Y.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-116

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-116 Damaging houses of religious worship or religious articles therein prohibited.

Any person who wilfully and without authority breaks, defaces or otherwise damages any house of religious worship or any portion thereof, or any appurtenances thereto, including religious figures or religious monuments, or any book, scroll, ark, furniture, ornaments, musical instrument, article of silver or plated ware, or any other chattel contained therein for use in connection with religious worship, or any person who knowingly aids, abets, conceals or in any way assists any such person shall be guilty of a misdemeanor punishable by imprisonment of not more than one year or by a fine of not more than two thousand five hundred nor less than five hundred dollars, or both. In addition, any person violating this section shall be subject to a civil penalty of not less than ten thousand dollars and not more than twenty-five thousand dollars. Such civil penalty shall be in addition to any criminal penalty or sanction that may be imposed, and such civil penalty shall not limit or preclude any cause of action available to any person or entity aggrieved by any of the acts prohibited by this section.

HISTORICAL NOTE

Section amended L.L. 102/2005 § 1, eff. Dec. 1, 2005

Section amended L.L. 70/1996 § 1, eff. Aug. 28, 1996

Section amended LL 13/1986 § 1

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-13.1 added LL 32/1946 § 1

Amended LL 13/1986 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-117

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-117 Defacement of property, possession, sale and display of aerosol spray paint cans and broad tipped markers prohibited in certain instances.

a. No person shall write, paint or draw any inscription, figure or mark or affix, attach or place by whatever means a sticker or decal of any type on any public or private building or other structure or any other real or personal property owned, operated or maintained by a public benefit corporation, the city of New York or any agency or instrumentality thereof or by any person, firm, or corporation, or any personal property maintained on a city street or other city-owned property pursuant to a franchise, concession or revocable consent granted by the city, unless the express permission of the owner or operator of the property has been obtained.

a-1. For purposes of this section, "property of another" shall mean all property, including real property, that is not owned, rented, or leased by a person; provided that such term shall not include a location that serves as such person's residence.

a-2. For purposes of this section, "educational facility" shall mean any building affiliated with an institution that maintains a list of enrolled students and is used for educational purposes for more than twelve (12) hours per week for more than six (6) students.

b. No person shall possess an aerosol spray paint can, broad tipped indelible marker or etching acid with the intent to violate the provisions of subdivision a of this section.

c. No person shall sell or offer to sell an aerosol spray paint can, broad tipped indelible marker or etching acid to any person under twenty-one years of age.

c-1. No person under twenty-one years of age shall possess an aerosol spray paint can, broad tipped indelible marker or etching acid in or on the property of another. This subdivision shall not be deemed to prohibit the possession of an aerosol spray paint can, broad tipped indelible marker or etching acid where such item is contained in a manufacturer-sealed package or completely enclosed in a locked container, which shall include bags, backpacks, briefcases and other containers that can be closed and secured with a key or combination lock.

c-2. This section shall not apply to any person possessing an aerosol spray paint can, broad tipped indelible marker or etching acid while in or on the property of another in violation of subdivision c-1 of this section, where:

(1) the owner, operator or other person having control of the property, building or facility consented in writing to the use or possession of the aerosol spray paint can, broad tipped indelible marker or etching acid; or

(2) such person uses or possesses the aerosol spray paint can, broad tipped indelible marker or etching acid under the supervision of the owner or person in control of such property; or

(3) such person is at his or her place of employment and the aerosol spray paint can, broad tipped indelible marker or etching acid was, will be or is being used during the course of such employment and used only with written permission from, or under the supervision of his or her employer or such employer's agent; or

(4) such person is at an educational facility and uses or will use the aerosol spray paint can, broad tipped indelible marker or etching acid at the educational facility, where he or she is enrolled, and is participating in a class at the educational facility that requires the use or possession of such items; or

(5) such person is on the property of another and uses or will use the aerosol spray paint can, broad tipped indelible marker or etching acid in or on the property of another if such use or possession is necessary to participate in a government-sponsored function or in other circumstances where a government agency gives its consent to such use or possession.

d. All persons who sell or offer for sale aerosol spray paint cans, broad tipped indelible markers or etching acid shall not place such cans, markers or etching acid on display and may display only facsimiles of such cans, markers or etching acid containing no paint, ink or etching acid.

e. For the purpose of this section, the term "broad tipped indelible marker" shall mean any felt tip marker or similar implement containing a fluid that is not water soluble and which has a flat or angled writing surface one-half inch or greater. For the purpose of this section, the term "etching acid" shall mean any liquid, cream, paste or similar chemical substance that can be used to etch, draw, carve, sketch, engrave, or otherwise alter, change or impair the physical integrity of glass or metal.

f. Any person who violates the provisions of paragraph a of this section shall be guilty of a class A misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year, or both. Any person who violates the provisions of paragraph b of this section shall be guilty of a class B misdemeanor punishable by a fine of not more than five hundred dollars or a term of imprisonment of not more than three months, or both. Any person who violates the provisions of paragraphs c or d of this section shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars or imprisonment of not more than three months, or both. Any person who has been previously convicted of violating the provisions of paragraphs c or d of this section shall be guilty of a class A misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year, or both. Any person who violates the provisions of paragraph c-1 of this section shall be guilty of a violation punishable by a fine of not more than two hundred fifty dollars or imprisonment of not more than fifteen days, or both. When a person is convicted of an offense defined in subdivision a or b of this section, or of an attempt to commit such offense, and the sentence imposed by the court for such conviction includes a sentence of probation or conditional discharge, the court shall, where appropriate, include as a condition of such sentence the defendant's successful participation in a graffiti removal program pursuant to paragraph (h) of subdivision two of section 65.10 of the penal law.

g. In addition to the criminal penalties imposed pursuant to subdivision f of this section, a person who violates the provisions of subdivision a, b, c or d of this section shall be liable for a civil penalty of not more than five hundred dollars for each violation which may be recovered in a proceeding before the environmental control board. Any person who has been previously convicted of violating the provisions of subdivision a, b, c or d of this section shall be liable for a civil penalty of not more than one thousand dollars for each violation which may be recovered in a proceeding before the environmental control board. Such proceeding shall be commenced by the service of a notice of violation returnable before such board. Anyone found to have violated the provisions of subdivision a of this section, by affixing, attaching or placing by whatever means a sticker or decal, in addition to any penalty imposed, shall be responsible for the cost of the removal of the unauthorized stickers or decals.

h. In addition to police officers, officers and employees of the department of consumer affairs, sanitation, environmental protection and transportation shall have the power to enforce the provisions of this section and may issue notices of violation, appearance tickets or summonses for violations thereof.

i. There shall be a rebuttable presumption that the person whose name, telephone number, or other identifying information appears on any sticker or decal affixed, attached or placed by whatever means in violation of subdivision a of this section violated this section by either (i) affixing, attaching or placing by whatever means such sticker or decal or (ii) directing, suffering or permitting a servant, agent, employee or other individual under such persons control to engage in such activity.

j. There shall be a rebuttable presumption that if a telephone number that appears on any sticker or decal affixed, attached or placed by whatever means in violation of subdivision a of this section belongs to a telephone answering service and no other telephone number or address is readily obtainable to locate the person or business advertised therein, such telephone answering service shall be held liable for a violation of subdivision a in accordance with the provisions of this section.

k. The commissioner of the department of sanitation shall be authorized to issue subpoenas to obtain official telephone records for the purpose of determining the identity and location of any person or entity reasonably believed by the commissioner to have violated subdivision a of this section by affixing, attaching or placing by whatever means a sticker or decal.

l. For the purposes of imposing a criminal fine or civil penalty pursuant to this section, every sticker or decal affixed, attached or placed by whatever means in violation of subdivision a of this section, shall be deemed to be the subject of a separate violation for which a separate criminal fine or civil penalty shall be imposed.

HISTORICAL NOTE

Section added L.L. 34/1985 § 2, language juxtaposed per chap 907/1985

§ 14, section number supplied by the Legislative Bill Drafting

Commission

Section heading amended L.L. 3/2003 § 1, eff. May 7, 2003.

Subd. a amended L.L. 5/2004 § 1, eff. Apr. 15, 2004.

Subd. a amended L.L. 3/2003 § 1, eff. May 7, 2003.

Subd. a amended L.L. 68/1995 § 10, eff. Sept. 5, 1995

Subd. a-1 added L.L. 39/2007 § 2, eff. Oct. 1, 2007. [See Note 1]

Subd. a-2 added L.L. 39/2007 § 2, eff. Oct. 1, 2007. [See Note 1]

Subd. b amended L.L. 39/2007 § 3, eff. Oct. 1, 2007. [See Note 1]

Subd. b amended L.L. 124/2005 § 1, eff. Dec. 29, 2005.

Subd. b amended L.L. 3/2003 § 1, eff. May 7, 2003.

Subd. c repealed and added L.L. 39/2007 § 4, eff. Oct. 1, 2007. [See Note 1]

Subd. c amended L.L. 124/2005 § 2, eff. Dec. 29, 2005.

Subd. c amended L.L. 3/2003 § 1, eff. May 7, 2003.

Subd. c-1 amended L.L. 39/2007 § 5, eff. Oct. 1, 2007. [See Note 1]

Subd. c-1 added L.L. 124/2005 § 3, eff. Dec. 29, 2005.

Subd. c-2 amended L.L. 39/2007 § 5, eff. Oct. 1, 2007. [See Note 1]

Subd. c-2 added L.L. 124/2005 § 4, eff. Dec. 29, 2005.

Subd. d amended L.L. 3/2003 § 1, eff. May 7, 2003.

Subd. e amended L.L. 3/2003 § 1, eff. May 7, 2003.

Subd. f separately amended L.L. 124/2005 § 5, eff. Dec. 29, 2005 and L.L. 127/2005 § 1, eff. Dec. 29, 2005.

Subd. f amended L.L. 5/2003 § 1, eff. May 7, 2003.

Subd. f amended L.L. 27/1992 § 1, eff. Aug. 9, 1992

Subd. g amended L.L. 5/2004 § 1, eff. Apr. 15, 2004.

Subd. g amended L.L. 5/2003 § 1, eff. May 7, 2003.

Subds. g, h added ch. 311/1992 § 1, eff. Nov. 1, 1992

Subds. i-l added L.L. 5/2004 § 1, eff. Apr. 15, 2004.

DERIVATION

Formerly § 435-13.2 added LL 72/1972 § 1

Repealed and added LL 34/1985 § 2

(Legislative findings, defaceing with use of stolen cans and markers, youths, LL 34/1985 § 1)

NOTE

1. Provisions of L.L. 39/2007:

Section 1. Declaration of legislative findings and intent. The Council hereby declares that graffiti is a public nuisance that degrades the quality of life in neighborhoods and communities across the City. Graffiti creates an atmosphere of neglect, inviting criminal activity and contributing to a feeling of disorderliness and fear.

The Council finds that 18-, 19-, and 20-year olds are disproportionately responsible for graffiti crime. Accordingly, prohibiting the sale to, and restricting the possession of, graffiti tools to persons under the age of 21 will greatly assist the City's anti-graffiti efforts. Requiring that graffiti materials be contained in a manufacturer-sealed package or completely enclosed in a locked container, which shall include bags, backpacks, briefcases and other containers that can be closed and secured with a key or a combination lock, allows persons between the ages of 18-20 to transport such materials to or from places where they may legally be used such as their school or at work, while making it difficult for these items to be used on the property of another.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-117.1

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-117.1 Anti-graffiti task force.

a. There is hereby established an anti-graffiti task force consisting of at least seven members. The speaker of the council shall appoint three members, and the mayor shall appoint the balance of the members, one of whom shall serve as chairperson. The members of the task force shall be appointed within thirty days of the effective date of this section and shall serve without compensation. The task force shall have a duration of twelve months.

b. The task force shall:

1. Assess the scope and nature of the city's graffiti problem, including geographical concentration, perpetrator profile and future trends.

2. Examine the effectiveness of existing provisions of law aimed at curbing graffiti vandalism, and propose amendments to strengthen such legislation.

3. Review current law enforcement activity, clarify enforcement responsibility and suggest ways to augment enforcement capability.

4. Identify all existing public and private anti-graffiti programs citywide and in each borough.

5. Survey efforts to combat graffiti in other jurisdictions, consider the replication of such programs in New York city and recommend further programmatic initiatives.

6. Propose a coordinated, comprehensive anti-graffiti program encompassing prevention, education, removal

and enforcement.

7. Maintain regular and systematic contact with civic associations, community boards and other concerned groups and individuals.

8. Assist in the establishment of borough and community anti-graffiti task forces.

c. The task force shall meet at least quarterly and shall issue a final report to the mayor and the council detailing its activities and recommendations.

HISTORICAL NOTE

Section added L.L. 3/1991 § 1, eff. Jan. 4, 1991

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-117.2

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-117.2 Rewards for providing information leading to apprehension, prosecution or conviction of a person for crimes involving graffiti vandalism.

The mayor, upon the recommendation of the police commissioner, shall be authorized to offer and pay a reward in an amount not exceeding five hundred dollars to any person who provides information leading to the apprehension, prosecution or conviction of any person who may have violated the provisions of subdivision a or b of section 10-117 of this chapter, or who may have committed any other crime where the unlawful conduct included the conduct described in subdivision a or b of such section. No police officer, peace officer or any other law enforcement officer, and no officer, official or employee of the city of New York shall be entitled, directly or indirectly, to collect or receive any such reward.

HISTORICAL NOTE

Section added L.L. 56/1992 § 1 eff. Oct. 21, 1992

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-117.3

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-117.3 Remedies for failure to remove graffiti from certain premises.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Graffiti" means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind visible to the public from a public place that is drawn, painted, chiseled, scratched, or etched on a commercial building or residential building, or any portion thereof, including fencing, that is not consented to by the owner of the commercial building or residential building. There shall be a rebuttable presumption that such letter, word, name, number, symbol, slogan, message, drawing, picture, writing or other mark of any kind is not consented to by the owner. Such presumption may be rebutted in any proceeding pursuant to this section.

2. "Commercial building" means any building that is used, or any building a portion of which is used, for buying, selling or otherwise providing goods or services, or for other lawful business, commercial, professional services or manufacturing activities.

3. "Residential building" means any building containing one or more dwelling units.

4. "Public place" means a place to which the public or a substantial group of persons has access including, but not limited to, any highway, street, road, sidewalk, parking area, plaza, shopping area, place of amusement, playground, park, beach or transportation facility.

b. Duty to keep property free of graffiti. The owner of every commercial building and residential building shall keep and cause to be kept such building free of all graffiti.

c. Availability of city funds; graffiti removal through written consent. Subject to the availability of annual appropriations, the mayor, through the community assistance unit, shall provide graffiti removal services to abate graffiti on commercial buildings and residential buildings without charge to the property owner if the property owner first executes a written consent and a waiver of liability in the form prescribed by the mayor.

d. Failure to remove graffiti from property. Notice to remove graffiti from a commercial or residential building shall be served by an agency designated by the mayor in the manner prescribed in paragraph two of subdivision d of section 1049-a of the charter. Such written notice shall, at a minimum: (1) describe the city's graffiti abatement program and the resources available to the property owner to abate graffiti; (2) indicate that if the owner of a commercial or residential building fails to remove such graffiti within sixty days of receipt of such notice, then the city may cause such graffiti to be removed; and (3) for a written notice involving residential buildings containing six or more dwelling units or commercial buildings, further indicate that the failure to remove the graffiti within sixty days of receipt of the notice shall result in the imposition of a fine as set forth in subdivision e of this section.

e. Penalty for failure to remove graffiti from residential buildings containing six or more dwelling units or commercial buildings. The owner of a residential building of six or more units or a commercial building who has been given written notice to remove graffiti from such building, and who fails to remove such graffiti within sixty days of receipt of such notice, shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than three hundred dollars. Such civil penalty may be recovered in a proceeding before the environmental control board. The owner of a residential building containing six or more dwelling units or a commercial building shall not be liable for a civil penalty if, within sixty days of receipt of such notice, such owner can demonstrate that the owner has contacted the mayor's community assistance unit, through a call to 311, with regard to providing graffiti removal services with respect to the graffiti that was the subject of the notice, and has executed a written consent and a waiver of liability in the form prescribed by the mayor with respect to such graffiti. Notwithstanding the foregoing, a property shall not be fined more than once in any six-month period, and summonses shall not be issued between November 1 and March 31.

f. Removal of graffiti from property through nuisance abatement proceedings.

1. Whenever the owner of a commercial building or a residential building fails to accept the city's graffiti removal services after the city has attempted in good faith to obtain written consent and a waiver of liability from the owner for such services, and the property owner fails to remove such graffiti within sixty days of receiving a notice to remove the graffiti, the city may serve the owner of the commercial building or residential building a notice of nuisance abatement. The notice shall be served on the owner by an agency designated by the mayor in the manner prescribed in paragraph two of subdivision d of section 1049-a of the charter. The notice, at a minimum, shall indicate the following:

(a) That the city of New York has determined that the property has become a nuisance because of graffiti on the property.

(b) The address of the property and the location on the property that has become a nuisance.

(c) That unless the property owner removes the graffiti, files a written consent and waiver of liability consenting to receive, without charge, graffiti removal services from the city, or submits to the city a written request for a hearing to contest the city's determination within thirty days of the date of the service of notice of nuisance abatement, the property owner will be deemed to have given permission to the city to enter or access the property and use the means it determines appropriate to remove or conceal the graffiti at the specified location.

(d) That if a property owner requests a hearing, the property owner may contest the determination that the property has become a nuisance.

(e) That this notice shall be deemed to provide the city with authority to work on as much of the property as necessary to remove or conceal the graffiti, and that the city is not responsible for removing or concealing the graffiti to the property owner's satisfaction.

2. Upon the property owner's failure to remove the graffiti, to file a written consent and a waiver of liability consenting to receive, without charge, graffiti removal services from the city, or to submit to the city a written request for a hearing to dispute the determination that the property identified in the notice has become a nuisance because of graffiti within thirty days of the date of the service of the notice of nuisance abatement, the city may enter or access the property specified in the notice and abate the nuisance by removing or concealing the graffiti.

3. Upon receipt of a timely request for a hearing, a hearing shall be held before the environmental control board within thirty days of receiving the request.

4. Upon a finding of a hearing officer of the environmental control board that the property has become a nuisance because of graffiti the city may enter or access the property specified in the notice and abate the nuisance by removing or concealing the graffiti.

5. In no case shall the city be required to clean, paint, or repair any area more extensive than where the graffiti is located.

HISTORICAL NOTE

Section added L.L. 111/2005 § 2, eff. Mar. 29, 2006. [See Note 1]

Subd. d amended L.L. 35/2008 §4, eff. Sept. 11, 2008. [See Charter

§1049-a Note 1]

Subd. f par 1 open par amended L.L. 35/2008 §5, eff. Sept. 11, 2008.

[See Charter §1049-a Note 1]

NOTE

1. Provisions of L.L. 111/2005:

Section 1. Legislative Findings and Intent.

The City Council finds that graffiti is a public nuisance, one that degrades the quality of life in neighborhoods and communities across the city. Graffiti creates an atmosphere of neglect, inviting criminal activity and contributing to a feeling of disorderliness and fear.

In light of these considerations, it is important that graffiti in public view be cleaned as quickly as possible, while respecting property rights and First Amendment free speech rights.

The goal of this legislation is to accommodate these important interests and to craft a solution to the City's graffiti problem that both adequately addresses the need to rid our communities of graffiti as well as protect our important freedoms. By imposing fines against the owners of certain property who fail to remove graffiti from their premises, coupled with granting to the City the ability to clean graffiti in public view from commercial and residential buildings, after an adequate notification process to property owners of such buildings, this legislation will improve the quality of life for our residents.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-118

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-118 Destruction or removal of property in buildings or structures.

(a) No person other than the owner of a building or structure, the duly authorized agent of such owner, or an appropriate legal authority shall destroy or remove any part of such building or structure.

(b) No person shall transport through, along or across a public street or way used materials or parts of buildings or structures, including but not limited to, piping, heating equipment, wiring, or other fixtures, windows or parts thereof, doors, radiators, bricks, wood beams or other parts, unless such person shall possess a bill of sale or other proper proof of ownership or right to possession of same signed by the owner of the building or structure, or one authorized by an appropriate legal authority.

(c) No dealer in junk or used materials shall purchase used materials or parts of buildings or structures, including but not limited to, piping, heating equipment, wiring, or other fixtures, windows or parts thereof, doors, radiators, bricks, wood beams or other parts, unless such dealer shall obtain at the time of purchase a bill of sale or other proper proof of ownership or right of possession of same signed by the owner of the building or structure from which said materials were taken, or by the duly authorized agent of such owner or by an appropriate legal authority.

(d) Any person who violates this section shall be guilty of a misdemeanor punishable by a fine not more than five hundred dollars or imprisonment for not more than three months, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-13.3 added LL 41/1977 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-119

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-119 Posting.

a. It shall be unlawful for any person to paste, post, paint, print, nail or attach or affix by any means whatsoever any handbill, poster, notice, sign, advertisement, sticker or other printed material upon any curb, gutter, flagstone, tree, lamppost, awning post, telegraph pole, telephone pole, public utility pole, public garbage bin, bus shelter, bridge, elevated train structure, highway fence, barrel, box, parking meter, mailbox, traffic control device, traffic stanchion, traffic sign (including pole), tree box, tree pit protection device, bench, traffic barrier, hydrant, public pay telephone, any personal property maintained on a city street or other city-owned property pursuant to a franchise, concession or revocable consent granted by the city or other such item or structure in any street, or to direct, suffer or permit any servant, agent, employee or other person under his or her control to engage in such activity; provided, however, that this section shall not apply to any handbill, poster, notice, sign, advertisement, sticker or other printed material so posted by or under the direction of the council, or by or under the direction of any city agency, or pursuant to a franchise, concession or revocable consent granted pursuant to chapter fourteen of the charter.

b. There shall be a rebuttable presumption that the person whose name, telephone number, or other identifying information appears on any handbill, poster, notice, sign, advertisement, sticker or other printed material on any item or structure described in subdivision a of this section in any street violated this section by either (i) pasting, posting, painting, printing, nailing or attaching or affixing by any means whatsoever such handbill, poster, notice, sign, advertisement, sticker or other printed material, or (ii) directing, suffering or permitting a servant, agent, employee or other individual under such person's control to engage in such activity.

c. There shall be a rebuttable presumption that if a telephone number that appears on any handbill, poster, notice, sign or advertisement placed in violation of subdivision a of this section belongs to a telephone answering

service and no other telephone number or address is readily obtainable to locate the person or business advertised therein, such telephone answering service shall be held liable for a violation of subdivision a in accordance with the provisions of section 10-121.

d. The commissioner of the department of sanitation shall be authorized to issue subpoenas to obtain official telephone records for the purpose of determining the identity and location of any person or entity reasonably believed by the commissioner to have violated subdivision a of this section.

HISTORICAL NOTE

Section amended L.L. 2/2003 § 1, eff. Jan. 7, 2003.

Section amended L.L. 111/1993 § 1, eff. Jan. 28, 1994

Section added chap 907/1985 § 1

Subd. a amended L.L. 68/1995 § 11, eff. Sept. 5, 1995

DERIVATION

Formerly § 760-1.0 added LL 26/1979 § 2

Amended LL 30/1985 § 1

CASE NOTES

¶ 1. Illegal posting of handbills violations apply to the person doing the posting and not to the person or business named in the handbill.-Matter of Sulzer v. Environmental Control Bd., 165 AD2d 270 [1991].

¶ 2. A political candidate sought a preliminary injunction against the enforcement of the statute. The court denied the injunction, finding that the candidate had not shown a probability of success on his claim that the statute was unconstitutional. The court noted that a municipality has some leeway in favor of restrictions upon the posting of signs on municipal property, so long as the restrictions are content neutral. Herschaft v. City of New York, 2002 WL 1204780 (U.S. Dist. Ct., E.D.N.Y.).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-120

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-120 Protection of city advertisements.

It shall be unlawful for any person to tear down, deface or destroy any notice, handbill, sign, advertisement, poster, sticker or other printed material, put up or posted by, or under the direction of the council, or by or under the direction of any city agency or pursuant to a franchise, concession or revocable consent granted pursuant to chaper fourteen of the charter.

HISTORICAL NOTE

Section amended L.L. 2/2003 § 2, eff. Jan. 7, 2003.

Section amended L.L. 111/1993 § 2, eff. Jan. 28, 1994

Section added chap 907/1985 § 1

DERIVATION

Formerly § 760-2.0 added LL 26/1979 § 2

Amended LL 30/1985 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-121

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-121 Violation.

a. Any person convicted of a violation of any of the provisions of section 10-119 or 10-120 of the code shall be punished by a fine of not less than seventy-five dollars nor more than one hundred fifty dollars, for the first offense and not less than one hundred fifty dollars nor more than two hundred fifty dollars for the second and each subsequent offense within a twelve month period, plus the cost of the removal of the unauthorized signs, imprisonment for not more than ten days, or both; provided, however, that subdivision b of section 10-119 of the code shall not apply with respect to criminal prosecutions brought pursuant to this subdivision.

b. In the instance where the notice of violation, appearance ticket or summons is issued for breach of the provisions of section 10-119 or 10-120 of the code and sets forth thereon civil penalties only, such process shall be returnable to the environmental control board, which shall have the power to impose the civil penalties of not less than seventy five dollars nor more than one hundred fifty dollars for the first offense and not less than one hundred fifty dollars nor more than two hundred fifty dollars for the second and each subsequent offense within a twelve month period. Anyone found to have violated the provisions of Section 10-119 or 10-120, in addition to any penalty imposed, shall be responsible for the cost of the removal of the unauthorized signs. Anyone found to have violated section 10-119 of this chapter by affixing any handbill, poster, notice, sign or advertisement to a tree by means of nailing or piercing the tree by any method shall have an additional penalty imposed equal to the amount of the original penalty.

c. In the event that a violator fails to answer such notice of violation, appearance ticket or summons within the time provided therefor by the rules and regulations of the environmental control board, he or she shall become liable for additional penalties. The additional penalties shall not exceed fifty dollars for each violation.

d. Any person found in violation of any of the provisions of section 10-119 or 10-120 of the code shall be liable for a civil penalty as provided for in subdivision b of this section.

e. Liability and responsibility for any civil penalty imposed pursuant to this section for any violation of section 10-119 or 10-120 of the code shall be joint and severable on the part of any corporation found to be liable and responsible and its officers, principals, and stockholders owning more than ten percent of its outstanding voting stock.

g. For the purposes of imposing a criminal fine or civil penalty pursuant to this section, every handbill, poster, notice, sign or advertisement pasted, posted, painted, printed or nailed in violation of section 10-119 of the code or torn down, defaced or destroyed in violation of section 10-120 of the code, shall be deemed to be the subject of a separate violation for which a separate criminal fine or civil penalty shall be imposed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 2/2003 § 3, eff. Jan. 7, 2003.

Subd. a amended L.L. 111/1993 § 3, eff. Jan. 28, 1994

Subd. b amended L.L. 29/2003 § 1, eff. July 10, 2003.

Subd. b amended L.L. 2/2003 § 3, eff. Jan. 7, 2003.

Subd. e repealed & added L.L. 111/1993 § 4, eff. Jan. 28, 1994

Subd. g added L.L. 2/2003 § 3, eff. Jan. 7, 2003.

DERIVATION

Formerly § 760-3.0 added LL 26/1979 § 2

Amended LL 30/1985 § 3

CASE NOTES

¶ 1. Ad Cd § 10-121(e) which provides that for posting violations which continue on a regular and ongoing basis, the individual, organization or business whose name appears on the handbill shall be deemed to have knowledge of such activity and shall be liable for a civil penalty is unconstitutional. The person who actually does the posting is liable.-Matter of Sulzer v. Environmental Control Bd., 165 AD2d 270 [1991].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-121.1

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-121.1 Rewards for providing information leading to criminal conviction of a person for unlawful posting.

The mayor, upon the recommendation of the sanitation commissioner, the transportation commissioner, the parks and recreation commissioner, the citywide administrative services commissioner or the police commissioner, shall be authorized to offer and pay a reward in an amount not exceeding five hundred dollars to any person who provides information leading to the criminal conviction of any person who may have violated the provisions of section 10-119 or section 10-120 of the code. No police officer, peace officer or any other law enforcement officer, and no officer, official or employee of the city of New York shall be entitled, directly or indirectly, to collect or receive any such reward.

HISTORICAL NOTE

Section added L.L. 2/2003 § 4, eff. Jan. 7, 2003.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-122

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-122 Motor boats; operation adjacent to bathing beaches.

It shall be unlawful for any person to operate a motor boat within three hundred feet of any public beach used by bathers. Any person who shall violate or refuse to comply with the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding three months or by both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 532-8.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-123

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-123 Bathing in public.

It shall be unlawful for any person to swim or bathe in any of the waters within the jurisdiction of the city, except in public or private bathing houses, unless covered with a bathing suit so as to prevent any indecent exposure of the person; and it shall be unlawful for any person to dress or undress in any place exposed to view. Any person who shall violate or refuse to comply with the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than ten dollars or by imprisonment not exceeding ten days or by both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 532-7.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-124

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-124 Wearing of bathing suits on streets prohibited. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 15/1997 § 1, eff. Apr. 1, 1997

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-15.0 added LL 38/1942 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-125

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-125 Consumption of alcohol on streets prohibited.

a. Definitions. Whenever used in this section, the following terms are defined as follows:

1. Alcoholic beverage. Any liquid intended for human consumption containing more than one-half of one percent (.005) of alcohol by volume.

2. Public place. A place to which the public or a substantial group of persons has access including, but not limited to, any highway, street, road, sidewalk, parking area, shopping area, place of amusement, playground, park or beach located within the city except that the definition of a public place shall not include those premises duly licensed for the sale and consumption of alcoholic beverages on the premises or within their own private property. Such public place shall also include the interior of any stationary motor vehicle which is on any highway, street, road, parking area, shopping area, playground, park or beach located within the city.

b. No person shall drink or consume an alcoholic beverage, or possess, with intent to drink or consume, an open container containing an alcoholic beverage in any public place except at a block party, feast or similar function for which a permit has been obtained.

c. Possession of an open container containing an alcoholic beverage by any person shall create a rebuttable presumption that such person did intend to consume the contents thereof in violation of this section.

d. Nothing in this section shall be deemed to prohibit the consumption of an alcoholic beverage in any duly licensed establishment whose certificate of occupancy extends upon a street.

e. Any person who shall be found to have violated any of the provisions of this section shall be punished by a fine of not more than twenty-five dollars ($25) or imprisonment of up to five (5) days, or both, or pursuant to the provisions of the family court act of the state of New York where applicable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. e amended L.L. 76/1995 § 3, eff. Sept. 28, 1995. Amendments

expire and are repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

DERIVATION

Formerly § 435-15.1 added LL 16/1979 § 1

Sub a par 2 amended LL 44/1984 § 1

CASE NOTES

¶ 1. Petitioner moved, in effect, for a mandamus order, directing the police department to comply with the statute, which requires it to submit for laboratory analysis the contents of any container seized under the Open Container Law. The court refused to grant the relief sought. Where, as here, petitioner was found in a public place having a container with the label or insignia of a brewery company, the police had reasonable cause to issue a ticket for violation of the law. However, although petitioner was not entitled to a blanket injunction, he could challenge a particular summons on the ground that the liquid in the container was not tested. The court noted that if the police department failed to adhere to proper testing procedures, it was also potentially liable to petitioner in damages. Bankhead v. Wolf, N.Y.L.J., Nov. 21, 2000.

¶ 2. An accusatory instrument under this section must allege that defendant intentionally consumed an open container containing alcoholic beverages. People v. Torres, 1 Misc.3d 126(A), 781 N.Y.S.2d 627 (App.Term 1st Dept.), leave to appeal denied, 2 N.Y.2d 747, 778 N.Y.S.2d 472 (2004).

¶ 3. As a result of the police officers' "plain view" observation of contraband (violation of the Open Container Law), followed by the suspect's flight, the officers were entitled to pursue the suspect. People v. Neely, 18 A.D.3d 394, 796 N.Y.S.2d 61 (1st Dept. 2005), leave to appeal denied, 5 N.Y.3d 808, 803 N.Y.S.2d 37 (2005).

¶ 4. Where a defendant was consuming alcohol in the lobby of an apartment building, to which substantial numbers of people have access, the lobby was a public place for purposes of § 10-125(b). People of the State of NY v. Medina, 16 Misc.3d 382, 842 N.Y.S.2d 227 (Sup.Ct. Bronx Co. 2007).

¶ 5. A bodega is a public place for purposes of the statutory prohibition on consumption of alcohol. United States v. Brown, 2007 WL 2121883 (U.S. Dist. Ct., E.D.N.Y.).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-126

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-126 Avigation in and over the city.

a. Definitions. When used in this section the following words or terms shall mean or include:

1. "Aircraft." Any contrivance, now or hereafter invented for avigation or flight in the air, including a captive balloon, except a parachute or other contrivance designed for use, and carried primarily as safety equipment.

2. "Place of landing." Any authorized airport, aircraft landing site, sky port or seaplane base in the port of New York or in the limits of the city.

3. "Limits of the city." The water, waterways and land under the jurisdiction of the city and the air space above same.

4. "Avigate." To pilot, steer, direct, fly or manage an aircraft in or through the air, whether controlled from the ground or otherwise.

5. "Congested area." Any land terrain within the limits of the city.

6. "Person." A natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

b. Parachuting. It shall be unlawful for any person to jump or leap from an aircraft in a parachute or any other device within the limits of the city except in the event of imminent danger or while under official orders of any branch of the military service.

c. Take offs and landings. It shall be unlawful for any person avigating an aircraft to take off or land, except in an emergency, at any place within the limits of the city other than places of landing designated by the department of transportation or the port of New York authority.

d. Advertising. 1. It shall be unlawful for any person to use, suffer or permit to be used advertising in the form of towing banners from or upon an aircraft over the limits of the city, or to drop advertising matter in the form of pamphlets, circulars, or other objects from an aircraft over the limits of the city, or to use a loud speaker or other sound device for advertising from an aircraft over the limits of the city. Any person who employs another to avigate an aircraft for advertising in violation of this subdivision shall be guilty of a violation hereof.

2. Any person who employs, procures or induces another to operate, avigate, lend, lease or donate any aircraft as defined in this section for the purpose of advertising in violation of this subdivision shall be guilty of a violation hereof.

3. The use of the name of any person or of any proprietor, vendor or exhibitor in connection with such advertising shall be presumptive evidence that such advertising was conducted with his or her knowledge and consent.

e. Dangerous or reckless operation or avigation. It shall be unlawful for any person to operate or avigate an aircraft either on the ground, on the water or in the air within the limits of the city while under the influence of intoxicating liquor, narcotics or other habit-forming drugs, or to operate or avigate an aircraft in a careless or reckless manner so as to endanger life or property of another. In any proceeding or action charging careless or reckless operation or avigation of aircraft in violation of this section, the court, in determining whether the operation or avigation was careless or reckless, shall consider the standards for safe operation or avigation of aircraft prescribed by federal statutes or regulations governing aeronautics.

f. Air traffic rules. It shall be unlawful for any person to navigate an aircraft within the limits of the city in any manner prohibited by any provision of, or contrary to the rules and regulations of, the federal aviation administration.

g. Reports. It shall be unlawful for the operator or owner of an aircraft to fail to report to the police department within ten hours a forced landing of aircraft within the limits of the city or an accident to an aircraft where personal injury, property damage or serious damage to the aircraft is involved.

h. Rules and regulations. The police commissioner is authorized to make such rules and regulations as the commissioner may deem necessary to enforce the provisions of this section.

i. Violations. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-16.0 added LL 55/1948 § 1

Sub f amended LL 19/1969 § 1

Sub b amended LL 13/1979 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § 435-16.0(f), providing that it shall be unlawful to avigate an aircraft within the City limits contrary to the rules and regulations of the Civil Aeronautics Administration or Board, **held** constitutional. Adoption of the Federal standards for air traffic was wholly within the local police power. The local law was in essence an

enforcement measure in aid of Federal legislation and was directed to the objective of securing the public safety and general health of the people. Contention that the exercise of police power in a field which the Federal Government has occupied renders the act unconstitutional, was without merit, as the local law merely supplemented enforcement of the Federal regulations.-People v. Newhauser, 197 Misc. 54, 92 N.Y.S. 2d 291 [1949].

¶ 2. Defendant who took off in airplane from Keyport in New Jersey and proceeded over the Atlantic Ocean to a point one-half mile off the shore of Queens County, near Riis Park, towing an advertising banner, **held** not guilty of violation of Admin. Code § 435-16.0, subd. d, making it unlawful to tow a banner from an aircraft over the limits of the city, since under Admin. Code § 2-1.0, subd. 4, the territory of the City of New York is limited, by reference to the boundary of the State line, to that portion of the Atlantic Ocean which is at the low-water mark.-People v. Coffrin, 126 N.Y.S. 2d 329 [1953].

¶ 3. Admin. Code § 435-16.0, subd. d making it unlawful for any person to tow advertising banners from an aircraft over the city limits, **held** unconstitutional, since it completely prohibited that which the State and Federal authorities permit where permission is obtained from the administrator of civil aeronautics, subject to obtaining permission of local authorities.-Id.

CASE NOTES

¶ 1. Federal regulations (Federal Aviation Admin.) which refer to parasails but do not refer to takeoffs and landings, do not pre-empt the City from enforcing its own regulations as to where parasail planes can take off and land. People v. Santoriello, 180 Misc.2d 533, 689 N.Y.S.2d 388 (Crim.Ct. New York Co. 1999).

¶ 2. Santoriello was later charged with a violation of 10-126(d)(1), which prohibits advertising in the form of towing banners from or upon an aircraft within City limits. However, the court declared this statute to be unconstitutional as pre-empted by federal laws which (under certain conditions) permitted this type of towing banner. The court said that if the City statute had merely provided safeguards to prevent hazards in congested areas, it might have survived, but a statute that completely prohibited the towing banners conflicted directly with federal law and could not stand. People v. Santoriello, 183 Misc.2d 54, 702 N.Y.S.2d 539 (Crim.Ct. New York Co. 1999).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-127

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-127 Commercial vehicles to display name and address of owner.

a. Definition. When used herein:

1. The word "commercial vehicle," shall mean any vehicle, either horse drawn or motor driven, used, constructed or equipped for the transportation of goods, wares or merchandise in trade or commerce.

b. Vehicles, markings of. Every commercial vehicle operating on the streets of the city shall at all times display permanently, plainly marked on both sides in letters and numerals not less than three inches in height, the name and address of the owner thereof.

c. Violations. Any person convicted of a violation of this section shall be punished by not more than thirty days' imprisonment, or by a fine of not more than fifty dollars, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-16.1 added LL 92/1948 § 1

Renumbered and amended chap 100/1963 § 399

(formerly § 435-16.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-128

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-128 Declaration of intent; dress of female employees in places of public accommodation.

It is hereby declared, as a matter of public policy, that the attire and appearance of females employed in cabarets, dance halls, catering establishments, coffee houses, hotels, restaurants or other places of public accommodations as hostesses, waitresses, cashiers, barmaids or in any capacity in which any such female comes in contact with or is likely to come in contact with the patrons of such establishments, attired in such a manner so that the breasts of such female employees are completely uncovered or covered only by a device attached to the nipples of each breast, is offensive to common decency, abhorrent to the standards of continence of the community and inimical to the general welfare of the people of the city of New York and in order that the peace, health, safety and general welfare of the inhabitants of the city may be protected and insured such conduct is prohibited as hereinafter provided.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-18.0 added LL 23/1967 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-129

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-129 Prohibited acts.

a. It shall be unlawful for any female while employed in, or who in any other way is engaged by any cabaret, dance hall, catering establishment, coffee house, hotel, restaurant or other place of public assembly or public accommodation, as a hostess, waitress, cashier, barmaid or in any other capacity wherein she comes in contact with or is likely to come in contact with the patrons thereof, to be clothed or costumed in such a manner so as to appear before the patrons of such place with less than an opaque covering of any portion of the breast below the top of the aerola.*1

b. No person or persons having control of or being in charge of any cabaret, dance hall, catering establishment, coffee house, hotel, restaurant or other place of public assembly or public accommodation shall permit, aid or abet any female to appear in any such place in violation of the provisions of the preceding subdivision and the appearance of any female in any such place in violation of the provisions of the preceding subdivision shall be presumptive evidence that such appearance was with the permission of the person or persons having charge of or control of such places.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-18.1 added LL 23/1967 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Information which charged in its entirety "Lewd Act. No Pasties GoGo" did not clearly charge violation of this section and complaint did not meet the standards of due process.-People v. Antorino, 61 Misc. 2d 217, 305 N.Y.S. 2d 137 [1969].

FOOTNOTES

1

[Footnote 1]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-130

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-130 Punishment.

Any person or persons who violate any of the provisions of section 10-129 shall be guilty of an offense and upon conviction thereof shall be punished by imprisonment for not more than thirty days or by a fine of not less than fifty dollars nor more than one hundred dollars or by both such fine and imprisonment and if any person shall have been previously convicted of a violation of section 10-129, he or she shall upon any subsequent conviction be punished by imprisonment of not less than ten days nor more than sixty days or by a fine of not less than one hundred dollars nor more than five hundred dollars or by both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-18.2 added LL 23/1967 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-131

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-131 Firearms.

a. Pistols or revolvers, keeping or carrying. 1. The police commissioner shall grant and issue licenses hereunder pursuant to the provisions of article four hundred of the penal law. Unless they indicate otherwise, such licenses and permits shall expire on the first day of the second January after the date of issuance.

2. Every license to carry or possess a pistol or revolver in the city may be issued for a term of no less than one or more than three years. Every applicant for a license to carry or possess a pistol or revolver in the city shall pay therefor, a fee of three hundred forty dollars for each original or renewal application for a three year license period or part thereof, a fee of ten dollars for each replacement application of a lost license.

3. Every applicant to whom a license has been issued by any person other than the police commissioner, except as provided in paragraph five of this subdivision, for a special permit from the commissioner granting it validity within the city of New York, shall pay for such permit a fee of three hundred forty dollars, for each renewal a fee of three hundred forty dollars, for each replacement of a lost permit a fee of ten dollars.

4. Fees paid as provided herein shall not be refunded in the event that an original or renewal application, or a special validation permit application, is denied by the police commissioner.

5. A fee shall not be charged or collected for a license to have and carry concealed a pistol or revolver which shall be issued upon the application of the commissioner of correction or the warden or superintendent of any prison, penitentiary, workhouse or other institution for the detention of persons convicted or accused of crime or offense, or held as witnesses in criminal cases in the city.

6. The fees prescribed by this subdivision shall be collected by the police commissioner, and shall be paid into the general fund of the city established pursuant to section one hundred nine of the charter, and a return in detail shall be made to the comptroller by such commissioner of the fees so collected and paid over by the commissioner.

7. A fee shall not be charged or collected for the issuance of a license, or the renewal thereof, to have and carry concealed a pistol or revolver which is issued upon the application of a qualified retired police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a qualified retired bridge and tunnel officer, sergeant or lieutenant of the triborough bridge and tunnel authority as defined under subdivision twenty of section 2.10 of the criminal procedure law, or a qualified retired uniformed court officer in the unified court system, or a qualified retired court clerk in the unified court system in the first and second judicial departments, as defined in paragraphs a and b of subdivision twenty-one of section 2.10 of the criminal procedure law or a retired correction officer as defined in subdivision twenty-five of section 2.10 of the criminal procedure law or a qualified retired sheriff, undersheriff or deputy sheriff of the city of New York as defined under subdivision two of section 2.10 of the criminal procedure law.

b. Air pistols and air rifles; selling or possessing. 1. It shall be unlawful for any person to sell, offer to sell or have in such person's possession any air pistol or air rifle or similar instrument in which the propelling force is a spring or air, except that the sale of such instruments if accompanied by delivery to a point without the city, and possession for such purpose, shall not be unlawful if such person shall have secured an annual license from the police commissioner of the city authorizing such sale and possession. The sale and delivery of such instruments within the city from one licensee to another licensee, and the use of such instruments in connection with an amusement licensed by the department of consumer affairs or at rifle or pistol ranges duly authorized by law shall not be considered a violation of this subdivision.

2. All persons dealing in such instruments referred to in this subdivision, shall keep a record showing the name and address of each person purchasing such instrument or instruments, together with place of delivery and said record shall be open to inspection during regular business hours by the officers of the police department of the city.

3. Every person to whom a license shall be granted to sell, possess and deliver the instruments described in this subdivision shall pay therefor an annual fee of ten dollars.

c. Discharge of small-arms. It shall be unlawful for any person to fire or discharge any gun, pistol, rifle, fowling-piece or other firearms in the city; provided that the provisions hereof shall not apply to premises designated by the police commissioner, a list of which shall be filed with the city clerk and published in the City Record.

d. Sale of toy-pistols. It shall be unlawful for any person to sell or dispose of to a minor any toy-pistol or pistol that can be loaded with powder and ball or blank cartridge to be exploded by means of metal caps; but nothing herein contained shall apply to the sale or disposal of what are known as firecracker pistols, torpedo pistols or such pistols as are used for the explosion of paper caps.

e. Tear gas; sale or possession of; fees for permits. 1. It shall be unlawful for any person to manufacture, sell or offer for sale, possess or use, or attempt to use, any lachrymating, asphyxiating, incapacitating or deleterious gas or gases, or liquid or liquids, or chemical or chemicals, without a permit issued by the police commissioner under such regulations as the commissioner or the council may prescribe; nor shall any person manufacture, sell or offer for sale, possess or use any weapon, candle, device, or any instrument of any kind designed to discharge, emit, release or use any lachrymating, asphyxiating, incapacitating or other deleterious gas or gases, or liquid or liquids, or chemical or chemicals, without a similar permit, similarly issued, except that the members of the police department in the line of duty may possess or use any such gas, liquid or chemical.

2. Applicants for permits under the provisions of this subdivision shall pay annual fees as follows:

(a) To carry or possess such gas or liquid $10.00

(a) Renewals $5.00

(b) To install such gas or liquid on any premises $25.00

(a) Renewals $5.00

(c) To manufacture such gas or liquid $100.00

(d) To sell such gas or liquid at wholesale $100.00

(e) To sell such gas or liquid at retail $50.00

(f) To sell instruments or devices designed to discharge or emit (a) such gas or liquid $50.00

(g) To possess or carry any instrument or device to discharge (a) or emit such gas or liquid $5.00

f. Violations. Except as is otherwise specifically provided in this section, any person who shall wilfully violate any provisions of this section shall, upon conviction, be punished by a fine of not more than fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

g. 1. It shall be unlawful for any person to sell or offer for sell, possess or use or attempt to use or give away, any toy or imitation firearm which substantially duplicates or can reasonably be perceived to be an actual firearm unless:

(a) the entire exterior surface of such toy or imitation firearm is colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple, either singly or as the predominant color in combination with other colors in any pattern; or

(b) such toy or imitation firearm is constructed entirely of transparent or translucent materials which permits unmistakable observation of the imitation or toy firearm's complete contents; and

(c) the barrel of such toy or imitation firearm, other than the barrel of any such toy or imitation firearm that is a water gun, is closed with the same material of which the toy or imitation firearm is made for a distance of not less than one-half inch from the front end of said barrel, and;

(d) such toy or imitation firearm has legibly stamped thereon, the name of the manufacturer or some trade name, mark or brand by which the manufacturer can be readily identified; and

(e) such toy or imitation or firearm does not have attached thereto a laser pointer, as defined in paragraph one of subdivision a of section 10-134.2 of this code.

2. Paragraph one of this subdivision shall not apply to:

(a) the possession or display of toy or imitation firearms by a manufacturer or dealer solely for purposes of sales that are accompanied by delivery to a point without the city;

(b) any toy or imitation firearm that will be used only for or in the production of television programs or theatrical or motion picture presentations, provided, however, that such use of any toy or imitation firearm complies with all applicable laws, rules or regulations concerning request and receipt of waivers authorizing such use;

(c) non-firing collector replica antique firearms, which look authentic and may be a scale model but are not intended as toys modeled on real firearms designed, manufactured and produced prior to 1898;

(d) decorative, ornamental, and miniature objects having the appearance, shape and/or configuration of a

firearm, including those intended to be displayed on a desk or worn on items such as bracelets, necklaces and key chains, provided that the objects measure no more than thirty-eight (38) millimeters in height by seventy (70) millimeters in length, the length measurement excluding any gun stock length measurement.

3. Authorized agents and employees of the department of consumer affairs, and of any other agency designated by the mayor, shall have the authority to enforce the provisions of this subdivision. A proceeding to recover any civil penalty pursuant to this subdivision shall be commenced by service of a notice of hearing that shall be returnable to the administrative tribunal of the department of consumer affairs. The administrative tribunal of such department shall have the power to impose civil penalties for a violation of this subdivision of not more than one thousand dollars ($1000).

4. Any person who shall violate this subdivision shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1000) or imprisonment not exceeding one (1) year or both.

h. Rifles and shotguns; carrying or possessing. 1. It shall be unlawful for any person to carry or possess a loaded rifle or shotgun in public within the city limits. Any person who shall violate this paragraph shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment.

2. It shall be unlawful for any person to carry or possess an unloaded rifle or shotgun in public within the city limits unless such rifle or shotgun is completely enclosed, or contained, in a non-transparent carrying case. Any person who shall violate this paragraph shall be guilty of an offense punishable by a fine of not more than fifty dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

3. The above provisions shall not apply to persons in the military service of the state of New York when duly authorized by regulations issued by the chief of staff to the governor to possess same, police officers and peace officers as defined in the criminal procedure law, or to participants in special events when authorized by the police commissioner.

i. 1. It shall be unlawful for any person, except as otherwise authorized pursuant to law, to dispose of any ammunition or any ammunition feeding device, as defined in section 10-301, designed for use in a firearm, rifle or shotgun, unless he or she is a dealer in firearms or a dealer in rifles and shotguns and such disposition is in accordance with law, provided that a person in lawful possession of such ammunition or ammunition feeding device may dispose of such ammunition or ammunition feeding device to a dealer in firearms who is authorized, or a dealer in rifles and shotguns who is authorized, to possess such ammunition or ammunition feeding device.

2. It shall be unlawful for any dealer in firearms or dealer in rifles and shotguns to dispose of any pistol or revolver ammunition of a particular caliber to any person not authorized to possess a pistol or revolver of such caliber within the city of New York.

3. It shall be unlawful for any person not authorized to possess a pistol or revolver within the city of New York to possess pistol or revolver ammunition, provided that a dealer in rifles and shotguns may possess such ammunition.

4. It shall be unlawful for any person authorized to possess a pistol or revolver of a particular caliber within the city of New York to possess pistol or revolver ammunition of a different caliber.

5. Notwithstanding the provisions of paragraphs two, three and four of this subdivision, any person authorized to possess a rifle within the city of New York may possess ammunition suitable for use in such rifle and a dealer in firearms or dealer in rifles and shotguns may dispose of such ammunition to such person pursuant to section 10-306.

6. It shall be unlawful for any person to possess any ammunition feeding device designed for use in a firearm except as provided in subparagraphs (a), (b), (c), (d) and (e) of this paragraph.

(a) Any pistol or revolver licensee or permittee may possess an ammunition feeding device designed for use in the pistol or revolver such licensee or permittee is authorized to possess, provided that such ammunition feeding device is not capable of holding more than seventeen rounds of ammunition and provided further that such ammunition feeding device does not extend below the grip of the pistol or revolver.

(b) Any person who is exempt pursuant to section 265.20 of the penal law from provisions of the penal law relating to possession of a firearm and who is authorized pursuant to any provision of law to possess a firearm without a license or permit therefor, may possess an ammunition feeding device suitable for use in such firearm, subject to the same conditions as apply with respect to such person's possession of such firearm.

(c) Any dealer in firearms may possess such ammunition feeding devices for the purpose of disposition authorized pursuant to paragraph seven of this subdivision.

(d) Any person who leases a firearm that has been certified by the commissioner as deactivated, from a dealer in firearms or a special theatrical dealer, for use during the course of any television, movie, stage or other similar theatrical production, or any professional photographer who leases a firearm that has been certified by the commissioner as deactivated, from a dealer in firearms or a special theatrical dealer, for use in the pursuance of his or her profession, may possess an ammunition feeding device suitable for use in such firearm, subject to the same conditions as apply with respect to such person's possession of such firearm.

(e) Any special theatrical dealer may possess such ammunition feeding devices exclusively for the purpose of leasing such ammunition feeding devices to such persons as are described in subparagraph (d) of this paragraph.

7. It shall be unlawful for any person to dispose of to another person any ammunition feeding device designed for use in a firearm, provided that a dealer in firearms may dispose of, to such persons as are described in subparagraphs (a) and (b) of paragraph six of this subdivision, such ammunition feeding devices as may be possessed by such persons and provided further that a person in lawful possession of such ammunition feeding devices may dispose of such ammunition feeding devices to a dealer in firearms. In addition, a dealer in firearms or a special theatrical dealer may lease, to such persons as are described in subparagraph (d) of paragraph six of this subdivision, such ammunition feeding devices as may be possessed by such persons.

8. Notwithstanding the provisions of paragraphs six and seven of this subdivision any person may, within ninety days of the effective date of this local law, dispose of an ammunition feeding device designed for use in a firearm to a dealer in firearms.

9. The regular and ordinary transport of ammunition or ammunition feeding devices as merchandise shall not be limited by this subdivision, provided that the person transporting such ammunition or ammunition feeding devices, where he or she knows or has reasonable means of ascertaining what he or she is transporting, notifies, in writing, the police commissioner of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by the police commissioner as the police commissioner may deem necessary for investigation as to whether the consignee may lawfully receive and possess such ammunition or ammunition feeding devices.

10. The regular and ordinary transport of ammunition or ammunition feeding devices by a manufacturer of ammunition or ammunition feeding devices, or by an agent or employee of such manufacturer who is duly authorized in writing by such manufacturer to transport ammunition or ammunition feeding devices on the date or dates specified, directly between places where the manufacturer regularly conducts business, provided such ammunition or ammunition feeding devices are transported in a locked opaque container, shall not be limited by this subdivision, provided that transportation of such ammunition or ammunition feeding devices into, out of or within the city of New York may be done only with the consent of the police commissioner of the city of New York. To obtain such consent, the manufacturer must notify the police commissioner in writing of the name and address of the transporting manufacturer,

or agent or employee of the manufacturer who is authorized in writing by such manufacturer to transport ammunition or ammunition feeding devices, the quantity, caliber and type of ammunition or ammunition feeding devices to be transported and the place where the manufacturer regularly conducts business within the city of New York and such other information as the commissioner may deem necessary. The manufacturer shall not transport such ammunition or ammunition feeding devices between the designated places of business for such reasonable period of time designated in writing by the police commissioner as such official may deem necessary for investigation and to give consent. The police commissioner may not unreasonably withhold his or her consent. For the purposes of this paragraph, places where the manufacturer regularly conducts business include, but are not limited to, places where the manufacturer regularly or customarily conducts development or design of ammunition or ammunition feeding devices, or regularly or customarily conducts tests on ammunition or ammunition feeding devices.

11. A person shall be deemed authorized to possess a pistol or revolver within the city of New York if such person is authorized to possess a pistol or revolver within the city of New York pursuant to this section, section 10-302 or section 400.00 of the penal law, or is exempt pursuant to section 265.20 of the penal law from provisions of the penal law relating to possession of a firearm and is authorized pursuant to any provision of law to possess a pistol or revolver within the city of New York without a license or permit therefor. A person shall be deemed authorized to possess a rifle within the city of New York if such person is authorized to possess a rifle within the city of New York pursuant to section 10-303, or is a person permitted pursuant to section 10-305 to possess a rifle without a permit therefor.

12. No pistol or revolver ammunition or ammunition feeding device shall be disposed of to any person pursuant to this subdivision unless such person exhibits the license or permit authorizing him or her to possess a pistol or revolver within the city of New York or exhibits proof that he or she is exempt pursuant to section 265.20 of the penal law from provisions of the penal law relating to possession of a firearm and proof that he or she is authorized pursuant to any provision of law to possess a pistol or revolver within the city of New York without a license or permit therefor.

13. A record shall be kept by the dealer of each disposition of ammunition or ammunition feeding devices under this subdivision which shall show the quantity, caliber and type of ammunition or ammunition feeding devices disposed of, the name and address of the person receiving same, the date and time of the transaction, and the number of the license or permit exhibited or description of the proof of status as a person not required to have a license or permit as required by paragraph twelve of this subdivision.

14. Any person who shall violate this subdivision shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment.

15. Any person who shall violate this subdivision shall be liable for a civil penalty of not more than one thousand dollars, to be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction.

16. The provisions of paragraphs three, four and six of this subdivision shall not apply to a person voluntarily surrendering ammunition or ammunition feeding devices, provided that such surrender shall be made to the police commissioner or the commissioner's designee; and provided, further, that the same shall be surrendered by such person only after he or she gives notice in writing to the police commissioner or the commissioner's designee, stating his or her name, address, the nature of the property to be surrendered, and the approximate time of day and the place where such surrender shall take place. Such notice shall be acknowledged immediately upon receipt thereof by such authority. Nothing in this paragraph shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such ammunition or ammunition feeding devices surrendered as herein provided. A person who possesses any such ammunition or ammunition feeding devices as an executor or administrator or any other lawful possessor of such property of a decedent may continue to possess such property for a period not over fifteen days. If such property is not lawfully disposed of within such period, the possessor shall deliver it to the police commissioner or the commissioner's designee or such property may be delivered to the superintendent of state police. When such property is delivered to the police commissioner or the commissioner's designee, such officer shall hold it and shall

thereafter deliver it on the written request of such executor, administrator or other lawful possessor of such property to a named person, provided such named person is licensed to or is otherwise lawfully permitted to possess the same. If no request to deliver the property is received within two years of the delivery of such property to such official, he or she shall dispose of it in accordance with the provisions of section 400.05 of the penal law.

j. Deceptively colored firearms, rifles, shotguns, and assault weapons.

(1) Definitions.

(i) When used in this subdivision, the term "deceptively colored firearm, rifle, shotgun, or assault weapon" shall include any firearm, rifle, shotgun, or assault weapon any substantial portion of whose exterior surface is colored any color other than black, dark grey, dark green, silver, steel, or nickel, except as provided in subparagraph (iii) of this paragraph. For purposes of this subparagraph, the exterior surface of either the receiver or the slide of a firearm shall be deemed to constitute a substantial portion of the exterior surface of the firearm.

(ii) Any firearm, rifle, shotgun, or assault weapon any substantial portion of whose exterior surface is colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink or bright purple, either singly or as the predominant color in combination with other colors in any pattern shall be deemed to be a deceptively colored firearm, rifle, shotgun, or assault weapon, except as provided in subparagraph (iii) of this paragraph.

(iii) Notwithstanding subparagraph (i) and (ii) of this paragraph, a firearm, rifle, shotgun, or assault weapon shall not be deemed to be a deceptively colored firearm, rifle, shotgun, or assault weapon merely because its handle is composed of ivory, colored so as to appear to be composed of ivory, composed of wood, or colored so as to be composed of wood.

(iv) The term "deceptive coloring product" shall mean and include any equipment, product, or material that is designed for use in modifying any firearm, rifle, shotgun, or assault weapon so as to make it a deceptively colored firearm, rifle, shotgun, or assault weapon. Any equipment, product, or material that is held out, offered for sale, or otherwise disposed of based on its utility, alone or in combination with other equipment, products, or materials, in modifying any firearm, rifle, shotgun, or assault weapon so as to make it a deceptively colored firearm, rifle, shotgun, or assault weapon shall be deemed a deceptive coloring product. Any combination of equipment, products, or materials that are jointly held out, offered for sale, or otherwise disposed of based on their utility, jointly or in combination with other equipment, products, or materials, in modifying any firearm, rifle, shotgun, or assault weapon so as to make it a deceptively colored firearm, rifle, shotgun, or assault weapon shall be deemed a deceptive coloring product.

(v) The definitions set forth in section 10-301 of this title shall apply to this subdivision.

(2) It shall be unlawful for any person to dispose of a deceptively colored firearm, rifle, shotgun, or assault weapon or a deceptive coloring product except as authorized by paragraph six of this subdivision. It shall be unlawful for any person to modify, attempt to modify, or offer to modify any firearm, rifle, shotgun, or assault weapon so as to make it a deceptively colored firearm, rifle, shotgun, or assault weapon except as authorized by paragraph six of this subdivision.

(3) It shall be unlawful for any person to possess a deceptively colored firearm, rifle, shotgun, or assault weapon or a deceptive coloring product except as authorized by paragraph five or six of this subdivision or for any person to attempt to possess a deceptively colored firearm, rifle, shotgun, or assault weapon or a deceptive coloring product except as authorized by paragraph six of this subdivision.

(4) Violation of this subdivision or of regulations issued pursuant to it shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year or both.

(5) This subdivision shall not apply to the possession of any deceptively colored firearm, rifle, shotgun, or

assault weapon by any person who possesses it on the effective date of the local law enacting this subdivision, or by any person who acquires it by operation of law after the effective date of the local law enacting this subdivision, or because of the death of another person for whom such person is an executor or administrator of an estate or a trustee of a trust created in a will, provided that, within fifteen days, such person either (i) surrenders such deceptively colored firearm, rifle, shotgun, or assault weapon to the commissioner for disposal in accordance with the provisions of section 400.05 of the penal law; or (ii) modifies such firearm, rifle, shotgun, or assault weapon so that it is no longer a deceptively colored firearm, rifle, shotgun, or assault weapon and cannot be readily converted into one. This subdivision shall not apply to the possession of any deceptive coloring product by any person who possesses it on the effective date of the local law enacting this subdivision, or by any person who acquires it by operation of law after the effective date of the local law enacting this subdivision, or because of the death of another person for whom such person is an executor or administrator of an estate or a trustee of a trust created in a will, provided that within fifteen days such person surrenders such deceptive coloring product to the commissioner for disposal.

(6) This subdivision shall not apply to the disposal, possession, modification, or use of any firearm, rifle, shotgun, assault weapon, or deceptive coloring product that is purchased for the use of, sold or shipped to, or issued for the use of, the United States or any department or agency thereof, or any state or any department, agency, or political subdivision thereof.

(7) The police commissioner may make and promulgate such rules and regulations as are necessary to carry out the provisions of this subdivision. Such rules and regulations may provide that for purposes of paragraph six of this subdivision, a firearm, rifle, shotgun, assault weapon, equipment, product, or material that is purchased by, received by, possessed by, or used by a peace officer or police officer shall be deemed to have been issued for the use of the agency employing such officer.

HISTORICAL NOTE

Subd. a par 2 amended L.L. 37/2004 § 1, eff. Oct. 10, 2004 except that the commissioner shall be authorized to promulgate such rules as are necessary to implement the provisions of this law before such date.

Subd. a par 2 amended L.L. 42/1992 § 1, eff. July 1, 1992

Subd. a par 2 amended L.L. 51/1989 § 1

Subd. a par 2 amended L.L. 37/1985 § 1

Subd. a par 3 amended L.L. 37/2004 § 2, eff. Oct. 10, 2004 except that the commissioner shall be authorized to promulgate such rules as are necessary to implement the provisions of this law before such date.

Subd. a par 3 amended L.L. 42/1992 § 1, eff. July 1, 1992

Subd. a par 3 amended L.L. 51/89 § 1

Subd. a par 3 amended L.L. 37/1985 § 1

Subd. a par 6 amended chap 503/1995 § 9, eff. Aug. 2, 1995

Subd. a par 7 amended chap 195/2005 § 2, eff. July 12, 2005.

Subd. a par 7 separately amended ch. 636/1994 § 2, ch. 637/1994 § 2, both eff. Aug. 2, 1994

Subd. a par. 7 added ch. 414/1991 § 2, eff. July 19, 1991

Subd. f amended L.L. 78/1991 § 2, eff. Sept. 30, 1991

Subd. g repealed and added L.L. 58/1999 § 1, eff. Jan. 16, 2000.

Subd. h pars 1, 2 amended L.L. 78/1991 § 3, eff. Sept. 30, 1991

Subd. i added L.L. 78/1991 § 4, eff. Sept. 30, 1991

Subd. i pars 6, 7 amended L.L. 22/1992 § 1, eff. Apr. 10, 1992

Subd. j added L.L. 32/2006 § 2, eff. Nov. 24, 2006. [See Note 1]

DERIVATION

Formerly § 436-5.0 added chap 929/1937 § 1

Sub b amended LL 50/1942 § 51

Sub a amended LL 32/1948 § 1

Sub b par 3 amended LL 145/1951 § 1

Sub g added LL 26/1955 § 1

Sub g added LL 75/1955 § 1

Sub a amended LL 47/1962 § 1

Sub a par 1 amended LL 38/1964 § 1

Sub h added LL 48/1964 § 1

Sub a amended LL 78/1973 § 1

Sub a par 2 amended LL 42/1979 § 1

Sub h par 3 amended chap 843/1980 § 231

Sub a par 2 amended LL 37/1985 § 1

NOTE

1. Provisions of L.L. 32/2006:

Section 1. Declaration of legislative findings and intent. The Council finds that guns that are colored so as to resemble toy guns endanger law enforcement officers and the public without serving any legitimate purpose. Multiple firms now offer to cover guns with ceramic coatings in an array of colors, including "hidden white" and "electric cherry." One even sells on the internet kits designed to allow people to recolor their guns in such colors. Guns in such colors could be easily mistaken for toys, which poses many dangers. If such colored guns deceive police officers, or

even cause officers to hesitate for a moment, armed criminals are given a potentially fatal advantage. Furthermore, a young child who comes upon a gun in an attractive color could easily mistake it for a toy with predictably tragic results.

Deceptively colored firearms pose a particular threat to New Yorkers because they undercut legislation that the Council passed seven years ago. Under Local Law 58 of 1999, toy guns (unless they are transparent or translucent) must be colored certain bright hues. The Council imposed this requirement to ensure that toy guns are never mistaken for real ones. Ceramic coating on real guns in the colors designated by Local Law 58 subverts the basic purpose of that law, changing it from one that protects the public to one that places police at greater risk.

There is no legitimate reason for anyone to disguise a gun to look like a toy, and such deceptive guns should be banned from New York City. By the same token, no person or company should disguise or offer to disguise a gun by changing its color, essentially seeking profit at the expense of City law and public safety. The Council therefore intends for this law to apply to the full extent of its jurisdiction under the state and federal constitutions to the practices addressed herein.

. . . . . .

§ 3. Severability. If any provision of this local law is for any reason found to be invalid, in whole or in part, by any court of competent jurisdiction, such finding shall not affect the validity of all remaining portions of this local law, which shall continue in full force and effect.

§ 4. This local law shall take effect 120 days after its enactment into law [Nov. 24, 2006], provided that, prior to such effective date, the police commissioner shall promulgate such rules and take such other actions as are necessary to its timely implementation.

CASE NOTES FROM FORMER SECTION

¶ 1. The State, by the enactment of the Penal Law § 1894-a has preempted the entire field with respect to the possession and use of toy or imitation pistols and a local ordinance attempting to impose additional regulations is unconstitutional. Thus, the provisions of this section prohibiting the possession of any toy or imitation pistols which substantially duplicate actual pistols was unconstitutional when applied to "cap pistols" which are permitted by the Penal Law without restrictions as to size, color or appearance.-People v. Delgardo, 1 Misc. 2d 821, 146 N.Y.S. 2d 350 [1955].

¶ 2. The provisions of this section which prohibit the possession of certain imitation pistols is a constitutional exercise of the police power. Where a black wooden imitation gun was found in automobile stolen by the defendant he could properly be found guilty of violating this section.-People v. Klufus, 1 Misc. 2d 828, 149 N.Y.S. 2d 821 [1956].

¶ 3. Defendant's conviction of unlawful sale of toy pistols affirmed despite dissent which argued that pistols in question did not "substantially duplicate" actual pistols.-People v. Weinstein, 5 AD2d 698, 169 N.Y.S. 2d 469 [1958], aff'd 4 N.Y. 2d 986, 177 N.Y.S. 2d 506, 152 N.E. 2d 529 [1958].

¶ 4. Speargun, powered by a cartridge of carbon dioxide and used for underwater fishing, does not fall under the interdiction of air rifles powered by springs or by air.-People v. Pestronk, 3 Misc. 2d 845, 157 N.Y.S. 2d 492 [1956].

¶ 5. Petitioner, a private detective, had a pistol license for several years. His partner, who developed an animosity toward him, had him arrested for allegedly pulling the gun and pointing it at him in front of a busy and brightly lighted theatre. The complaint, which was made eight days after the alleged incident, was dismissed. Thereafter the Police Commissioner disapproved petitioner's application for renewal of his license. In view of the meager investigation made, it seems that the petition has merit. The matter is remanded to the Police Commissioner for further action.-In re Melita, 135 (1) N.Y.L.J. (1-3-56) 6, Col. 6 F.

¶ 6. Special patrolmen of Welfare Department were not entitled to carry firearms in view of prior directive by Police Commissioner prohibiting same.-Matter of Johnston (McCarthy), 142 (70) N.Y.L.J. (10-7-59) 12, Col. 5 F.

¶ 7. The Commissioner properly denied petitioner's application for renewal of his pistol license upon the sole ground that petitioner's 16-year-old son had had two arrests and two pistols had been stolen from petitioner's home while he was away. The Commissioner believed that petitioner's possession of a pistol might tempt such a son.-Matter of Grauling, 17 Misc. 2d 1021, 183 N.Y.S. 2d 654 [1959].

¶ 8. Petitioner had a record of arrests during 1931-1935, but all charges in connection therewith were dismissed. He became licensed as a private detective in 1940 and was granted a pistol permit in 1947, at which times his record of arrests was fully known. Therefore, the Commissioner's subsequent refusal to renew the pistol permit on the ground of the prior arrests was arbitrary.-In re Palocsik (Kennedy), 141 (46) N.Y.L.J. (3-10-59) 12, Col. 4 M.

¶ 9. Petitioner's pistol permit issued because it was necessary for him to carry large amounts of money in connection with his business, **held** properly revoked where petitioner had been arrested for attempted felonious assault with motor vehicle, driving while intoxicated, signal light violation and failure to advise of change of address. Acquittal of the first three charges were unimpressive where he admitted to drinking excessively and he was carrying pistol at a time when he was not engaged in the purpose for which the permit was issued.-Matter of Goldfarb (Kennedy), 144 (79) N.Y.L.J. (10-24-60) 14, Col. 3 F.

¶ 10. Petitioner had a pistol license since 1950 and in 1959 he reported it stolen and the gun was subsequently recovered from a person, who while intoxicated was waving it on a bus. In 1960 a complaint was made by a former employee who had been discharged that petitioner had threatened him with the gun. **Held,** revocation of the license was not arbitrary although petitioner's personal character had not been questioned.-Epstein v. Kennedy, 145 (55) N.Y.L.J. (3-22-61) 15, Col. 7 F.

¶ 11. There was no violation of this section where the credible evidence showed that the discharging of a rifle into a ceiling occurred when two men tried to break down the door of the rifle owner's apartment and refused to leave the apartment after the owner ordered them to do so.-Hutchinson v. Rosetti, 24 Misc. 2d 949, 205 N.Y.S. 2d 526 [1960].

¶ 12. Where charges for discharging a rifle within city limits were dropped against the plaintiff, the property clerk of the New York City Police Department could not refuse to return plaintiff's confiscated rifle.-Hutchinson v. Rosetti, 24 Misc. 2d 949, 205 N.Y.S. 2d 526 [1960].

¶ 13. There is a clear legislative intent that within the City of New York the Police Commissioner as the licensing officer shall decide in a specific case whether a pistol license shall be issued and he must be given a certain amount of discretion in the powers conferred on him and court will not substitute its judgment for that of a qualified official.-Matter of Bogac (Neco) 161 (99) N.Y.L.J. (5-21-69) 2, Col. 2 F.

¶ 14. Petitioners, inspectors of the Housing and Development Administration who were sworn in as special patrolmen but who were not peace officers did not demonstrate a clear right to judgment directing respondents to allow them to carry properly registered firearms.-Glinsman v. Walsh, 166 (51) N.Y.L.J. (9-13-71) 19, Col. 1 F.

¶ 15. Denial of petitioner's application for a gun permit was not arbitrary where although petitioner testified to her fears in traveling, especially at night, the short distance from her place of business to her home or bank the record showed no special danger to her or any other circumstance that would distinguish her from other proprietors of retail establishments.-Slatsky v. Murphy, 166 (73) N.Y.L.J. (10-14-71) 72, Col. 3 M.

¶ 16. Revocation of petitioner's permit to carry a pistol had a rational basis where it was shown that petitioner had failed to safeguard his pistol and had left it in a desk drawer in his office where it was found by one of his employees who used it to commit suicide.-In re Dubbs (Murphy) 166 (78) N.Y.L.J. (10-21-71) 2, Col. 2 M.

¶ 17. The Police Commissioner being the licensing authority for pistol permits in New York City is a necessary and proper party to a proceeding for an order directing respondent to grant petitioner's application for a pistol permit.-Rottman v. Gardner, 167 (49) N.Y.L.J. (3-13-72) 17, Col. 6 T.

¶ 18. Revocation of petitioner's pistol permit on the ground that he was not a proper person to carry a pistol was not arbitrary where petitioner reported loss of his weapon on September 23, 1967 and on September 3, 1969 again reported theft of his weapon from the front seat of his car.-In re Levinson (Police Dept.), 166 (101) N.Y.L.J. (11-26-71), Col. 7 M.

¶ 19. Subdivision (e) is not unconstitutionally vague.-People v. DeLeon, 32 N.Y. 2d 944, 300 N.E. 2d 734, 347 N.Y.S. 2d 203 [1973].

¶ 20. Denial of pistol license to petitioner sought in connection with his interest in marksmanship on ground of "Unstable Employment" because petitioner had a number of jobs in the last several years was not a proper basis for such denial.-Klapper v. Codd, 78 Misc. 2d 377, 356 N.Y.S. 2d 431 [1974].

¶ 21. Determination disapproving petitioner's application for an on-premises pistol license on ground of "insufficient needs" was annulled since no showing of need is required for the issuance of such a license.-Shapiro v. Cawley, 46 AD2d 633, 360 N.Y.S. 2d 7 [1974].

¶ 22. Subdivision g of this section which makes it unlawful to sell or possess an imitation pistol which duplicates an actual pistol unless the imitation is in certain colors is a proper exercise of police powers and is not an invalid attempt to regulate a field preempted by a state statute.-People v. Webb, 78 Misc. 2d 253, 356 N.Y.S. 2d 494 [1974].

¶ 23. An inoperative revolver loaded with live ammunition and one spent shell which was black with a clear barrel did not come within the provisions of this section forbidding the sale and possession of certain toy or imitation revolvers.-People v. Rivers, 76 Misc. 2d 972, 351 N.Y.S. 2d 622 [1974].

¶ 24. Fourteen year old respondent had no standing to object to seizure of photographs of him holding firearms when seized from the pocket of another juvenile since fourth amendment protects not property rights but the right to privacy and respondent was not the victim of an invasion of privacy.-Matter of Kwok T., 81 Misc. 2d 911, 367 N.Y.S. 2d 427 [1975].

¶ 25. City Marshals are not required to obtain pistol permit as a condition to their continued possession of firearms and the omission of City Marshal from the definition of peace officer in the CCP does not indicate a legislative intent to eliminate any of their common law privileges.-Matter of Aponte (Dept. of Investigation), 173 (88) N.Y.L.J. (5-7-75) 2, Col. 3 F.

¶ 26. An inoperable pistol comes within the meaning of an imitation pistol since it substantially duplicates an actual pistol. The court expressly disagreed with the finding in People v. Rivers, supra ¶ 23.-People v. Davis, 82 Misc. 2d 947, 371 N.Y.S. 2d 982 [1975].

¶ 27. Subdivision g of this section which makes it unlawful to possess a toy pistol resembling a real gun is constitutional.-People v. Judiz, 38 N.Y. 2d 529, 344 N.E. 2d 399, 381 N.Y.S. 2d 467 [1976].

¶ 28. A revolver which lacked a firing pin and was thus inoperable was not a firearm since it was incapable of being fired and defendant could be held for trial on charge of possessing a toy or imitation revolver in violation of this section.-People v. Pearson, 85 Misc. 2d 1029 [1976].

¶ 29. Determination of respondents revoking petitioner's license to carry a firearm on the ground that his actions or attitudes "engender doubt as to his fitness to possess a firearm" was arbitrary and capricious where although the hotel of which he was the manager had been the site of drug trafficking the petitioner was not involved in those activities and

had sought police assistance on many occasions to keep "such undesirable elements" away from the hotel.-In re Long (Codd), 179 (9) N.Y.L.J. (1-13-78) 7, Col. 2 M.

¶ 30. Determination which denied petitioner's application for a pistol permit was upheld where although petitioner claimed that he had to carry a substantial amount of cash in connection with his business which was in a high crime rate area, he was never robbed and failed to document his cash flow.-Matter of Bartek (McGuire), 180 (69) N.Y.L.J. (10-10-78) 29, Col. 6 B.

¶ 31. Where defendant was charged under subdivision g with possession of a realistic looking toy gun (actually a genuine gun with a part missing which made it inoperable) and search for gun could have been made as an incident to an arrest on a marihuana charge, but no arrest for a controlled substance was made, gun would be suppressed.-In the Matter of Robert M, 99 Misc. 2d 462 [1979].

¶ 32. A starter pistol which had been altered to accept live cartridges but which was inoperable since the firing pin could not hit the primers with sufficient force to ignite the powder was an imitation pistol pursuant to the provisions of subdivision g of this section.-People v. Williams, 113 Misc. 2d 595 [1982].

¶ 33. A starter's pistol is an imitation pistol within the meaning of § 436-5.0(g) and its possession is prohibited. A real but inoperable handgun is not such a toy or imitation pistol or revolver.-Matter of Michael R. (People), 91 App. Div. 2d 1211; aff'd 61 N.Y. 2d 316 [1984].

CASE NOTES

¶ 1. Imitation pistols designed to be mistaken for real guns and used for nefarious purposes are illegal. Prosecution for violations of § 436-5.0(g) [10-131(6)(g)] must prove that the item possessed was never designed to be a useable firearm but was an imitation pistol or a model so closely copied as not readily discernible as a toy.-People v. Wilfong, 141 Misc. 2d 574 [1988].

¶ 2. Police Departments administrative policy limiting to two the number of pistols or firearms retired officers may list on carry licenses is not abuse of discretion or capricious but is a genuine effort to reduce gun thefts. Retired officers are subject to the same regulations as other citizens.-Caruso v. Ward, 143 Misc. 2d 5 [1989].

¶ 3. Two 16 year old defendants arrested as they sat in a fast food restaurant with a loaded shotgun may only be charged with possessing an unregistered shotgun within NYC as a violation, not an unclassified misdemeanor because the offense had been reclassified to a violation as long as the weapon had not been used in the commission of a crime or the possessor had not previously been denied a permit for such possession (Ad Code of the City of NY § 10-310), however defendants could have been charged with a misdemeanor had they been charged with possession of a loaded shotgun within the city limits (Ad Code § 10-131(h)).-People v. Abrey, 144 Misc. 2d 274.

¶ 4. Defendants may be charged with acting in concert in concealing on their persons a shotgun shell and the readily assembled parts of a "functionally operable" shotgun in public within the meaning of Ad Code §§ 10-301, 10-131(h)(1) because it is up to the trier of fact to determine whether defendants could have made the unassembled weapon operational with reasonable preparation.-People v. Walston, 147 Misc. 2d 679.

¶ 5. The Police Commissioner of the City of New York is vested with the authority to grant, revoke or cancel gun licenses pursuant to §10-131(a)(1). The only reference to any hearing is found in the rules of the Police Department 38 RCNY 5-30(h).-Shapiro v. NYC Police Dept. 157 Misc. 2d 28 [1993].

¶ 6. Ad Cd §10-131(g) prohibits toy guns from being certain colors and is not preempted by federal law which requires that toy guns have an orange plug. The manufacturers could comply with both requirements.-City of New York v. Job-Lot Pushcart, 213 AD2d 210 [1995].

¶ 7. City law outlawing sales of certain toy guns that resemble actual firearms is not pre-empted by the 1988 Federal Toy Gun Law (15 U.S.C. § 5001 and its implementing regulations, 15 CFR § 1150 et seq.).-City of New York v. Job Lot Pushcart, 88 N.Y.2d 163, 643 N.Y.S.2d 944 (1996).

¶ 8. A gun license is deemed a privilege rather than a right. The law does not require a quasi-judicial or formal adversarial hearing before a pistol license is revoked. Thus, there is no question of substantial evidence in a proceeding to review the revocation of a pistol license and it is not appropriate to transfer the case to the Appellate Division.-Shapiro v. New York City Police Department (License Division), 157 Misc. 2d 28, 595 N.Y.S. 2d 864 (Sup. Ct. New York Co. 1993).

¶ 9. The possession of a handgun license is a privilege rather than a right. The Police Commissioner has broad discretion to grant licenses. In an Article 78 proceeding arising out of the revocation of a pistol license, the only issue is whether the Commissioner's action was arbitrary and capricious or an abuse of discretion. A rational basis exists where the evidence adduced is adequate to support the Commissioner's action. The court must defer to the fact finder's assessment of the evidence and the credibility of witnesses. In this case, the court held that hearsay evidence obtained from confidential informants regarding petitioner's jury tampering in a federal racketeering trial, together with statements taken from a juror in the case regarding a bribe attempt and the fact that the federal judge had declared a mistrial upon indications of jury tampering, were enough to form a basis for revocation of a pistol permit.-Sewell v. City of New York, 182 A.D. 2d 469, 583 N.Y.S. 2d 255 (1st Dept. 1992).

¶ 10. A gun powered by carbon dioxide is not an "air gun" within the meaning of Section 10-131. People v. Delisser, 177 A.D.2d 702, 577 N.Y.S.2d 84 (2nd Dept. 1991).

¶ 11. A BB gun, powered by a carbon dioxide cartridge, qualifies as an "air gun" within the prohibitions of Administrative Code § 10-131(b)(1). Matter of Cesar P., 656 N.Y.S.2d 684 (App.Div. 2d Dept. 1997).

¶ 12. A complaint charging possession of an unlicensed air pistol or air rifle must allege that the weapon was operable. Thus, the complaint, or a supporting deposition or a ballistics report, must demonstrate facts showing that at the time of seizure, the weapon was operable. People v. Blackwell, 176 Misc.2d 896, 675 N.Y.S.2d 486 (Sup.Ct. New York Co. 1998).

¶ 13. The possession of a loaded rifle in the locked trunk of a car is deemed to be "in public" for purposes of this statute. People v. Harris, 193 Misc.2d 487, 750 N.Y.S.2d 424 (App.Term 2d Dept. 2002).

¶ 14. A paintball gun which uses a carbon dioxide cartridge is an "air gun" as defined in the statute. The court held that possession and use of the gun by a thirteen-year-old boy, with the knowledge and consent of his parents, makes the parents liable for injuries caused by the use of the gun (plaintiff shot the paintball gun at a girl who was standing in the driveway of his home, hitting her in the eye). The parents had not only allowed him to keep the gun, but even assisted him in the illegal activity by bringing him to the store to purchase more ammunition. Danielle A. v. Christopher P., 3 Misc.2d 357, 776 N.Y.S.2d 446 (Sup.Ct. Richmond Co. 2003).

¶ 15. The mere facts that a school safety agent saw the defendant standing near a locker that was "kind of cracked open," and that the agent found the air pistol in the locker when he opened it, were insufficient to establish that the defendant possessed an air pistol. The agent did not see the defendant place anything into the locker, and there was no evidence that the locker was assigned to defendant. In other words, mere proximity to the air pistol is not enough to show possession. In Re David H., 30 A.D.3d 285, 817 N.Y.S.2d 269 (1st Dept. 2006).

¶ 16. In one case, a juvenile delinquency finding was affirmed, where an imitation firearm possessed by the juvenile substantially duplicated or could reasonably have been perceived to be an actual firearm, especially from the point of view of an observer with no opportunity to examine it closely. In Re Timothy L., 29 A.D.3d 492, 815 N.Y.S.2d 550 (1st Dept. 2006).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-132

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-132 Sale of broad head, bladed or hunting arrows.

a. It shall be unlawful for any person to sell or dispose of to a person under sixteen a broad head, bladed or hunting arrow or arrowhead.

b. Any person who shall violate this section shall, upon conviction, be punished by a fine of not more than fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 436-5.1 added LL 9/1955 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-133

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-133 Possession of knives or instruments.

a. Legislative findings. It is hereby declared and found that the possession in public places, streets and parks of the city, of large knives is a menace to the public health, peace, safety and welfare of the people of the city; that the possession in public places, streets and parks of such knives has resulted in the commission of many homicides, robberies, maimings and assaults of and upon the people of the city; that this condition encourages and fosters the commission of crimes, and contributes to juvenile delinquency, youth crime and gangsterism; that unless the possession or carrying in public places, streets and parks of the city of such knives without a lawful purpose is prohibited, there is danger of an increase in crimes of violence and other conditions detrimental to public peace, safety and welfare. It is further declared and found that the wearing or carrying of knives in open view in public places while such knives are not being used for a lawful purpose is unnecessary and threatening to the public and should be prohibited.

b. It shall be unlawful for any person to carry on his or her person or have in such person's possession, in any public place, street, or park any knife which has a blade length of four inches or more.

c. It shall be unlawful for any person in a public place, street or park, to wear outside of his or her clothing or carry in open view any knife with an exposed or unexposed blade unless such person is actually using such knife for a lawful purpose as set forth in subdivision d of this section.

d. The provisions of subdivisions b and c of this section shall not apply to (1) persons in the military service of the state of New York when duly authorized to carry or display knives pursuant to regulations issued by the chief of staff to the governor; (2) police officers and peace officers as defined in the criminal procedure law; (3) participants in special events when authorized by the police commissioner; (4) persons in the military or other service of the United

States, in pursuit of official duty authorized by federal law; (5) emergency medical technicians or voluntary or paid ambulance drivers while engaged in the performance of their duties; or (6) any person displaying or in possession of a knife otherwise in violation of this section when such knife (a) is being used for or transported immediately to or from a place where it is used for hunting, fishing, camping, hiking, picnicking or any employment, trade or occupation customarily requiring the use of such knife; or (b) is displayed or carried by a member of a theatrical group, drill team, military or para-military unit or veterans organization, to, from, or during a meeting, parade or other performance or practice for such event, which customarily requires the carrying of such knife; or (c) is being transported directly to or from a place of purchase, sharpening or repair, packaged in such a manner as not to allow easy access to such knife while it is transported; or (d) is displayed or carried by a duly enrolled member of the Boy or Girl Scouts of America or a similar organization or society and such display or possession is necessary to participate in the activities of such organization or society.

e. Violation of this section shall be an offense punishable by a fine of not more than three hundred dollars or by imprisonment not exceeding fifteen days or by both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 383/1995 § 1, eff. Nov. 1, 1995

Subd. e amended L.L. 76/1995 § 4, eff. Sept. 28, 1995. Amendment

expires and is repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

DERIVATION

Formerly § 436-5.2 added LL 107/1959 § 1

Sub c amended LL 12/1960 § 1

Sub a amended LL 64/1983 § 1

Sub b amended LL 64/1983 § 2

Sub c repealed and added LL 64/1983 § 3

Sub f relettered LL 64/1983 § 4

(formerly sub e)

Sub e relettered and amended LL 64/1983 § 5

(formerly sub d)

Sub d added LL 64/1983 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. The provisions of this section making it unlawful for any person under 21 years to carry on his person or have in his possession in any public place any knife or pointed instrument capable of cutting or puncturing are unconstitutional. Such legislation is vague and indefinite and it fails to require proof that possession was for a criminal

intent.-People v. Munoz, 9 N.Y. 2d 51, 211 N.Y.S. 2d 146, 172 N.E. 2d 535 [1961].

¶ 2. This section promotes a legitimate governmental objective and is not unconstitutionally vague or an improper exercise of the city's police power.-People v. Ortiz, 125 Misc. 2d 318 [1984].

CASE NOTES

¶ 1. A Sikh priest was given a summons for violating the law prohibiting possession of an exposed knife. The priest contended that the display of the knife was part of his religion, and that the statute violated the constiutional guarantee of freedom of religion. The court held that the statute did not violate the constitution, although it dismissed the charges in the interest of justice. The need for public safety created a compelling governmental interest, to which the priest's freedom to carry a knife had to give way. The court noted that if Sikhs were given an exemption from the law, it would create an impermissible burden for the police to have to ascertain whether anyone carrying an exposed knife (and thus ostensibly violating the law) was a genuine Sikh. People v. Singh, 135 Misc.2d 701, 516 N.Y.S.2d 412 (Crim.Ct. Queens Co. 1987).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-134

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-134 Prohibition on sale of certain knives.

a. Legislative findings. It is hereby declared and found that the possession in public places, streets and parks of the city, of folding knives which lock upon opening, is a menace to the public health, peace, safety and welfare of the people of the city; that the possession in public places, streets and parks of such knives has resulted in the commission of many homicides, robberies, maimings and assaults of and upon the people of the city, that this condition encourages and fosters the commission of crimes, and contributes to juvenile delinquency, youth crime and gangsterism; that if this situation is not addressed, then there is a danger of an increase in crimes of violence, and other conditions detrimental to public peace, safety and welfare. It has been found that folding knives with a blade of four (4) inches or more that locks in an open position are designed and used almost exclusively for the purpose of stabbing or the threat thereof. Therefore for the safety of the city, such weapons should be prohibited from sale within the jurisdiction of the city of New York.

b. It shall be unlawful for any person to sell, or offer for sale within the jurisdiction of the city of New York, any folding knife with a blade length of four or more inches which is so constructed that when it is opened it is locked in an open position and cannot be closed without depressing or moving a release mechanism.

c. Exempt from this section are importers and exporters or merchants who ship or receive locking folding knives, with a blade length of four or more inches, in bulk, which knives are scheduled to travel or have travelled in the course of international, interstate, or intrastate commerce to a point outside the city. Such bulk shipments shall remain in their original shipping package, unopened, except for inspection and possible subdivision for further movement in interstate or intrastate commerce to a point outside the city.

d. Violation of this section shall be an offense punishable by a fine of not more than seven hundred fifty dollars

($750) or by imprisonment not exceeding fifteen days (15) or both such fine and imprisonment. Any person violating this section shall be subject to a civil penalty not to exceed one thousand dollars for each violation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended L.L. 76/1995 § 5, eff. Sept. 28, 1995. Amendments

expire and are repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

DERIVATION

Formerly § 436-5.3 added LL 24/1984 § 1

CASE NOTES

¶ 1. The possession of weapons in school facilities is a matter of grave public concern. In one case, where a student was found to have possessed a multi-bladed knife, the court placed the student on probation. During the probationary period, the student moved to reopen the dispositional hearing and for entry of an order adjourning the proceeding in contemplation of dismissal. The court held that the student needed continued supervision and counseling and denied the motion. However, the court stated that a new motion could be brought at a later time, by providing a report from the school as to the student's academic performance and behavior during the current semester, along with a report from his treating therapist. In Re Gary B., 12 Misc.3d 1151(A), 819 N.Y.S.2d 848 (Fam.Ct. Queens Co. 2006).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-134.1

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-134.1 Prohibition on sale of box cutters to persons under twenty-one years of age, open displays of box cutters by sellers, and possession of box cutters in a public place, or on school premises by persons under twenty-two years of age.

a. Legislative findings. The council hereby finds that the number of school safety incidents which take place in the city's schools are disturbingly high and are rising, and that these incidents place students and staff at unacceptable risk of injury and disrupt the learning environment. Board of education statistics reveal that for the first half of the 1994-95 school year, 8,333 school safety incidents occurred, representing a 27.6 percent increase as compared with the same period in the prior year. Board of education statistics also reveal that for the entire 1994-95 school year, 19,814 school safety incidents were reported, representing an increase of 16 percent as compared to the prior school year.

The council further finds that the board of education's school safety statistics reveal that over 2,000 box cutters and other similar implements were seized during the 1994-95 school year, indicating that these instruments have become the "weapon of choice" in the city's schools. These implements are used as weapons by students as they are relatively inexpensive, readily available, and easily deployable. Used as weapons, box cutters and similar instruments can cause great injury.

It is the council's belief that banning the sale of box cutters to minors under eighteen year of age, requiring that those who sell box cutters ensure that they are not displayed in a manner that increases opportunities for minors to steal them, and banning the possession of box cutters by persons under twenty-two years of age on school premises, will significantly help in reducing the number of violent school safety incidents and in ensuring that schools are the safe havens of knowledge and education that children need and deserve.

b. Definitions. For purposes of this section:

(1) "Box cutter" means any knife consisting of a razor blade, retractable, nonretractable, or detachable in segments, attached to or contained within a plastic or metal housing, including utility knives, snap-off knives, and box cart cutters.

(2) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

(3) "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any hallway, lobby and other portion of an apartment house or hotel not constituting a room or apartment designed for actual residence.

(4) "School premises" means the buildings, grounds, or facilities, or any portion thereof, owned, occupied by, or under the custody or control of public and private institutions for the primary purpose of providing educational instruction to students, and any vehicles owned, operated or leased by such institutions which are used to transport such students or the personnel of such institutions.

c. It shall be unlawful for any person to sell or offer to sell or cause any person to sell or offer to sell a box cutter to any individual under twenty-one years of age.

d. No person who sells or offers for sale box cutters shall place such box cutters on open display so that such implements are accessible to the public without the assistance of such seller, or his or her employee or other agent, offering such implement for sale; provided, however, that the restrictions of this subdivision shall not apply to those box cutters on open display (1) which are clearly and fully visible from a place of payment for goods or services or customer information at which such seller or an employee or other agent of such seller is usually present during hours when the public is invited or (2) which are in a package, box or other container provided by the manufacturer, importer or packager that is larger than 41 square inches.

e. It shall be unlawful for any person under twenty-two years of age to possess a box cutter on school premises, and unlawful for any person under twenty-one years of age to possess a box cutter while in a public place; provided, however, that nothing in this subdivision shall preclude:

(1) the temporary transfer on school premises of such an instrument to a person under twenty-two years of age for a valid instructional, or school-related purpose where such device is used only under the supervision of a school staff person or other authorized instructor; or

(2) the possession or use of such an instrument in a public place by any person under twenty-one years of age or on school premises by any person under twenty-two years of age so long as it occurs under circumstances in which such person is performing work on such premises during the course of his or her employment, and such instrument is used only under the supervision of his or her employer or such employer's agent or a school staff person.

f. When a person is found to possess a box cutter while in a public place in violation of subdivision e of this section, it is an affirmative defense that:

(1) such person is traveling to or from school premises, where it was or will be used for a valid instructional or school related purpose and used only under the supervision of a school staff member or other authorized instructor, and such person has not displayed the box cutter in a menacing or threatening manner, or in a manner that a reasonable person would believe manifests an intent to use such box cutter for a criminal purpose; or

(2) such person is traveling to or from his or her place of employment, where it was or will be used during the course of such employment and used only under the supervision of his or her employer or such employer's agent, and such person has not displayed the box cutter in a menacing or threatening manner, or in a manner that a reasonable person would believe manifests an intent to use such box cutter for a criminal purpose.

g. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added L.L. 80/1995 § 1, eff. Dec. 4, 1995

Section heading amended L.L. 22/1998 § 1, eff. July 17, 1998.

Subd. b par (3) added L.L. 22/1998 § 2, eff. July 17, 1998.

Subd. b par (4) renumbered and amended L.L. 22/1998 §§ 2, 3, eff. July 17, 1998. (formerly par (3))

Subd. c amended L.L. 22/1998 § 4, eff. July 17, 1998.

Subd. e amended L.L. 22/1998 § 5, eff. July 17, 1998.

Subd. f added L.L. 22/1998 § 6, eff. July 17, 1998.

Subd. g relettered (formerly subd. f) L.L. 22/1998 § 6, eff. July 17, 1998.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-134.2

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-134.2 Regulation of laser pointers.

a. Definitions. For purposes of this section:

(1) "Laser pointer" means any device that emits light amplified by the stimulated emission of radiation that is visible to the human eye.

(2) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

(3) "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, parking lot, plaza, transportation facility, place of amusement, park, playground, and any hallway, lobby and other portion of an apartment house or hotel not constituting a room or apartment designed for actual residence.

(4) "School premises" means the buildings, grounds or facilities, or any portion thereof, owned, occupied by, or under the custody or control of public or private institutions for the primary purpose of providing educational or recreational instruction to students, and any vehicles owned, operated or leased by or on behalf of such institutions that are used to transport such students or the personnel of such institutions.

b. It shall be unlawful for any person to give, sell or offer to sell or cause any person to give, sell or offer to sell a laser pointer to any individual eighteen years of age or younger.

c. No person who sells or offers for sale laser pointers shall place such laser pointers on open display so that

such laser pointers are accessible to the public without the assistance of such seller, or his or her employee or other agent, offering such laser pointers for sale, unless: (1) such laser pointers on open display are clearly and fully visible from a place of payment for goods or services or customer information at which such seller or an employee or other agent of such seller is usually present during hours when the public is invited or (2) such laser pointers are in a package, box or other container provided by the manufacturer, importer or packager that is larger than forty-one square inches. Further, it shall be unlawful to display laser pointers in any manner or to post a sign advertising the availability of laser pointers unless a notice has been posted, in a form and manner prescribed by rule of the department of consumer affairs, indicating that the sale or giving of laser pointers to persons eighteen years of age or younger is a misdemeanor.

d. It shall be unlawful for any person twenty years of age or younger to possess a laser pointer on school premises, unlawful for any person eighteen years of age or younger to possess a laser pointer while in a public place and unlawful for any person to direct light emitted from a laser pointer into or through a public place; provided, however, that nothing in this section shall preclude:

(1) the temporary transfer on school premises of a laser pointer to, or possession on school premises of a laser pointer by, a person twenty years of age or younger for a valid instructional, school-related or employment purpose, where such laser pointer is used under the supervision of a school staff person, other authorized instructor, employer or employer's agent; or

(2) the temporary transfer in a public place of a laser pointer to, or possession in a public place of a laser pointer by, a person eighteen years of age or younger, during such person's hours of employment, for a valid employment purpose, where such laser pointer is used under the supervision of the employer or employer's agent; or

(3) the direction of light from a laser pointer into or through a public place by a person nineteen years of age or older, during such person's hours of employment, for a valid employment purpose.

e. It shall be unlawful for any person to direct light from a laser pointer at a uniformed police officer, uniformed security guard, uniformed school safety officer, uniformed traffic enforcement agent, uniformed member of a paid or volunteer fire department, uniformed emergency medical service worker or uniformed ambulance worker, or other uniformed city, state or federal peace officer, investigator or emergency service worker, or the marked service vehicle of any such individual.

f. When a person is found to possess a laser pointer while in a public place or on school premises in violation of subdivision d of this section, it is an affirmative defense that:

(1) such person was traveling to or from school premises, where the laser pointer would have been or was used for a valid instructional, school-related or employment purpose under the supervision of a school staff person, other authorized instructor, employer or employer's agent, and such person had not turned on the laser pointer or displayed it in a menacing or threatening manner; or

(2) such person was traveling to or from his or her place of employment, where the laser pointer would have been or was used during such person's hours of employment, for a valid employment purpose, under the supervision of the employer of*32 employer's agent, and such person had not turned on the laser pointer or displayed it in a menacing or threatening manner.

g. Authorized agents and employees of the department of consumer affairs, and of any other agency designated by the mayor, shall have the authority to enforce the provisions of subdivisions b and c of this section. A proceeding to recover any civil penalty pursuant to this section shall be commenced by the service of a notice of hearing that shall be returnable to the administrative tribunal of the department of consumer affairs. The administrative tribunal of the department shall have the power to impose civil penalties for a violation of subdivision b or c of this section as follows: not more than three hundred dollars for the first violation; not more than five hundred dollars for the section**33 violation by the same person within a two-year period; and not more than one thousand dollars for the third and all

subsequent violations by the same person within a two-year period. For purposes of determining whether a violation of subdivision b or subdivision c of this section should be adjudicated as a second, third or subsequent violation, violations of subdivision b and violations of subdivision c of this section by the same person within a two-year period shall be aggregated.

h. Any person who violates subdivision b, c or e of this section shall be guilty of a misdemeanor. Any person who violates subdivision d of this section shall be guilty of a violation for a first offense and a misdemeanor for all subsequent offenses.

HISTORICAL NOTE

Section added L.L. 58/1998 § 1, eff. Feb. 6, 1999.

CASE NOTES

¶ 1. Unless a person has previously been found to have violated 10-134.2(d) (possession of a laser pointer by a person under twenty years of age, on school premises), a first offense constitutes a violation rather than a crime. Since a juvenile delinquency petition may not be predicated on the commission of a violation by a person less than sixteen years of age, the Family Court will not have jurisdiction over a child under sixteen who violates this statute. There is nothing that the Family Court can do in such a situation, unless and until the statute is changed. Matter of Miguel N., N.Y.L.J., Sept. 19, 2003, at 23, col. 2 (Fam.Ct. Queens Co.).

FOOTNOTES

32

[Footnote 32]: * So in original. ("of" should be "or".)

33

[Footnote 33]: ** So in original. ("section" should be "second".)

NYC Administrative Code 10-135

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-135 Prohibition on sale and possession of electronic stun guns.

a. As used in this section, "electronic stun gun" shall mean any device designed primarily as a weapon, the purpose of which is to stun, render unconscious or paralyze a person by passing an electronic shock to such person, but shall not include an "electronic dart gun" as such term is defined in section 265.00 of the penal law.

b. It shall be unlawful for any person to sell or offer for sale or to have in his or her possession within the jurisdiction of the city any electronic stun gun.

c. Violation of this section shall be a class A misdemeanor.

d. The provisions of this section prohibiting the possession of electronic stun guns shall not apply to police officers as defined in the criminal procedure law, who are operating under regular department procedure or operation guidelines established by their department.

e. The provisions of this section shall not apply to manufacturers of electronic stun guns or importers and exporters or merchants of electronic stun guns, when such stun guns are scheduled to travel in the course of international, interstate, or intrastate commerce to a point outside the city. Such bulk shipments shall remain in their original shipping package, unopened, except for inspection and possible subdivision for further movement in interstate or intrastate commerce to a point outside the city.

HISTORICAL NOTE

Section added L.L. 38/1985 § 2, language juxtaposed per chap 907/1985

§ 14, section number supplied by Legislative Bill Drafting

Commission

DERIVATION

Formerly § 436-5.4 added LL 38/1985 § 2

(Legislative findings, electronic stun guns are a menace, LL 38/1985

§ 1)

CASE NOTES

¶ 1. An electronic stun gun possessed in violation of § 10-135(b) must be operational in order to convert a complaint into an information, and operability may be established by deposition or by circumstantial evidence.-People v. Lynch, 145 Misc. 2d 354 [1989].

¶ 2. Where defendant is charged with violating the Ad Code of the City of NY § 10-135(b), the unlawful possession of an electronic stun gun, the city must establish proof of the weapons operability in addition to possession, by deposition or circumstantial evidence, to convert a complaint into an information.-People v. Lynch, 145 Misc. 2d 354.

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NYC Administrative Code 10-136

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-136 Prohibition against certain forms of aggressive solicitation.

a. Definitions. For purposes of this section:

(1) "Aggressive manner" shall mean:

(a) Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to (i) fear bodily harm to oneself or to another, damage to or loss of property, or the commission of any offense as defined in section ten of the penal law upon oneself or another, or (ii) otherwise be intimidated into giving money or other thing of value, or (iii) suffer unreasonable inconvenience, annoyance or alarm;

(b) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

(c) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact; or

(d) Using violent or threatening gestures toward a person solicited.

(2) "Solicit, ask or beg" shall include using the spoken, written, or printed word, or bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

(3) "Public place" shall mean a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any hallway, lobby and other portion of an apartment house or hotel not constituting a room or apartment designed for actual residence.

(4) "Bank" shall mean any banking corporation as defined in section 11-164 of the code.

(5) "Check cashing business" shall mean any person duly licensed by the superintendent of banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to the provisions of article 9-A of the banking law.

(6) "Automated teller machine" shall mean a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

(7) "Automated teller machine facility" shall mean the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

b. Prohibited acts. (1) No person shall solicit, ask or beg in an aggressive manner in any public place.

(2) No person shall solicit, ask or beg within ten feet of any entrance or exit of any bank or check cashing business during its business hours or within ten feet of any automated teller machine during the time it is available for customers' use. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. Provided further that no person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this paragraph shall be construed to prohibit the lawful vending of goods and services within such areas.

(3) No person shall approach an operator or other occupant of a motor vehicle while such vehicle is located on any street, for the purpose of either performing or offering to perform a service in connection with such vehicle or otherwise soliciting the sale of goods or services, if such approaching, performing, offering or soliciting is done in an aggressive manner as defined in paragraph one of subdivision a of this section. Provided, however, that this paragraph shall not apply to services rendered in connection with the lawful towing of such vehicle or in connection with emergency repairs requested by the operator or other occupant of such vehicle.

c. Exemptions. The provisions of this section shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

d. Penalties. Any violation of the provisions of this section shall constitute a misdemeanor punishable by imprisonment for not more than sixteen days or by a fine not to exceed one hundred dollars, or by both.

HISTORICAL NOTE

Section added L.L. 80/1996 § 2, eff. Oct. 26, 1996. [See Note]

NOTE

Provisions of L.L. 80/1996 § 1:

Section 1. Legislative findings. The council recognizes a constitutional right to beg or solicit in a peaceful and non-threatening manner. The council finds, however, that an increase in aggressive solicitation throughout the city has become extremely disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation and disorder.

Aggressive panhandling usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic. The council further finds that the presence of individuals who solicit money from persons at or near banks or automated teller machines is especially troublesome. Motorists also find themselves confronted by persons who without permission wash their automobile windows at traffic intersections, despite explicit indications by drivers not to do so. Such activity often carries with it an implicit threat to both persons and property. People driving or parking on city streets frequently find themselves faced with panhandlers seeking money by offering to perform "services" such as opening car doors or locating parking spaces.

This law is timely and appropriate because current laws and city regulations are insufficient to address the aforementioned problems. The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to serve a substantial governmental interest. Furthermore, in enacting this legislation, the council recognizes the availability of community service and other sentencing alternatives, which may be appropriate remedies for violations of this law.

The law is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. Its goal is instead to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the city.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-137

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-137 Prevention of35 harassment on school premises.

a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Department" shall mean the New York city department of education.

2. "Gender" shall mean actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

3. "Harassment" shall mean the creation of a hostile environment by, in whole or in part, conduct or verbal threats, taunting, intimidation or abuse, including conduct, verbal threats, intimidation or abuse for any reason, including, but not limited to, a person's actual or perceived race, color, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, sex, family composition or circumstance, economic circumstance, physical characteristic, medical condition, school performance or any other characteristic or reason that has or would reasonably have the effect of substantially interfering with a student's educational performance, opportunities or benefits, or a student's mental, emotional or physical well-being, or that reasonably causes or would reasonably be expected to cause a student or other person to fear for his or her physical safety.

4. "Retaliatory action" shall mean, but not be limited to, dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, compensation or other benefit, failure to hire, failure to appoint, failure to promote, or transfer or assignment or failure to transfer or assign against the wishes of the affected person.

5. "School" shall mean each school within the New York city public school system that provides educational instruction to students at or below the twelfth grade level.

6. "School function" shall mean a school-sponsored extra-curricular event or activity or any event that takes place on school premises.

7. "School premises" shall mean the buildings, grounds or facilities, or any portion thereof, owned, occupied by, or under the custody or control of the department or of a school, used for the primary purpose of providing educational instruction to students at or below the twelfth grade level, and any vehicles owned, operated or leased by or on behalf of such institutions that are used to transport such students or the personnel of such institutions. School premises shall also include public transportation, such as subways, buses and ferries, when students use such public transportation to attend school or a school function.

b. Prohibition of harassment. No person shall subject another person to harassment on school premises or at a school function.

c. Policies and guidelines. 1. The chancellor of the city public school system shall create policies and guidelines, in accordance with the procedures set forth in subdivision three of section 2801 of the New York state education law, designed to create an environment for each school that is free from harassment. Such policies and guidelines shall include, but not be limited to, penalties or disciplinary measures for those found to have violated such policies and guidelines, and shall indicate when incidents of harassment must be reported to law enforcement authorities. Such policies and guidelines shall also specify that harassment is a basis for granting to a student who has been harassed a transfer to another school, commonly called a "safety transfer," and that harassment is a basis for disciplining any student who engages or has engaged in the harassment of others.

2. Such policies and guidelines required by paragraph 1 of this subdivision shall also: (i) include guidelines to be used in employee training programs, which training shall be given on a regular basis to all pedagogical staff and school safety officers to discourage the development of harassment by (a) raising the awareness and sensitivity of school employees to potential harassment, and (b) enabling employees to prevent and respond to harassment;

(ii) include guidelines to be used in presentations given to students about conduct and harassment issues; such guidelines shall be designed to discourage the development of harassment by (a) raising the awareness and sensitivity of pupils regarding potential harassment, and (b) fostering empathy and empathetic conduct among students;

(iii) be included in the code of conduct which the chancellor is required to disseminate pursuant to subdivision four of section 2801 of the New York state education law;

(iv) be included in mail to parents or guardians of students at each school at the beginning of each school year, be posted in prominent places within each school and be translated and made available in the ten most common languages spoken in New York city and in any other language spoken by more than ten percent of the parents or guardians of children attending any individual school; and

(v) be distributed to all staff, school safety officers and members of school safety committees.

3. The chancellor of the city public school system shall appoint the principal of each school as the person responsible for ensuring the dissemination of the anti-harassment policies and guidelines to all staff of each school, all school safety officers, all members of the school safety committee, and to all students and their parents or guardians, and for providing training to pedagogical staff and school safety officers. Such principal shall also ensure that the name and contact information of a school employee who can provide copies of such policies and guidelines is made available to all students, parents, guardians, staff and to the school safety committee. Such principal may designate a subordinate to assume the responsibilities required by this paragraph.

d. Reporting. 1. The chancellor of the city public school system shall appoint the principal of each school as the enforcement officer responsible for ensuring the enforcement of the anti-harassment policies and guidelines established pursuant to subdivision c of this section and to whom reports of incidents of harassment on school premises or at a school function may be made. Each such principal may designate a subordinate to assume these responsibilities. The chancellor shall also appoint the superintendent of each region and/or district within his or her jurisdiction or the designee of such superintendent, as the person to whom reports of incidents of harassment on school premises or at a school function may be made when such report concerns the principal or other person appointed or designated as the enforcement officer of a school.

2. The chancellor shall create procedures under which incidents of harassment on school premises or at school functions are tracked centrally for record keeping purposes, and procedures under which such incidents of harassment are reported promptly to the principal or his or her designee, or the superintendent of each region and/or district or his or her designee, who must complete, for each such incident, an incident report indicating information about the incident, including, but not limited to, the parties, the location where such incident took place, the date and time such incident occurred and type of harassment involved.

3. By no later than July 30 of each year, the department shall publish a statistical summary of all incidents of harassment that occurred on school premises or at a school function during the preceding school year. Such summary report shall indicate, at a minimum, the number and nature of incidents of harassment broken down by school, school district, region, borough and grade level, and shall be published on the department's website and by such other means as, in the chancellor's discretion, are reasonably determined to best disseminate such information to the public.

4. The department shall also include, on each school's annual report card or any similar document that the department creates, summary information about incidents of harassment at such school, which information shall include (i) a comparison of all incidents of harassment at such school with all incidents of harassment in all similar schools, as determined by the department and (ii) the number of safety transfers that were granted from such school to another school during the preceding school year.

e. Protection of people who report incidents of harassment. Any person subjected to harassment or having reasonable cause to suspect that another person has been subjected to harassment on school premises or at a school function, who reasonably and in good faith either reports such information to appropriate school officials or to law enforcement authorities, or who initiates, testifies, participates or assists in any formal or informal proceedings pursuant to this section, shall not be liable for civil damages that may arise from the making of such report or from initiating, testifying, participating or assisting in such formal or informal proceedings, and no school official or employee shall take, request or cause a retaliatory action against any such person who either makes such a report or initiates, testifies, participates or assists in such formal or informal proceeding.

HISTORICAL NOTE

Section added L.L. 42/2004 § 2, eff. Mar. 8, 2005. [See Note 1]

NOTE

1. Provisions of L.L. 42/2004:

Section 1. Legislative findings: The Council finds that many students, teachers, administrators and others in the New York city school communities are plagued by harassing behavior that interferes with students' educational performance, opportunities and emotional or physical well-being and the well-being of the entire school community. Accordingly, the Council finds that it is necessary to establish strong policies in our City's schools prohibiting harassment for any reason including reasons based, in whole or in part, upon, but not limited to, a person's actual or perceived race, color, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, sex, family composition or circumstance, economic circumstance, physical characteristic, medical condition or school

performance.

. . . . . .

§ 3. If any subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining portions shall remain in full force and effect.

FOOTNOTES

35

[Footnote 35]: * There are two sections 10-137.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-137

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-137 Prohibition on36 the sale or installation of audible burglar alarms for motor vehicles.

a. Definitions. For the purposes of this section:

(1) "audible burglar alarm for a motor vehicle" shall mean any sound signal device designed and intended to produce an audible response upon unauthorized entry into a motor vehicle.

(2) "dealer" shall mean a person selling or leasing and distributing motor vehicles primarily to purchasers that in good faith purchase the vehicles other than for resale.

(3) "manufacturer" shall mean any person manufacturing or assembling motor vehicles.

(4) "motor vehicle" shall mean any device that is propelled by an engine in or upon which a person or material may be transported on the ground and which is intended to be operated upon a public highway.

(5) "person" shall mean an individual, partnership, company, corporation, association, firm, organization or any principal, director, officer, partner, member or employee thereof.

b. (1) It shall be unlawful for any person to sell or offer or display for sale or cause any other person to sell or offer or display for sale an audible burglar alarm for a motor vehicle that:

i. is not capable of automatically terminating its audible response within three minutes of its being activated;

ii. is capable of being activated by means other than direct physical contact with such motor vehicle or through

the use of an individual remote activation device that is designed to be used with the audible burglar alarm system of a particular vehicle which alarm shall be capable of and shall terminate its audible response within three minutes of its being activated; or

iii. is set to automatically terminate its audible response more than three minutes after its being activated.

(2) It shall be unlawful for any person, other than a manufacturer, to install or cause any person to install an audible burglar alarm for a motor vehicle that:

i. is not capable of automatically terminating its audible response within three minutes of its being activated;

ii. is capable of being activated by means other than direct physical contact with such motor vehicle or through the use of an individual remote activation device that is designed to be used with the audible burglar alarm system of a particular vehicle which alarm shall be capable of and shall terminate its audible response within three minutes of its being activated; or

iii. after completion of installation, is not set to automatically terminate its audible response within three minutes of its being activated.

(3) It shall be unlawful for any person to sell, offer or display for sale, or install or cause any other person to sell, offer or display for sale, or install any component that when added to an audible burglar alarm for a motor vehicle would cause such alarm to not meet the requirements of subdivision d of section 24-221*38 of this code.

c. (1) Notwithstanding the provisions of subdivision b of this section, any dealer or any person who prior to the effective date of this section installed an audible burglar alarm for a motor vehicle that does not comply with subdivision b of this section and who, at the time the audible burglar alarm for a motor vehicle was installed, provided a warranty for the replacement or repair of such alarm that commenced upon the installation of such alarm, shall be authorized to replace or repair such alarm in accordance with the terms of such warranty.

(2) Any dealer or any person to which the provisions of paragraph one of this subdivision apply shall maintain a record of all repairs and replacements of such audible burglar alarm for a motor vehicle performed in accordance with the terms of a warranty. Such records shall include the effective date and expiration date of the warranty, the date on which such repair or replacement was performed and such other information as the police commissioner may require by rule. These records shall be retained for a period of seven years, or such longer period as the police commissioner may establish by rule.

d. (1) Any person who violates subdivision b of this section shall be liable for a civil penalty of not less than five hundred dollars nor more than one thousand dollars for the first violation, not less than one thousand dollars nor more than two thousand five hundred dollars for the second violation and not less than two thousand five hundred dollars nor more than five thousand dollars for the third and each subsequent violation.

(2) Each sale, offer or display for sale, or installation of an audible burglar alarm for a motor vehicle made or caused to be made in violation of subdivision b of this section shall be deemed a separate violation and a separate civil penalty shall be imposed for each such violation.

e. The provisions of this section shall be enforced by the police department and the department of consumer affairs.

f. A proceeding to recover any civil penalty pursuant to this section shall be commenced by the service of a notice of hearing that shall be returnable to the administrative tribunal of the department of consumer affairs.

HISTORICAL NOTE

Section added L.L. 43/2004 § 1, eff. Nov. 27, 2004.

FOOTNOTES

36

[Footnote 36]: * There are two sections 10-137.

38

[Footnote 38]: * This section 24-221 was repealed and substance was transferred to new §§ 24-d238, 24-240.

NYC Administrative Code 10-138

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-138 Distribution of a Model Code of Conduct to participants in youth sports programs.

a. Legislative findings and intent. Participation in youth sports programs should be a rewarding experience. Through sports programs, our youth learn the importance of teamwork, cooperation, effort, discipline and commitment. Furthermore, regular physical activity is the cornerstone of an active and healthy lifestyle. Unfortunately, good sportsmanship is sometimes lacking on the part of coaches, parents, players, spectators and other persons involved in youth sports programs, resulting in the creation of a hostile environment for participants. The City Council finds that in order to realize the full potential and value of youth sports programs, participants in such programs should follow a Code of Conduct that reflects principles of good sportsmanship at all youth sports events. Furthermore, the City Council finds that organizations that administer youth sports programs should have the option of banning coaches, parents, players, spectators and other participants in youth sports programs from attending youth sports events if they engage in certain egregious behavior at such events. Additionally, such organizations should have the option of requiring individuals to complete some form of anger management counseling before being allowed to resume attendance at youth sports events.

b. Definitions. For purposes of this section:

(1) The term "youth" shall mean any person under the age of eighteen.

(2) The term "organization" shall mean any individual, firm, partnership, trust, association, corporation or other entity.

(3) The term "youth sports event" shall mean a competition, practice or instructional event involving one or

more youth sports teams, where such youth sports teams utilize city facilities and/or receive city funding.

c. Any organization that administers a youth sports program that utilizes city facilities and/or receives city funding shall distribute the following Model Code of Conduct or a similar Code of Conduct containing guidelines for conduct of behavior to be observed at youth sports events to all coaches, parents and players participating in such sports program:

Model Code of Conduct

1. All officials, coaches, parents, players, spectators and participants shall respect one another.

2. All officials, coaches, parents, players, spectators and participants shall respect officials' decisions.

3. All officials, coaches, parents, players, spectators and participants shall engage in fair play and abide by all game rules.

4. All officials, coaches, parents, players, spectators and participants shall refrain from engaging in taunting of officials, coaches, parents, players, spectators or other participants by means of baiting or ridiculing.

5. All officials, coaches, parents, players, spectators and participants shall refrain from verbal and/or profane abuse of officials, coaches, parents, players, spectators or other participants.

6. All officials, coaches, parents, players, spectators and participants shall refrain from threatening physical violence or engaging in any form of physical violence.

7. All officials, coaches, parents, players, spectators and participants shall win and lose with good sportsmanship and shall strive to make youth sports programs rewarding for all participants.

d. Any organization that administers a youth sports program that utilizes city facilities or receives city funding shall post or affix the Model Code of Conduct or a similar Code of Conduct containing guidelines for conduct of behavior to be observed at youth sports events at the primary facility where such youth sports events occur, as practicable.

e. Any organization that administers a youth sports program that utilizes city facilities and/or receives city funding may ban the presence at youth sports events of any official, coach, parent, player, spectator or other participant who (1) engages in verbal or physical threats or abuse aimed at any official, coach, parent, player, spectator or other participant, (2) initiates a fight or scuffle with any official, coach, parent, player, spectator or other participant or (3) engages in repeated and egregious violations of the Model Code of Conduct or similar Code of Conduct containing guidelines for conduct of behavior to be observed at youth sports events, if the conduct occurs at or in connection with such youth sports event.

f. In the event that any official, coach, parent, player, spectator or other participant is banned from attending youth sports events pursuant to subdivision (e) of this section, such person may petition the organization that imposed such ban for permission to resume attendance. Prior to being permitted to resume attendance, such organization may require such person to present proof of completion of anger management counseling or its equivalent.

HISTORICAL NOTE

Section added L.L. 18/2003 § 1, eff. Feb. 28, 2003.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-145

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-145 Licensing and regulation of towing cars. [Repealed]

HISTORICAL NOTE

Section added chap 907/1985 § 1

Section repealed LL 28/1987 § 3

Section added chap 907/1985 § 1, amended L.L. 75/1985 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Defendant, who had been driving his tow truck upon the Henry Hudson Parkway in response to a call for towing service was not guilty of a violation of a regulation of the Department of Parks forbidding commercial vehicles from using the Parkway in view of exception in the regulations providing in case of breakdown a disabled vehicle might be towed to the nearest exit. This exception should not be construed to apply only to towing service rendered by the company to which the Department of Parks had granted a towing service contract.-People v. Mann, 290 N.Y. 89, 48 N.E. 2d 274 [1943].

¶ 2. Regulation of Department of Parks granting an exclusive contract for towing service on the Henry Hudson Parkway and excluding therefrom all other tow trucks, did not conflict with Admin. Code § 436-7.0, which regulates licensed tow cars and makes it unlawful for any owner or driver of a tow truck to refuse to render towing service to the owner or driver of a disabled motor vehicle.-People v. LaFrantz, 188 Misc. 989, 69 N.Y.S. 2d 614 [1947].

¶ 3. Action of Police Commissioner in suspending petitioner's license to operate a tow car for thirty days for failure to comply with the duties and conditions imposed upon tow car operators by the Admin. Code, **held** not to have been arbitrary.-Gersh v. Police Dept., 125 (48) N.Y.L.J. (3-12-51) 884, Col. 5 T.

¶ 4. Police Commissioner's revocation of petitioner's tow car license was annulled where petitioner was presently with the armed forces in Germany but prior to his entry in the service had executed a power of attorney to his father, who operated a gasoline station, and the revocation was based on acts of his father in connection with towing a disabled car with a tow car which was not petitioner's but belonged to another who had left it at the father's service station for repairs. The Commissioner's action was based on the false information that petitioner's licensed tow car was used in violating the regulation.-In re Rothman (Monaghan), 126 (47) N.Y.L.J. (9-6-51) 392, Col. 4 M.

¶ 5. Although petitioner was not entitled to a hearing as a matter of right under the statute and therefore the proceeding was in the nature of a mandamus to review an administrative act and the "substantial evidence" rule had no application, the discretion of the Commissioner might nevertheless be reviewed if it appeared that his action was arbitrary or capricious or was based upon false information.-Id.

¶ 6. Petitioner was deprived of due process where his application for a municipal license as a tow truck driver was denied without a hearing and solely because of a felony conviction 15 years prior to the application.-Brown v. Murphy, 34 Misc. 2d 151, 224 N.Y.S. 2d 423 [1962].

¶ 7. The Police Commissioner did not act arbitrarily in refusing to issue a tow car license to petitioner who less than nine months prior to the instant application had had his license revoked following an accident wherein petitioner hauled the other car away without permission.-In re Morizia (Murphy), 147 (38) N.Y.L.J. (2-26-62) 16, Col. 1 T.

¶ 8. The Police Commissioner had no authority to revoke petitioner's tow car license. Petitioner refused to sign a waiver of immunity for the grand jury investigating the tow truck activity.-Muro v. Murphy, 146 (22) N.Y.L.J. (8-2-61) 3, Col. 8 F.

¶ 9. The determination of the Police Commissioner revoking petitioner's license and denying renewal applications was annulled and the matter remitted for further proceedings where the notice of hearing was clearly insufficient.-In re Muro, 146 (93) N.Y.L.J. (11-14-61) 16, Col. 5 F.

¶ 10. Regulations of the Police Department prohibiting the owner of a towing truck from maintaining a radio capable of bringing in police calls were consistent with the general purposes of this section although not specifically pertinent to towing car rates.-In re Lade, 148 (85) N.Y.L.J. (10-31-62) 19, Col. 2 M.

¶ 11. Revocation of probationary tow car license because of prior use of unlicensed tow truck, without charging a fee, was not arbitrary.-Nicodemus v. Murphy, 151 (34) N.Y.L.J. (2-19-64) 16, Col. 4 M.

¶ 12. Petitioner issued a restrictive automobile towing license and who contended that the requirement that he produce certain permits from the Fire Department and certificates from the Building Department was unfair was not entitled to a hearing on his application for renewal of license as these objections are based upon the nature of the regulations promulgated by the Commissioner and not on any quasi-judicial determination by him and do not involve any questions of adjudicative fact. The Court also held these regulations reasonable and that the City Council could delegate to the Commissioner of Police power to enforce regulations over tow cars.-Bay Towing Inc. v. Broderick, 49 Misc. 2d 657, 268 N.Y.S. 2d 108 [1966].

¶ 13. Where petitioners had used their private cars to go to scenes of accidents and to solicit business there in which they would use their tow truck they violated spirit, intent and purpose of section regardless of whether their actions constituted a direct violation thereof and where petitioners had towing license revoked on a previous occasion denial of their application for a restricted tow car license was warranted.-Matter of Fiorenti v. Leary, 28 AD2d 702, 281 N.Y.S. 2d 221 [1967], aff'd 21 N.Y. 2d 668, 234 N.E. 2d 256, 287 N.Y.S. 2d 94 [1968].

¶ 14. Denial of application for a tow car driver's license to petitioner was not arbitrary where he had been addicted to drugs for several years and had recently been voluntarily committed for treatment at a drug rehabilitation center for 8 months and then released and was at present an out-patient participant in a drug rehabilitation program.-In re Ippolito (Police Dept. of City of N.Y.), 166 (3) N.Y.L.J. (7-6-71) 12, Col. 4 T.

¶ 15. Where the price was omitted on an "Authorization to Repair" form there was no enforceable contract, and regulations enacted pursuant to this section require that the owner be given the cost of repairs before he executes an authorization to repair.-Campbell v. WABC Towing Corp., 78 Misc. 2d 671, 356 N.Y.S. 2d 455 [1974].

¶ 16. Licensing and regulatory scheme of car towing industry as formulated in this section was upheld as being reasonably related to protecting the public in their dealing with that industry but no basis exists for restricting transfer of existing licenses for car towing held by individuals and partnerships where the transferee meets the existing standards for such license.-Matter of Love Towing v. Beame, 93 Misc. 2d 1064 [1978].

¶ 17. This section requiring tow car operators to obtain a license from N.Y.C. Police Department and to set forth rate schedule is not applicable to operator that towed parked cars on streets of a private residential community through public streets to garage because it is applicable only to the moving of a vehicle that requires towing because of accident, or because it is unable to proceed under its own motive power.-Forest Hills Gardens Corp. v. Kowler, 80 AD2d 630 [1981], aff'd 55 N.Y. 2d 768 [1981].

¶ 18. To justify a tow truck stop without a warrant under the power of the city to regulate and supervise the tow truck industry the stop and inspection must be conducted expeditiously, posing only a minimal intrusion upon the expectation of privacy, the stop must continue to be a crucial part of the regulatory scheme designed to protect the public in dealing with the tow truck industry and the stop must be limited to operations which take place away from an operational base or fixed place of business.-People v. Velez, 109 Misc. 2d 853 [1981].

CASE NOTES

¶ 1. This section is intended to regulate and license the operation of tow trucks whether the fee is directly or indirectly charged for towing. Defendant is the employee of a motor club whose membership agreement states that members are covered for towing expense to a maximum of $25.00. Thus defendant is engaged in the operation of towing vehicles for a fee, even though indirectly collected, and therefore comes within the ambit of this section.-People v. Osorio, 135 Misc 2d 262, [1987].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-146

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-146 Sale of motor vehicles to unlicensed minors.

Any person who sells or gives any motor vehicle or motorcycle to any minor under eighteen years of age who has not been licensed to operate a motor vehicle or motorcycle within the city of New York, is guilty of a misdemeanor punishable by a fine of not more than two hundred fifty dollars, imprisonment for not more than six months, or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 436-10.0 added LL 48/1951 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-147

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-147 Possession of handcuffs, thumb-cuffs or leg irons by unauthorized persons prohibited.

a. It shall be unlawful for any person to knowingly possess any type of handcuffs, including disposable cinch cuffs, thumb cuffs or leg irons. This section shall not prohibit the possession of toy handcuffs which by their construction cannot be used to restrain an individual.

b. The prohibition of this section shall not apply to the following persons:

1. any peace officer, police officer or any person appointed as a police officer by the superintendent of state police; or

2. any police officer or peace officer of another state while conducting official business within the state of New York; or

3. any employee of the city, charged with the care or custody of a juvenile committed to a secure detention facility, while on duty or while traveling to or from his or her assigned duty; or

4. any person in military service or other service of the state, or of the United States, in pursuit of official duty or when duly authorized by federal or state law, regulation or ordered to possess the same articles prohibited by this section; or

5. any member of the auxiliary police force; or

6. any special patrolman appointed by the police commissioner, while on duty or while traveling to or from his

or her assigned place of duty; or

7. any licensed private investigator or any employee of a watch, guard, or patrol agency licensed by the secretary of state under article seven of the general business law, or any employee of a person, firm or corporation operating an armored car transportation service, while such person is acting in the course of his or her employment or is traveling to or from his or her place of employment; and

8. any employee of a person, firm or corporation engaged in the business of manufacturing, selling or transporting such handcuffs, including disposable cinch cuffs, thumb cuffs or leg irons, which are intended for possession by persons authorized by this section, while such person is acting in the course or his or her employment or is traveling to or from his or her place of employment; or

9. any person engaged in a business activity which requires the utilization of such handcuffs, including disposable cinch cuffs, thumbcuffs or leg irons as authorized pursuant to regulations promulgated by the police commissioner, while such person is acting in the course of his or her employment or is traveling to or from his or her place of employment.

c. Any person found in violation of this section shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars or imprisonment of not more than ten days or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd b par 5 amended LL 71/1988 § 1

Subd b par 5 amended LL 17/1988 § 1

Subd b pars 6-9 amended LL 17/1988 § 1

Subd. c amended L.L. 76/1995 § 6, eff. Sept. 28, 1995. Amendment

expires and is repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

DERIVATION

Formerly § 436-14.0 added LL 13/1980 § 1

Sub b par 5 amended LL 67/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-148

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-148 Fines for unlawful cutting of trees on city property other than trees under the jurisdiction of the department of parks and recreation.

It shall be unlawful for any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation to cut, remove or in any way destroy or cause to be destroyed, any tree or other form of vegetation on any public property, without acquiring written consent from the agency having jurisdiction or control of such property. The foregoing provision shall not apply to employees of any agency who are engaged in the proper and authorized performance of their assigned duties.

HISTORICAL NOTE

Section amended L.L. 7/1996 § 3, eff. Feb. 11, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § D51-201.0 added LL 67/1982 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-149

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-149 Violation.

a. Any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation violating the provisions of section 10-148 of this code concerning a tree shall be liable to arrest and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than fifteen thousand dollars or by imprisonment of not more than one year or by both such fine and imprisonment for each such violation. Such individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation shall also be liable for a civil penalty of not more than ten thousand dollars for each such violation which may be recovered in a proceeding before the environmental control board. A proceeding to recover any civil penalty authorized by this section shall be commenced by the service of a notice of violation returnable to the environmental control board. The environmental control board shall have the power to impose the civil penalties prescribed herein.

b. Any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation violating the provisions of section 10-148 of this code concerning any other form of vegetation shall be liable to arrest and upon conviction thereof shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment of not more than ninety days or by both such fine and imprisonment for each such violation.

c. Any individual, firm, corporation, agent, employee or person under the control of such individual, firm or corporation found to be guilty of violating the provisions of section 10-148 of this code or subdivision a of section 18-129 of this code by a court of competent jurisdiction or by the environmental control board shall be denied the opportunity to obtain written consent from the commissioner of parks and recreation or from an agency having control of public property to cut, remove or in any way destroy or cause to be destroyed, any tree or other form of vegetation on

such property for a maximum of two years from the date of conviction, or from the date the civil penalty was imposed.

HISTORICAL NOTE

Section amended L.L. 7/1996 § 4, eff. Feb. 11, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § D51-201.1 added LL 67/1982 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-150

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-150 Declaration and findings; election for non-public office.

The council hereby finds that it is in the public interest to hold certain elections on days other than those which the vast majority of the people of the city respect as a day of worship and a day of rest. The holding of elections on such days of worship is unfair to those citizens who observe such days of worship in that they are unable to participate fully in the election process on an equal basis unless they violate their religious precepts. This poses a threat to the free exercise of religion and equality of access to the electoral process. The council further finds and declares that bigotry, prejudice and intolerance will be discouraged if such elections are forbidden on those days of worship, and that holding elections on other days will permit the participation of a greater number of people.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E51-10.0 added LL 22/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-151

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-151 Elections for non-public office or position.

a. It shall be unlawful to conduct any election for a non-public office or position on Friday after sundown, Saturday or Sunday in which members of the general public are eligible to cast a vote by virtue of the fact that they reside in a particular area of the city.

b. It shall be unlawful for any person to direct, mandate, supervise or assist in conducting any such elections.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E51-10.1 added LL 22/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-152

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-152 Penalty.

a. Any person who shall violate any provision of section 10-151, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or imprisonment for not more than ten days, or both such fine and imprisonment.

b. The results of any election held in violation of section 10-151 shall be null and void.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E51-10.2 added LL 22/1972 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-153

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-153 First aid kits on vehicles for hire.

a. All motor vehicles for hire, used to transport any persons, with a seating capacity of ten or more persons, including the driver, whether by charter or for a term of months shall provide equipment and maintain on board the vehicle at all times, a complete first aid kit containing all that equipment reasonably calculated to provide emergency medical aid to injured persons.

b. Any person, firm or corporation, convicted of a violation of the provisions of this section shall be punished by a fine of one hundred dollars or imprisonment for thirty days or both such fine and imprisonment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 435-16.2 added LL 64/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-154

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-154 False statements in certificates, forms, written statements, applications or reports.

Any person who shall knowingly make a false statement or who shall knowingly falsify or allow to be falsified any certificate, form, signed statement, application or report required under the provisions of this code or any rule or regulation of any agency promulgated thereunder, shall be guilty of an offense and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment of a term of not more than sixty days or both.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1151-9.0 added LL 39/1957 § 15

Renumbered chap 100/1963 § 1577

(formerly § 982-9.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-155

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-155 Public nuisance defined.

For the purpose of this section and section 10-156 of this chapter, the following are declared to be public nuisances:

a. Any building, erection or place where violations of any of the provisions of article two hundred thirty of the penal law are occurring and where two or more violations of such provisions which have resulted in one or more criminal convictions and one or more arrests have occurred within the twelve month period of time prior to the commencement of a proceeding pursuant to section 10-156 of this chapter. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the provisions of such article has been made within thirty days prior to the issuance of notice pursuant to section 10-156 of this chapter.

b. Any building, erection or place where violations of any of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law are occurring and where two or more violations of such provisions which have resulted in one or more criminal convictions and one or more arrests have occurred within the twelve month period of time prior to the commencement of a proceeding pursuant to section 10-156 of this chapter. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the provisions of such articles has been made within thirty days prior to the issuance of notice pursuant to section 10-156 of this chapter.

c. Any building, erection or place where violations of any of the unlawful activities set forth in section one hundred twenty-three of the alcoholic beverage control law are occurring and where two or more violations of such provisions which have resulted in one or more criminal convictions and one or more arrests have occurred within the twelve month period of time prior to the commencement of a proceeding pursuant to section 10-156 of this chapter. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the unlawful

activities set forth in such section has been made within thirty days prior to the issuance of notice pursuant to section 10-156 of this chapter.

d. Any building, erection or place where violations of any of the provisions of section 165.40, 165.45, 165.50, 170.65, 170.70, or 175.10 of the penal law or section four hundred fifteen-a of the vehicle and traffic law are occurring and where two or more violations of such provisions which have resulted in one or more criminal convictions and one or more arrests have occurred within the twelve month period of time prior to the commencement of a proceeding pursuant to section 10-156 of this chapter. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the provisions of such sections has been made within thirty days prior to the issuance of notice pursuant to section 10-156 of this chapter.

e. Any building, erection or place where violations of any of the provisions of section 240.45 of the penal law are occurring and where two or more violations of such provisions which have resulted in one or more criminal convictions and one or more arrests have occurred within the twelve month period of time prior to the commencement of a proceeding pursuant to section 10-156 of this chapter. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the provisions of such section has been made within thirty days prior to the issuance of notice pursuant to section 10-156 of this chapter.

f. For the purposes of this section, "conviction" shall be defined and applied in accordance with the provisions of section 1.20 of the criminal procedure law.

HISTORICAL NOTE

Section amended LL 5/1989 § 2. [See Note 1]

Section added chap 907/1985 § 1

Subd e added LL 64/1989 § 1

Subd f relettered LL 64/1989 § 1

(formerly subd e)

DERIVATION

Formerly § 436-8.0 added LL 42/1984 § 2

(Legislative findings; gambling; drugs etc. from certain buildings

detrimental to health of people LL 42/1984 § 1)

NOTE

1. Provision of LL 5/1989 § 1

Section one. Legislative Intent. The Council finds that Local Law 42 of 1984 was enacted to authorize the police commissioner to sanction and penalize public nuisances: establishments and property operated or used in violation of penal laws relating to prostitution, gambling, controlled substances, dangerous drugs, stolen property, and laws relating to the sale and consumption of alcoholic beverages. The Council hereby reaffirms its previous finding that such public nuisances continue to exist in the city of New York and have a detrimental effect on the public health, safety and welfare and further have a negative effect on the quality of life and total community environment. The Council further finds that the usefulness of Local Law 42 of 1984 in removing public nuisances have been curtailed by the requirement that violations of the penal and other specified laws result in two or more criminal convictions within a twelve-month

period. It has often proved difficult to obtain two convictions within this time frame because of delays in the criminal proceedings. It is the intention of the Council to remove this impediment to the use of Local Law 42 in prohibiting the continued existence of public nuisances in the city of New York by requiring one conviction and one arrest as a precondition to the use of this provision.

CASE NOTES

¶ 1. Evidence of four arrests for gambling violations at petitioner's premises, one of which resulted in a criminal conviction, was sufficient for a finding that the premises constituted a public nuisance. Upon such a determination, the Police Department could close the premises to the extent necessary to abate the nuisance. Johnson v. Police Dept. of the City of New York, 178 A.D.2d 643, 578 N.Y.S.2d 218 (2nd Dept. 1991).

Administrative Code of the City of New York

***** Current through December 2009 ****

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Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-156 Powers of the police commissioner with respect to public nuisances.

a. In addition to the enforcement procedures set forth in chapter seven of title seven of this code and any other law, the police commissioner or such commissioner's designee after notice and opportunity for a hearing shall be authorized:

1. to order the discontinuance of such activity at the building, erection or place where such public nuisance exists, and/or

2. to order the closing of the building, erection or place to the extent necessary to abate the nuisance.

b. 1. Prior to the issuance of orders by the police commissioner or such commissioner's designee pursuant to subdivision a of this section, the police commissioner or such commissioner's designee shall give notice and opportunity for a hearing to the owner, lessor, lessee and mortgagee of a building, erection or place whereinthe public nuisance is being conducted, maintained or permitted. Notice shall be given as follows:

(a) service of a notice of hearing may be made to owners and lessors by delivering such notice to the owner or lessor or to an agent of the owner or lessor or to a person of suitable age and discretion at the residence or place of business of the owner or lessor or, if upon reasonable application such delivery cannot be completed, by affixing such notice in a conspicuous place at the owner's or lessor's place of business or residence or by placing it under the entrance door at either of such locations or by delivering such notice to a person employed by the owner or lessor on the premises at which the nuisance is located and, in all instances except personal delivery upon such owner or lessor, by mailing the notice of hearing as follow:

(i) to the person registered with the department of housing preservation and development as the owner or agent of the premises, at the address filed with such department in compliance with article two of subchapter four of chapter two of title twenty-seven of the administrative code; or

(ii) to the person designated as owner of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the department of finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the department of finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

(iii) to the person in whose name the real estate affected by the order of the police commissioner or such commissioner's designee is recorded in the office of the city register or the county clerk as the case may be.

(b) service of a notice of hearing may be made to an owner or lessor which is a corporation pursuant to section three hundred six of the business corporation law;

(c) service of a notice of hearing may be made to lessers (i) by delivering such notice to the lessee or to a person employed by the lessee on the premises at which the nuisance is located; or (ii) by affixing such notice in a conspicuous place to the premises at which the nuisance is located or placing a copy under the entrance door of such premises and mailing a copy of such notice to the lessee at such premises;

(d) service of a notice of hearing may be made to mortgagees by mailing such notice to the mortgagee at the last known residence or place of business or employment of the mortgagee;

(e) proof of service pursuant to subparagraphs (a), (b), (c) and (d) of this paragraph shall be filed with the commissioner or the commissioner's designee;

2. The lack of knowledge of, acquiescence or participation in or responsibility for, a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession of or having charge of as agent or otherwise, or having any interest in the property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors and lessees, mortgagees and such other persons.

c. Orders of the police commissioner or such commissioner's designee issued pursuant to this section shall be posted at the building, erection or place where a public nuisance exists or is occurring in violation of law and shall be mailed to the owner of record thereof within one business day of the posting.

d. On the fifth business day after the posting of an order issued pursuant to paragraphs one or two of subdivision a of this section and upon the written directive of the police commissioner or such commissioner's designee, officers of the police department are authorized to act upon and enforce such orders.

e. Where the police commissioner or such commissioner's designee closes a building, erection or place pursuant to paragraph two of subdivision a of this section, such closing shall be for such period as the police commissioner or such commissioner's designee may direct but in no event shall the closing be for a period of more than one year from the posting of the order pursuant to subdivision c of this section. If the owner, lessor or lessee shall (i) file a bond in an amount determined by the police commissioner or such commissioner's designee but which may not exceed the value of the property ordered to be closed and (ii) submit proof satisfactory to the police commissioner or such commissioner's designee that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, erection or place has been directed to be closed by the order of the police commissioner or such commissioner's designee, then the police commissioner or such commissioner's designee may vacate the provisions of the order that direct the closing of the building, erection or place.

f. A closing directed by the police commissioner or such commissioner's designee pursuant to paragraph two of

subdivision a of this section shall not constitute an act of possession, ownership or control by the city of the closed premises.

g. It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, erection or place, or portion thereof, ordered closed by the police commissioner or such commissioner's designee. Mutilation or removal of a posted order of the police commissioner shall be punishable by a fine of not more than two hundred fifty dollars or by imprisonment not exceeding fifteen days, or both, provided such order contains therein a notice of such penalty.

h. Intentional disobedience or resistance to any provision of the orders issued by the police commissioner or such commissioner's designee pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment not exceeding six months, or both.

i. The police commissioner may promulgate rules and regulations to carry out and give full effect to the provisions of section 10-155 and this section. Such rules and regulations shall be promulgated in accordance with section eleven hundred five of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd b par 1 amended LL 53/1988 § 1

Subd d amended LL 53/1988 § 2

DERIVATION

Formerly § 436-8.1 added LL 42/1984 § 2

CASE NOTES

¶ 1. The evidence of four arrests for gambling violations, one of which resulted in a criminal conviction supports the determination that the place of business was a public nuisance, § 10-155(b). Police are authorized to close petitioner's place of business to the extent necessary to abate a nuisance, § 10-156. Despite efforts to separate the part of the premises which serves as a "legitimate" video rental store, petitioner still had legal as well as physical access to the area where the gambling violations occurred. Video store should not remain open as a separate entity.-Johnson v. Police Dept, 178 AD2d 643 [1991].

¶ 2. The New York City Police Department, following an administrative hearing, declared a store to be a public nuisance because of illegal gambling and directed that the premises be closed for one year. The Police Department had regulations under which anyone adversely affected by a closure order could attempt to vacate the order by filing a motion with the Police Department, which is then assigned for processing by a hearing officer. Petitioner, who allegedly purchased the building after the closure occurred, brought an Article 78 proceeding arising out of the closure. The court held that since the petitioner had failed to pursue the hearing remedy, the proceeding had to be dismissed by reason of failure to exhaust administrative remedies.-Abreu v. New York City Police Department, 182 A.D.2d 414, 582 N.Y.S.2d 148 (1st Dept. 1992).

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Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-157 Bicycles used for commercial purposes.

a. Every person, firm, partnership, joint venture, association or corporation which engages in the course of its business, either on behalf of itself or others, in delivering packages, parcels, papers or articles of any type by bicycle shall provide identification of the business by requiring every bicycle or bicycle operator to be identified by:

(1) affixing to the rear of each bicycle, bicycle seat or both sides of the delivery basket, a metal plastic or other sign of a type approved by the police commissioner, with the name of the business and a three digit identification number which identifies the bicycle operator in lettering and numerals so as to be plainly readable at a distance of not less than ten feet and maintaining same in good condition thereon; and

(2) by requiring each bicycle operator to wear a jacket, vest, or other wearing apparel on the upper part of the cyclist's body while making deliveries, or otherwise riding a bicycle on behalf of the business, the back of which shall indicate the business name and the bicycle operator's individual identification number in lettering and numerals so as to be plainly readable at a distance of not less than ten feet.

b. Every person, firm, partnership, joint venture, association or corporation engaged in providing a service as authorized herein must issue to every bicycle operator a numbered identification card which contains the name, residence address and photo of the bicycle operator and the name, address and telephone number of the company for whom the bicycle operator is employed. Such identification card must be carried by the bicycle operator while the cyclist is making deliveries, or otherwise riding a bicycle on behalf of the business, and must be produced upon the demand of a police officer or any other law enforcement officer.

c. Every person, firm, partnership, joint venture, association or corporation engaged in providing a service as authorized herein shall maintain in a log book to be kept for such purpose, the name and place of residence address of every employee operating a bicycle, the date of employment and discharge of each person in said service, and every messenger or delivery person's identification number. The owner of any business engaged in providing a service as authorized in this section shall be responsible for maintaining in the log book a daily trip record in which all entries shall be made legibly in ink and each entry shall be dated and include the bicycle identification number, the operator's name and the name and place of origin and destination for each trip. No entry shall be rewritten either in whole or in part except in such manner as may be provided by regulation of the commissioner; any such unauthorized rewriting shall give rise to a rebuttable presumption of an act of fraud, deceit or misrepresentation. Such log book shall be made available for inspection during regular and usual business hours upon request of an agent of the police commissioner or any police officer or any other person authorized by law.

d. The owner of any business engaged in providing a service as authorized in this section shall file an annual report in such form as shall be designated by the police commissioner by rule or regulations. Said report shall include, inter alia, the number of bicycles it owns and the number and identity of any employees it may retain. Any business engaged in providing a service as authorized in this section shall be responsible for the compliance with the provisions of this section of any employees it shall retain. Nothing contained in this section shall be construed as applying to persons under the age of sixteen who use a bicycle to deliver daily newspapers or circulars.

e. (1) The owner of any business engaged in providing a service as authorized in this section shall provide, at its own expense, protective headgear suitable for each bicycle operator. Such headgear shall:

(i) meet the standards set forth by the consumer product safety commission in title 16, part 1203 of the code of federal regulations;

(ii) be readily available at each employment site for use by each bicycle operator; and

(iii) be replaced if such headgear is no longer in good condition. Headgear is no longer in good condition if it is missing any of its component parts or is otherwise damaged so as to impair its functionality.

(2) Each bicycle operator shall wear protective headgear that meets the requirements of paragraph 1 of this subdivision while making deliveries or otherwise operating a bicycle on behalf of such business. The term "wear such protective headgear" means having the headgear fastened securely upon the head with the headgear straps.

f. The owner of any business engaged in providing a service as authorized in this section, notwithstanding that a bicycle may be provided by an employee thereof, shall provide at its own expense and ensure that each bicycle is equipped with a lamp; a bell or other device capable of giving an audible signal; brakes; reflective tires or, alternately, a reflex reflector mounted on the spokes of each wheel; as well as other reflective devices or material, in accordance with section 1236 of the vehicle and traffic law.

g. Except as otherwise provided in subdivision h of this section, the violation of any of the provisions of this section, or of any of the rules or regulations that may be promulgated pursuant hereto, shall be a violation triable by a judge of the criminal court of the city of New York and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars or imprisonment for not more than fifteen days or both such fine and imprisonment.

h. Any person who makes deliveries or otherwise operates a bicycle on behalf of a business without carrying the identification required by subdivision b of this section or who fails to produce such identification upon demand as required by such subdivision, or who fails to wear protective headgear required by subdivision e of this section, shall be guilty of a traffic infraction and upon conviction thereof shall be liable for a fine of not less than twenty-five dollars nor more than fifty dollars. It shall be an affirmative defense to such traffic infraction that the business did not provide the protective headgear required by subdivision e of this section. Such traffic infraction may be adjudicated by such an

administrative tribunal as is authorized under article two-A of the vehicle and traffic law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. e added L.L. 9/2007 § 2, eff. July 26, 2007. [See Note 1]

Subd. e amended L.L. 76/1995 § 7, eff. Sept. 28, 1995. Amendments

expire and are repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

Subd. f added L.L. 9/2007 § 2, eff. July 26, 2007. [See Note 1]

Subd. g relettered and amended (former Subd. e) L.L. 9/2007 § 2, eff.

July 26, 2007. [See Note 1]

Subd. h relettered and amended (former Subd. f) L.L. 9/2007 § 2, eff.

July 26, 2007. [See Note 1]

DERIVATION

Formerly § 436-15.0 added LL 37/1984 § 1

Amended LL 47/1984 § 1

NOTE

1. Provisions of L.L. 9/2007:

Section 1. Declaration of legislative findings and intent. The City of New York is replete with businesses that utilize bicycles due to their cost efficiency and high maneuverability. Bicycle riders are frequently seen on the City streets acting as couriers for a wide variety of consumer items.

However, due to the quantity of pedestrian and vehicular traffic within the City, potentially dangerous collisions are inevitable. Approximately 540,000 bicyclists visit emergency rooms each year throughout the United States. Of those, roughly 67,000 have suffered head injuries.

According to the New York City Department of Transportation, head injuries are the most common cause of death among cyclists and wearing a helmet can significantly reduce the risk of head injury. Studies indicate that the use of helmets diminishes the danger of bicycle-related head trauma by 74%-85%. To ensure a minimum level of protection, the Consumer Product Safety Commission has adopted a helmet standard that became mandatory for all helmets manufactured for sale in the U.S. after March, 1999.

The low cost of safety helmets relative to the potentially severe dangers resulting from bicycle accidents clearly demonstrates the benefits of such protective equipment. Additionally, reducing serious head injuries may result in a financial benefit for businesses due to reduced medical and insurance costs. Finally, a reduction in such injuries may help spare the City's health care resources.

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Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-157.1 Signs with bicycle safety procedures.

a. Every person, firm, partnership, joint venture, association or corporation subject to the provisions of subdivision a of section 10-157 of this chapter shall post one or more signs at each employment site summarizing:

(1) the responsibilities of bicycle operators and businesses pursuant to section 10-157 of this chapter; and

(2) the provisions of the vehicle and traffic law, administrative code of the city of New York and department of transportation traffic rules and regulations that the commissioner of transportation in his or her discretion determines are most important for the safe operation of bicycles.

b. Every sign required pursuant to subdivision a of this section shall be:

(1) in English and Spanish and any other language spoken predominantly by any bicycle operator utilized by the business; and

(2) posted in a manner conspicuous to bicycle operators utilized by the business and to patrons of the business present at the employment site.

c. The commissioner of transportation shall promulgate such rules and regulations as may be required to effectuate the purposes of this section, including rules and regulations governing the content, size and manner of display of signs required pursuant to this section and shall make a model sign available on the department of transportation's website.

d. The violation of any provision of subdivision a or b of this section shall be a violation triable by a judge of the criminal court of the city of New York and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars or imprisonment for not more than fifteen days or both such fine and imprisonment. In addition, any person who violates any provision of subdivision a or b of this section shall be liable for a civil penalty of three hundred dollars.

e. The provisions of this section shall be enforceable by the police commissioner.

HISTORICAL NOTE

Section added L.L. 10/2007 § 1, eff. July 26, 2007.

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NYC Administrative Code 10-158

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Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-158 Vessel regulation zone.

a. Description. That portion of the body of water contained within the county of the Bronx, known as the lagoon within pelham bay park, whose limits are: on the northeast, latitude 40° 52' 40", longitude 73° 47'; on the northwest, latitude 40° 52' 57", longitude 73° 47' 38"; on the southeast, latitude 40° 51' 54", longitude 73° 49' 12"; and on the southwest, latitude 40° 52' 4", longitude 73° 48' 25", and which does not exceed one thousand feet from the shore line at low water mark, shall be designated a vessel regulation zone, as set forth under section 46 of the navigation law of the state of New York.

b. Regulation. The maximum vessel speed limit within this vessel regulation zone shall be four miles per hour. The commissioners of the police department and the department of parks and recreation shall be required to enforce said speed limit. "Vessel", as defined for purposes of this section, shall not include a crew racing shell. "Crew racing shell" shall mean any shell, gig, barge or other boat designed primarily for practice or racing, propelled by oars or sweeps, in the sport of crew or scull racing conducted by a private or public educational institution, school, academy, college, university or association of any of the preceding or by any amateur sports club or association or by the United States or International Olympics Committee and shall not include canoes, rowboats or lifeboats.

c. Posting of speed signs. There shall be posted by the commissioner of the department of parks and recreation on the shore near the boundaries of this vessel regulation zone, signboards facing the water and bearing thereon in large letters, "Vessel Regulation Zone, Speed Limit 4 miles per hour". Such signboards shall be conspicuously placed and of sufficient size to be easily readable by a person using such waters.

d. Penalties. Any person violating any of the regulations including the speed limit as set forth in this section

shall be guilty of a misdemeanor punishable upon conviction by a fine not exceeding fifty dollars or by imprisonment for not more than ninety days or by both.

e. Exemptions. The provisions of this section shall not apply to any vessel while actually competing in a duly authorized regatta, provided notice of such regatta has been filed with the Bronx county clerk and the department of parks and recreation at least ten days prior to the occurrence of such event and provided that no single sponsor of such regatta be allowed to conduct more than six within any calendar year.

HISTORICAL NOTE

Section added LL 48/1990 § 2 eff. August 16, 1990 contingent on state

approval. [See note]

NOTE

Provisions of LL 48/1990 §§ 1, 4

Section one. Legislative findings. The council hereby finds that the lagoon in the Pelham Bay Park is a source for such recreational activities as fishing and rowing for many people and serves as the site to launch canoes, kayaks and other motorless boats. However, the lagoon also is used by persons in speedboats, some of which are trailed by water-skiers, that leave large wakes which present hazards for other recreational activities, not to mention the possible erosion of shore front property. Under the State Navigation Law, the city has the authority to designate speed limits within certain clearly identified bodies of water. Therefore, to ensure a safer environment in the lagoon in Pelham Bay Park, the council hereby finds that this body of water should be designated a vessel regulation zone and that a maximum speed limit of four miles per hour be imposed to better ensure the public's safety.

§ 4. This local law shall take effect thirty days after its enactment into law and after approval by the New York State commissioner of parks, recreation and historic preservation [Approval received November 20, 1990 and filed with the City Council, see Message 243 for 1990].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-158.1

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-158.1 Harlem River no wake area.

a. For the purposes of this section the following terms shall be defined as follows: 1. "Idle speed" shall mean the lowest speed at which a vessel can operate, maintain safe steerage, and minimize the production of a wake that could unreasonably interfere with or endanger other persons, property, or water-borne vessels.

2. "No wake area" shall mean an area in which a vessel must travel at idle speed.

3. "Vessel" shall mean any motorized floating craft with the exception of any motorized floating craft that (i) is used primarily as a residence, (ii) is a vessel operated by an authorized member or employee of any law enforcement or emergency services agency or organization when used in the performance of official law enforcement or emergency services duties, (iii) is provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement or (iv) is a vessel in commercial service, as defined in Section 2101 of Title 46 of the United States Code. A vessel operated by an individual who is compensated to operate such vessel shall not provide sufficient cause to deem such vessel to be in "commercial service."

4. "Wake" shall mean all changes in the vertical height of the water's surface caused by the passage of a vessel including, but not limited to, such craft's bow wave, stern wake and propeller wash.

b. Swindler Cove and that portion of the Harlem River running from the University Heights Bridge southerly to the High Bridge; and that portion of the Harlem River between the Spuyten Duyvil trestle and the Broadway Bridge are hereby designated "No Wake Areas."

c. 1. All vessels operating within the no wake area shall be operated at idle speed.

2. The police commissioner, the commissioner of parks and recreation and the heads of such other agencies as the mayor shall designate shall have the authority to enforce paragraph one of this subdivision.

d. The commissioner of parks and recreation shall post one or more signboards at or about seven hundred fifty feet from the northerly-most and southerly-most boundaries, respectively, or as closely thereto as practicable, of each such "no wake area" and at or about three hundred fifty feet from the northerly-most and southerly-most boundaries, respectively, or as closely thereto as practicable, of each such "no wake area." Such signboards shall face the water in both directions and bear thereon, respectively, a notice indicating the distance from the "no wake area" and a direction to proceed at idle speed. The exact distances of such signboards shall be subject to the availability of property upon which to post such signboards. The commissioner of parks and recreation shall also post additional signboards to indicate to vessel operators the presence of a boathouse in the "no wake area" or the shoreline. Such signboards shall be conspicuously placed and be of sufficient size to be read easily by a person using such waters.

e. Any person violating paragraph one of subdivision c of this section shall be guilty of a misdemeanor punishable upon conviction by a fine not exceeding one hundred fifty dollars or by imprisonment for not more than ninety days or by both. Any such penalty shall be in addition to any penalty provided for in the New York State navigation law.

f. The provisions of this section shall not apply to the following: 1. any vessel while actually competing in a duly authorized regatta, provided notice of such regatta has been filed with and accepted by the clerk of Bronx and New York counties, and with the United States coast guard and the department of parks and recreation, at least ten days prior to the occurrence of such event and

2. any vessel while actually engaged in safety or coaching activities

HISTORICAL NOTE

Section added L.L. 117/2005 § 2, eff. Mar. 29, 2006. [See Note 1]

NOTE

1. Provisions of L.L. 117/2005:

Section 1. Declaration of legislative findings and intent. The operation of water-borne vessels within the city of New York or its territorial waters results in the production of wakes, some of which travel at speeds and heights that pose a danger to the safety of boaters in vessels that are not mechanically propelled, and may damage piers and other shoreline structures, waterfront recreational facilities and parks, the shoreline itself and wetland restoration sites along the waterfront.

The New York Restoration Project, a non-profit organization founded over ten years ago, creates open space for public access and manages several gardens and parks. In 1996, the organization began work to clean up a five-acre parcel of land on the Harlem River located at the corner of Harlem River Drive and Dyckman Street that was being used as a dumping ground for boats, refrigerators, construction equipment and other debris.

The New York Restoration Project converted this area to parkland and opened the Peter Jay Sharp Boathouse in 2004, which is a floating structure managed by the New York Rowing Association, a not-for-profit organization dedicated to sharing the benefits of rowing for athletes in New York City of all ages and athletic abilities. In addition, the organization initiated a wetland restoration project along the shoreline that was completed in 2003 by the New York State Department of Transportation.

The Peter Jay Sharp Boathouse has required several costly repairs during its short period of operation. For example, over 300 linear feet of sewer, sprinkler and water utility piping running from the boathouse to the shore was destroyed, a floating dock was damaged and the boathouse's fendering system deteriorated. According to the New York Restoration Project, harmful wakes have contributed to these damages.

The Harlem River is a popular waterway for rowing and crew racing. Nicknamed "Scullers Row" in the late 19th and early 20th centuries, the Harlem River is considered by many to be the birthplace of American rowing. In addition to the Peter Jay Sharp boathouse, the Columbia University Boathouse is located at the northern tip of Manhattan near Spuyten Duyvil. Columbia University rowers have long practiced and raced on the Harlem River as far south as Yankee Stadium. Other rowing clubs use the Harlem River for daily practice, including Fordham University, Manhattan College and the Empire State Rowing Association.

Use of the Harlem River for rowing is rapidly increasing. In 2005, there were two regattas on the Harlem River, including the first annual Peter Jay Sharp "Head of the Harlem" Regatta in September, which drew high school, collegiate and master rowers from up and down the eastern seaboard. The New York Rowing Association's Urban Rowing Initiative teaches swimming and rowing to urban teenagers, especially from Washington Heights and the South Bronx, as a way of opening up both the river to its surrounding community and the kids to possible athletic scholarships. The New York State Office of Parks and Historic Preservation is studying the feasibility of building a multi-use boathouse at the southern end of Roberto Clemente State Park as part of a park-wide renovation to be completed by 2010.

Despite the Harlem River's unique role as a crew racing destination in New York City, rowers must compete with mechanically-propelled boat users and their wakes. A recent incident underscores the need for operators of all water-borne vessels to exercise extreme caution in their activities and to make allowances for the possibility of the presence of other boaters in the water. In this incident, a collision occurred between a racing shell carrying four members of the Peter Jay Sharp Rowing Club and another vessel. The four men were thrown into the water, and while three were rescued by the operators of the vessel, the fourth man, Jim H. Runsdorf, could not be rescued. This bill is therefore named in tribute to Jim H. Runsdorf.

This tragedy raises questions about how to improve the coordination of water transportation in areas known for crew racing using non-mechanical boats and regattas. This legislation addresses this problem by defining two areas in the Harlem River as a "no wake area" to enhance the safety of non-mechanically propelled vessel operators and protect piers and other shoreline structures, waterfront recreational facilities and parks, the shoreline itself and wetlands along the waterfront. This legislation also addresses the need for increased awareness and care among operators of water-borne mechanically-propelled vessels traveling in the territorial waters of New York City by publicizing educational material and creating a temporary citywide task force on boater safety and wake reduction.

. . . . . .

§ 5. This local law shall be known as the Jim H. Runsdorf Law.

§ 6. This local law shall take effect immediately, except that sections two and three shall take effect ninety days after it shall have become a law, and except that the police commissioner and the commissioner of parks and recreation shall take such actions as are necessary for the implementation of sections two and three of this local law prior to such effective date.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-158.2

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-158.2 Wake reduction educational material.

The commissioner of parks and recreation, in consultation with the police commissioner, shall prepare and make available to operators of water-borne vessels, as defined in section 19-306 of this code, within the city of New York or its territorial waters, and operators of piers, marinas and boat repair yards educational materials related to the dangers of wakes to the safety of boaters in water-borne vessels in the water; the potentially adverse impact of wakes to piers and other shoreline structures, waterfront recreational facilities and parks, the shoreline itself, and wetlands along the city's waterfront; the importance of minimizing wakes as a water-borne vessel operates in a vessel regulation zone or "no wake area;" and which government entities have jurisdiction over rule-making and enforcement in the territorial waters of the city of New York.

HISTORICAL NOTE

Section added L.L. 117/2005 § 2, eff. Mar. 29, 2006. [See § 10-158.1 Note 1]

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NYC Administrative Code 10-159

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-159 Safe streets, safe city advisory board.

(a) There is hereby established a safe streets, safe city advisory board. The safe streets, safe city advisory board shall consist of the deputy mayor for public safety, the police commissioner, one person appointed by the speaker of the city council, one additional person appointed by the mayor, one person appointed by the governor, one person appointed by the temporary president of the state senate, one person appointed by the minority leader of the senate, one person appointed by the speaker of the state assembly and one person appointed by the minority leader of the assembly.

(b) The safe streets, safe city advisory board shall meet at least four times a year, including on the first Thursday in August, November, February and May. The advisory board may establish its own rules and procedures with respect to the conduct of its meetings and other affairs not inconsistent with law.

(c) Membership on the safe streets, safe city advisory board shall not constitute the holding of a public office, and members of the advisory board shall not be required to take and file oaths of office before serving on the advisory board.

(d) No member of the safe streets, safe city advisory board shall be disqualified from holding any public office or employment, nor shall a member forfeit any office or employment by reason of appointment as a member hereunder.

(e) The director of the office of management and budget, in consultation with the police commissioner and heads of appropriate agencies of the city, shall make an annual report to the mayor within thirty days of the release of the preliminary budget in nineteen hundred ninety-two, nineteen hundred ninety-three, nineteen hundred ninety-four, nineteen hundred ninety-five, nineteen hundred ninety-six and nineteen hundred ninety-seven regarding

implementation of the safe streets, safe city program. The mayor shall promptly forward a copy of such report to the safe streets, safe city advisory board, the governor, the temporary president of the state senate, the minority leader of the state senate, the speaker of the state assembly, the minority leader of the state assembly and the speaker of the city council. The director of the office of management and budget shall notify the safe streets, safe city advisory board of any proposed budget modification to the safe streets, safe city program at the same time such proposed budget modification is submitted to the city council for approval in the form of an updated supporting schedule to such proposed budget. Such notification shall contain a detailed description of the proposed modification and the impact thereof upon the safe streets, safe city program.

(f) The safe streets, safe city advisory board shall report on August first, nineteen hundred ninety-one, and on October first of every year thereafter, through nineteen hundred ninety-six, on the implementation of the safe streets, safe city program within the city, with particular emphasis on the city's current efforts with respect to the city's criminal justice system, as well as the other agencies which are to receive enhanced funding under the safe streets, safe city program. Any additional written comments submitted by individual members of the advisory board regarding the city's implementation of the program shall be attached to and incorporated within the advisory board report as an addendum thereto. All comments and observations included in the report by the safe streets, safe city advisory board shall be responded to by the mayor.

(g) The advisory board may request and shall receive from any department, division, board, bureau, commission, borough president, agency or public authority of the city of New York, such assistance, information, and data as will enable the advisory board properly to carry out its functions.

HISTORICAL NOTE

Section amended chap 186/1993 § 1, eff. June 30, 1993

Section added chap 6/1991 § 2, eff. Feb. 13, 1991. [See note]

Subd. (a) amended chap 525/1993 § 1 eff. June 30, 1993

NOTE

Provision of chap 6/1991

Section 1. The legislature hereby finds and declares that an omnibus criminal justice plan is essential to deal effectively and comprehensively with crime in New York city. The "safe streets, safe city" program, based upon the New York city police commissioner's comprehensive study of the New York city police department, is such a plan. At the heart of the plan is the premise of community policing and the deployment of officers to neighborhood patrol. The mayor and the city council have agreed that the financing program provided for in this act, together with the component of funds to be provided through real estate taxes, will provide the funds necessary to implement this expansion and enhancement of the city's criminal justice system. The state must authorize the new revenue sources requested by the city of New York to enable the city to effectively meet the goals of the "safe streets, safe city" program.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-160

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-160 Security measures at automated teller machine facilities.

a. Definitions. For purposes of this section:

(1) "Access code" means a series of numbers or letters, unique to each banking customer, which when entered into an automated teller machine, grant the customer entry to the customer's account records.

(2) "Automated teller machine" means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

(3) "Automated teller machine card" means an instrument authorized by a bank which permits a customer to gain access to an automated teller machine facility.

(4) "Automated teller machine facility" means the area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular banking hours.

(5) "Bank" means any banking corporation, as defined in section 11-640 of the code, which operates, owns, or controls an automated teller machine facility in the city of New York.

(6) "Adequate lighting" with respect to an open and operating automated teller machine facility located on an exterior wall of a building open to the outdoor air, and any defined parking area, means lighting during nighttime hours according to the following standards:

(i) a minimum of ten candlefoot power at the face of the automated teller machine and extending in an unobstructed direction outward five feet;

(ii) a minimum of two candlefoot power within fifty feet from all unobstructed directions from the face of the automated teller machine. If such machine is located within ten feet of the corner of the building and the automated teller machine facility is generally accessible from the adjacent side, there shall be a minimum of two candlefoot power along the first forty unobstructed feet of the adjacent side of the building.

With respect to defined parking areas, "adequate lighting" means a minimum of two candlefoot power in that portion of the parking area within sixty feet of the automated teller machine facility.

With respect to an automated teller machine facility located within the interior of a building, "adequate lighting" means lighting, on a twenty-four hour basis, which permits a person entering the facility to readily and easily see all persons occupying such facility, and which permits a person inside the facility to readily and easily see all persons at the entry door of such facility.

(7) "Defined parking area" means that portion of any parking area open for bank customer parking which is (i) contiguous to any paved walkway or sidewalk within fifty feet of an automated teller machine facility, (ii) regularly, principally and lawfully used for parking by users of the automated teller machine facility while conducting transactions at such automated teller machine facility during nighttime hours; and (iii) owned or leased by the operator of the automated teller machine facility, or owned or otherwise controlled by the party leasing the automated teller machine facility site to the operator. The term does not include any parking area which is not open or regularly used for parking by the users of the automated teller machine who are conducting automated teller machine transactions during nighttime hours. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed.

(8) "Nighttime hours" means the period of time beginning at sunset and ending at sunrise.

(9) "Candlefoot power" means the light intensity of candles on a horizontal plane at thirty-six inches above ground level and five feet in front of the area to be measured.

(10) "Regular banking hours" means the period of time during each weekday, Monday through Friday, commencing at nine o'clock a.m. and ending at three o'clock p.m.

b. Security measures. A bank shall maintain the following security measures with respect to each of its automated teller machine facilities:

(1) a surveillance camera or cameras, which shall view and record all persons entering, exiting, and moving within or about an automated teller machine facility located within the interior of a building, or which shall view and record all activity occurring within a minimum of three feet in front of an automated teller machine located on an exterior wall of a building open to the outdoor air. Such camera or cameras need not view and record banking transactions made at the automated teller machine. The recordings made by such cameras shall be preserved by the bank for at least thirty days;

(2) within six months after the submission of the report of the temporary task force required by subdivision c of this section, entry doors equipped with locking devices which permit entry to such facility only to persons using an automated teller machine card or access code issued by a bank for that purpose. Provided, however, that any automated teller machine facility located within the interior of a building that is not equipped with such entry door locking devices within six months after the submission of such report shall thereafter have at least one security guard stationed therein during the period of time after regular banking hours when such automated teller machine facility is available to banking customers;

(3) entry doors equipped with fire exit bolts pursuant to paragraph two of subdivision k of section 27-371 of the

code:

(4) adequate lighting;

(5) at least one exterior wall made substantially of untinted glass or other untinted, transparent material, which provides an unobstructed view of the automated teller machine or machines within the automated teller machine facility;

(6) reflective mirrors or surfaces at each automated teller machine which provide the user a rear view;

(7) a reflective mirror or mirrors placed in a manner which permits a person present in the automated teller machine facility to view areas within such facility which are otherwise concealed from plain view; and

(8) a clearly visible sign, which at a minimum, states:

(i) the activity within the automated teller machine facility is being recorded by surveillance camera;

(ii) customers should close the entry door completely upon entering if the automated teller machine facility is located within the interior of a building;

(iii) customers should not permit entrance to any unknown person at any time after regular banking hours when an automated teller machine facility located within the interior of a building is available to banking customers;

(iv) customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility; and

(v) complaints concerning security in the automated teller machine facility should be directed to the bank's security department or to the department of consumer affairs, together with telephone numbers for such complaints. Where emergency assistance is needed due to criminal activity or medical emergency, call 911 at the nearest available public telephone.

Paragraphs two, three, five and seven of this subdivision shall not apply to any automated teller machine facility located on an exterior wall of a building open to the outdoor air.

Paragraph five of this subdivision shall not apply to any automated teller machine facility located in (i) a landmark building or within an historic district, if compliance with paragraph five would require the approval of the landmarks preservation commission, and such approval has been sought and denied; or (ii) any building, if compliance with paragraph five would require the removal of a load-bearing wall as defined in section 27-232 of the code.

c. Temporary task force. There is hereby established a temporary task force to advise the mayor and the council as to the technological feasibility of the limited access entry door requirements of paragraph two of subdivision b of this section. Such task force shall be comprised of fifteen members, two of whom shall be representatives of federally-chartered banks, two of whom shall be representatives of state-chartered banks, and two of whom shall be representatives of savings and loan associations. The mayor and the speaker of the city council shall each appoint seven members; the chair of the temporary task force shall be jointly appointed by the mayor and the speaker. Not later than twelve months after the appointment of the last member of the temporary task force, the task force shall submit a report containing its conclusions to the mayor and the city council.

d. List of facilities. Any bank which operates an automated teller machine facility shall file a list of such facilities with the police department, the department of consumer affairs, and the department of buildings, including the street addresses, intersecting streets, hours of operation, method of security, and method of surveillance at each facility, and the telephone number of the bank's security department. The police department shall distribute to each police precinct a list of all automated teller machine facilities in the precinct which are available to banking customers.

e. Violations and penalties. (1) A bank found to be in violation of any provision of subdivision b of this section shall be subject to a civil penalty of not more than two hundred fifty dollars. Each violation of any provision of subdivision b of this section with respect to a particular automated teller machine facility shall be considered a separate violation thereof.

(2) Any bank found to be in violation of any provision of subdivision b of this section shall correct the violation within three days after such finding. Failure to correct the violation within three days after such finding shall subject the bank to a civil penalty of not less than five hundred dollars or more than one thousand dollars and an additional civil penalty of two hundred fifty dollars per day for each day such violation continues.

(3) Any bank found to be in violation of subdivision h of this section shall be liable for a civil penalty of not more than one thousand dollars for each automated teller machine facility for which a report has not been filed. Any bank which makes a material false statement or material omission in any report filed pursuant to subdivision h of this section shall be liable for a civil penalty of not more than five thousand dollars for each report.

(4) A proceeding to recover any civil penalty authorized to be imposed pursuant to this section shall be commenced by the service of a notice of violation which shall be returnable to the commissioner of consumer affairs. Such commissioner, after due notice and an opportunity for a hearing, shall be authorized to impose the civil penalties prescribed by this section.

f. Consumer safety information. Upon the original issuance or reissuance of an automated teller machine facility access card or code, or any other means or device permitting access to an automated teller machine facility, the issuing bank shall provide its customer with written information concerning safety precautions to be employed while using an automated teller machine facility. Such written information shall include at a minimum the information described in subparagraphs (i) through (v) of paragraph eight of subdivision b of this section. In addition, upon the effective date of the local law which added this section and for one year thereafter, such written information shall also include a statement indicating that notwithstanding efforts to restrict access to an automated teller machine facility located within the interior of a building to persons authorized to use an automated teller machine card or access code, entrance is sometimes obtained by persons who are not authorized to use the automated teller machine facility.

g. Enforcement; statistics. (1) The police department, the department of consumer affairs, and the department of buildings shall be authorized to enforce this section.

(2) Statistics of crimes associated with the use of automated teller machines compiled and maintained by the police department shall be made available upon the request of any bank.

(3) Notwithstanding the provisions of section six hundred sixty-six of the charter, a notice of violation issued by the department of buildings pursuant to this section shall not be subject to review by the board of standards and appeals.

h. Certification of compliance. Within thirty days after the effective date of the local law which added this section, and each year thereafter, every bank which has an automated teller machine facility which is in operation on such date or on such date every year thereafter, shall submit a written report to the commissioner of buildings, on a form prescribed by such commissioner, certifying that such automated teller machine facility is in compliance with the provisions of this section, or if such facility is not in compliance with the provisions of this section, such report shall state the manner in which such facility fails to meet the requirements of this section and the reasons for such non-compliance. Each such report shall be accompanied by a fee of one hundred dollars for each automated teller machine facility operated by the bank.

i. Compliance with building code and all other applicable provisions of law. Nothing contained in this section shall be construed to exempt or relieve any bank from complying with all relevant provisions of the building code and all other applicable provisions of law.

j. Exemptions. The provisions of this section shall not apply to any unenclosed automated teller machine located in any building, structure or space whose primary purpose or function is unrelated to banking acitvities, including but not limited to supermarkets, airports and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

HISTORICAL NOTE

Section added L.L. 70/1992 § 2 eff. Feb. 9, 1993 [See Note 1]

NOTE

1. Provisions of L.L. 70/1992 § 1

Section 1. Legislative intent. The Council hereby finds that the use of automated teller machines (ATMs) to conduct banking transactions has become a fact of daily life for millions of New York City's residents, commuters and visitors. According to a March 1992 report to the City Council prepared by representatives of the city's banking industry, New Yorkers use ATM machines nearly one million times each day. In 1991, there were 8.1 million active ATM bank cards in New York City-more than the city's total 1990 population of 7.3 million people-which were used to conduct over 326 million transactions. Further, more than 18 million cardholders in the NYCE-banking network have access to an ATM in New York City. According to the banking industry, there are approximately 2418 ATMs in 1038 locations located throughut the city; 780 of those locations, or 75%, are open 24-hours a day. The banking industry asserts that the popularity of ATM banking continues to grow.

From January 1990 to December 1991, the New York Police Department reported 743 robberies and attempted robberies associated with ATMs; the actual number of such crimes is believed to be much higher. Many of these were crimes of extreme violence, such as the shooting of a Manhattan Assistant District Attorney at an ATM in Brooklyn and the murder of Police Sergeant Keith Levine, who was trying to intervene in what appeared to be a robbery at a midtown Manhattan ATM.

The Council also finds that security measures currently used at the majority of ATM locations are inadequate to protect the public safety. At present, there is no uniform set of standards for security at ATM facilities. The banks report that only 33% of all ATM locations are equipped with surveillance cameras; only 10% have guards. Moreover, a Council survey of 231 ATM locations throughout the city revealed that access to an ATM facility is not limited to persons having ATM bank cards; virtually any card having a magnetic stripe will allow entry into an ATM location. Of the interior ATMs surveyed by Council staff, 26% had broken or faulty door locks; 6% provided "elevator mirrors" allowing users to see blind spots and 37% posted signs with consumer safety information. The safety of ATM facilities thus frequently differs widely from location to location and the users of such facilities are often vulnerable to robberies and muggings.

The Council therefore concludes that it is necessary and appropriate for the protection and safety of the public to require banks and other institutions providing ATM services to install certain minimum security measures at each ATM facility. It is the Council's belief that these requirements, including adequate lighting, surveillance cameras, transparent windows, reflective mirrors and surfaces, and consumer safety warnings, will significantly enhance the safety and well-being of New York City's residents, workforce and visitors.

The Council recognizes the need for further technological developments to create a system by which access to ATM machines is limited, to the greatest extent possible, to holders of valid access cards issued by banks and other financial institutions. In order to facilitate the development of such technology, the bill calls for the formation of a task force of bank representatives and other appointees of the Mayor and Speaker of the Council to join in a cooperative effort to examine the technological feasibility of the limited access door requirement, and report to the Mayor and the Council no later than one year after its formation. If within six months after the submission of this report, an ATM

facility is unable to comply with the limited access door requirement, the bill requires that at least one security guard be stationed within the ATM facility during those times, after regular banking hours, when the ATM facility is available to customers.

CASE NOTES

¶ 1. Plaintiff sued a bank after being shot in an attempt robbery at an ATM machine. In dismissing the case on the ground that the incident was unforseeable, plaintiff's claim that the lighting over the ATM was dim, with some bulbs on and some off, in violation of Admin. Code § 10-160(a)(6), was insufficient to defeat defendant's summary judgment motion. There was no evidence that the lighting conditions, even if dimmer than required, were a proximate cause of the attempted robbery and assault. Coronel v. Chase Manhattan Bank, 2005 WL 1529714 (App.Div. 1st Dept.).

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NYC Administrative Code 10-161

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Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-161 Three-card Monte Prohibited.

a. Definitions. For the purposes of this section, "three-card monte" shall mean a game or scheme in which the player is to receive money if he or she correctly selects one of any number of objects, which object was designated by the dealer, operator or any individual working with said dealer or operator of the game or scheme, as the winning object prior to shuffling or rearranging the position of such objects. "Objects" shall be defined as any item capable of being shuffled or rearranged on a surface, including, but not limited to, cards, shells or caps.

b. It shall be unlawful for any person to deal or operate, or be in any manner accessory to the dealing or operating, of three-card monte on any public street, sidewalk or plaza.

c. Any person who violates subdivision b of this section shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added L.L. 39/1999 § 1, eff. Aug. 4, 1999.

CASE NOTES

¶ 1. Since a number of prior decisions held that three-card monte was not a game of chance, the City Council enacted Section 10-161 to outlaw three-card monte regardless of whether it was a game of chance or a game of skill. A defendant, who was accused of conducting an illegal three-card monte game, sought dismissal of the information because it failed to allege that the player received money. The court, however, refused to dismiss the information. The

statute does not require that the player-or for that matter, the dealer, actually receive or exchange money. There need only be the expectation that the player will receive money if he or she correctly selects the object designated by the dealer. This requirement was met, the court, said, by an allegation set forth in the complaint, that the defendant was observed encouraging pedestrians to place their bets. People v. Mohammed, N.Y.L.J., Mar. 21, 2001, page 19, col. 1 (Crim.Ct. Bronx Co.).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-162

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-162 Interference with professional sporting event.

a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. Major venue sporting event. An athletic competition or practice involving a professional team or an athletic competition or practice being conducted in a venue with a permanent seating capacity of more than five thousand. The duration of such competition or practice is to include the period from the opening of the venue's gates to the public, to the closing of the gates after the event.

2. Playing area. Any area designated for use by players, coaches, officials or other team or league personnel that is on, or adjacent to, the area of play during the period from the opening of the venue's gates to the public, to the closing of the gates after the event.

3. Sports participant. An umpire, referee, player, coach, manager, security employee, groundskeeper, stadium operations employee, or any other sanctioned participant in which the major venue sporting event is taking place.

4. Dangerous instrument. Any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.

5. Substance. The term includes, but is not limited, to any liquid or saliva.

b. Conduct prohibited. 1. It shall be illegal for any person other than a sports participant to knowingly enter or remain unlawfully upon the playing area of a major venue sporting event.

2. It shall be illegal for any person other than a sports participant to subject a sports participant to contact by means of any substance, object or dangerous instrument during a major venue sporting event, or attempt to do so, with the intent to cause physical injury to a sports participant during a major venue sporting event or with the intent to disrupt a major venue sporting event.

3. It shall be illegal for any person other than a sports participant to place, drop, toss or hurl any substance, object or dangerous instrument onto the playing area of a major venue sporting event, or attempt to do so, with the intent to cause physical injury to a sports participant during a major venue sporting event or with the intent to disrupt a major venue sporting event.

4. It shall be illegal for any person other than a sports participant to strike, slap, kick or otherwise subject to physical contact a sports participant during a major venue sporting event, or to attempt to do so, with the intent to cause physical injury to a sports participant during a major venue sporting event or with the intent to disrupt a major venue sporting event.

c. Criminal penalties. 1. Any person who knowingly enters or remains unlawfully upon the playing area of a major venue sporting event shall be guilty of a misdemeanor punishable by imprisonment of not more than one year, a fine of not more than one thousand dollars, or both.

2. Any person who uses a dangerous instrument when violating the provisions of paragraph two of subdivision b of this section shall be guilty of a misdemeanor punishable by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both. Any person who violates the provisions of such paragraph by using any substance or object other than a dangerous instrument shall be guilty of a misdemeanor punishable by imprisonment of not more than ninety days or a fine of not more than five hundred dollars, or both.

3. Any person who uses a dangerous instrument when violating the provisions of paragraph three of subdivision b of this section shall be guilty of a misdemeanor punishable by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both. Any person who violates the provisions of such paragraph by using any substance or object other than a dangerous instrument shall be guilty of a misdemeanor punishable by imprisonment of not more than ninety days or a fine of not more than five hundred dollars, or both.

4. Any person who violates the provisions of paragraph four of subdivision b of this section shall be guilty of a misdemeanor punishable by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both.

d. Civil penalties.

1. Any person who violates the provisions of paragraph one or paragraph three of subdivision b of this section shall be liable, to any person or entity injured or aggrieved by such action, for a civil penalty of not less than one thousand dollars and not more than five thousand dollars.

2. Any person who violates the provisions of paragraph two or paragraph four of subdivision b of this section shall be liable, to any person or entity injured or aggrieved by such action, for a civil penalty of not less than ten thousand dollars and not more than twenty-five thousand dollars.

3. The civil penalties set forth in paragraphs one and two of this subdivision shall be in addition to any criminal penalties and/or sanctions that may be imposed, and such civil penalties shall not limit or preclude any cause of action available to any person or entity injured or aggrieved by such action.

HISTORICAL NOTE

Section added L.L. 61/2003 § 2, eff. Oct. 20, 2003. [See Note 1]

Subd. a amended L.L. 100/2005 § 2, eff. Dec. 31, 2005. [See Note 2]

Subd. b repealed and added L.L. 100/2005 § 3, eff. Dec. 31, 2005. [See Note 2]

Subd. c added L.L. 100/2005 § 4, eff. Dec. 31, 2005. [See Note 2]

Subd. d added L.L. 100/2005 § 4, eff. Dec. 31, 2005. [See Note 2]

NOTE

1. Provisions of L.L. 61/2003:

Section One. Legislative findings and intent. Recently, there has been an increase in the number of unruly fans at professional sporting events. These fans have become more violent by trespassing onto the playing area of a professional sporting event and attacking players, coaches and sports officials.

Two episodes of violence and fan disruption, during the play of professional baseball, merely seven months apart, illustrate this problem. The first incident at the home of the Chicago White Sox involved a father-son duo that jumped over the box-seat railing and injured the opposing team's first base coach, who has hearing damage from that incident. The second incident occurred when a 24-year old man ran onto the field, raced over to the first base umpire and wrapped his arms around him. This occurred after three separate instances in earlier innings of fans running onto the field. Barry Mano, President of the National Association of Sports Officials, states: "We're out in harm's way and things are worse today than ever before."

The City Council, in an effort to protect sport participants at professional sporting events in New York City, and to dissuade lawless fans from committing injury and mayhem, creates a new section of the administrative code that makes it a Class A misdemeanor to trespass onto the playing area of a professional sporting event and implements a structure of civil penalties for such unruly fans. This legislation does not include athletic competition or practice that is played by a college or university team, nor shall it include any interscholastic or intramural athletic activity or youth athletic activity sponsored by a primary, middle, junior high, high school, community or municipal recreation department.

2. Provisions of L.L. 100/2005:

Section 1. Legislative intent and findings. Unruly behavior at professional sporting events, and at sporting events at major venues, has increased in recent years. In 2003, local law 61 was adopted to make it illegal to enter the playing area of a professional sporting event or to enter such area and assault or attempt to assault a professional sports participant. This local law, however, only penalizes the entering of the playing area or the assault or attempted assault of a professional sports participant after entering the playing area of the professional sporting event, but does not address the tossing or hurling of objects, substances or dangerous instruments onto the playing area of a sporting event, the tossing or hurling of an object, substance or dangerous instrument at a sports participant during a sporting event, or the assault or attempted assault of a professional sports participant from the viewing area of a sporting event.

The Council finds that tossing or hurling objects, substances or dangerous instruments onto the playing area of a professional sporting event, and at sporting events at major venues, may cause serious injury and may result in violence, particularly in a crowded venue during a sporting event. It is not the intent of this local law to penalize traditional fan participation in sports events, including but not limited to throwing a ball back onto the field after a home run, or the tossing of hats onto the rink after a hat trick in a hockey game. Rather, this local law is intended to address that behavior which is not part of a sports tradition but is intended to cause physical injury or disrupt an event.

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***** Current through December 2009 ****

NYC Administrative Code 10-163

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-163 Speed contests and races.

a. Except as provided in the vehicle and traffic law, no person shall engage in or participate in any race, exhibition or contest of speed, or aid or abet in such race, exhibition or contest of speed, on any highway, street, alley, sidewalk, or any public or private parking lot or area. Under this subdivision, "engage in" and "participate" shall mean actions or circumstances that reasonably indicate that a race, exhibition or contest of speed has occurred or is imminent, including, but not limited to, the presence of a canister appearing to hold nitrous oxide attached to a vehicle; an explicit invitation to race; a starting or ending point marked in some way; the wagering on the race's outcome; the operation of a motor vehicle in a manner where the operator, in competition, accelerates at a high rate of speed; the raising of a vehicle vertically; the spinning of the vehicle rapidly in a circle.

b. No person shall participate as a spectator in any event or gathering held for the purpose of a race, exhibition or contest of speed not authorized pursuant to the vehicle and traffic law. Under this subdivision, "participate" shall mean acts at the scene of a race, exhibition or contest of speed that reasonably appear to support such race, such as wagering on the outcome of the race or actively encouraging the participants to the race, exhibition or contest of speed.

c. A violation of subdivision a shall constitute a misdemeanor and be punishable by imprisonment of not more than six months or a fine of not more than six hundred dollars, or both such fine and imprisonment. A second violation of subdivision a of this section committed within ten years of a violation of subdivision a of this section shall be punishable upon conviction by imprisonment of not more than one year or a fine of not more than one thousand dollars, or both such fine and imprisonment. A violation of subdivision b shall constitute a violation punishable by imprisonment of up to fifteen days or a fine of not more than two hundred fifty dollars, or both such fine and imprisonment.

HISTORICAL NOTE

Section added L.L. 46/2004 § 2, eff. Oct. 14, 2004. [See Note 1]

NOTE

1. Provisions of L.L. 46/2004:

Section One. Legislative findings and intent.

Under the vehicle and traffic law and penal law, those who engage in drag racing may be charged with, among other things, prohibited speed contests and races. However, a person charged with engaging in a prohibited speed contest or race under the vehicle and traffic law only faces up to thirty days in jail and up to a five hundred twenty-five dollar fine for a first offense, and only a jail term of up to six months and a fine of up to seven hundred fifty dollars for the second offense within twelve months of the first offense. This penalty is inadequate, and the City Council finds that engaging in drag racing or actively participating in a drag race, particularly within the congested environs of New York city, warrants an increased penalty.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-164

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-164 Operation of vehicles on approach of authorized emergency vehicles.

a. Upon the immediate approach of an authorized emergency vehicle, as defined in the vehicle and traffic law, equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle or bicycle when operated as an authorized emergency vehicle, and when audible signals are sounded from any said vehicle by siren, exhaust whistle, bell, air-horn or electronic equivalent; the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to the right-hand edge or curb of the roadway, or to either edge of a one-way roadway three or more lanes in width, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, unless otherwise directed by a police officer or other authorized employee of the police department.

b. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and for a first conviction thereof shall be punishable by a fine of not more than three hundred dollars or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a conviction of a second violation, both of which were committed within a period of ten years, a person shall be punishable by a fine of not more than six hundred dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment; upon a conviction of a third or subsequent violation, all of which were committed within a period of ten years, a person shall be punishable by a fine of not more than nine hundred dollars or by imprisonment for not more than one-hundred eighty days or by both such fine and imprisonment.

HISTORICAL NOTE

Section added L.L. 98/2005 § 2, eff. Dec. 1, 2005. [See Note 1]

NOTE

1. Provisions of L.L. 98/2005:

Section 1. Legislative findings and intent. Traffic congestion in New York presents an ongoing problem to emergency services. Emergency vehicles en route to an emergency are often forced to contend with stubbornly apathetic drivers who refuse to yield the right of way.

State law currently sets the fine schedule for consecutive traffic infractions. The density of the population in New York City, however, increases not only automobile congestion, but also the number of emergency situations that arise and the scale of the response required to address many emergencies, thus posing a risk to public safety and health. Drivers who are unwilling to yield the roadway for emergency vehicles obstruct not only emergency vehicles, but also other drivers who attempt to yield the roadway. Many of the city's roadways are narrow enough that one such unwilling driver has the ability to obstruct completely the progress of an emergency vehicle.

The City Council, in an effort to protect those in emergency situations by opening up the city's streets to emergency vehicles, creates a new section of the administrative code that increases the fines for failing to yield the right of way for an emergency vehicle.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-165

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-165 Prohibition41 of use of non-wood bats.

a. Definitions. When used herein, the following terms shall have the following meanings:

1. "Competitive baseball game" shall mean any organized baseball game at which a certified umpire officiates and which takes place in the city of New York.

2. "High school age children" shall mean persons older than thirteen years of age, but younger than eighteen years of age.

3. "School" shall mean any public or private school which includes any grade nine through twelve and which is located in the city of New York.

4. "Wood bat" shall mean any baseball bat constructed exclusively of wood or any wood laminated or wood composite bat, which is approved by major league baseball, pursuant to such organization's official rules, for major league or minor league baseball play; provided that such term shall not include any bat made in whole or in part of metal, including, but not limited to, aluminum, magnesium, scandium, titanium or any other alloy compound.

b. Only wood bats shall be used in any competitive baseball game in which high school age children are participants and which involves the participation and/or sponsorship of a school.

HISTORICAL NOTE

Section added L.L. 20/2007 § 2, eff. Sept. 1, 2007. [See Note 1]

NOTE

1. Provisions of L.L. 20/2007:

Section 1. Declaration of legislative findings and intent. The Council hereby finds that the use of non-wood bats poses an unacceptable risk of injury to children, particularly those who play competitive high school baseball.

FOOTNOTES

41

[Footnote 41]: * There are 3 sections 10-165.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-165

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-165 Regulation of publicly accessible collection bins.

a. Definition. For purposes of this section, "Publicly accessible collection bin" shall mean any outdoor container, other than any container placed by any government or governmental agency, or its contractors or licensees, that allows for any member of the public to deposit items into the container for the purpose of collection by the provider of such container.

b. Requirements. All publicly accessible collection bins shall comply with the following provisions:

1. Each individual publicly accessible collection bin shall prominently display on the front and on at least one other side of the bin, the name, address and telephone number of the provider of the bin. This information shall be printed in characters that are plainly visible. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

2. No publicly accessible collection bin may be placed on any city property or property maintained by the city, or on any public sidewalk or roadway.

3. No publicly accessible collection bin shall be placed on any private property without the written permission of the property owner or the property owner's designated agent.

4. In addition to penalties provided for in any other provisions of law, in the event that a publicly accessible collection bin is placed on city property, or property maintained by the city, or on any public sidewalk or roadway, the owner of the publicly accessible collection bin, if the address of such owner is ascertainable, shall be notified by the

department of sanitation by certified mail, return receipt requested, that such publicly accessible collection bin must be removed within thirty days from the mailing of such notice. A copy of such notice, regardless of whether the address of such owner is ascertainable, shall also be affixed to the publicly accessible collection bin. This notice shall state that if the address of the owner is not ascertainable and notice is not mailed by the department of sanitation, such publicly accessible collection bin must be removed within thirty days from the affixation of such notice. This notice shall also state that the failure to remove the publicly accessible collection bin within the designated time period will result in the removal and disposal of the publicly accessible collection bin by the department of sanitation. This notice shall also state that if the owner objects to removal on the grounds that the bin is not on city property, or property maintained by the city, or on any public sidewalk or roadway, such owner may send written objection to the department of sanitation at the address indicated on the notice within twenty days from the mailing of such notice or, if the address of such owner is not ascertainable and notice is not mailed by the department of sanitation, within twenty days from the affixation of such notice, with proof that the bin is on private property. Proof that the bin is on private property shall include, but not be limited to, a survey of the property prepared by a licensed surveyor that is certified to the record owner of such property.

HISTORICAL NOTE

Section added L.L. 31/2007 § 1, eff. Oct. 1, 2007.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-165

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-165 Serial44 acts of public lewdness.

A person is guilty of serial acts of public lewdness when two or more times within any three-year period he or she intentionally exposes the private or intimate parts of his or her body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in private premises under circumstances in which he or she may readily be observed from either a public place or from other private premises, and with intent that he or she be so observed. A person who commits serial acts of public lewdness shall be guilty of a class A misdemeanor.

HISTORICAL NOTE

Section added L.L. 63/2007 § 1, eff. Jan. 30, 2008.

FOOTNOTES

44

[Footnote 44]: * There are 3 sections 10-165.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-166

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-166 Use of cellular telephones by schoolchildren.

a. Definitions. For the purposes of this section:

(1) "Cellular telephone" shall mean any mobile analog, wireless, digital or other similar telephone or communications device, which can be used to access two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 CFR § 20.3.

(2) "School" shall mean any buildings, grounds, facilities, property, or portion thereof under the jurisdiction of the New York city department of education or any non-public school that provides educational instruction to students at or below the twelfth grade level.

(3) "Student" shall mean any person under the age of eighteen enrolled in a school.

b. Any parent or guardian of any student may provide such student with a cellular telephone for any lawful use en route to and from school. No person shall interfere with the provision of such telephone to, or the use of such telephone by, such student.

c. Any person who is aggrieved by interference prohibited by subdivision b of this section shall be entitled to seek equitable relief in any court of competent jurisdiction.

d. Nothing in this section shall be construed to affect or limit the right of any school or law enforcement official

to enforce regulations regarding the use of cellular telephones.

HISTORICAL NOTE

Section added L.L. 46/2007 § 2, eff. Dec. 9, 2007. [See Note 1]

NOTE

1. Provisions of L.L. 46/2007:

Section 1. Legislative intent. Cellular phones have proven to be invaluable tools in facilitating communication between schoolchildren and their parents or guardians as such children travel to and from school. The use of such phones allows parents or guardians to ensure their children's safe arrival at school in the morning and back at home at the end of the school day, and enables any children traveling to or from school who become injured or lost, or who find themselves in a remote location or in other dangerous circumstances, to contact their parents or guardians or the police. In addition, such use provides parents and their children with significant peace of mind. It is therefore the Council's intent to allow schoolchildren to carry cellular phones with them to and from school for the purpose of being used outside of school to promote safety and the general welfare.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-167

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 1 PUBLIC SAFETY

§ 10-167 Climbing, jumping or suspending of oneself from structures prohibited.

a. For purposes of this section, the term "structure" shall mean any building, monument, statue, crane, bridge, sign, tower or other object, or any combination thereof, exceeding fifty feet in height.

b. It shall be unlawful to: (i) jump or attempt to jump from a structure, or (ii) climb or attempt to climb up, down or around the exterior of a structure, or suspend or attempt to suspend oneself from the exterior of a structure or on a device attached to one or more structures, unless permission has been granted to climb or suspend oneself from the structure by the owner of the structure for the sole purpose of performing construction or maintenance.

c. This section shall not apply to a structure the primary purpose of which is recreational or instructional climbing or jumping, provided that permission is granted for such activity by the owner of such structure.

d. Any person who violates the provisions of subdivision b of this section shall be guilty of a class A misdemeanor, punishable by up to one year in jail or a fine of up to one thousand dollars or both.

HISTORICAL NOTE

Section added L.L. 42/2008 § 2, eff. Dec. 21, 2008. [See Note 1]

NOTE

1. Provisions of L.L. 42/2008:

Section 1. Legislative Findings. New York City is unique for the number of tall buildings and internationally recognized landmarks concentrated within city limits. This fact draws visitors from around the world, many of whom come to tour and admire these structures. However, an increase in the popularity of BASE (building, antenna, span, earth) jumping in the past several years has also lured BASE jumping enthusiasts to the City seeking publicity or fame from climbing the exterior of, or jumping or suspending themselves from, recognized landmarks. Currently, the City is unable to effectively prevent and/or penalize these individuals. The Council finds that reasonable prohibitions must be instituted against such climbing, jumping and suspending of oneself to protect the safety of such persons, as well as bystanders, to deter this dangerous behavior and to preserve the integrity of New York's landmark structures.

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NYC Administrative Code 10-201

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 2*2 UNLAWFUL SALE OR POSSESSION OF CONTROLLED SUBSTANCES

SUBCHAPTER 1 UNLAWFUL SALE OR POSSESSION OF CONTROLLED SUBSTANCES

§ 10-201 Unlawful possession of controlled substances.

No person shall unlawfully posses or sell any controlled substance the possession or sale of which would constitute a felony pursuant to articles two hundred twenty or two hundred twenty-one of the penal law.

HISTORICAL NOTE

Section added L.L. 10/1989 § 2, eff. Feb. 23, 1989

FOOTNOTES

2

[Footnote 2]: * Chapter added L.L. 10/1989 § 2, eff. Feb. 23, 1989. [See note at end of chapter.]

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***** Current through December 2009 ****

NYC Administrative Code 10-202

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 2*2 UNLAWFUL SALE OR POSSESSION OF CONTROLLED SUBSTANCES

SUBCHAPTER 1 UNLAWFUL SALE OR POSSESSION OF CONTROLLED SUBSTANCES

§ 10-202 Civil Action.

a. Any person who has been convicted of the possession or sale of a controlled substance in an amount which constitutes a felony pursuant to articles two hundred twenty or two hundred twenty-one of the penal law shall be liable to the city for a civil penalty in the amount of not less than ten thousand dollars nor more than one hundred thousand dollars for each count of an indictment for unlawful possession or sale which has resulted in a conviction under the penal law.

b. The corporation counsel, upon notification by an appropriate law enforcement agency that there is reason to believe that a person who has been convicted of an offense under articles two hundred twenty or two hundred twenty-one of the penal law has substantial assets and that there is a significant likelihood that a civil judgment obtained pursuant to this section shall be capable of satisfaction, may commence a civil action under this section.

c. In any civil action brought pursuant to this section, the city may recover, in addition to the amount set forth in subdivision a, the costs of the investigation and prosecution of the person in the criminal action resulting in conviction pursuant to articles two hundred twenty and two hundred twenty-one of the penal law, and the costs of the civil action, including reasonable attorney's fees.

HISTORICAL NOTE

Section added L.L. 10/1989 § 2, eff. Feb. 23, 1989

NOTE

Provisions of LL 10/1989 § 1

Section one. Declaration of legislative intent and findings. The Council finds that narcotics trafficking and other drug-related crimes have deeply infected every aspect of life in the city of New York. The number of street crimes, robberies, burglaries and indiscriminate acts of violence against strangers and family members, including many disturbing incidents of child abuse or fatalities attributable to drug-induced violence, has increased dramatically over the last few years. No one is immune to the plague of drugs. Easy access to controlled substances threatens both to destroy our youth and to cut down adults in their prime, ruining families, careers, and institutions. Narcotics-related crimes have overwhelmed the criminal justice and corrections systems and impaired the city's ability to ensure the safety, security and well-being of residents and visitors. The continued and growing need for additional police, prosecutors, judges, corrections officers, parole and probation officers, and adequate jail and correction facilities caused by the scourge of drugs, is rapidly draining the city treasury and depleting resources the city needs in order to deliver basic services to its citizens.

Accordingly, the Council concludes that those who traffic in narcotics should be held accountable for the severe consequences of their illegal conduct by paying significant civil penalties to the city. In this manner, the responsibility for this extraordinary drain on the city's limited resources can be placed on the individuals and entities immediately responsible for the mounting health, welfare, and social services costs in our neighborhoods and communities. The shift of this financial burden to illicit drug dealers will increase the costs and risks associated with drug trafficking and help to fund the City's efforts to combat it.

This legislation is intended to be a tool in the continuing fight against narcotics trafficking and an additional deterrent by giving the city an opportunity to collect a civil penalty and the cost of both the civil and criminal prosecutions in appropriate cases. The Council recognizes that in those cases where the defendant will have no collectible assets, the pursuit of a civil judgment would be an inefficient use of the city's limited resources. Accordingly, the Council, in adopting this legislation, intends that the corporation counsel commence a civil action in cases where he or she has been notified by an appropriate law enforcement agency that there is reason to believe that a defendant will have substantial assets that are capable of collection. One factor to be considered in determining whether a defendant has collectible assets for the purposes of legislation is whether he or she was represented by a Legal Aid attorney or an attorney appointed pursuant to the provisions of article 18-B of the County Law in the underlying criminal prosecution, it being recognized by the Council that legal representation by a court-appointed attorney is a strong indication that such person does not have sufficient assets to warrant a civil prosecution under this section. The Council is mindful that the prosecution of civil actions pursuant to this legislation could strain the resources of the corporation counsel and accordingly envisions that he or she may enter into contract with a private firm to pursue the penalties provided herein.

FOOTNOTES

2

[Footnote 2]: * Chapter added L.L. 10/1989 § 2, eff. Feb. 23, 1989. [See note at end of chapter.]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-301

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-301 Control and regulation of the disposition, purchase and possession of firearms, rifles, shotguns and assault weapons.

Definitions. Whenever used in this chapter the following terms shall mean and include:

1. "Firearm." (a) Any pistol or revolver; (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm. The provisions of this chapter relating to firearms shall not apply to assault weapons except as specifically provided.

2. "Rifle." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and, even if not designed or redesigned, made or remade, and intended to be fired from the shoulder, is not a firearm as defined in subdivision one of this section, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger. The provisions of this chapter relting to rifles shall not apply to assault weapons except as specifically provided.

3. "Shotgun." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and, even if not designed or redesigned, made or remade, and intended to be fired from the shoulder, is not a firearm as

defined in subdivision one of this section, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell, to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. The provisions of this chapter relating to shotguns shall not apply to assault weapons except as specifically provided.

4. "Gunsmith." Any person, firm, partnership, corporation, or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving, or trueing, or who in the course of such business performs any mechanical operation on any rifle, shotgun, firearm, assault weapon or machine gun.

5. "Dealer in firearms." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any pistol or revolver or other firearms which may be concealed upon the person. Dealer in firearms shall not include a wholesale dealer.

6. "Dealer in rifles and shotguns." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any rifle, or shotgun. Dealer in rifles and shotguns shall not include a wholesale dealer.

7. "Ammunition." Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

8. "Dispose of." To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

9. "Deface." To remove, deface, cover, alter, or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

10. "Commissioner." The police commissioner of the city of New York or the commissioner's designee.

11. "Permit." The permit for purchase and possession of rifles and shotguns issued by the commissioner.

12. "Certificate." The certificate of registration for possession of rifles and shotguns.

13. "Serious offense." A serious offense as defined in subdivision seventeen of section 265.00 of the penal law.

14. "Business enterprise." Any proprietorship, company, partnership, corporation, association, cooperative, nonprofit organization or other entity engaged or seeking to engage in the activities regulated pursuant to section 10-302 of this chapter.

15. "Semiautomatic." Any firearm, rifle or shotgun that uses part of the energy of a fired cartridge to expel the case of the fired cartridge and load another cartridge into the firing chamber, and which requires a separate pull of the trigger to fire each cartridge.

16. "Assault weapon."

(a) Any semiautomatic centerfire or rimfire rifle or semiautomatic shotgun which has one or more of the following features:

1. folding or telescoping stock or no stock;

2. pistol grip that protrudes conspicuously beneath the action of the weapon;

3. bayonet mount;

4. flash suppressor or threaded barrel designed to accommodate a flash suppressor;

5. barrel shroud;

6. grenade launcher; or

7. modifications of such features, or other features, determined by rule of the commissioner to be particularly suitable for military and not sporting purposes. In addition, the commissioner shall, by rule, designate specific semiautomatic centerfire or rimfire rifles or semiautomatic shotguns, identified by make, model and/or manufacturer's name, as within the definition of assault weapon, if the commissioner determines that such weapons are particularly suitable for military and not sporting purposes. The commissioner shall inspect such specific designated semiautomatic centerfire or rimfire rifles or semiautomatic shotguns at least three times per year, and shall revise or update such designations as he or she deems appropriate.

(b) Any shotgun with a revolving-cylinder magazine.

(c) Any part, or combination of parts, designed or redesigned or intended to readily convert a rifle or shotgun into an assault weapon.

(d) "Assault weapon" shall not include any rifle or shotgun modified to render it permanently inoperative.

17. "Ammunition feeding device." Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with firearms, rifles, shotguns or assault weapons.

18. "Antique firearm." Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

19. "Special theatrical dealer." Any person, firm, partnership, corporation or company who possesses assault weapons exclusively for the purpose of leasing such assault weapons to special theatrical permittees within the city and for theatrical purposes outside the city.

20. "Acquire." To gain possession of or title to a weapon through purchase, gift, lease, loan, or otherwise.

HISTORICAL NOTE

Section heading amended L.L. 78/1991 § 5, eff. Sept. 30, 1991

Section added chap 907/1985 § 1

Subds. 1, 2, 3, 4, 7, 10 amended L.L. 78/1991 § 5, eff. Sept. 30, 1991

Subd. 15 added L.L. 78/1991 § 6, eff. Sept. 30, 1991

Subd. 16 added L.L. 78/1991 § 6, eff. Sept. 30, 1991

Subd. 16 par (a) subpar 7 amended L.L. 8/2005 § 1, eff. Apr. 18, 2005.

Subds. 17-18 added L.L. 78/1991 § 6, eff. Sept. 30, 1991

Subd. 19 added L.L. 22/1992 § 2, eff. Apr. 10, 1992

Subd. 20 added L.L. 31/2006 § 2, eff. Nov. 24, 2006. [See § 10-302.1

Note 2]

DERIVATION

Formerly § 436-6.0 added LL 106/1967 § 1

Sub 4 amended LL 9/1973 § 2

Subs 11, 12, 13, 14, 15 repealed LL 5/1984 § 2

(Legislative findings, plea bargain, gun used in crime, LL 5/1984 § 1)

Subs 11, 12, 13, 14 added LL 5/1984 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Gun control law was upheld as constitutional as against claim that it constitutes a deprivation of liberty and property without due process; that it violates the Second Amendment to the U.S. Constitution; that the City Council lacked power to legislate in the area involved because the state had preempted the field of firearms control and that the statute is vague and indefinite, unreasonable and arbitrary. Nor was the local law beyond the power of the city council to enact as it was a proper exercise of the City's police power.-N.Y. Sporting Arms Asso. Inc. v. City of N.Y., 159 (70) N.Y.L.J. (4-10-68) 2 Col. 1 T, aff'd, 31 AD2d 794, 297 N.Y.S. 2d 287 [1969].

¶ 2. The constitutionality of the Gun Control Law was upheld as against claim that it deprived individuals of liberty and property without due process; that it violates the Second Amendment to the United States Constitution; that the city lacks power to legislate in this area because the state has preempted the entire field of firearms control and that the statute is vague, indefinite, unreasonable and arbitrary.-Grimm v. City of New York, 56 Misc. 2d 525, 289 N.Y.S. 2d 358 [1968].

¶ 3. Gun control law as amended by L.L. 1973, No. 9 is constitutional and federally licensed manufacturers of firearms are not exempt from its provisions.-CDM Products, Inc. v. City of N.Y., 76 Misc. 2d 369, 350 N.Y.S. 2d 500 [1973].

¶ 4. Possession of an unregistered shotgun which is unoperable owing to a missing trigger mechanism is punishable pursuant to this section since the concept of operability has no place in the statutory scheme of this code.-People v. Simmons, 125 Misc. 2d 118 [1984].

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NYC Administrative Code 10-302

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-302 Licensing of gunsmiths, of wholesale manufacturers of firearms, or assemblers of firearms, dealers in firearms, dealers in rifles and shotguns, and special theatrical dealers.

a. It shall be unlawful for any person or business enterprise to engage in the business of gunsmith, wholesale manufacturer of firearms, assembler of firearms, dealer in firearms, dealer in rifles and shotguns, or special theatrical dealer, unless such person, or business enterprise, has obtained a license to engage in such business in the manner prescribed in this section. No person shall engage in the business of dealer in rifles and shotguns or special theatrical dealer unless he or she has been issued a permit for the possession of shotguns and rifles pursuant to the provisions of this chapter. No person or business enterprise shall be eligible to apply for or to hold a license as a special theatrical dealer unless such person or business enterprise (1) possesses both a license as a dealer in firearms and a license as a dealer in rifles and shotguns and (2) has possessed such licenses and engaged in such businesses for at least one year.

b. No license shall be issued or renewed pursuant to this section except by the police commissioner, and then only after investigation and finding that all statements in a proper application for a license or renewal are true. No license shall be issued or renewed except for any applicant:

(1) of good moral character;

(2) who has not been convicted anywhere of a felony or of any serious offense;

(3) who has stated whether he or she has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness and who is free from any mental disorder, defects or diseases that would impair the ability safely to possess or use a firearm, rifle or shotgun;

(4) who has not been convicted of violating section 10-303.1 of this chapter; and

(5) concerning whom no good cause exists for the denial of a license.

c. (1) An applicant to engage in such business shall also be a citizen of the United States, more than twenty-one years of age and maintain a place of business in the city.

(2) Each applicant to engage in such business shall comply with all the requirements set forth in this section. If the applicant is a partnership, each partner thereof shall comply with all the requirements set forth in this section and if the applicant is a corporation, each officer thereof shall so comply.

(3) No applicant for a special theatrical dealer's license or renewal thereof shall be issued such license or renewal unless the applicant submits proof, in such form as the commissioner may require, that at least ten percent of the gross income earned by the applicant as a dealer in firearms, dealer in rifles and shotguns and, in the case of an application for renewal, special theatrical dealer, in the year preceding the application for such license or renewal, was earned from the lease for theatrical purposes of such ammunition feeding devices, firearms, rifles, shotguns or assault weapons as the applicant was authorized to lease. No applicant for a special theatrical dealer's license or renewal thereof shall be issued such license or renewal unless the gross income earned by the applicant as a dealer in firearms, dealer in rifles and shotguns and, in the case of an application for renewal, special theatrical dealer, in the year preceding the application for such license or renewal, exceeded fifty thousand dollars.

d. An application for a license or renewal thereof shall be made to the police commissioner. An application shall include the full name, date of birth, residence, present occupation of each person or individual signing the same, whether he or she is a citizen of the United States, whether he or she complies with each requirement for eligibility specified in subdivision b of this section and such other facts as may be required to show the good character, competency and integrity of each person or individual signing the application. An application shall be signed and affirmed by the applicant. Each individual signing an application shall submit one photograph of himself or herself and a duplicate for each required copy of the application. Such photographs shall have been taken within thirty days prior to filing the application. The photographs submitted shall be two inches square, and the application shall also state the previous occupation of each individual signing the same and the location of the place of such business, or of the bureau, agency, subagency, office or branch office for which the license is sought, indicating the street and number and otherwise giving such apt description as to point out reasonably the location thereof. In such case, if the applicant is a business eenterprise, its name, date and place of formation, and principal place of business shall be stated. For a partnership, the application shall be signed and affirmed by each partner, and for a corporation, by each officer thereof.

With respect to an application for a license as a dealer in rifles and shotguns or as a special theatrical dealer, a written statement shall be submitted by the individual applicant, or in the case of a business enterprise a responsible officer or agent thereof, stating (a) the identification number of the shotgun and rifle permit issued to the individual applicant or the responsible officer or agent in the case of a business enterprise, (b) the address of a regular place of business maintained by the applicant, (c) that since the issuance of the rifle and shotgun permit the individual applicant or responsible officer or agent has not become disqualified for issuance of such a permit, (d) that he or she undertakes to supervise the acts of his or her, or in the case of a business enterprise, its employees, (e) that the applicant has not previously been refused a license as a dealer in shotguns and rifles or as a special theatrical dealer and that no such license issued to the applicant has ever been revoked.

e. Before a license is issued or renewed, there shall be an investigation of all statements required in the application by the police department. For that purpose, the records of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police department. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card

supplied for that purpose by the federal bureau of investigation. When completed, one standard card shall be promptly submitted to the division of criminal justice services where it shall be appropriately processed. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the police department. The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a license pursuant to the provisions of this section. Of the remaining two fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the license, and the other remain on file with the police department. No such fingerprints may be inspected by any person other than a peace officer, when acting pursuant to his or her special duties, or a police officer except on order of a judge or justice of a court of record either upon notice to the licensee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police department shall report the results to the commissioner without unnecessary delay.

f. Applications shall indicate and licenses shall be issued for a gunsmith, a wholesale manufacturer of firearms, an assembler of firearms, a dealer in firearms, a dealer in rifles and shotguns or a special theatrical dealer.

g. The application for any license, if granted, shall be a public record. Such application shall be kept on file in the office of the police commissioner and, within ten days after the issuance of a license, a duplicate copy shall be filed in the executive department, division of state police, Albany.

h. No license shall be transferable to any other person or premises. The license shall mention and describe the premises for which it is issued and shall be valid only for such premises.

i. A license issued pursuant to this section shall be prominently displayed on the licensed premises. Failure of any person or business enterprise to so exhibit or display such license shall be presumptive evidence that the person or business enterprise is not duly licensed.

j. Any license or renewal issued pursuant to this section shall expire on the first day of the second January following the date of issuance. Any application to renew a license that has not previously expired, been revoked or cancelled shall thereby extend the term of the license until disposition is made of the application by the police commissioner.

k. The conviction of a licensee anywhere of a felony or a serious offense shall operate as a revocation of the license. Written notice of such revocation shall be forwarded to the executive division of state police in Albany.

l. The police commissioner, upon evidence of any disqualification set forth in subdivision b of this section, may at any time suspend or revoke and cancel a license issued pursuant to this section. Written notice of such suspension or revocation shall be forwarded to the executive department, division of state police, Albany.

m. No license shall be issued pursuant to this section unless the applicant therefor possesses and exhibits all licenses required under any federal or state law.

n. Records. (1) Any person licensed under this section shall keep an accurate book record of every transaction involving a firearm, machine gun, rifle, shotgun or assault weapon. Such record shall be kept in the manner prescribed and contain the information required by the police commissioner.

(2) The records required by this section shall be subject to inspection at all times by members of the police department. Such records shall be maintained on the premises mentioned and described in the license, and preserved for record. In the event of suspension, cancellation or revocation of a license, or discontinuance of business by a licensee, such record shall be immediately surrendered to the police commissioner.

(3) Any person licensed under this section as a dealer in firearms or special theatrical dealer shall cause a

physical inventory to be taken within the first five business days of April and October of each year, which shall include a listing of each firearm by make, caliber and serial number. The original copy of such inventory shall be securely maintained on the premises for which the license was issued. One or more additional copies shall be forwarded to such addresses as the commissioner may direct, by such means as the commissioner may direct.

(4) With each copy of the inventory required under paragraph three of this subdivision shall be included an affidavit signed by the licensee (or, if the licensee is not a natural person, by an officer, general manager, or other principal of the licensee) stating under penalties of perjury that within the first five business days of that April or October, as the case may be, the signer has personally observed the firearms reported. The affidavit shall also describe the date and contents of any report required to be made pursuant to section 400.10 of the penal law.

(5) In addition to the penalties specified in section 10-310, any act or omission that constitutes a violation of this subdivision or of rules and regulations issued by the commissioner pursuant thereto shall be grounds for the revocation of a license issued by the commissioner pursuant to this section.

o. Rules and regulations. (1) The police commissioner may make and promulgate such rules and regulations regarding the issuance and renewal of such licenses and the reporting of inventory of firearms, loss of firearms, and theft of firearms and may prescribe such forms as are necessary to carry out the provisions of this section.

(2) Such rules and regulations shall prescribe reasonable standards and conditions under which firearms, component parts of firearms, rifles, shotguns, assault weapons and ammunition shall be kept at the store or premises of gunsmiths, including store and plant security, employment, record keeping and product quality control for the protection of the public safety, health and welfare. The foregoing enumeration shall not be construed as a limitation of the police commissioner's authority to promulgate rules and regulations hereunder.

(3) The violation of such rules and regulations shall be triable by a judge of the criminal court of the city of New York and punishable by not more than thirty days imprisonment or by a fine of not more than fifty dollars, or both.

p. The annual license fee for a license issued pursuant to this section shall be twenty-five dollars for gunsmiths, wholesale manufacturers and assemblers of firearms, fifty dollars for dealers in firearms, and one hundred fifty dollars for dealers in rifles and shotguns and special theatrical dealers.

q. Failure to obtain a license, by any person, firm, partnership, corporation or company, as required by the provisions of this section shall be punishable as a class A misdemeanor.

r. No dealer in rifles and shotguns may dispose of a rifle or shotgun to any person unless such person produces a valid rifle and shotgun permit, or proof of lawful authority as a police or peace officer, or is an exempt person as provided in this chapter.

s. Any suspension, denial or revocation of a license may be appealed by the applicant or licensee pursuant to procedures established by the police commissioner for administrative review.

HISTORICAL NOTE

Section heading amended L.L. 22/1992 § 3, eff. Apr. 10, 1992

Section added chap 907/1985 § 1

Subd. a amended L.L. 22/1992 § 3, eff. Apr. 10, 1992

Subd. b par (3) amended L.L. 8/2005 § 2, eff. Apr. 18, 2005.

Subd. b par (4) added L.L. 8/2005 § 3, eff. Apr. 18, 2005.

Subd. b par (5) renumbered (former par (4)) L.L. 8/2005 § 3, eff. Apr. 18, 2005.

Subds. c, d, f amended L.L. 22/1992 § 3, eff. Apr. 10, 1992

Subd. n par (1) amended L.L. 78/1991 § 7, eff. Sept. 30, 1991

Subd. n pars (3), (4), (5) added L.L. 30/2006 § 2, eff. Nov. 24, 2006. [See Note 1]

Subd. o par (1) amended L.L. 30/2006 § 3, eff. Nov. 24, 2006. [See Note 1]

Subd. o par (2) amended L.L. 78/1991 § 8, eff. Sept. 30, 1991

Subd. p amended L.L. 22/1992 § 3, eff. Apr. 10, 1992

DERIVATION

Formerly § 436-6.1 added LL 106/1967 § 1

Repealed and added LL 9/1973 § 3

Sub e amended chap 287/1974 § 1

Sub e amended chap 843/1980 § 232

Section heading amended LL 5/1984 § 4

Subs a, b, c, d, f, i, k, l, n, o, p amended LL 5/1984 § 4

Sub e amended LL 5/1984 § 5

Subs r, s added LL 5/1984 § 6

NOTE

1. Provisions of L.L. 30/2006:

Section 1. Declaration of legislative findings and intent. The Council finds that action is necessary to detect, and therefore prevent, the theft of firearms from licensed dealers. Firearms illicitly removed from licensed dealers provide one avenue of supply for the illegal handgun market and for gun crime. Given the lethality of modern handguns and the existence of a market for the illegal resale of handguns to people who should not legally possess them, every missing gun should be the focus of police attention as soon as practicable. This can be accomplished through effective and mandatory inventory controls by licensed firearms dealers.

. . . . . .

§ 4. Severability. If any provision of this local law is for any reason found to be invalid, in whole or in part, by any court of competent jurisdiction, such finding shall not affect the validity of all remaining portions of this local law, which shall continue in full force and effect.

§ 5. This local law shall take effect 120 days after its enactment into law [Nov. 24, 2006], provided that, prior to such effective date, the police commissioner shall promulgate such rules and take such other actions as are necessary to its timely implementation.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-302.1

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-302.1 Preventing the diversion of firearms, rifles and shotguns to criminals.

a. No dealer in firearms and no dealer in rifles and shotguns shall: (i) sell or otherwise dispose of more than one firearm or more than one rifle or shotgun to any individual as part of the same sales transaction; or (ii) sell or otherwise dispose of a rifle or shotgun to any individual if the dealer knows or should know that such individual has purchased a rifle or shotgun within the prior ninety days, or (iii) sell or otherwise dispose of a firearm to any individual if the dealer knows or should know that such individual has purchased a firearm within the prior ninety days.

b. No person shall acquire a firearm if such person has acquired a firearm within the previous ninety days. No person shall acquire a rifle or shotgun if such person has acquired a rifle or shotgun within the previous ninety days. For purposes of this subdivision when a firearm, rifle or shotgun is acquired by a corporation, partnership, or other entity, it shall be considered to have been acquired by each natural person who is an officer, director or other principal of such entity, unless the firearm, rifle or shotgun is acquired on behalf of such entity by a person who is licensed by the commissioner as gun custodian or special gun custodian, or acquired on behalf of an organization possessing an organization registration certificate, as those terms are used in title thirty-eight of the rules of the city of New York.

c. Before disposing of any firearm, rifle or shotgun to a person licensed by the commissioner to possess firearms, rifles or shotguns, any dealer in firearms, dealer in rifles and shotguns or other person shall contact the police department to ensure compliance with the requirements of this section.

d. Any dealer in firearms, dealer in rifles and shotguns or other person who disposes of any firearm, rifle or shotgun to a person licensed by an authority other than the commissioner to possess firearms, rifles or shotguns shall make reasonable efforts to contact such licensing authority and to ascertain the most recent date of acquisition by such

licensee of a firearm, in the case of disposition of a firearm, or of a rifle or shotgun, in the case of disposition of a rifle or shotgun.

e. Any dealer in firearms or dealer in rifles or shotguns who disposes of any firearm, rifle or shotgun shall, before or at the time of disposing of such firearm, rifle or shotgun, record, in the record book required to be kept by subdivision n of section 10-302, the efforts made by such dealer to ensure compliance with the requirements of this section, any exception or exemption set forth in this section that such dealer reasonably believes would authorize the disposal of such firearm, rifle or shotgun, and the grounds for such dealer's belief that such exception or exemption applies.

f. Exceptions. The provisions of this section shall not apply to the sale of firearms, rifles or shotguns to (i) a police officer, as such term is defined in section 1.20 of the criminal procedure law, (ii) a federal law enforcement officer, as such term is defined in section 2.15 of the criminal procedure law, (iii) a public agency in furtherance of official business, (iv) persons in the military service of the state of New York, when duly authorized by regulations issued by the adjutant general to possess such weapons, (v) persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess such weapons, (vi) persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of such weapons is necessary for manufacture, transport, installation and testing under the requirements of such contract, (vii) peace officers as defined in section 2.10 of the criminal procedure law, provided that such peace officers are authorized pursuant to law or regulation of the state or city of New York to possess a firearm, rifle or shotgun within the city of New York without a license or permit therefor, and are authorized by their employer to possess such firearm, rifle or shotgun, (viii) persons licensed as dealers, manufacturers or importers of firearms pursuant to chapter 44 of title 18 of the United States Code, (ix) any motion picture, television or video production company or entertainment or theatrical company whose production involves the use of firearms, rifles or shotguns, provided that such weapons shall be properly registered and a special theatrical permit shall have been issued for such weapons pursuant to rules established by the commissioner, (x) with respect to the sale of firearms only, persons licensed by the commissioner as gun custodians or special gun custodians, as those terms are used in title thirty-eight of the rules of the city of New York, and (xi) with respect to the sale of rifles and shotguns only, organizations possessing an organization registration certificate, as that term is used in title thirty-eight of the rules of the city of New York.

g. Exempt transactions. The requirements of this section shall not apply to: (i) any transaction in which a person acquires a firearm, rifle or shotgun by operation of law, or because of the death of another person for whom such person is an executor or administrator of an estate or a trustee of a trust created in a will, provided that within fifteen days such person surrenders such firearm, rifle or shotgun to the commissioner until it can be reacquired without violation of this section or other applicable law. If a firearm, rifle or shotgun is surrendered pursuant to this subdivision but no written request to reacquire it is received by the commissioner within two years of such surrender, the commissioner shall dispose of such firearm in accordance with the provisions of section 400.05 of the penal law;

(ii) the exchange of a firearm, rifle or shotgun by a dealer in firearms or a dealer in rifles and shotguns for another firearm, rifle or shotgun previously purchased from such dealer by the person requesting such exchange, provided that such exchange takes place within thirty days of such request;

(iii) the acquisition or disposal of an antique firearm, rifle or shotgun which is incapable of being fired or discharged or which does not fire fixed ammunition, or a firearm, rifle or shotgun manufactured prior to eighteen hundred ninety-four or whose design was patented and whose commercial manufacture commenced prior to eighteen hundred ninety-four and whose manufacture continued after such year without any substantial alteration in design or function, and for which cartridge ammunition is not commercially available and is possessed as a curiosity or ornament or for its historical significance and value;

(iv) the acquisition or disposal of a firearm at an indoor or outdoor pistol range when such acquisition or disposal begins a period of possession or use of the firearm that is authorized by paragraphs 7-a, 7-b, or 7-e of

subdivision a of section 265.20 of the penal law;

(v) the sale of a firearm by a dealer in firearms to a person whose firearm is stolen or irretrievably lost, provided that: (1) such person has complied with any legal requirement to report the loss or theft, including but not limited to the applicable provisions of title thirty-eight of the rules of the city of New York and section 400.10 of the penal law;

(2) such person provides to such dealer a copy of a police report of the loss or theft or of any report made pursuant to the applicable provisions of title thirty-eight of the rules of the city of New York and section 400.10 of the penal law, which copy the dealer shall attach to the record book required to be kept by subdivision n of section 10-302;

(3) the copy provided pursuant to subparagraph two of this paragraph contains the name and address of the regulated firearm owner, a description of the regulated firearm, the location of the loss or theft, if known, the date of the loss or theft, if known, and the date when the loss or theft was reported to the law enforcement agency; and

(4) such person's attempt to replace the regulated firearm occurs within thirty days of the loss or theft of such firearm, if known, or, if such date is not known, within thirty days of the date when the loss or theft was reported to the law enforcement agency, as reflected by the information recorded on the police report; and

(vi) any other transaction authorized in advance in writing by the commissioner.

h. Penalties. (i) In addition to the penalties specified in section 10-310, any act or omission that constitutes or would constitute a violation of this section or of rules and regulations issued by the commissioner pursuant thereto shall be grounds for the revocation of a license to deal in firearms, deal in rifles and shotguns, possess firearms, or possess a rifle or shotgun.

(ii) Any firearm disposed of or acquired in violation of this section shall be a nuisance subject to surrender and forfeiture in accordance with the procedures specified in section 400.05 of the penal law.

i. The commissioner may make and promulgate such rules and regulations as are necessary to carry out the provisions of this section. Such rules and regulations may address, but need not be limited to:

(i) procedures for implementation of this section by the commissioner;

(ii) establishment of a database of firearm, rifle and shotgun purchases for the purpose of enforcing the requirements of this chapter; and

(iii) the specification of reasonable efforts required to comply with subdivision d of this section.

HISTORICAL NOTE

Section amended L.L. 31/2006 § 3, eff. Nov. 24, 2006. [See Note 2]

Section added L.L. 9/2005 § 2, eff. July 17, 2005 with special provisions.

[See Note 1]

NOTE

1. Provisions of L.L. 9/2005:

Section 1. Declaration of legislative findings and intent. Although many illegal guns are obtained outside of New York state, existing city laws governing gun sellers should be strengthened to prevent the diversion of guns to the illegal marketplace. The Council finds that it is imperative that additional protections be implemented to ensure that New York

city continues to lead the way in preventing gun violence.

. . . . . .

§3. This local law shall take effect 180 days after its enactment; provided that the police commissioner is immediately authorized to adopt, amend and promulgate such rules as may be necessary to effectuate the purpose of this local law.

2. Provisions of L.L. 31/2006:

Section 1. Declaration of legislative findings and intent. In local law number 9 for the year 2005, the Council addressed the problem of the diversion of rifles and shotguns to the illegal gun marketplace. The Council finds that the provisions of this local law must be strengthened and extended to address the problem of the proliferation of illegal handguns.

The illegal possession of handguns-by felons, juveniles, drug addicts, people subject to restraining orders for domestic violence, and others not legally entitled to possess handguns-is a deadly and ongoing threat to the people of New York City. The city, state, and federal government maintain extensive statutes and licensing schemes to prevent such people from acquiring handguns. Nonetheless, networks of illegal gun traffickers supply handguns at a large profit to people who should not have them.

Approximately twenty percent of the city's robberies and the majority of its murders involve guns. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) traced 8,437 guns used in crime in New York City from August 1997 to July 1998. Of those guns, 278 were used in homicides and 618 were used by juveniles.

Although traffickers can obtain guns in many ways, they are often able to simply buy them from federally licensed retailers. Rather than buy guns in their own names, illegal traffickers usually rely on "straw purchases," **i.e.,** having someone else purchase guns on their behalf. One ATF study concluded that more than half of the guns identified in urban trafficking investigations that involved juveniles had been trafficked by straw purchasers or straw purchasing rings.

ATF has found that purchases of multiple handguns at the same time are a strong indicator of straw purchases and, therefore, of illegal handgun trafficking. A loophole in existing federal and New York state law allows a purchaser, once approved, to buy as many guns at a time as he or she likes. Having a straw purchaser buy more than one handgun at a time allows traffickers to work quickly, efficiently, and without involving more criminal confederates than necessary.

Due to the importance in illegal gun sales of multiple purchases by straw purchasers, limiting or prohibiting multiple sales by licensed dealers inhibits gun crime and illegal gun trafficking. After South Carolina and Virginia enacted one-handgun-per-month laws, their significance as suppliers of crime guns to Northeastern states diminished sharply. In the year after Maryland passed a similar law, it experienced a fourteen percent drop in homicides. Moreover, the number of crime guns seized in the adjacent District of Columbia that had first been bought at retail in Maryland dropped from twenty to zero.

In order to fight illegal handgun trafficking and therefore the supply of handguns to people who, under existing law, should not have handguns, the city must limit multiple and closely consecutive purchases of handguns. Doing so will not only save lives, but will also reinforce the city's position as a national leader against gun crime.

. . . . . .

§ 6. Severability. If any provision of this local law is for any reason found to be invalid, in whole or in part, by any court of competent jurisdiction, such finding shall not affect the validity of all remaining provisions of this local

law, which shall continue in full force and effect.

§ 7. This local law shall take effect 120 days following its enactment into law [Nov. 24, 2006], provided that, prior to such effective date, the police commissioner shall promulgate such rules and take such other actions as are necessary to its timely implementation.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-303

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-303 Permits for possession and purchase of rifles and shotguns.

It shall be unlawful to dispose of any rifle or shotgun to any person unless said person is the holder of a permit for possession and purchase of rifles and shotguns; it shall be unlawful for any person to have in his or her possession any rifle or shotgun unless said person is the holder of a permit for the possession and purchase of rifles and shotguns.

The disposition of a rifle or shotgun, by any licensed dealer in rifles and shotguns, to any person presenting a valid rifle and shotgun permit issued to such person, shall be conclusive proof of the legality of such disposition by the dealer.

a. Requirements. No person shall be denied a permit to purchase and possess a rifle or shotgun unless the applicant:

(1) is under the age of twenty-one; or

(2) is not of good moral character; or

(3) has been convicted anywhere of a felony; of a serious offense as defined in §265.00 (17) of the New York State Penal Law; of a misdemeanor crime of domestic violence as defined in §921 (a) of title 18, United States Code; of a misdemeanor crime of assault as defined in the penal law where the applicant was convicted of such assault within the ten years preceding the submission of the application; or of any three misdemeanors as defined in local, state or federal law, however nothing in this paragraph shall preclude the denial of a permit to an applicant with fewer than three misdemeanor convictions; or

(4) has not stated whether he or she has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness; or

(5) is not now free from any mental disorders, defects or diseases that would impair the ability safely to possess or use a rifle or shotgun; or

(6) has been the subject of a suspension or ineligibility order issue pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act; or

(7) who is subject to a court order that

(a) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate;

(b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

(d) For purposes of this section only, "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person; or

(8) has been convicted of violating section 10-303.1 of this chapter; or

(9) unless good cause exists for the denial of the permit.

b. Application. Application for a rifle and shotgun permit shall be made to the police commissioner, shall be signed and affirmed by the applicant and shall state his or heer full name, date of birth, residence, physical condition, occupation and whether he or she complies with each requirement specified in subdivision a of this section, and any other information required by the police commissioner to process the application. Each applicant shall submit with his or her application a photograph of himself or herself in duplicate, which shall have been taken within thirty days prior to the filing of the application. Any willful or material omission or false statement shall be a violation of this section and grounds for denial of the application.

c. Before a permit is issued or renewed, the police department shall investigate all statements required in the application. For that purpose, the records of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police department. In order to ascertain any previous criminal record, the investigating officer shall take the fingerprints and physical descriptive data in quadruplicate of each individual by whom the application is signed. Two copies of such fingerprints shall be taken on standard fingerprint cards eight inches square, and one copy may be taken on a card supplied for that purpose by the federal bureau of investigation. When completed, one standard card shall be promptly submitted to the division of criminal justice services where it shall be appropriately processed. A second standard card, or the one supplied by the federal bureau of investigation, as the case may be, shall be forwarded to that bureau at Washington with a request that the files of the bureau be searched and notification of the results of the search be made to the police department. The failure or refusal of the federal bureau of investigation to make the fingerprint check provided for in this section shall not constitute the sole basis for refusal to issue a permit pursuant to the provisions of this section. Of the remaining two

fingerprint cards, one shall be filed with the executive department, division of state police, Albany, within ten days after issuance of the permit, and the other remain on file with the police department. No such fingerprints may be inspected by any person other than a peace officer, when acting pursuant to his or her special duties, or a police officer, except on order of a justice of a court of record either upon notice to the permittee or without notice, as the judge or justice may deem appropriate. Upon completion of the investigation, the police department shall report the results to the police commissioner without unnecessary delay.

d. Fees. The fee for an application for a rifle and shotgun permit or renewal thereof shall be one hundred forty dollars.

e. Issuance. (1) Upon completion of the investigation, and in no event later than thirty days from the submission of the application, unless the police commissioner determines more time is needed for an investigation and then it shall not exceed sixty days, the commissioner shall issue the permit or shall notify the applicant of the denial of the application and the reason or reasons therefor. The applicant shall have the right to appeal said denial pursuant to procedures established by the police commissioner for administrative review.

(2) Any person holding a valid license to carry a concealed weapon in accordance with the provisions of the penal law, shall be issued such permit upon filing an application and upon paying the established fee therefor, without the necessity of any further investigation, affidavits or fingerprinting, unless the police commissioner has reason to believe that the status of the applicant has changed since the issuance of the prior license.

f. Validity. Any person to whom a rifle and shotgun permit has been validly issued pursuant to this chapter may possess a rifle or shotgun. No permit shall be transferred to any other person. Every person carrying a rifle or shotgun shall have on his or her person a permit which shall be exhibited for inspection to any peace officer or police officer upon demand. Failure of any such person to so exhibit his or her permit shall be presumptive evidence that he or she is not duly authorized to possess a rifle or shotgun and the same may be considered by the police commissioner as cause for revocation or suspension of such permit. A permit shall be valid for three (3) years and shall be subject to automatic renewal, upon sworn application, and without investigation, unless the police commissioner has reason to believe that the status of the applicant has changed since the previous application.

g. Revocation or suspension. A permit shall be revoked upon the conviction in this state, or elsewhere, of a person holding a rifle or shotgun permit, of a felony or a serious offense. A permit may be revoked or suspended at any time upon evidence of any other disqualification set forth in subdivision a of this section. Upon revocation or suspension of a permit for any reason, the police commissioner shall immediately notify the New York state division of criminal justice services. The police commissioner shall from time to time send a notice and supplemental report hereof, containing the names, addresses and permit numbers of each person whose rifle and shotgun permit has been revoked or suspended to all licensed dealers in rifles and shotguns throughout the city for the purpose of notifying such dealers that no rifles or shotguns may be issued or sold or in any way disposed of to any such persons. The police commissioner or any police officer acting at the police commissioner's direction shall forthwith seize any rifle and shotgun permit which has been revoked or suspended hereunder and shall seize any rifle or shotgun possessed by such person, provided that the person whose rifle or shotgun permit has been revoked or suspended, or such person's appointee or legal representative, shall have the right at any time up to one year after such seizure to dispose of such rifle or shotgun to any licensed dealer or any other person legally permitted to purchase or take possession of such rifle or shotgun. The permittee shall have the right to appeal any suspension or revocation pursuant to procedures established by the commissioner for administrative review.

h. Non-residents. Non-residents of the city of New York may apply for a rifle or shotgun permit subject to the same conditions, regulations and requirements as residents of the city of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Open par amended L.L. 22/1992 § 4, eff. Apr. 10, 1992

Subd. a amended L.L. 44/2002 § 1, eff. Dec. 19, 2002, however, with respect to a person holding an existing permit on the date of enactment, this local law shall take effect upon the date of submission by such person of an application for renewal of the permit.

Subd. a par (1) separately amended L.L. 6/2005 § 1, eff. Apr. 18, 2005 and L.L. 8/2005 § 4, eff. Apr. 18, 2005.

Subd. a par (8) added L.L. 8/2005 § 5, eff. Apr. 18, 2005.

Subd. a par (9) renumbered (former par (8)) L.L. 8/2005 § 5, eff. Apr. 18, 2005.

Subds. b, c amended L.L. 78/1991 § 9, eff. Sept. 30, 1991

Subd. d amended L.L. 37/2004 § 3, eff. Oct. 10, 2004 except that the commissioner shall be authorized to promulgate such rules as are necessary to implement the provisions of this law before such date.

Subd. d amended L.L. 51/1989 § 2, eff. July 1, 1989

Subds. f, g amended L.L. 78/1991 § 9, eff. Sept. 30, 1991

DERIVATION

Formerly § 436-6.6 added LL 106/1967 § 1

Sub c amended chap 287/1974 § 3

Sub d amended LL 8/1975 § 1

Sub d amended LL 7/1982 § 2

Subs a, b amended LL 5/1984 § 8

Sub c repealed and added LL 5/1984 § 9

Subs e, f, g, h amended LL 5/1984 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-303.1

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-303.1 Prohibition of the possession or disposition of assault weapons.

a. It shall be unlawful for any person to possess or dispose of any assault weapon within the city of New York, except as provided in subdivision d, e or f of this section or section 10-305. A person who peaceably surrenders an assault weapon to the commissioner pursuant to subdivision d, e or f of this section or subdivision f of section 10-305 shall not be subject to the criminal or civil penalties set forth in this section.

b. Criminal penalty. Any person who shall violate subdivision a of this section shall be guilty of an unclassified misdemeanor punishable by a fine of not more than five thousand dollars or by imprisonment of up to one year, or by both such fine and imprisonment, for each assault weapon disposed of or possessed, provided that the first violation of subdivision a of this section involving possession of an assault weapon as defined in paragraph c of subdivision 16 of section 10-301 shall be an offense punishable by a fine of not more than three hundred dollars of imprisonment of not more than fifteen days, or both, on condition that (1) such first violation is not in conjunction with the commission of a crime and (2) the possessor has not been previously convicted of a felony or a serious offense.

c. Civil penalty. In addition to the penalties prescribed in subdivision b of this section, any person who shall violate subdivision a of this section shall be liable for a civil penalty of not more than twenty-five thousand dollars for each assault weapon disposed of or possessed, to be recovered in a civil action brought by the corporation counsel in the name of the city in any court of competent jurisdiction, provided that the first violation by any person of subdivision a of this section involving possession of an assault weapon as defined in paragraph c of subdivision sixteen of section 10-301 shall subject such person to a civil penalty of not more than five thousand dollars on condition that (1) such first violation is not in conjunction with the commission of a crime and (2) the possessor has not been previously convicted of a felony or a serious offense.

d. Disposition of assault weapons by permittees, licensees and previously exempt persons. Any person who, on or after the effective date of this local law, shall possess an assault weapon and a valid permit for possession and purchase of rifles and shotguns and a certificate of registration for such assault weapon, and any licensed dealer in firearms or licensed dealer in rifles and shotguns who is not licensed as a special theatrical dealer and who, on or after the effective date of this local law, shall possess an assault weapon, and any police officer or peace officer who, before the effective date of this local law was exempt from the sections of the administrative code requiring rifle and shotgun permits and certificates, and who, upon the effective date of this local law, is not exempt from the sections of the administrative code prohibiting the possession or disposition of assault weapons, and who, on or after the effective date of this local law, shall possess an assault weapon, shall, within ninety days of the effective date of rules promulgated by the commissioner pursuant to subparagraph 7 of paragraph a of subdivision 16 of section 10-301, either:

(1) peaceably surrender his or her assault weapon pursuant to subdivision f of section 10-305 for the purpose of destruction of such weapon by the commissioner, provided that the commissioner may authorize the use of such weapon by the department; or (2) lawfully remove such assault weapon from the city of New York. All assault weapons possessed by such permittees, licensees and previously exempt persons shall be subject to the provisions of this subdivision, whether defined as assault weapons in subdivision 16 of section 10-301 or in rules promulgated by the commissioner pursuant to subparagraph 7 of paragraph a of subdivision 16 of section 10-301.

e. Disposition of assault weapons by non-permittees. Any person who, on or after the effective date of this local law, shall possess an assault weapon and who is not the holder of a valid permit for possession and purchase of rifles and shotguns and a certificate of registration for such assault weapon, shall peaceably surrender his or her assault weapon pursuant to subdivision f of section 10-305 for the purpose of destruction of such weapon by the commissioner, provided that the commissioner may authorize the use of such weapon by the department, and provided further that heirs and legatees may dispose of assault weapons pursuant to subdivision f of this section.

f. Disposition of assault weapons by heirs and legatees. Any person who acquires an assault weapon on or after the effective date of this local law by the laws of intestacy or by testamentary bequest shall, within ninety days of such acquisition, either: (1) peaceably surrender such assault weapon pursuant to subdivision f of section 10-305 for the purpose of destruction of such weapon by the commissioner, provided that the commissioner may authorize the use of such weapon by the department; or (2) lawfully remove such assault weapon from the city of New York.

g. Within thirty days of the effective date of rules promulgated by the commissioner pursuant to subparagraph 7 of paragraph a of subdivision 16 of section 10-301, the commissioner shall send by regular mail to every person who has been issued a permit to possess a rifle or shotgun and whose rifle or shotgun the commissioner reasonably believes to be an assault weapon as defined in subdivision 16 of section 10-301 or as defined in such rules, a written notice setting forth the requirements and procedures relating to the disposition of such weapons, and the criminal and civil penalties that may be imposed upon the permittee for unlawful possession or disposition of such weapons. Failure by the commissioner to send, or the permittee to receive, such notice, shall not excuse such permittee for unlawful possession or disposition of such weapons.

h. Surrender of firearms. At the discretion of the police commissioner, any person convicted of violating this section may be subject to immediate surrender of all firearms in his or her possession.

HISTORICAL NOTE

Section added L.L. 78/1991 § 10, eff. Sept. 30, 1991

Subd. b amended L.L. 76/1995 § 8, eff. Sept. 28, 1995. Amendment

expires and is repealed May 1, 1996, as per L.L. 21/1996, subd. reverts

to previous language

Subd. c amended L.L. 8/2005 § 6, eff. Apr. 18, 2005.

Subd. d amended L.L. 22/1992 § 5, eff. Apr. 10, 1992

Subd. h added L.L. 8/2005 § 7, eff. Apr. 18, 2005.

NOTE

Provisions of L.L. 78/1991 § 1.

Section 1. Legislative intent. It is hereby declared and found by the council that certain guns, commonly referred to as semiautomatic "assault weapons," are generally recognized as particularly suitable for military and not sporting purposes. The council further finds and declares that ammunition feeding devices which are capable of holding more than five rounds of ammunition and which are capable of being used in assault weapons are particularly suitable for military and not sporting purposes. The council further finds and declares that because assault weapons and such ammunition feeding devices pose a grave threat to law enforcement officers and to the public, it is necessary to impose restrictions on the possession, sale and use of such weapons and ammunition feeding devices. It is not, however, the council's intent to place additional restrictions on the possession, sale or use of rifles and shotguns which are primarily designed and intended for hunting, target practice or other legitimate sports or recreational activities.

CASE NOTES

¶ 1. The court held that the statute was not unconstitutionally vague, and that it did not violate substantive due process rights under the United States Constitution. Moreover, the law was not pre-empted by federal statutes governing the Civilian Marksmanship Program. Richmond Boro Gun Club, Inc. v. City of New York, 97 F.3d 681 (2nd Cir. 1996).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-303.2

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-303.2 Civil penalty; firearms dealers and manufacturers.

a. Definitions. For purposes of this section, the terms "firearm," "handgun," "dealer," "collector," and "manufacturer" shall have the meanings set forth in 18 U.S.C. §921, as such section may be amended from time to time, or any successor provision thereto. The term "transfer" shall be deemed to include any sale, assignment, pledge, lease, loan, gift or other disposition. References to "statutes, laws or regulations" shall be deemed to include federal, state and local statutes, laws, local laws, ordinances, rules and regulations.

b. Manufacturer and Dealer Liability. A manufacturer or dealer shall be liable for any injury or death caused by a firearm that it has transferred, if (i) such injury or death results from the use of such firearm by an individual not authorized by law to possess such firearm in the city of New York, and (ii) such manufacturer or dealer, or any other individual or entity acting subsequent to such manufacturer or dealer, unlawfully transferred such firearm at any time prior to such injury or death. Such liability also includes the possible imposition of punitive damages. Liability under this section does not extend to any manufacturer or dealer that has complied with the following standards during a period of one year immediately preceding and including the transfer of such firearm:

(1) The manufacturer or dealer executes no transfers or agreements to transfer at gun shows except for gun shows that maintain a practice of performing instant criminal background checks consistent with 18 U.S.C. §922 (t), as such subsection may be amended from time to time and any successor provision thereto, on all transfers, whether by licensed or unlicensed sellers.

(2) Any place of business operated by the manufacturer or dealer is located at a fixed address where:

(a) a record is maintained, as may be required by any statute, law or regulation, of the make, model, caliber or gauge, and serial number of all firearms held in inventory or offered for sale; and

(b) a record is maintained, as may be required by any statute, law or regulation, of the make, model, caliber or gauge, and serial number of all firearms sold, and of any identifying information required by any such statute, law or regulation to be obtained from purchasers;

(3) The manufacturer or dealer provides access to the aforementioned records to officers, employees and agents of public agencies conducting inspections, to the full extent required by applicable statutes, laws and regulations;

(4) The manufacturer or dealer limits transfers to any individual or entity to one handgun in any given thirty-day period, provided that this paragraph shall not apply to lawful transfers to (a) public agencies in furtherance of official business; (b) law enforcement officers employed by public agencies; (c) private security firms, holding any permits or licenses required by applicable statutes, laws and regulations, for the use of their agents and employees; (d) private operators of state and local correctional facilities, for the use of their agents and employees; or (e) licensed manufacturers, licensed dealers or licensed collectors, as those terms are defined by 18 U.S.C. §921, as such section may be amended from time to time, or any successor provision thereto;

(5) The manufacturer or dealer has complied with all applicable statutes, laws and regulations governing the transfer of firearms; and

(6) The manufacturer or dealer has not transferred a firearm to any other manufacturer or dealer in circumstances in which the manufacturer or dealer transferring such firearm knew or should have known that such manufacturer or dealer had not complied with the standards set forth in this subdivision.

c. Exceptions. (1) No action may be commenced pursuant to this section by any person injured or killed by the discharge of a firearm that is lawfully possessed by a law enforcement official employed by a public agency.

(2) This section shall not limit in scope any cause of action, other than that provided by this section, available to a person injured by or killed by a firearm.

(3) Nothing in this section shall prevent a manufacturer or dealer from seeking whole or partial indemnity or contribution for any liability incurred under this section from any third party wholly or partially responsible for the injury or death.

(4) Notwithstanding the provisions of subdivision b, there shall be no basis for liability under this section if the manufacturer or dealer proves by a preponderance of the evidence that: (i) the person injured or killed by the discharge of a firearm was committing or attempting to commit a crime (whether or not such crime is actually charged); (ii) the unlawful transfer or possession of the firearm is solely a result of the failure of the owner of the firearm to renew a license, permit or registration within six months of the date such renewal is required; or (iii) prior to the injury or death caused by the firearm, a lawful possessor of the firearm has reported its theft to a federal, state or local law enforcement agency, or reported its loss to an appropriate public agency.

(5) Notwithstanding the provisions of subdivision b, there shall be no basis for liability under this section if the manufacturer or dealer proves by a preponderance of the evidence that the manufacturer or dealer lawfully transferred the firearm to: (i) a public agency in furtherance of official business; (ii) a law enforcement officer employed by a public agency; (iii) a private security firm, holding any permits or licenses required by applicable statutes, laws and regulations, for the use of its agents and employees; or (iv) a private operator of a state or local correctional facility for the use of its agents and employees.

(6) Notwithstanding the provisions of subdivision b, there shall be no basis for liability under this section if the manufacturer or dealer proves by a preponderance of the evidence that the injury or death is not directly or indirectly

related to any act or omission by such manufacturer or dealer, including but not limited to any failure by the manufacturer or dealer to comply with the standards set forth in subdivision b of this section.

HISTORICAL NOTE

Section added L.L. 7/2005 § 2, eff. Mar. 19, 2005 with special provisions.

[See Note 1]

NOTE

1. Provisions of L.L. 7/2005:

Section 1. Legislative Findings and Intent. In its most recent annual summary, the Office of Vital Statistics of the New York City Department of Health and Mental Hygiene reported a total of 493 firearm deaths in New York City in 2003. The report further shows that 397 of these deaths were the results of homicide. In addition to these deaths, a number of victims each year suffer serious injuries resulting from the discharge of firearms. Though by far the most serious concern, homicide is only one of the many classifications of crimes involving firearms. Other armed crimes, including robbery, burglary, rape and kidnapping, account for additional incidents each year.

In order to reduce gun-related crime, New York City has in the past two decades adopted a thorough background check and licensing scheme aimed at ensuring the responsible handling of firearms and the registration of all firearm owners in the City. Unfortunately, despite such efforts, the problem of gun crime persists at the alarming rate of approximately one firearm death per day. The fact is largely a result of the proliferation of illegal means of firearm procurement, such as unlicensed importation from other States with less restrictive gun laws, unregistered sales at trade shows, and so-called "straw purchases," in which authorized purchasers buy guns and provide them to unauthorized users, including minors and convicted felons.

To combat this threat against the safety of New York City effectively, measures must be taken to stem the flow of illegal firearms at its source. The Council finds that if manufacturers and dealers followed the commonsense practices specified in this section, the flow of illegally transferred firearms and resulting injuries and deaths from the use of such firearms would be reduced significantly. Manufacturers and dealers who fail to abide by practices that will stem the flow of illegally transferred firearms must be held to a standard of liability, as should manufacturers and dealers who sell their products to other manufacturers and dealers knowing that such manufacturers and dealers have not complied with these practices. The Council therefore finds that the imposition of civil liability for distribution of firearms by dealers and manufacturers in the circumstances specified in this local law is essential to the maintenance of public safety and health.

. . . . . .

§3. This local law shall take effect 60 days after its enactment into law, and shall apply to causes of action in relation to transfers of firearms by dealers and manufacturers that occur after such effective date, provided that, notwithstanding any inconsistent provision of this local law, any one-year period or thirty-day period referred to in this local law shall be reduced as may be necessary so that the commencement of such period in no event predates such effective date.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-304

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-304 Certificates of registration.

a. It shall be unlawful for any person to have in his or her possession any rifle or shotgun unless said person is the holder of a certificate of registration for such rifle or shotgun.

b. It shall be unlawful for any person who is not a licensed dealer to dispose of any rifle or shotgun for which such person does not have a certificate of registration unless such person files with the police commissioner a declaration in duplicate, signed and affirmed by the declarant which shall list by caliber, make, model, manufacturer's name and serial number, or if none, any other distinguishing number or identification mark, of each rifle and shotgun possessed by the declarant. Upon receipt of acknowledgement of said declaration by the police commissioner, the declarant may lawfully sell, transfer, or otherwise dispose of such rifles or shotguns to a licensed dealer or any other person legally permitted to purchase or take possession of such rifles or shotguns.

Any willful or material omission or false statement shall be a violation of this section.

c. Exhibition of certificate. Every person carrying a rifle or shotgun shall have on his or her person a certificate of registration valid for such weapon. Upon demand, the appropriate certificate shall be exhibited for inspection to any peace officer or police officer. Failure of any person to so exhibit his or her certificate shall be presumptive evidence that he or she is not duly authorized to possess such rifle or shotgun and may be considered by the police commissioner as cause for revocation or suspension of such person's permit.

d. Revocation. The revocation of a rifle or shotgun permit shall automatically be deemed to be a revocation of all certificates of registration for rifles and shotguns held by the person whose permit has been revoked.

e. Disposition of rifles and shotguns. No person lawfully in possession of a rifle or shotgun shall dispose of same except to a licensed dealer in firearms, licensed dealer in rifles and shotguns, the holder of a valid rifle and shotgun permit, an exempt person as enumerated in this chapter, or a non-resident of the city of New York not subject to the permit requirements of this chapter.

Any person so disposing of a rifle or shotgun shall report the disposition on forms provided by the commissioner setting forth the rifle and shotgun permit number of both seller and purchaser, the make, caliber, type, model and serial number, if any, and if the seller is a licensed dealer the certificate of registration number, of all such rifles and shotguns. Such form shall be signed by both seller and purchaser and the original shall be forwarded to the police commissioner within seventytwo hours of the disposition, one copy shall be retained by the seller, another by the purchaser.

1. If the seller is a licensed dealer, he or she shall at the time of the sale issue a certificate of registration to the purchaser provided to the dealer for that purpose by the police commissioner and shall forward to the police commissioner the duplicate thereof, together with the report of disposition.

2. If the seller is not a licensed dealer, the police commissioner shall, if the purchaser's rifle permit is valid, issue the certificate of registration within ten days of the receipt by the police commissioner of the report of disposition. Pending receipt of the certificate, but in no event for any longer than fourteen days from the date of purchase, the copy of the report of disposition shall serve in lieu of the purchaser's certificate of registration.

f. No fee shall be charged for a certificate of registration.

g. Notwithstanding any other provision of this section concerning the transfer, receipt, acquisition, or any other disposition of a rifle or shotgun, a rifle and shotgun permit shall not be required for the passing of a rifle or shotgun upon the death of an owner, to his or her heir or legatee, whether the same be by testamentary bequest or by the laws of intestacy, except that the person who shall so receive or acquire said rifle or shotgun shall be subject to all other provisions of this chapter, provided further that if the heir or legatee of the owner of such rifle or shotgun does not qualify to possess same under this chapter, the rifle or shotgun may be possessed by the heir or legatee for the purpose of sale as otherwise provided herein for a period not exceeding one hundred eighty days or for such further limited period beyond the one hundred eighty days as may be approved by the commissioner, said extensions in no event to exceed a total of ninety days.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended L.L. 78/1991 § 11, eff. Sept. 30, 1991

DERIVATION

Formerly § 436-6.9 added LL 106/1967 § 1

Sub c amended chap 843/1980 § 233

Subs a, b, e, g amended LL 5/1984 § 12

CASE NOTES FROM FORMER SECTION

¶ 1. Petition charging respondent, 15 years of age with possession of a firearm under Penal Law § 265.00(3), which was a sawed-off shotgun was dismissed where shotgun was $22\frac{1}{4}$ inches and thus was not a concealed weapon and respondent could not be found to be a juvenile delinquent because of violation of this section which makes possession of a shotgun within the City of N.Y. without a certificate of registration a misdemeanor where he was not specifically charged with a violation of the code and hence was not put on notice as to the charge against him.-Matter

of Peabody, 86 Misc. 2d 520 [1976].

¶ 2. The elements of the offense of possession of a shotgun without a proper certification under this section are not necessarily the same as the crime of possession of a firearm as defined in the Penal Law.-Id.

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***** Current through December 2009 ****

NYC Administrative Code 10-305

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-305 Exemptions.

The sections requiring rifle and shotgun permits and certificates and prohibiting the possession or disposition of assault weapons shall not apply as follows:

a. Minors. Any person under the age of twenty-one years may carry, fire, or use any rifle or shotgun in the actual presence or under the direct supervision of any person who is a holder of a rifle or shotgun permit, or for the purpose of military drill under the auspices of a legally recognized organization and under competent supervision or for the purpose of competition or target practice in and upon a firing range approved by the police commissioner or any other governmental agency authorized to provide such approval, or the national rifle association, which is under competent supervision at the time of such competition or target practice, provided that the rifle or shotgun is otherwise properly registered or exempt from registration by virtue of some other provision of this chapter. This exemption shall not apply to assault weapons.

b. Antiques and ornaments. The provisions of this chapter shall not apply to antique rifles and shotguns which are incapable of being fired or discharged or which do not fire fixed ammunition, or those weapons manufactured prior to eighteen hundred ninety-four and those weapons whose design was patented and whose commercial manufacture commenced prior to eighteen hundred ninety-four and whose manufacture continued after eighteen hundred ninety-four without any substantial alteration in design or function, and for which cartridge ammunition is not commercially available and are possessed as curiosities or ornaments or for their historical significance and value. This exemption shall not apply to assault weapons.

c. Persons in the military service in the state of New York, when duly authorized by regulations issued by the

chief of staff to the governor to possess the same, and police officers, provided that such police officers shall not be exempt from the sections prohibiting the possession or disposition of assault weapons except during the performance of their duties as police officers, and other peace officers as defined in section 2.10 of the criminal procedure law, provided that such peace officers (1) are authorized pursuant to law or regulation of the state or city of New York to possess either (a) a firearm within the city of New York without a license or permit therefor, or (b) a rifle, shotgun or assault weapon within the city of New York without a permit therefor; and (2) are authorized by their employer to possess such rifle, shotgun or assault weapon; and (3) shall not possess such rifle, shotgun or assault weapon except during the performance of their duties as peace officers.

d. Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

e. Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

Any such person exempted by subdivisions c, d and e above, may purchase a rifle or shotgun only from a licensed dealer, and must submit to the dealer full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, and military or other official identification. Any dealer who disposes of a rifle or shotgun to any exempt person without securing such identification shall be in violation of these sections.

f. A person may voluntarily surrender a rifle, shotgun or assault weapon to the police commissioner, provided, that the same shall be surrendered by such person only after he or she gives notice in writing to the police commissioner, stating such person's name, address, the type of gun to be surrendered, and the approximate time of day and the place where such surrender shall take place and such time of day and place have been approved in writing by the police commissioner. Nothing in this subdivision shall be construed as granting immunity from prosecution for any crime or offense except that of unlawful possession of such rifle, shotgun or assault weapon.

g. The regular and ordinary transport of rifles, shotguns or assault weapons as merchandise provided that the person transporting such rifles, shotguns or assault weapons where he or she knows or has reasonable means of ascertaining what such person is transporting, notifies, in writing, the police commissioner of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by the police commissioner as the police commissioner may deem necessary for investigation as to whether the consignee may lawfully receive and possess such rifles, shotguns or assault weapons.

h. Possession by retail customers for the purpose of firing at duly licensed rifle target concessions at amusement parks, piers, and similar locations provided that the rifles to be so used by firmly chained or affixed to the counter and that the individual rifles are registered by the proprietor and that the proprietor is in possession of a rifle and shotgun permit. This exemption shall not apply to assault weapons.

i. (1) Non-residents in transit. Any other provision of this chapter to the contrary notwithstanding, a non-resident of the city of New York who, without a rifle and shotgun permit issued hereunder, enters the city of New York possessing a rifle or shotgun in the course of transit to a destination outside the city of New York, or a non-resident of the city of New York who enters the city of New York possessing an assault weapon in the course of transit to a destination outside the city of New York, shall have a period of twenty-four hours subsequent to such entering to be exempt from penalty under this chapter for the unlawful possession of a rifle, shotgun or assault weapon, provided that such rifle, shotgun or assault weapon shall at all times be unloaded and in a locked case, or locked automobile trunk, and that said non-resident is lawfully in possession of said rifle, shotgun or assault weapon according to the laws of his or her place of residence.

(2) Non-residents purchasing a rifle or shotgun from a licensed dealer. Any other provision of this chapter notwithstanding, a non-resident of the city of New York may purchase a rifle or shotgun from a licensed dealer provided that he or she presents the dealer with documentary evidence of his or her identity and place of residence, and the rifle or shotgun purchased is either personally delivered to the purchaser or transmitted by the dealer directly to the purchaser's residence. In the event the purchaser is traveling from the city by rail, ship or plane, the dealer is hereby authorized to deliver such rifle or shotgun at the appropriate terminal to a representative of the railroad, airline or shipping company, for placement aboard such train, plane or ship. If the rifle or shotgun is personally delivered to the non-resident purchaser within the city of New York, the purchaser shall have the rifle or shotgun removed from the city no later than twenty-four hours after the time of purchase. This exemption shall not apply to assault weapons.

j. Nothing herein contained shall be construed to be a prohibition of the conduct of business by manufacturers, wholesale dealers, interstate shippers, or any other individuals or firms properly licensed by the federal government, where such prohibition would be preempted by federal law.

k. Special theatrical permit. Nothing herein contained is intended to prevent the possession or utilization of any rifle, shotgun or assault weapon during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer in the pursuance of his or her profession, provided however, that the rifle or shotgun so used shall be properly registered and a special theatrical permit shall have been issued for the rifle, shot- gun or assault weapon pursuant to rules established by the com- missioner.

l. Persons in possession of, using or transporting rifles which have been issued by the director of civilian marksmanship of the department of the army, pursuant to the provisions of ten U.S.C.A., sections 4307-4309, unto a civilian rifle club, or unto a rifle team representing an educational institution, provided that such persons are members in good standing of an accredited civilian rifle club, or are connected as students or coaches with such educational institution, shall not be required to obtain a certificate of registration for such rifle. This exemption shall not apply to assault weapons.

m. Any resident of the city of New York acquiring a rifle or shotgun outside the city of New York shall within seventy-two hours after bringing such weapon into the city make application for a rifle and shotgun permit, if such person does not already possess such permit, and for a certificate of registration.

Pending the issuance of such permit and/or certificate of registration such resident shall deposit such weapon with a designated officer, at the police precinct in which such person resides, who shall issue a receipt therefor and said weapon shall be retained at the precinct until the resident shall produce the proper permit and registration certificate. This exemption shall not apply to assault weapons.

n. The provisions of section 10-303 of this chapter shall not apply to persons who are members of units of war veterans organizations, which organizations are duly recognized by the veterans administration, pursuant to section three thousand four hundred two of title thirty-eight of the United States code, and who are specifically designated to carry rifles or shotguns by the commanders of said units, while actually participating in, going to or returning from, special events authorized by the commissioner. Said rifles or shotguns, to be carried, must be the property of the unit of the war veterans organization, must be registered with the police commissioner pursuant to section 10-304 of this chapter and must be kept at the unit's headquarters or some central place as registered.

o. Nothing herein shall exempt a member of a unit of a war veterans organization from possessing a permit issued pursuant to section 10-303, to carry rifles or shotguns which are not the property of a war veterans organization; nor shall that member be exempt from registering such rifles or shotguns, pursuant to section 10-304, which said member may personally own, possess or purchase.

p. Any gunsmith licensed pursuant to section 10-302 may engage in the business of gunsmith as authorized by such license.

q. Notwithstanding the provisions of this chapter prohibiting the possession or disposition of assault weapons, a special theatrical dealer may possess such weapons exclusively for the purpose of leasing such weapons to special theatrical permittees within the city and for theatrical purposes outside the city and may, in addition, with the written approval of the commissioner, permanently remove one or more assault weapons from the city.

HISTORICAL NOTE

Section amended L.L. 78/1991 § 12, eff. Sept. 30, 1991

Section added chap 907/1985 § 1

Subd. a amended L.L. 6/2005 § 2, eff. Apr. 18, 2005.

Subd. q added L.L. 22/1992 § 6, eff. Apr. 10, 1992

DERIVATION

Formerly § 436-6.10 added LL 106/1967 § 1

Subs n-1, n-2 added LL 55/1968 § 1

Subs a, f, g, i, k, m amended LL 5/1984 § 13

Sub n-1 amended LL 5/1984 § 14

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***** Current through December 2009 ****

NYC Administrative Code 10-306

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-306 Disposition, purchase and possession of ammunition and ammunition feeding devices.

a. No person, except a dealer in rifles and shotguns, may dispose of to another person an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding more than five rounds of rifle or shotgun ammunition, except in the manner provided in this chapter for the disposition of assault weapons, provided that a person in lawful possession of such ammunition feeding devices may dispose of such ammunition feeding devices to a dealer in rifles and shotguns. No dealer in rifles and shotguns may dispose of such ammunition feeding devices except to a person who is exempt from subdivision a of section 10-303.1 pursuant to section 10-305.

b. No person may possess an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding more than five rounds of rifle or shotgun ammunition, unless such person is exempt from subdivision a of section 10-303.1 pursuant to section 10-305, provided that a dealer in rifles and shotguns may possess such ammunition feeding devices for the purpose of disposition authorized pursuant to subdivision a of this section.

c. No ammunition suitable for use in a rifle of any caliber or for any shotgun or ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition shall be disposed of to any person who has not been issued a rifle and shotgun permit and a certificate of registration and who does not exhibit same to the dealer at the time of the purchase. In no event shall rifle or shotgun ammunition be disposed of to or possessed by any such person except for a shotgun, or for the specific caliber of rifle, for which the certificate of registration has been issued. No ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding more than five rounds of rifle or shotgun ammunition shall be disposed of by a dealeer in rifles and shotguns to any person who does not exhibit proof that he or she is exempt from subdivision a of section 10-303.1 pursuant to section 10-305.

d. It shall be unlawful for any person who is required to have a permit in order to possess a rifle or shotgun and who has not been issued such permit to possess rifle or shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun.

e. A record shall be kept by the dealer of each disposition of ammunition or ammunition feeding devices under this section which shall show the type, caliber and quantity of ammunition or ammunition feeding devices disposed of, the name and address of the person receiving same, the caliber, make, model, manufacturer's name and serial number of the rifle or shotgun for which the purchaser is purchasing ammunition, the date and time of the transaction, and the number of the permit and certificate exhibited or description of the proof of exemption exhibited as required by this section. Such information shall be made available to all law enforcement agencies.

f. Notwithstanding any other provision of this section, ammunition and ammunition feeding devices which are designed for use in rifles or shotguns and which are capable of holding no more than five rounds of rifle or shotgun ammunition may be disposed of or possessed in the same manner and pursuant to the same requirements, rules and exemptions as apply to disposal or possession of rifles, shotguns or assault weapons under this chapter, provided that a special theatrical permittee may not possess live ammunition suitable for use in the rifle, shotgun or assault weapon such permittee is authorized to possess. Ammunition feeding devices which are designed for use in rifles or shotguns and which are capable of holding more than five rounds of rifle or shotgun ammunition may only be disposed of or possessed in the manner provided in this section.

g. Notwithstanding any other provision of this section, any person authorized to possess a pistol or revolver within the city of New York may possess ammunition suitable for use in such pistol or revolver and a dealer in firearms or dealer in rifles and shotguns may dispose of such ammunition to such person pursuant to subdivision i of section 10-131.

h. Dealers in rifles and shotguns and special theatrical dealers may lease ammunition feeding devices which are designed for use in rifles or shotguns to special theatrical permittees. Special theatrical permittees may possess such ammunition feeding devices subject to the same conditions as apply with respect to such permittee's possession of rifles, shotguns and assault weapons.

HISTORICAL NOTE

Section amended L.L. 78/1991 § 13, eff. Sept. 30, 1991

Section added chap 907/1985 § 1

Subd. e amended L.L. 6/2005 § 3, eff. Apr. 18, 2005.

Subd. f amended L.L. 22/1992 § 7, eff. Apr. 10, 1992

Subd. h added L.L. 22/1992 § 8, eff. Apr. 10, 1992

DERIVATION

Formerly § 436-6.11 added LL 106/1967 § 1

Amended LL 5/1984 § 15

CASE NOTES

¶ 1. Mere possession of shotgun ammunition is not a crime under the statute. People v. Kramer, 132 A.D.2d 572, 517 N.Y.S.2d 298 (2d Dept. 1987).

¶ 2. In order for a complaint under this section to be converted into an information, the prosecution must demonstrate that the ammunition was suitable to be fired. People v. Volkes, N.Y.L.J., Nov. 6, 2003, at 21, col. 1 (Crim.Ct. Richmond Co.).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-307

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-307 Supply of forms.

The commissioner shall provide all dealers in rifles and shotguns with adequate supplies of all forms including applications for permits as required by this chapter, without charge.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 436-6.16 added LL 106/1967 § 1

Amended LL 5/1984 § 18

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-308

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-308 Vehicles, rooms, dwellings or structures; possession therein.

The presence of a rifle, or shotgun, or rifle or shotgun ammunition, in a vehicle, room, dwelling or structure, without a rifle and shotgun permit therefor and a certificate of registration therefor, or the presence of an assault weapon in a vehicle, room, dwelling or structure, shall be presumptive evidence of possession thereof by all persons occupying the vehicle, room, dwelling or structure at the time.

HISTORICAL NOTE

Section amended L.L. 78/1991 § 14, eff. Sept. 30, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § 436-6.12 added LL 106/1967 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-309

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-309 Identifying marks.

a. Defacing. Any person who alters, changes, removes, disfigures, obliterates or defaces the name of the maker, model, manufacturer's or serial number of a rifle, shotgun or assault weapon shall be in violation of this section.

b. Any rifle or shotgun sold or otherwise disposed of by a licensed dealer, which does not contain a manufacturer's or serial number, must have imbedded into the metal portion of such rifle or shotgun a dealer's number. Failure to so mark and identify any rifle or shotgun shall be a violation of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 78/1991 § 15, eff. Sept. 30, 1991

DERIVATION

Formerly § 436-6.13 added LL 106/1967 § 1

Sub b amended LL 5/1984 § 16

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-310

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-310 Violation.

Except as is otherwise provided in sections 10-302 and 10-303.1, violation of sections 10-301 through 10-309 and of rules and regulations issued by the commissioner pursuant thereto shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year or both, provided that the first violation of such sections involving possession of an unregistered rifle or shotgun or rifle or shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition shall be an offense punishable by a fine of not more than three hundred dollars or imprisonment of not more than fifteen days, or both on condition that (a) the first violation of possession of an unregistered rifle and shotgun or rifle and shotgun ammunition or an ammunition feeding device which is designed for use in a rifle or shotgun and which is capable of holding no more than five rounds of rifle or shotgun ammunition is not in conjunction with the commission of a crime and (b) the possessor has not been previously convicted of a felony or a serious offense and (c) the possessor has not previously applied for and been denied a permit for such possession.

HISTORICAL NOTE

Section amended L.L. 31/2006 § 4, eff. Nov. 24, 2006. [See § 10-302.1 Note 2]

Section amended L.L. 76/1995 § 9, eff. Sept. 28, 1995. Amendments expire and are repealed May 1, 1996, as per L.L. 21/1996, section

reverts to previous language

Section amended L.L. 78/1991 § 16, eff. Sept. 30, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § 436-6.14 added LL 106/1967 § 1

Amended LL 9/1973 § 4

Amended LL 5/1984 § 17

CASE NOTES FROM FORMER SECTION

¶ 1. Petition charging respondent, 15 years of age, with possession of a firearm under Penal Law § 265.00(3), which was a sawed-off shotgun was dismissed where shotgun was $22\frac{1}{4}$ inches and thus was not a concealed weapon and respondent could not be found to be a juvenile delinquent because of violation of this section which makes possession of a shotgun within the City of N.Y. without a certificate of registration a misdemeanor where he was not specifically charged with a violation of the code and hence was not put on notice as to the charge against him.-Matter of Peabody, 86 Misc. 2d 520 [1976].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-311

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-311 Sale of weapons without safety locking device prohibited.

a. It shall be unlawful for any person or business enterprise to dispose of any weapon which does not contain a safety locking device. For the purposes of this section and section 10-312: (1) weapon shall mean a firearm, rifle, shotgun, or assault weapon, as such terms are defined in section 10-301; or a machine gun, as defined in the penal law; and (2) a safety locking device shall mean a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user, and includes, but is not limited to, a trigger lock, which prevents the pulling of the trigger without the use of a key, or a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers.

b. It shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any weapon in the city of New York unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the weapon and on a separate sheet of paper included within the packaging enclosing the weapon: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS. NEW YORK CITY LAW PROHIBITS, WITH CERTAIN EXCEPTIONS, ANY PERSON FROM ACQUIRING MORE THAN ONE FIREARM, OR MORE THAN ONE RIFLE OR SHOTGUN, WITHIN A 90-DAY PERIOD."

c. Any person who applies for and obtains authorization to purchase a weapon or otherwise lawfully obtains a weapon pursuant to chapters one or three of title ten of this code shall be required to purchase or obtain a safety locking device at the time he or she purchases or obtains the weapon.

d. (1) The police commissioner is authorized to promulgate rules setting forth the types of safety locking devices which will comply with this section in accordance with subdivision a of this section. The city of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of, a safety locking device that may have been purchased in compliance with such rules promulgated by the commissioner.

(2) The police commissioner shall provide written notice of the requirements of this section and section 10-312 to all persons who receive an official authorization to purchase a weapon and all persons applying for renewal of a license or permit issued pursuant to chapters one or three of title ten, including any rules promulgated under this subdivision. All persons applying for a license or permit or applying for the renewal of a license or permit pursuant to chapters one or three of title ten of this code, shall receive from the commissioner information concerning the importance of using a safety locking device while a weapon is not in use, and a warning that weapons should be stored unloaded and locked in a location that is both separate from their ammunition and inaccessible to [their] children and any other unauthorized persons.

e. Any violation of subdivisions a or b of this section or any rule promulgated thereunder shall be a misdemeanor and triable by a judge of the criminal court of the city of New York and punishable by imprisonment of not more than thirty days or by a fine of not more than five hundred dollars, or both.

HISTORICAL NOTE

Section amended L.L. 65/1999 § 1, eff. Feb. 1, 2000.

Section added L.L. 21/1998 § 1, eff. Nov. 14, 1998.

Subd. b amended L.L. 31/2006 § 5, eff. Nov. 24, 2006. [See § 10-302.1

Note 2]

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NYC Administrative Code 10-312

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 3 FIREARMS

§ 10-312 Use of safety locking device required under certain circumstances.

a. It shall be unlawful for any person who is the lawful owner or lawful custodian of a weapon, as that term is defined in section 10-311, to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of his or her immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device. Any person who violates this subdivision shall be guilty of a violation, punishable by imprisonment of not more than ten days or by a fine of not more than two hundred fifty dollars, or both.

b. Any person who violates subdivision a of this section having previously been found guilty of a violation of such subdivision, or under circumstances which create a substantial risk of physical injury to another person, shall be guilty of a misdemeanor punishable by imprisonment of not more than thirty days or by a fine of not more than one thousand dollars, or both.

c. The provisions of this section shall not apply to weapons owned or lawfully possessed by a police officer, as such term is defined in section 1.20 of the criminal procedure law, or a federal law enforcement officer, as such term is defined in section 2.15 of the criminal procedure law.

HISTORICAL NOTE

Section added L.L. 65/1999 § 2, eff. Feb. 1, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-401

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 4 ACTIONS BY VICTIMS OF VIOLENT CRIME

§ 10-401 Short title.

This local law shall be known as the "Victims of Violent Crime Protection Act".

HISTORICAL NOTE

Section added L.L. 13/2001 § 1, eff. Mar. 16, 2001.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-402

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 4 ACTIONS BY VICTIMS OF VIOLENT CRIME

§ 10-402 Definition.

For purposes of this chapter:

a. "Crime of violence" means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction.

HISTORICAL NOTE

Section added L.L. 13/2001 § 1, eff. Mar. 16, 2001.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-403

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 4 ACTIONS BY VICTIMS OF VIOLENT CRIME

§ 10-403 Civil cause of action.

Except as otherwise provided by law, any person claiming to be injured by an individual who commits a crime of violence as defined in section 10-402 of this chapter, shall have a cause of action against such individual in any court of competent jurisdiction for any or all of the following relief:

1. compensatory and punitive damages;
2. injunctive and declaratory relief;
3. attorneys' fees and costs;
4. such other relief as a court may deem appropriate.

HISTORICAL NOTE

Section added L.L. 13/2001 § 1, eff. Mar. 16, 2001.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-404

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 4 ACTIONS BY VICTIMS OF VIOLENT CRIME

§ 10-404 Limitations.

a. A civil action under this chapter must be commenced within six years after the alleged crime of violence as defined in section 10-402 of this chapter occurred. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the civil procedure law and rules, a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to six years after the inability to commence the action ceases.

b. Nothing in this section requires a prior criminal complaint, prosecution or conviction to establish the elements of a cause of action under this chapter.

HISTORICAL NOTE

Section added L.L. 13/2001 § 1, eff. Mar. 16, 2001.

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NYC Administrative Code 10-405

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 4 ACTIONS BY VICTIMS OF VIOLENT CRIME

§ 10-405 Burden of proof.

Conviction of a crime arising out of the same transaction, occurrence or event giving rise to a cause of action under this chapter shall be considered conclusive proof of the underlying facts of that crime for purposes of an action brought under this chapter. That such crime was a crime of violence must be proved by preponderance of the evidence.

HISTORICAL NOTE

Section added L.L. 13/2001 § 1, eff. Mar. 16, 2001.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-406

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 4 ACTIONS BY VICTIMS OF VIOLENT CRIME

§ 10-406 Severability.

If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

HISTORICAL NOTE

Section added L.L. 13/2001 § 1, eff. Mar. 16, 2001.

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NYC Administrative Code 10-501

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 5 DISCLOSURE OF SECURITY BREACH*37

§ 10-501 Definitions.

For the purposes of this chapter,

a. The term "personal identifying information" shall mean any person's date of birth, social security number, driver's license number, non-driver photo identification card number, financial services account number or code, savings account number or code, checking account number or code, brokerage account number or code, credit card account number or code, debit card number or code, automated teller machine number or code, personal identification number, mother's maiden name, computer system password, electronic signature or unique biometric data that is a fingerprint, voice print, retinal image or iris image of another person. This term shall apply to all such data, notwithstanding the method by which such information is maintained.

b. The term "breach of security" shall mean the unauthorized disclosure or use by an employee or agent of an agency, or the unauthorized possession by someone other than an employee or agent of an agency, of personal identifying information that compromises the security, confidentiality or integrity of such information. Good faith or inadvertent possession of any personal identifying information by an employee or agent of an agency for the legitimate purposes of the agency, and good faith or legally mandated disclosure of any personal identifying information by an employee or agent of an agency for the legitimate purposes of the agency shall not constitute a breach of security.

HISTORICAL NOTE

Section added L.L. 45/2005 § 2, eff. Sept. 16, 2005. [See Chapter 5

footnote]

FOOTNOTES

37

[Footnote 37]: * Chapter 5 added L.L. 45/2005 § 2, eff. Sept. 16, 2005. Note provisions of L.L. 45/2005:

Section One. Legislative declaration. The Council finds that acts of identity theft are plaguing New Yorkers. Federal Trade Commission statistics indicate that identity theft has become the single most common consumer fraud complaint in the nation. New York City residents are as likely to be victimized by identity theft as the citizens of many cities within the United States.

The Council finds that identity thieves often gain control of victims' sensitive personal information by hacking into computers or otherwise violating the security of data systems. When such unauthorized persons acquire individuals' personal information, they are able to access bank accounts, take control of credit cards, and defraud unsuspecting victims. The Council thus finds that one of the most effective ways to curtail identity thieves is to inform would-be victims that the security of their sensitive personal information has been violated; individuals can then take the steps necessary to regain control of their privacy and finances.

Accordingly, the Council finds it necessary to require City agencies to inform individuals whenever there has been a breach of security with respect to sensitive personal information. Agencies can best serve New Yorkers by making such disclosures expeditiously, while acting in accordance with the procedures of the New York City Police Department and other legitimate law enforcement agents.

. . . . . § 3. This local law shall take effect 120 days after it shall have been enacted into law; provided that the commissioner of any agency may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, establishing guidelines and promulgating rules.

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NYC Administrative Code 10-502

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 5 DISCLOSURE OF SECURITY BREACH*37

§ 10-502 Agency disclosure of a security breach.

a. Any city agency that owns or leases data that includes personal identifying information and any city agency that maintains but does not own data that includes personal identifying information, shall immediately disclose to the police department any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach if such personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

b. Subsequent to compliance with the provisions set forth in subdivision a of this section, any city agency that owns or leases data that includes personal identifying information shall disclose, in accordance with the procedures set forth in subdivision d of this section, any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach to any person whose personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

c. Subsequent to compliance with the provisions set forth in subdivision a of this section, any city agency that maintains but does not own data that includes personal identifying information shall disclose, in accordance with the procedures set forth in subdivision d of this section, any breach of security following discovery by a supervisor or manager, or following notification to a supervisor or manager, of such breach to the owner, lessor or licensor of the data if the personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

d. The disclosures required by subdivisions b and c of this section shall be made as soon as practicable by a method reasonable under the circumstances. Provided said method is not inconsistent with the legitimate needs of law enforcement or any other investigative or protective measures necessary to restore the reasonable integrity of the data

system, disclosure shall be made by at least one of the following means:

1. Written notice to the individual at his or her last known address; or

2. Verbal notification to the individual by telephonic communication; or

3. Electronic notification to the individual at his or her last known e-mail address.

e. Should disclosure pursuant to paragraph one, two or three of subdivision d be impracticable or inappropriate given the circumstances of the breach and the identity of the victim, such disclosure shall be made by a mechanism of the agency's election, provided such mechanism is reasonably targeted to the individual in a manner that does not further compromise the integrity of the personal information.

HISTORICAL NOTE

Section added L.L. 45/2005 § 2, eff. Sept. 16, 2005. [See Chapter 5 footnote]

FOOTNOTES

37

[Footnote 37]: * Chapter 5 added L.L. 45/2005 § 2, eff. Sept. 16, 2005. Note provisions of L.L. 45/2005:

Section One. Legislative declaration. The Council finds that acts of identity theft are plaguing New Yorkers. Federal Trade Commission statistics indicate that identity theft has become the single most common consumer fraud complaint in the nation. New York City residents are as likely to be victimized by identity theft as the citizens of many cities within the United States.

The Council finds that identity thieves often gain control of victims' sensitive personal information by hacking into computers or otherwise violating the security of data systems. When such unauthorized persons acquire individuals' personal information, they are able to access bank accounts, take control of credit cards, and defraud unsuspecting victims. The Council thus finds that one of the most effective ways to curtail identity thieves is to inform would-be victims that the security of their sensitive personal information has been violated; individuals can then take the steps necessary to regain control of their privacy and finances.

Accordingly, the Council finds it necessary to require City agencies to inform individuals whenever there has been a breach of security with respect to sensitive personal information. Agencies can best serve New Yorkers by making such disclosures expeditiously, while acting in accordance with the procedures of the New York City Police Department and other legitimate law enforcement agents.

. . . . . § 3. This local law shall take effect 120 days after it shall have been enacted into law; provided that the commissioner of any agency may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, establishing guidelines and promulgating rules.

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NYC Administrative Code 10-503

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 5 DISCLOSURE OF SECURITY BREACH*37

§ 10-503 Agency disposal of personal identifying information.

An agency that discards records containing any individual's personal identifying information shall do so in a manner intended to prevent retrieval of the information contained therein or thereon.

HISTORICAL NOTE

Section added L.L. 45/2005 § 2, eff. Sept. 16, 2005. [See Chapter 5 footnote]

FOOTNOTES

37

[Footnote 37]: * Chapter 5 added L.L. 45/2005 § 2, eff. Sept. 16, 2005. Note provisions of L.L. 45/2005:

Section One. Legislative declaration. The Council finds that acts of identity theft are plaguing New Yorkers. Federal Trade Commission statistics indicate that identity theft has become the single most common consumer fraud complaint in the nation. New York City residents are as likely to be victimized by identity theft as the citizens of many cities within the United States.

The Council finds that identity thieves often gain control of victims' sensitive personal information by hacking into computers or otherwise violating the security of data systems. When such unauthorized persons acquire individuals' personal information, they are able to access bank accounts, take control of credit cards, and defraud unsuspecting victims. The Council thus finds that one of the most effective ways to curtail identity thieves is to inform would-be victims that the security of their sensitive personal information has been violated; individuals can then take the steps necessary to regain control of their privacy and finances.

Accordingly, the Council finds it necessary to require City agencies to inform individuals whenever there has been a breach of security with respect to sensitive personal information. Agencies can best serve New Yorkers by making such disclosures expeditiously, while acting in accordance with the procedures of the New York City Police Department and other legitimate law enforcement agents.

. . . . . § 3. This local law shall take effect 120 days after it shall have been enacted into law; provided that the commissioner of any agency may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, establishing guidelines and promulgating rules.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-601

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-601 Short Title.

This local law shall be known as the "Gun Offender Registration Act."

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6 footnote]

CASE NOTES

¶ 1. A guilty plea to criminal possession of a weapon in the second degree (Penal Law 265.03[1][b]) is not a "gun offense." Thus, a person convicted under that section is not subject to the Requirements of the Gun Offender Registration Act. People v. Baker, 2009 N.Y. App.Div. Lexis 3757 (2d Dept.).

FOOTNOTES

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[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have

been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further crimes.

The New York City Police Department has shown that information about past offenders can be used to prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

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***** Current through December 2009 ****

NYC Administrative Code 10-602

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-602 Definitions.

For purposes of this chapter: a. "Career education" shall have the meaning given in subdivision twenty-four of section two of the education law.

b. "Commissioner" shall mean the police commissioner of the city of New York or his or her designee.

c. "Department" shall mean the police department of the city of New York.

d. "Gun offender" shall mean any person who is convicted, after the effective date of this act, of a gun offense as defined in subdivision e of this section in a court in the city of New York. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this chapter as one conviction. The entry of a plea of guilty, a plea of guilty where the gun offender does not accept responsibility, a plea of nolo contendere, or a verdict of guilty, shall constitute a conviction for purposes of this chapter; provided, however, that any conviction set aside pursuant to law, including any conviction for a gun offense that has been reversed upon appeal, is not a conviction for purposes of this chapter. The term "gun offender" shall not include any person who has been pardoned for all gun offenses by the governor.

e. "Gun offense" shall mean a conviction of criminal possession of a weapon in the third degree in violation of subdivision 4, 5, 6, 7, or 8 of section 265.02 of the penal law or criminal possession of a weapon in the second degree in violation of subdivision 3 of section 265.03 of the penal law.

f. "Higher education" shall have the meaning given in subdivision eight of section two of the education law.

g. "Local correctional facility" shall have the meaning given in paragraph (a) of subdivision sixteen of section two of the correction law.

h. "Secondary education" shall have the meaning given in subdivision seven of section two of the education law.

i. "State correctional facility" shall mean a correctional facility as defined in paragraph (a) of subdivision four of section two of the correction law.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6

footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further crimes.

The New York City Police Department has shown that information about past offenders can be used to prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-603

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-603 Duty to register and to verify.

a. A gun offender shall register with the department at the time sentence is imposed on a form prescribed by the department.

b. Registration as required by this chapter shall consist of a statement in writing signed by the gun offender giving such information as may be required under subdivision c of this section.

c. A gun offender shall, to the extent required by the department, provide the following information to the department:

1. The gun offender's name, all aliases used, date of birth, sex, race, height, weight, eye color, number of any driver's license or non-driver photo ID card, home address and/or expected place of residence.

2. A photograph, updated during the period of registration as described in subdivision d of this section.

3. A description of the offense for which the gun offender was convicted, the date of conviction and the sentence imposed.

4. The name and address of any institution of career education, higher education or secondary education at which the gun offender is or expects to be enrolled or attending, and whether such offender resides in or will reside in a facility owned or operated by such institution.

5. The gun offender's expected place of employment, including name and phone number of supervisor and

mailing address of employer.

6. Any other information deemed pertinent by the department.

d. First personal appearance. A gun offender who is required to register shall personally appear at such office as the commissioner may direct within forty-eight hours of (i) release, in the event the gun offender receives a sentence of imprisonment, or (ii) the time sentence is imposed, if such sentence does not include imprisonment, for the purpose of personally verifying such information as may be required under subdivision c of this section with the department. The department may at such time photograph the gun offender. The commissioner may require the gun offender to provide such documentation as the commissioner deems acceptable verifying such information.

e. For a gun offender who is required to register under this chapter and who is a resident of the City of New York, every six months after the gun offender's initial registration date during the period in which he or she is required to register under this chapter the following applies:

1. Except as specified in paragraph 2 of this subdivision, within twenty days of each six month anniversary of the gun offender's initial registration date, the gun offender shall personally appear at such office as the commissioner may direct for the purpose of verifying such information as may be required under subdivision c of this section with the department. The department may at such time photograph the gun offender. The commissioner may require the gun offender to provide such documentation as the commissioner deems acceptable verifying such information.

2. If a gun offender required to register under this chapter who is a resident of the City of New York is confined to any state or local correctional facility, hospital or institution throughout the twenty-day period described in paragraph 1 of this subdivision, such gun offender shall personally appear as required by paragraph 1 within forty-eight hours of release. The department may at such time photograph the gun offender.

f. The department is authorized to maintain in the registry database information other than that specified in subdivision c of this section.

g. Any gun offender shall, within ten calendar days after establishing residence in the city of New York or changing residences within the city of New York, personally appear at such office as the commissioner may direct and there provide verification information as required by this chapter. The commissioner may require the gun offender to provide such documentation as the commissioner deems acceptable verifying the change in residence.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6

footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further crimes.

The New York City Police Department has shown that information about past offenders can be used to

prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

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***** Current through December 2009 ****

NYC Administrative Code 10-604

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-604 Duration of registration and verification.

A gun offender shall register and verify for a period of four years from the date of conviction of a gun offense, if the conviction does not include imprisonment, or for a period of four years from the date of release after conviction of a gun offense, in the event the gun offender receives a sentence of imprisonment.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6 footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further crimes.

The New York City Police Department has shown that information about past offenders can be used to prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-605

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-605 Sharing of registration information.

The department is authorized to make the registry available to any regional or national government-operated registry of gun offenders for the purpose of sharing information. The department may accept files from any regional or national registry of gun offenders. The department is also authorized to make the registry available to other City agencies.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6 footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further

crimes.

The New York City Police Department has shown that information about past offenders can be used to prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-606

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-606 Cooperation with other agencies.

The department is authorized to cooperate with state and City agencies and the judiciary to facilitate implementation of this chapter. Assistance and cooperation in the implementation of this chapter shall be provided by other City departments and agencies upon request by the commissioner.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6 footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further crimes.

The New York City Police Department has shown that information about past offenders can be used to prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

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NYC Administrative Code 10-607

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-607 Regulations.

The commissioner may make and promulgate such rules and regulations and establish such forms as are necessary to carry out the provisions of this chapter.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6 footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further crimes.

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. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

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NYC Administrative Code 10-608

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 6 GUN OFFENDER REGISTRATION ACT*39

§ 10-608 Penalties.

Any violation by a gun offender of this chapter or of rules and regulations established pursuant to this chapter, including any failure to register or to verify pursuant in the manner and within the time periods provided for in this chapter, shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment of not more than one year or both. Failure to receive any form shall not excuse any violation of this chapter.

HISTORICAL NOTE

Section added L.L. 29/2006 § 2, eff. Mar. 24, 2007. [See Chap. 6 footnote]

FOOTNOTES

39

[Footnote 39]: * Chapter 6 added L.L. 29/2006 § 2, eff. Mar. 24, 2007. Note provisions of L.L. 29/2006: Section one. Legislative findings and intent. The Council of the City of New York finds that people who have been convicted of felony gun offenses pose unique dangers to the people of this City and should, therefore, be monitored to prevent them from reoffending and to ensure their prompt apprehension if they do commit further

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The New York City Police Department has shown that information about past offenders can be used to prevent future crimes. The Specially Targeted Offenders Project (STOP) led to 247 arrests of offenders who had violated a duty to report changes in address under the state's Correction Law from 2003 to 2004, almost doubling the rate of such arrests from the previous year.

. . . . . § 3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect 240 days after it shall have been enacted into law [Mar. 24, 2007], provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules and regulations.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-701

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 7 UNAUTHORIZED RECORDING IN A PLACE OF PUBLIC PERFORMANCE*40

§ 10-701 Definitions.

Whenever used in this chapter, the following terms shall have the following meanings:

a. "Recording device" means a photographic or video camera, or any audio and/or visual recording function of any device used for recording or transmitting sound, picture, or both, of a live performance or motion picture.

b. "Place of public performance" means (1) a theater that is used primarily for the exhibition of motion pictures or (2) any venue that is used for the exhibition of motion pictures or used for live theatrical or musical performances at which the operator posts a sign that meets the requirements of section 10-705 of this article.*42

c. "Unauthorized operation" means operation conducted without written authority or permission from the owner, operator, manager or other person having control of a place of public performance.

HISTORICAL NOTE

Section added L.L. 21/2007 § 1, eff. June 30, 2007. [See Chapter 7

footnote]

FOOTNOTES

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[Footnote 40]: * Chapter 7 added L.L. 21/2007 § 1, eff. June 30, 2007. Note provisions of L.L. 21/2007: § 2. This local law shall take effect sixty days after its enactment [June 30, 2007] provided, however, that the police department may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

42

[Footnote 42]: * Should be "chapter"

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 10-702

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 7 UNAUTHORIZED RECORDING IN A PLACE OF PUBLIC PERFORMANCE*40

§ 10-702 Unauthorized operation of a recording device in a place of public performance prohibited.

No person may engage in or cause or permit another to engage in the unauthorized operation of a recording device in a place of public performance.

HISTORICAL NOTE

Section added L.L. 21/2007 § 1, eff. June 30, 2007. [See Chapter 7 footnote]

FOOTNOTES

40

[Footnote 40]: * Chapter 7 added L.L. 21/2007 § 1, eff. June 30, 2007. Note provisions of L.L. 21/2007: § 2. This local law shall take effect sixty days after its enactment [June 30, 2007] provided, however, that the police department may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

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***** Current through December 2009 ****

NYC Administrative Code 10-703

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 7 UNAUTHORIZED RECORDING IN A PLACE OF PUBLIC PERFORMANCE*40

§ 10-703 Penalties.

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor which, upon a first conviction, shall be punishable by a term of imprisonment not to exceed six months, by a fine of not less than one thousand dollars nor more than five thousand dollars, or both such fine and imprisonment, and be subject to a civil penalty not to exceed five thousand dollars. Any person who violates the provisions of this chapter shall be guilty of a misdemeanor which, upon a second and any subsequent conviction occurring within one year of a first conviction, shall be punishable by a term of imprisonment not to exceed one year, by a fine of not less than five thousand dollars nor more than ten thousand dollars, or both such fine and imprisonment, and be subject to a civil penalty not to exceed ten thousand dollars. Such penalty shall be in addition to any other penalties or sanctions that may be imposed, and such penalties shall not limit or preclude any cause of action available to any person or entity injured or aggrieved by such action.

HISTORICAL NOTE

Section added L.L. 21/2007 § 1, eff. June 30, 2007. [See Chapter 7 footnote]

FOOTNOTES

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[Footnote 40]: * Chapter 7 added L.L. 21/2007 § 1, eff. June 30, 2007. Note provisions of L.L. 21/2007: § 2. This local law shall take effect sixty days after its enactment [June 30, 2007] provided, however, that the police department may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

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NYC Administrative Code 10-704

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 7 UNAUTHORIZED RECORDING IN A PLACE OF PUBLIC PERFORMANCE*40

§ 10-704 Exception.

This section shall not be interpreted to impair or restrict any law enforcement personnel or employees of governmental agencies or other entities, public or private, who, in the course of their employment, attempt to capture any visual image, sound recording, or other physical impression: (i) of a person engaging in criminal or otherwise illegal activity; or (ii) while conducting an investigation, surveillance, or monitoring of any person to obtain evidence of suspected illegal activity, including the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law or pattern of business practices adversely affecting public health or safety.

HISTORICAL NOTE

Section added L.L. 21/2007 § 1, eff. June 30, 2007. [See Chapter 7 footnote]

FOOTNOTES

40

[Footnote 40]: * Chapter 7 added L.L. 21/2007 § 1, eff. June 30, 2007. Note provisions of L.L. 21/2007:

§ 2. This local law shall take effect sixty days after its enactment [June 30, 2007] provided, however, that the police department may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

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NYC Administrative Code 10-705

Administrative Code of the City of New York

Title 10 Public Safety

CHAPTER 7 UNAUTHORIZED RECORDING IN A PLACE OF PUBLIC PERFORMANCE*40

§ 10-705 Signage.

The operator of a venue as defined by paragraph (2) of subdivision b of § 10-701 of this subchapter*43 may prominently display at the entrance to such venue, a sign stating in conspicuous letters that are at least three-fourths of an inch high that the unauthorized operation of a recording device at such place of public performance is prohibited by law and is punishable by criminal and civil penalties.

HISTORICAL NOTE

Section added L.L. 21/2007 § 1, eff. June 30, 2007. [See Chapter 7 footnote]

FOOTNOTES

40

[Footnote 40]: * Chapter 7 added L.L. 21/2007 § 1, eff. June 30, 2007. Note provisions of L.L. 21/2007: § 2. This local law shall take effect sixty days after its enactment [June 30, 2007] provided, however, that the police department may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

43

[Footnote 43]: * Should be "chapter"

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Title 10 Public Safety

CHAPTER 7 UNAUTHORIZED RECORDING IN A PLACE OF PUBLIC PERFORMANCE*40

§ 10-706 Rule-making authority.

The police department may promulgate rules as necessary to carry out the provisions of this chapter.

HISTORICAL NOTE

Section added L.L. 21/2007 § 1, eff. June 30, 2007. [See Chapter 7 footnote]

FOOTNOTES

40

[Footnote 40]: * Chapter 7 added L.L. 21/2007 § 1, eff. June 30, 2007. Note provisions of L.L. 21/2007: § 2. This local law shall take effect sixty days after its enactment [June 30, 2007] provided, however, that the police department may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

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NYC Administrative Code 11-101

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-101 Power of department of finance to adopt a seal.

The department of finance is authorized to adopt a seal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-1.0 added LL 10/1968 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-102

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-102 Finance department; records; copies when in evidence.

A copy of any paper, record, book, document or map, filed in the department of finance, or the minutes, records or proceedings, or any portion thereof, of any board or commission of which the commissioner of finance, is or may become a member, when certified by the commissioner of finance, or a deputy commissioner of finance, to be a correct copy of the original, shall be admissible in evidence in any trial, investigation, hearing or proceeding in any court, or before any commissioner, board or tribunal, with the same force and effect as the original. Whenever a subpoena is served upon the commissioner of finance, or any member of a board or commission of which the commissioner of finance is a member, or upon any officer or employee of the department of finance, or upon any officer or employee of such boards or commissions, requiring the production upon any trial or hearing of an original paper, document, book, map, record, minutes or proceedings, the commissioner of finance, in his or her discretion, may furnish a copy certified as herein provided, unless the subpoena be accompanied by an order of the court or other tribunal before which trial or hearing is had requiring the production of such original.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B17-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 357

Amended LL 54/1977 § 56

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-102.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-102.1 Authorization to require identifying numbers.

a. The commissioner of finance in the proper discharge of his duties in the administration and collection of taxes, assessments, arrears or other charges payable to the city may require any person to furnish such identifying number as the commissioner may prescribe for securing proper identification of such person, including but not limited to a social security account number or federal employer identification number.

b. Any person who fails to supply such identifying number within thirty days after written demand therefor shall be liable for a civil penalty of not more than one thousand dollars. Upon application in writing and for good cause shown, the commissioner of finance may extend the time for compliance with such written demand.

c. The civil penalty prescribed by this section shall be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction. In addition, the corporation counsel may institute any other action or proceeding in any court of competent jurisdiction that may be appropriate or necessary for the enforcement of the provisions of this section.

HISTORICAL NOTE

Section separately added L.L. 27/1986 § 2 and L.L. 65/1986 § 2

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Administrative Code of the City of New York

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NYC Administrative Code 11-103

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-103 Bond of commissioner and deputy commissioners of finance.

The commissioner and any deputy commissioner of finance, within ten days after receiving notice of his or her appointment and before the commissioner enters upon his or her office, shall give a bond to the city and to the people of the state of New York in the sum of three hundred thousand dollars, with not less than four sufficient sureties to be approved by the comptroller, conditioned that he or she will faithfully discharge the duties of the commissioner's office and all trusts imposed on him or her by law in virtue of the commissioner's office, including all duties in connection with the tax on mortgages as prescribed by article eleven of the tax law. Such bond shall be deemed to extend to the faithful execution of the duties of the office until a new appointment shall be made and confirmed, and the person so appointed enters upon the performance of the commissioner's duties. In case of any official misconduct or default on the part of such commissioner or any deputy commissioner of finance, or their subordinates, an action upon such bond may be begun and prosecuted to judgment by the city, which, after first paying therefrom the expenses of the litigation, shall cause the proceeds of such judgment to be distributed as shall be lawful and equitable among the persons and objects injured or defrauded by such official misconduct or default of the commissioner or any deputy commissioner of finance or any of their subordinates.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 413-1.0 added chap 929/1937 § 1

Amended chap 252/1949 § 4

Amended chap 100/1963 § 318

Amended LL 54/1977 § 24

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NYC Administrative Code 11-104

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-104 Commissioner of finance to keep accounts.

a. The commissioner of finance shall keep books showing the receipts of moneys from all sources, and designating the sources of same, and also showing the amounts paid from time to time on account of the several appropriations, the forms of which shall be prescribed by the comptroller.

b. The city collector or the deputy collector in each borough office of the city collector, in receiving monies payable to the city, from whatever source derived, shall not issue a receipt to the payor for a payment made by personal, business or corporate check unless specifically requested.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(2)-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 349

Amended LL 54/1977 § 49

Sub a designated LL 16/1980 § 1

Sub b added LL 16/1980 § 2

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Administrative Code of the City of New York

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NYC Administrative Code 11-105

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-105 Agreements with financing agencies or card issuers; payment of fines, civil penalties, taxes, fees, rates, rent, charges or other amounts by credit card.

1. As used in this section, the following terms shall have the following meanings:

a. "Card issuer" shall mean an issuer of a credit card, charge card or other value transfer device.

b. "Credit card" means any credit card, credit plate, charge card, charge plate, courtesy card, debit card or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit, or to purchase or lease property or services on the credit of the person issuing the credit card or a person who has agreed with the issuer to pay obligations arising from the use of a credit card issued another person.

c. "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts, obligations or credit agreements or indebtedness of buyers under credit agreements from one or more retail sellers or entering into credit agreements with retail buyers but shall not include a retail seller. The term includes but is not limited to a bank, trust company, private banker, industrial bank or investment company, if so engaged, but shall not include a retail seller.

d. "Person" means an individual, partnership, corporation or any other legal or commercial entity.

2. The city may enter into agreements with one or more financing agencies or card issuers to provide for the acceptance by the city of credit cards as an alternate means of payment of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts owed by a person to the city. Any such agreement shall govern the terms and conditions upon

which a credit card proffered as a means of payment of a fine, civil penalty, tax, fee, rent, rate, charge or other amount shall be accepted or declined and the manner in and conditions upon which the financing agency or card issuer shall pay to the city the amount of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts paid by means of credit cards pursuant to such agreement. Any such agreement may provide for the payment by the city to such financing agency or card issuer of fees for the services rendered by such financing agency or card issuer pursuant to such agreement, which fees may consist of a discount deducted from or payable in respect of the amount of each such fine, civil penalty, tax, fee, rent, rate, charge or other amount or otherwise as the agreement may provide.

3. Notwithstanding any other provision of law to the contrary, any agency or department of the city which, pursuant to an agreement entered into under this section, accepts credit cards as a means of payment of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts owed by a person to the city shall be authorized to charge and collect from any person offering a credit card as a means of payment of a fine a reasonable and uniform fee as a condition of accepting such credit card in payment of a fine, civil penalty, tax, fee, rent, rate, charge or other amount. Such fee shall not exceed the cost incurred by the agency or department in connection with such credit card transaction, which cost shall include any fee payable by the city to the financing agency.

HISTORICAL NOTE

Section amended chap 309/1996 § 448, eff. July 13, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(2)-2.0 added LL 63/1979 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-106

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-106 Weekly reports by commissioner of finance to mayor and comptroller.

The commissioner of finance shall once in each week report in writing to the mayor and to the comptroller all moneys received by the commissioner, the amount of all warrants paid by him or her since the commissioner's last report, and the amount remaining to the credit of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 418-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 351

Amended LL 54/1977 § 50

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-107

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-107 Report to comptroller.

The commissioner of finance, when required by the comptroller, shall furnish to him or her such information as the comptroller may demand in relation to the finances of the city, within such reasonable time as the commissioner may direct.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 418-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 352

Amended LL 54/1977 § 51

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-108

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-108 Rules in signing warrants.

No warrant shall be signed by the comptroller or countersigned by the commissioner of finance, except upon vouchers for the expenditures of the amount named therein, duly prepared and audited according to the methods prescribed by the comptroller, and filed with the comptroller, except in the case of judgments, in which case a transcript thereof shall be filed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 419-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 353

Amended LL 54/1977 § 52

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-109

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-109 Commissioner of finance to exhibit bank book.

The commissioner of finance shall exhibit his or her bank book to the comptroller on the first Tuesday of every month and oftener when required.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 420-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 354

Amended LL 54/1977 § 53

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-110

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-110 When commissioner of finance to close accounts.

The accounts of the commissioner of finance shall be annually closed on the last day of June.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 420-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 355

Amended LL 54/1977 § 54

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-111

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-111 Withdrawal of moneys by heads of agencies.

Notwithstanding any provision of the charter, any city treasury or sinking fund moneys which have been duly withdrawn from any bank or trust company upon proper warrant and check to the order of the head or heads of any agency or agencies may be redeposited by such head or heads of such agency or agencies in a properly designated deposit bank and thereafter such redeposited moneys may be withdrawn upon check signed by him or her or them without additional warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 420b-1.0 added LL 8/1939 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-112

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-112 Authorization of subordinates to sign checks and warrants.

Notwithstanding any provision of the charter, the comptroller or commissioner of finance may designate and authorize any deputies, assistant deputies, or employees to sign, each in his or her own name and in place of and for the comptroller or commissioner of finance, respectively, any or all checks or warrants, including those issued against sinking fund and trust fund bank accounts. A warrant or check so signed shall be of the same force and effect as if signed by the comptroller or commissioner of finance, respectively. The designation or designations of deputies shall be made in writing in the manner set forth in section ninety-four of the charter. The designation or designations of assistant deputies or employees shall be in writing, signed in duplicate by the comptroller or the commissioner of finance, respectively, and shall be duly filed and remain of record in the office of the comptroller and the department of finance. The period for which each such designation of deputies, assistant deputies and employees shall continue in force shall be specified therein and may be terminated by the comptroller or commissioner of finance, respectively, at any time by filing in the same office or offices in which the designation has been filed a written notice of such termination signed by the comptroller or commissioner of finance, respectively.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 420b-2.0 added LL 32/1939 § 1

Amended chap 100/1963 § 356

Amended LL 54/1977 § 55

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-113

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-113 Acceptance of facsimile signatures by banks or trust companies.

Notwithstanding any provision of the charter, checks drawn upon any bank or trust company for payment of payrolls or disbursements for relief, required to be signed by the head of an agency or his or her authorized designee, may be signed by the facsimile signature or signatures of the person or persons authorized to sign such checks, if the head of such agency so authorizes by an instrument in writing signed by the head of such agency and filed with the comptroller; and, in such event, any bank or trust company shall, acting in good faith and without notice of any defect or invalidity, be authorized to pay and be protected in paying any checks bearing or purporting to bear the facsimile signature or signatures of the person or persons duly authorized to sign such checks, regardless of the person by whom or the means by which the actual or purported facsimile signature or signatures thereon may have been affixed thereto, if such facsimile signature or signatures closely resemble the facsimile specimens from time to time filed with such banks or trust companies by the head of the agency in question; provided, however, that nothing herein contained shall release such bank or trust company from any liability arising from any cause or fact other than the fact that such facsimile signature is not a genuine facsimile signature affixed with appropriate authority.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 420b-3.0 added LL 32/1939 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-114

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-114 City collector; where to keep offices.

The main office of the bureau of city collections shall be maintained in one borough and a branch office in each other borough.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 417-1.0 added chap 929/1937 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-115

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-115 City collector; appointment; bond.

The commissioner of finance shall appoint the city collector. The city collector, before entering upon the duties of his or her office, shall enter into a bond to the city of New York to be approved by the commissioner of finance and comptroller in the penal sum of twenty-five thousand dollars, which bond shall be conditioned for the faithful performance of the duties of the office by the officer giving such bond. Such bond shall be a lien on all the real estate held by the collector executing the same, or any surety thereto, within any of the counties in the city at the time of the filing thereof, unless there be named and described in or on any such bond, real estate in one or more of such counties equal in value to the amount of such bond and owned by a surety, in which case the bond shall be a lien on such real estate so described and upon all the real estate of such city collector, and no other, and shall continue to be such lien until the condition, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied, or until such lien be released, not to exceed, however, the period of ten years after the time when the officer who has given such bond shall have ceased to hold his or her office, unless an action thereon has been commenced and shall then be pending.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 319

Amended LL 54/1977 § 26

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-116

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-116 Deputies to give bond; duties.

The city collector shall take from each deputy a bond, in such penal sum and with such sureties as may be approved by the city collector and by the comptroller and commissioner of finance, which bond shall run to the city collector, the city and to whom it may concern, and shall be conditioned for the faithful performance of the duties of such deputy. Each bond taken in pursuance of the provisions of this section shall be filed with the comptroller. Each deputy collector shall have all the powers and be subject to all the duties of the city collector in respect to the collection and receipt of taxes, assessments, water rents and arrears.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-1.1 added chap 929/1937 § 1

Renumbered & amended chap 100/1963 § 350

(formerly § 416-1.0)

Amended LL 54/1977 § 27

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-117

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-117 Renewal of bond.

If at any time during the continuance in office of the city collector or deputy collectors the comptroller or commissioner of finance shall deem any surety of them to be insufficient, he or she may require the city collector or deputy collectors to enter into a new bond to be approved in like manner as prescribed in section 11-115 of this chapter, within such time as the comptroller may direct, not being less than ten days after requiring such new bond to be given. In case of the neglect or refusal of any such officer to furnish such bond within the time so directed, the comptroller or commissioner of finance may declare his or her office vacant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 320

Amended LL 54/1977 § 28

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-118

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-118 Bureau of city collections; duties.

The duties of the bureau of city collections shall also include the collection of water rents, charges, fines and penalties in connection with the water supply, including arrears, sewer rents, sewer surcharges, charges, fines and penalties in connection with the sewer system as defined in sections 24-514 and 24-523 of the code, including arrears, interest on bonds and mortgages and revenue arising from the sale of property belonging to or managed by the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-4.0 added chap 929/1937 § 1

Amended LL 67/1950 § 2

Amended chap 309/1959 § 7

Amended LL 2/1961 § 2

Amended chap 100/1963 § 321

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-119

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-119 City collector; absence; suspension of.

a. In case of inability of the city collector to perform the duties of his or her office by reason of sickness or absence from the city, the commissioner of finance shall designate some suitable person to perform the duties of the city collector's office during such inability or absence, and shall, if the comptroller so requires, take from such person a bond, with sufficient sureties, in the manner hereinafter prescribed.

b. If the city collector or any deputy collector shall on any day omit or neglect to furnish to the commissioner of finance or to the comptroller, respectively, the statements and vouchers required in section 11-121 of this chapter, or to make the prescribed daily payments, it shall be the duty of the commissioner of finance forthwith to suspend him or her from office. In case of such suspension, the commissioner of finance shall appoint a suitable person to perform the duties of the officer so suspended, who shall continue to act as such officer until the person suspended shall be restored or another person shall have been appointed. On making such temporary appointment, the commissioner of finance shall be required to take from the person so appointed a bond, with two sufficient sureties, to be approved by the comptroller and filed with the comptroller, in such penal sum as the comptroller may deem just, conditioned for the faithful performance of the duties of the office during the continuance of the person appointed therein; and all the provisions of law prescribing the duties of the city collector and deputy collectors shall apply to the person or persons so appointed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-5.0 added chap 929/1937 § 1

Amended chap 100/1963 § 322

Amended LL 54/1977 § 29

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-120

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-120 Bond of city collector to be filed.

The bond given by the city collector shall be filed and remain in the office of the comptroller, and true copies thereof, certified by the comptroller, shall be filed in the office of the clerk of each of the counties embraced within the city, and shall be public records. In case a certificate of the adjustment of the accounts of the city collector be made, a true copy thereof, certified by the comptroller, shall be filed in each of the offices in which a copy of the bond of the city collector shall have been filed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-3.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-121

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-121 City collector; daily statements and accounts.

a. The city collector or the deputy collector in each borough office of the city collector shall enter upon accounts, to be maintained in each such office for each parcel of property, the payment of taxes, assessments, sewer rents or water rents thereon, the amount therefor, and the date when paid. The city collector shall daily enter into suitable books to be kept for the purpose of such accounts, such payments and the respective parcels on account of which the same were paid.

b. At close of office hours each day, the city collector shall render to the commissioner of finance or the deputy commissioner of finance in such borough, a statement of the sums so received, and at the same time pay over to such commissioner of finance or deputy commissioner of finance, the amount received on such day. The city collector shall thereupon receive from such commissioner of finance or deputy commissioner of finance a voucher for the payment of such sums which he or she shall exhibit to the comptroller not later than the next succeeding business day.

c. At the close of office hours each day, the city collector shall also furnish a statement to the comptroller who shall file the same in his or her office. Such statement shall indicate in detail such sums so received and the respective parcels on account of which the same were paid. The comptroller shall, on each day, immediately after receiving such statement, compare it with a voucher furnished to him or her by the commissioner of finance indicating the sums which have been paid on such day to the commissioner of finance and if the aggregate amounts thereof shall correspond, shall credit the city collector in his or her books with such amount.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-6.0 added chap 929/1937 § 1

Sub a amended LL 67/1950 § 3

Subs b, c amended chap 100/1963 § 323

Amended LL 54/1977 § 30

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-122

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-122 Exemption from taxes granted to REMICs.

An entity that is treated for federal income tax purposes as a real estate mortgage investment conduit, hereinafter referred to as a REMIC, as such term is defined in section 860D of the internal revenue code, shall be exempt from all taxation under chapters five and six of this title. A REMIC shall not be treated as a corporation, partnership or trust for purposes of chapter six of this title. The assets of a REMIC shall not be included in the calculation of any tax liability under chapter six. This provision does not exempt the holders of regular or residual interests, as defined in section 860G of the internal revenue code, in a REMIC from tax on or measured by such regular or residual interests, or on income from such interests.

HISTORICAL NOTE

Section added chap 525/1988 § 2

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-123

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-123 Interest compounded daily.

In computing the amount of any interest required to be paid under section 11-224 (except subdivision j thereof), 11-224.1, 11-264, 11-306, 11-307, 11-312, 11-313, 17-151, 19-152, 24-317, 24-512, 24-605, 26-128, 26-517.1, 27-2144 or 27-4029.1 of the code, such interest shall be compounded daily.

HISTORICAL NOTE

Section amended L.L. 62/2005 § 3, eff. June 6, 2005.

Section added L.L. 47/1990 § 1, eff. July 12, 1990 applying on July 1,

1990

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-124

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-124 Conciliation conferences.

a. The commissioner of finance may establish a procedure for providing conciliation conferences for purposes of settling contested determinations of taxes or charges or denials of refunds or credits with respect to taxes or charges imposed under chapter five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or twenty-seven of this title, or for the purpose of settling disputes arising from the notification of the refusal to grant, the suspension or the revocation of a license issued pursuant to chapter thirteen of this title. If such a procedure is established, a conciliation conference shall be provided at the option of any taxpayer or any other person subject to the provisions of any of such chapters. For purposes of this subdivision, if the commissioner of finance fails to act with respect to a refund application before the expiration of the time period after which the taxpayer may file a petition for refund with the tax appeals tribunal established by section one hundred sixty-eight of the charter pursuant to subdivision (c) of section 11-529 or subdivision three of section 11-680 of the code, such failure shall be deemed to be the denial of a refund.

b. A request for a conciliation conference shall be made in the manner set forth in rules promulgated by the commissioner of finance and, notwithstanding any provision of law to the contrary, shall suspend the running of the period of limitations for the filing of a petition with the tax appeals tribunal under chapter five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or twenty-seven of this title until such time as a conciliation decision is rendered by the commissioner of finance, or until the person who requested the conciliation conference makes a written request to discontinue or withdraw from the conciliation proceeding.

c. Nothing contained herein shall prevent any taxpayer or any other person who has received a notice of determination, notice of deficiency or notice of denial of a claim for refund from filing a petition with the tax appeals

tribunal if the time for filing such a petition has not elapsed.

d. The commissioner of finance is authorized and empowered to make, adopt and amend rules appropriate to the carrying out of this section and the purposes thereof.

HISTORICAL NOTE

Section added chap 808/1992 § 15, eff. Oct. 1, 1992

NYC Administrative Code 11-125

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-125 Temporary amnesty program; commercial rent or occupancy tax, utility tax, real property transfer tax and hotel room occupancy tax.

a. Notwithstanding any other provision of law to the contrary, the commissioner of finance shall establish a three-month amnesty program, to be effective during the fiscal year of the city beginning July first, nineteen hundred ninety-four, for all taxpayers owing any commercial rent or occupancy tax imposed by chapter seven of this title, utility tax imposed by chapter eleven of this title, real property transfer tax imposed by chapter twenty-one of this title or hotel room occupancy tax imposed by chapter twenty-five of this title. Such amnesty program shall apply, (1) in the case of the commercial rent or occupancy tax, to tax liabilities for tax periods ending on or before May thirty-first, nineteen hundred ninety-three, (2) in the case of the utility tax, to tax liabilities for tax periods ending on or before March thirty-first, nineteen hundred ninety-four, (3) in the case of the real property transfer tax, to tax liabilities arising out of taxable events occurring before April first, nineteen hundred ninety-four and (4) in the case of the hotel room occupancy tax, to tax liabilities for tax periods ending on or before February twenty-eighth, nineteen hundred ninety-four. Amnesty tax return forms shall be in a form prescribed by the commissioner of finance and shall provide for specifications by the taxpayer of the tax and the taxable period or taxable event for which amnesty is being sought. The taxpayer must also provide such additional information as is required by the commissioner of finance. Amnesty shall be granted only for the tax and taxable periods or taxable events specified by the taxpayer on such forms (hereinafter referred to as "designated taxes").

b. Such amnesty program shall provide that upon written application by any taxpayer, and upon evidence of payment to the city of New York by such taxpayer of all designated taxes plus interest, the commissioner of finance shall waive any penalties which may be applicable, and no civil, administrative or criminal action or proceeding shall be

brought against the taxpayer relating to the designated taxes plus interest. Failure to pay all designated taxes plus interest shall invalidate any amnesty granted pursuant to this section.

c. Amnesty shall not be granted to any taxpayer who is the subject of any criminal investigation being conducted by any agency of the city of New York or of the state of New York or any political subdivision thereof or to any taxpayer who is a party to any civil or criminal litigation which is pending on the date of the taxpayer's application in any court of this state or the United States for nonpayment, delinquency or fraud in relation to any of the designated taxes plus interest. A civil litigation shall not be deemed to be pending if the taxpayer withdraws from such litigation prior to the granting of amnesty.

d. No refund or credit shall be granted of any penalty paid prior to the time the taxpayer makes a request for amnesty pursuant to subdivision b of this section.

e. Unless the commissioner of finance on his or her own motion redetermines the amount of designated taxes plus interest, no refund or credit shall be granted of any designated taxes plus interest paid under this amnesty program.

f. The commissioner of finance shall formulate such rules as are necessary, issue forms and instructions, and take any and all other actions necessary to implement the provisions of this section. The commissioner of finance shall publicize the amnesty program provided for herein so as to maximize public awareness of and participation in such program.

g. For purposes of this section, the term "taxpayer" shall include any person liable for payment of any tax specified in subdivision a of this section.

h. For purposes of this section, the amnesty tax return forms and other documents filed by taxpayers for purposes of chapter seven, eleven, twenty-one or twenty-five of this title shall be deemed to be reports or returns referred to in section 11-716, 11-1116, 11-2115 or 11-2516, respectively, of this title.

HISTORICAL NOTE

Section added L.L. 23/1994 § 1, eff. July 5, 1994

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-126

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-126 Limited liability companies.

When used in this title, the term "partnership" shall mean an entity classified as a partnership for federal income tax purposes, including a subchapter K limited liability company, and the term "partner" or the term "member" when used in relation to a partnership shall include a member of a subchapter K limited liability company, unless the context requires otherwise. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the state limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law. Notwithstanding anything herein to the contrary, this section shall not apply for purposes of chapter seventeen or nineteen of this title.

HISTORICAL NOTE

Section amended chap 513/2002 § 41, eff. Sept. 17, 2002 and applying

to taxable years beginning after Dec. 31, 2001.

Section renumbered and amended chap 625/1996 § 10, eff. Sept. 4, 1996

and applying to taxable years beginning on and after Jan. 1, 1996.

Formerly § 11-125

Section amended chap 637/1995 § 18, eff. Aug. 8, 1995

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-127

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-127 Temporary amnesty program; chapters five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-four, twenty-five and twenty-seven of this title.

a. Notwithstanding any other provision of law to the contrary, the commissioner of finance shall establish a three-month amnesty program, to be effective during the fiscal year of the city beginning July first, two thousand three for taxpayers owing taxes or charges imposed, or formerly imposed by the above enumerated chapters of this title. Such amnesty program shall apply to tax liabilities for taxable periods ending, or transactions occurring, on or before December thirty-first, two thousand one. Amnesty applications and tax return forms shall be in a form prescribed by the commissioner of finance and shall provide for specifications by the taxpayer of the tax and taxable period or taxable event for which amnesty is being sought. The taxpayer must also provide such additional information as is required by the commissioner of finance. Amnesty shall be granted only for liabilities for taxes and charges imposed or formerly imposed under the above chapters for the taxable periods or taxable events specified by the taxpayer on such forms (hereinafter referred to as "designated taxes").

b. Such amnesty program shall provide that upon written application by the taxpayer, and upon evidence of payment to the city of New York by such taxpayer of all designated taxes plus interest as provided in subdivision c of this section, the commissioner of finance shall waive any penalties that may be applicable. Such commissioner shall also waive any amount of interest that would be applicable in the absence of this amnesty program in excess of the amount required to be paid pursuant to subdivision c of this section. No civil, administrative or criminal action or proceeding shall be brought against the taxpayer relating to the designated taxes plus interest required by this amnesty program. Failure to pay all designated taxes plus interest required by this amnesty program shall invalidate any amnesty granted pursuant to this program.

c. The interest that is required to be paid under this amnesty program shall be, for each designated tax, the excess of:

(1) interest calculated as provided by this code to the date of payment over

(2) interest, if any, calculated as provided by this code to the date three years prior to the first day of the amnesty program established by the commissioner of finance under this section.

d. If a taxpayer received any benefit either under the amnesty program established by section 11-125 of this chapter, or the amnesty program established by section eighty-four of chapter seven hundred sixty-five of the laws of nineteen hundred eighty-five, with respect to a liability for any tax or charge, such taxpayer shall not be eligible for amnesty under the program established by this section for any liability for that same tax or charge for the same or any other tax period.

e. Amnesty shall not be granted to a taxpayer who is the subject of any criminal investigation being conducted by an agency of the city of New York or the state of New York or any political subdivision thereof; or to any taxpayer who is a party to any criminal litigation that is pending on the date of the taxpayer's amnesty application in any court of this state or the United States, for nonpayment, delinquency or fraud in relation to any of the designated taxes. Amnesty shall also not be granted to any taxpayer that has been convicted of a crime relating to a designated tax. Amnesty shall not be granted to any taxpayer with respect to liabilities for taxes or charges to the extent that the taxpayer's liability for such taxes or charges was the subject of an audit pending with the city of New York department of finance on March tenth, two thousand three. Amnesty shall not be available to a taxpayer for any liability for a designated tax, penalty or interest that is the subject of an existing installment payment agreement on the day this amnesty program begins. Amnesty shall be available to any taxpayer who is a party to an administrative proceeding or civil litigation commenced in the city of New York department of finance conciliation bureau, the tax appeals tribunal or any court of this state and pending on the date of the taxpayer's amnesty application with respect to a matter that is the subject of such proceeding or litigation, provided the taxpayer withdraws from such proceeding or litigation prior to the granting of amnesty and the proceeding or litigation does not involve a matter that was the subject of an audit pending with the city of New York department of finance on March tenth, two thousand three.

f. No refund or credit shall be granted under this program with respect to any penalty or interest paid prior to the time the taxpayer makes a request for amnesty pursuant to subdivision b of this section.

g. Unless the commissioner of finance on his or her own motion redetermines the amount of any designated taxes plus required interest, no refund or credit shall be granted of any designated taxes or required interest paid under this amnesty program.

h. Any return or report filed under this amnesty program is subject to audit verification and assessment as provided by statute. If the applicant files a false or fraudulent tax return or report, or attempts in any manner to defeat or evade a tax under the amnesty program, amnesty shall be denied or rescinded. The waiver of penalties and interest and the prohibition of civil and criminal proceedings provided for in subdivision b of this section, apply only with regard to those designated taxes, interest and penalties for which amnesty was granted. Nothing in this section shall prevent the commissioner of finance from determining a higher amount of tax due than that for which amnesty was granted, provided, however, that such determination shall not invalidate the amnesty that was granted for any designated taxes and interest, paid pursuant to this provision. Penalties may be imposed, interest will not be waived and proceedings will not be barred with respect to any amounts of tax later determined to be due in excess of the designated taxes for which amnesty was granted.

i. The commissioner of finance shall formulate such rules as are necessary, issue forms and instructions and take any and all other actions necessary to implement the provisions of this section. The commissioner of finance shall publicize the amnesty program provided in this section so as to maximize public awareness of and participation in such

program.

j. For purposes of this section, the term "eligible taxpayer" shall include any person liable for payment or collection of any tax or charge specified in subdivision a of this section.

k. The amnesty forms and other documents filed by taxpayers pursuant to this section for purposes of the chapters of this title referred to in subdivision a of this section shall be deemed to be reports and returns subject to the secrecy provisions of such chapters in the same manner and to the same extent as if such forms and documents were reports or returns referred to therein.

1. (1) Notwithstanding any other provision of this section to the contrary, the commissioner of finance may establish a three-month amnesty program to be effective during the fiscal year of the city beginning July first, two thousand three, which may coincide with the amnesty program established under subdivision a of this section, for all operators of hotels having fewer than ten rooms, including but not limited to bed and breakfast establishments and hotels operated in private residences. Such amnesty program shall apply with respect to liabilities for hotel room occupancy tax on hotel room occupancies occurring prior to the day the amnesty program established under this subdivision begins. Except as provided in this subdivision, all of the provisions of this section shall apply to the amnesty program established under this subdivision.

(2) In addition to the other requirements of this section, an operator seeking amnesty pursuant to this subdivision must register as a hotel operator if such person has not already done so. An amnesty program established under this subdivision shall provide that upon submission of such written application and upon evidence of payment to the city of hotel room occupancy taxes and interest as provided in paragraph three of this subdivision: (1) the commissioner of finance shall waive any applicable penalties, and no civil administrative or criminal action or proceeding shall be brought against such operator with respect to the taxes so paid, and (2) the commissioner of finance shall waive any liability of such operator for taxes required to be collected by such operator, and interest thereon, for hotel room occupancies in hotels having fewer than ten rooms, including but not limited to bed and breakfast establishments and hotels operated in a private residence, occurring prior to the first day of the twelfth month preceding the first day of the amnesty program established under this subdivision.

(3) To be eligible for amnesty under this subdivision, an operator shall be required to pay hotel room occupancy taxes, and interest thereon, that such operator was required to collect for all hotel room occupancies in hotels having fewer than ten rooms, including but not limited to bed and breakfast establishments and hotels operated in a private residence, occurring during the period commencing on the first day of the twelfth month preceding the first day of the amnesty program established under this subdivision.

(4) Failure to pay all taxes as provided in this subdivision shall invalidate any amnesty granted pursuant to this subdivision.

(5) Notwithstanding any provision of subdivision e of this section to the contrary, amnesty under this subdivision may be granted to any taxpayer who has an audit pending with the city of New York department of finance on the date of the taxpayer's amnesty application and to any taxpayer who is a party to an administrative proceeding or civil litigation commenced in the city of New York department of finance conciliation bureau, the tax appeals tribunal or any court of this state and pending on the date of the taxpayer's amnesty application, provided the taxpayer withdraws from such proceeding or litigation prior to the granting of amnesty.

HISTORICAL NOTE

Section added chap 63/2003 § F1 eff. May 19, 2003.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-128

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-128 Payment of real property taxes by electronic funds transfer.

a. Definition. "Electronic funds transfer" shall mean any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

b. Authority. Notwithstanding any provision of law to the contrary, the department of finance may accept and, as authorized by this section, require payment of real property taxes by electronic funds transfer, and may authorize a designee to accept such payments. The department of finance, or its designee, may take all actions necessary to complete and administer such transactions, including but not limited to requesting and collecting necessary information and the debiting of specified accounts as provided for by this section.

c. Participation. Notwithstanding any provision of law to the contrary, the commissioner may require the payment of real property taxes by electronic funds transfer for properties with annual real property tax liability equal to or greater than three hundred thousand dollars. The owner of any such real property, or the person or entity authorized by such owner to pay real property taxes on such real property, shall be required to enroll in an electronic payment program to make such payments, including any arrears in real property taxes on such real property, by electronic funds transfer, either by payment initiated by the taxpayer as described in paragraph one of subdivision d of this section or by authorizing the department of finance to debit the relevant account as described in paragraph two of subdivision d of this section.

1. Notwithstanding any other provision of this section, where a taxpayer pays real property taxes for more than one property by a single payment, and the total annual real property tax liability for such properties is equal to or greater

than three hundred thousand dollars, the total annual real property tax liability for such properties shall be used to determine whether the taxes for a property must be paid by electronic funds transfer.

2. (i) Where real property taxes are paid for more than one taxpayer by a single bill or paid by a single entity, including but not limited to a mortgage escrow agent as defined in subparagraph (ii) of this paragraph, if the total amount paid is equal to or greater than three hundred thousand dollars annually, such amount shall be used to determine whether the taxpayer or entity is required to participate in an electronic funds transfer program.

(ii) For purposes of this paragraph, the term "mortgage escrow agent" shall include every banking organization, federal savings bank, federal savings and loan association, federal credit union, bank, trust company, licensed mortgage banker, savings bank, savings and loan association, credit union, insurance corporation organized under the laws of any state other than New York, or any other person, entity or organization which, in the regular course of its business, requires, maintains or services escrow accounts in connection with mortgages on real property located in the city.

d. Electronic payment program. The owner of real property, or other person or entity authorized by such owner to pay real property taxes on real property for which payment must be made by electronic funds transfer under this section, may choose between participating in a taxpayer initiated payment program or an automatic debit program, as set forth in this subdivision and described in rules promulgated by the commissioner of finance.

1. Taxpayer initiated program. In such a program, taxpayers initiate payment by electric funds transfer, including payment by fedwire.

2. Automatic debit program. In such a program, taxpayers authorize the department of finance, or the department's designee as determined by the commissioner of finance, to debit the taxpayer's account for the amounts due.

e. Notification of participation requirements. For taxpayers or entities subject to this section, the department of finance shall mail notice of such requirement to the property owner or other party who has been designated to receive real property tax bills on an owner's registration card filed by such owner. Such notice shall include the date by which the owner or other party designated by such owner to pay real property taxes on the property must enroll in the electronic payment program.

f. Authorization. To administer the payment of real property taxes by electronic funds transfer by automatic debit as described in paragraph two of subdivision d of this section, the department of finance may require that the party responsible for the payment of real property taxes:

1. execute an electronic funds transfer agreement with the department of finance or its designee, on a form approved by the department of finance. Such form may be in a format designated by the commissioner, including an electronic format. The agreement shall require that the taxpayer authorize the department of finance or its designee to debit such account on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law; and

2. furnish the department of finance or its designee with information to enable the department of finance to complete the electronic funds transfer transaction. Such information shall include, but not be limited to, the name and address of the bank from which an electronic funds transfer shall be authorized, the account number from which the paymeent shall be authorized, the American Bankers Association (ABA) routing number of the bank where the taxpayer maintains an account and the borough, block and lot of the real property for which such payments are authorized.

g. Timely payment. Notwithstanding any provision of law to the contrary, where real property taxes are required to be made by electronic funds transfer pursuant to subdivision c of this section, payment of real property tax by electronic funds transfer shall be deemed timely and not subject to interest charges if:

1. for taxpayers enrolled in a taxpayer initiated program pursuant to paragraph one of subdivision d of this section, (i) the taxpayer properly initiates payment on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law; and (ii) on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law, such account contains sufficient funds to enable the successful completion of the electronic funds transfer; or

2. for taxpayers enrolled in an automatic debit program pursuant to paragraph two of subdivision d of this section, (i) the department of finance or its designee has been authorized to debit the taxpayer's account on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law; (ii) such account is properly identified; and (iii) on the date such payment is due, such account contains sufficient funds to enable the successful completion of the electronic funds transfer.

h. Charge on returned payments. Where the department of finance or its designee attempts to debit a taxpayer's account pursuant to a valid electronic funds transfer agreement and is unable to successfully complete the electronic funds transfer due to insufficient funds or other cause not attributable to the department of finance or its designee, in addition to any interest accruing from the late payment of taxes in accordance with applicable law, the same fee that is imposed for a dishonored check pursuant to section eighty-five of the general municipal law shall be imposed on the affected real property, and such fee may be collected in the manner provided in such section.

i. Hardship. If a taxpayer is unable to enroll in the electronic payment program required by subdivision c of this section or subsequent to enrollment becomes unable to make payments by electronic funds transfer as required by this section, the taxpayer may seek a waiver by written application to the department of finance that sets forth the reason for such inability. Such waiver may be granted in the discretion of the commissioner of finance, who may consider such criteria as:

1. the hardship, whether financial or practical, created by participation in the electronic funds transfer program for the taxpayer seeking the waiver;

2. the length of time for which the waiver is requested; and

3. any other factors that the commissioner may deem relevant.

The commissioner shall issue a determination, in writing, within ten days of the department of finance's receipt of a waiver request pursuant to this subdivision, but no waiver shall be granted with respect to the payment of any installment of real property taxes that is due within thirty days of the date of the request for a waiver.

j. Confidentiality. The department of finance shall assure the confidentiality of information supplied by taxpayers in effecting electronic funds trasfers in accordance with applicable provisions of law. The provisions of article six of the public officers law shall not apply to any such information furnished by taxpayers subject to the requirements of this section.

k. Failure to pay by electronic funds transfer. 1. With respect to any real property as to which real property taxes are required to be paid by electronic funds transfer under this section, but for which an installment of real property taxes is not paid by electronic funds transfer and is paid instead by any other method, including payment by check, (i) with respect to the first installment that is paid by any other method, including payment by check, the department of finance shall mail a warning notice to the taxpayer setting forth the requirement to make payment by electronic funds transfer and the penalties for failure to do so; and (ii) with respect to each and every subsequent installment that is paid by any other method, including payment by check, the department of finance shall impose a penalty charge in the amount of one percent of the amount of the tax installment that was required under this section to be paid by electronic funds transfer.

2. Any penalty charge imposed under this subdivision shall be a lien against the real property for which the

taxpayer failed to make a payment in the manner required by this section, and shall accrue interest at the same rate as is imposed on a delinquent tax on real property, to be calculated to the date of payment from the date of entry. Such lien shall be a tax lien within the meaning of sections 11-319 and 11-401 and may be sold, enforced or foreclosed in the manner provided in chapters three and four of this title.

1. Rules. The commissioner may promulgate rules necessary to implement this section.

HISTORICAL NOTE

Section added chap 60/2004 § T1, eff. Aug. 20, 2004.

Subd. c par 2 amended L.L. 62/2005 § 4, eff. June 6, 2005.

Subd. g amended L.L. 62/2005 § 4, eff. June 6, 2005.

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Administrative Code of the City of New York

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NYC Administrative Code 11-129

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 1 DEPARTMENT OF FINANCE

§ 11-129 Department of finance statement of account.

a. At intervals determined by the commissioner of finance, the department of finance shall send to owners of real property a statement of account for the property, which shall represent a bill for taxes, charges and assessments, and which shall include, in a manner determined by the commissioner, a description of taxes, charges and assessments that remain unpaid on the property, and payments received by the department for taxes, charges and assessments on the property, and which may include additional information as the commissioner deems appropriate.

b. The statement of account shall be sent to owners who notified the department of a mailing address for such statements, or, if no mailing address has been so provided, to the owner of record at the property address appearing on the assessment roll.

c. Notwithstanding subdivision b of this section, in lieu of mailing the statement of account, the department may send the statement of account by electronic means to any owner whose electronic mailing address is known to the department.

HISTORICAL NOTE

Section added L.L. 19/2009 § 1, eff. Apr. 17, 2009.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-201

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-201 Assessments on real property; general powers of finance department.

The commissioner of finance shall be charged generally with the duty and responsibility of assessing all real property subject to taxation within the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-6.0 added LL 10/1968 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-202

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-202 Maps and records; surveyor.

The commissioner of finance shall appoint a surveyor who shall make the necessary surveys and corrections of the block or ward maps, and also make all new tax maps which may be required.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-2.0 added LL 10/1968 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-203

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-203 Maps and records; tax maps.

a. As used in the charter and in the code, the term "tax maps" shall mean and include the block map of taxes and assessments to the extent that the territory within the city of New York is or shall be embraced in such map, such ward or land maps as embrace the remainder of such city, and also such maps as may be prepared under and pursuant to subdivision d of this section.

b. Each separately assessed parcel shall be indicated on the tax maps by a parcel number or by an identification number. A separate identification number shall be entered upon the tax maps in such manner as clearly to indicate each separately assessed parcel of real property not indicated by parcel numbering. Real property indicated by a single identification number shall be deemed to be a separately assessed parcel.

In the case of a newly created parcel with any building thereon, no tax lot number or identification number shall be assigned to such parcel unless the commissioner of the department of buildings has certified that the newly created parcel complies with all applicable zoning laws.

c. Parcel numbers shall designate each parcel by the use of three or more numbers, of which one shall be a section or ward number, another a block, district or plat number, and another a lot number. The department of finance may from time to time change the form of the section and blocks, and also the numbers thereof, on the tax maps filed in its office whenever such change of form has been caused pursuant to section one hundred ninety-nine of the charter, and

there shall thereafter be delineated and entered upon such maps such new additional sections and blocks and their numbers as necessity may require. Such administration may from time to time change the form of the lots or parcels comprised within any block, and also the numbers thereof, and cause to be shown on such maps the separate lots or parcels of land contained in any new block added thereto and also the lots numbers thereof, according to the general plan employed in the making of such maps.

d. Each separately assessed parcel indicated by an identification number shall be shown by a description, or by inscription of such number on the block map of taxes and assessments, or by other map and description. Such numbers may be altered in the same manner as provided in the preceding subdivision for the alteration of parcel numbers.

e. New tax maps shall be certified by the department of finance and filed in its main office, and substituted for use in its offices and in those of the department of environmental protection with respect to maps affecting the boroughs of Manhattan, Bronx, Brooklyn and Queens, instead of the maps theretofore in use therein. All changes and alterations made in the tax maps shall be transmitted within thirty days after such change or alteration to such offices.

f. On or before July first, nineteen hundred sixty-four, the department of finance:

(i) Shall certify and file a map showing the boundaries of each and every tax block and its tax block number in the boroughs of Manhattan, Bronx, Brooklyn and Queens, with the city register, and with the clerks of the counties of New York, Bronx, Kings and Queens,

(ii) Shall certify and file a copy of the tax maps for the year nineteen hundred sixty-four-nineteen hundred sixty-five for the boroughs of Manhattan, Bronx, Brooklyn and Queens with the city register, and

(iii) Shall, not later than July first, nineteen hundred sixty-seven, certify and file a copy of the tax maps for the year nineteen hundred sixty-seven-nineteen hundred sixty-eight for the boroughs of Manhattan, Bronx, Brooklyn and Queens respectively with the clerks of the counties of New York, Bronx, Kings and Queens. All changes and alterations made in the block boundary maps and in the tax maps shall be transmitted within thirty days after such change or alteration to such county clerks and city register.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-3.0 added LL 10/1968 § 12

Amended LL 8/1981 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-204

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-204 Tax maps; block references; alterations and corrections.

a. On and after July first, nineteen hundred sixty-four, the use of the land maps in the offices of the city register and in the offices of the clerks of the counties of New York, Bronx, Kings and Queens, shall be discontinued, and on and after July first, nineteen hundred sixty-four, reference shall be had to the tax maps for the boroughs of Manhattan, Bronx, Brooklyn and Queens and to block numbers designated thereon for the purpose of indexing, recording or filing of instruments affecting title or relating to real property in such counties and the tax maps for said boroughs shall be conclusive as to the location of block boundaries and block numbers. The tax map for each borough may be referred to as the land map for the particular county which it affects.

b. Whenever any block boundaries shall be changed or any new or additional blocks of land shall be formed in such counties by the opening or closing of any street, avenue, road, boulevard or parkway or otherwise, the department of finance shall cause such maps to be altered to show the changes in the boundaries of a block and the formation of such new or additional blocks, and to cause such blocks, the boundaries of which have been altered, and such new or additional blocks, to be numbered on such maps with such block numbers as such department may determine. The commissioner of finance, or an officer or employee of the department designated by the commissioner, shall certify and file annually with the register and county clerk in each of such counties a list of the numbers of the blocks, the boundaries of which have been altered, and a list of the numbers of new or additional blocks which have been formed.

c. For the purpose of notice under any of the provisions of law for the recording of instruments affecting or

relating to land in such counties, each block shall be deemed to extend to the middle lines of the streets, avenue, roads and boulevards laid out on such land maps fronting and adjoining such block, and shall also be deemed to extend to the exterior bulkhead line or to the exterior line of grants of land under water where water forms one of the boundaries of a block.

d. The word "block", as used in this section designates a plot or parcel of land such as is commonly so designated in the city, wholly embraced within the continuous lines of streets, or streets and waterfront taken together where water forms one of the boundaries of a block, and such other parcels of land or land under water as may be indicated by the department of finance upon such tax maps by block numbers as constituting blocks.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-4.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-205

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-205 Maps and records; public inspection; evidential value.

a. The books, maps, assessment-rolls, files and records of the department of finance shall be kept in such of the offices of the department of finance as may be most convenient to the taxpayers of the city and suitable to the proper discharge of the business of the department of finance. They shall be public records and shall at all reasonable times be open to public inspection.

b. Copies of all such records and transcripts thereof, certified by the commissioner of finance or an assessor or by an officer or employee of the department of finance designated by the commissioner of finance, and under the seal of the department of finance, shall be admissible in evidence in all courts and places in the same manner and for the same purposes as books, papers or documents similarly authenticated by the clerk of a county.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-5.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-206

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-206 Power of the commissioner of finance to correct errors.

The commissioner of finance may correct any assessment or tax which is erroneous due to a clerical error or to an error of description contained in the several books of annual record of assessed valuations, or in the assessments-rolls. If the taxes computed on such erroneous assessment have been paid, the commissioner of finance is authorized to refund or credit the difference between the taxes computed on the erroneous and corrected assessments.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-7.0 added LL 10/1968 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-207

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§11-207 Duties of assessors in assessing property.

a. In performing their assessment duties, the assessors shall personally examine each parcel of taxable real estate during at least every third assessment cycle, and shall personally examine each parcel of real estate that is not taxable during at least every fifth assessment cycle, as measured from the last preceding assessment cycle during which such parcel was personally examined. Notwithstanding anything in the preceding sentence to the contrary, the assessors shall revalue, reassess or update the assessment of each parcel of taxable or nontaxable real estate during each assessment cycle, irrespective of whether such parcel was personally examined during each assessment cycle.

b. The persons having charge of the borough assessment offices shall furnish to the commissioner of finance, under oath, a detailed statement of all taxable real estate in the city. Such statement shall contain the street, the section or ward, the block and lot and map or identification numbers of such real estate embraced within such district; the sum for which, in their judgment, each separately assessed parcel of real estate would sell under ordinary circumstances if it were wholly unimproved and, separately stated, the sum for which the same parcel would sell under ordinary circumstances with the improvements, if any, thereon, such sums to be determined with regard to the limitations contained in the state real property tax law. Such statement shall include such other information as the commissioner of finance may, from time to time, require.

HISTORICAL NOTE

Section amended L.L. 65/1991 § 1, eff. July 17, 1991

Section added chap 907/1985 § 1

Subd. a amended L.L. 55/1993 § 1 eff. June 30, 1993

DERIVATION

Formerly § E17-8.0 added LL 10/1968 § 12

CASE NOTES

¶ 1. Proper procedure for challenging assessment as being "excessive, unequal or unlawful," in this case a claim of over assessing low income housing, is through a special proceeding commenced pursuant to RPTL Article 7.-78 So. First St. Corp. v. Crotty, 150 AD2d 218 reversed 75 NY2d 984 [1990].

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Administrative Code of the City of New York

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NYC Administrative Code 11-208

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-208 Special right of entry; certificate of the commissioner of finance.

A right of entry upon real property and into buildings and structures at all reasonable times to ascertain the character of the property shall not be allowed to any person acting in behalf of the department of finance, other than the officials mentioned in sections one hundred fifty-six and one thousand five hundred twenty-one of the charter, unless a certificate therefor, executed in writing and signed by the commissioner of finance, is presented by such person to the owner, lessee, or occupant of the premises or his or her agent before entry thereon is made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-9.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-208.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-208.1 Income and expense statements.

a. Where real property is income-producing property, the owner shall be required to submit annually to the department not later than the first day of September a statement of all income derived from and all expenses attributable to the operation of such property as follows:

(1) Where the owner's books and records reflecting the operation of the property are maintained on a calendar year basis, the statement shall be for the calendar year preceding the date the statement shall be filed.

(2) Where the owner's books and records reflecting the operation of the property are maintained on a fiscal year basis for federal income tax purposes, the statement shall be for the last fiscal year concluded as of the first day of August preceding the date the statement shall be filed.

(3) Notwithstanding the provision of paragraphs one and two of this subdivision, where the owner of the property has not operated the property and is without knowledge of the income and expenses of the operation of the property for a consecutive twelve month period concluded as of the first day of August preceding the date of*3 the statement shall be filed, then the statement shall be for the period of ownership.

(4) The commissioner may for good cause shown extend the time for filing an income and expense statement by a period not to exceed thirty days.

b. Such statements shall contain the following declaration: "I certify that all information contained in this statement is true and correct to the best of my knowledge and belief. I understand that the willful making of any false statement of**4 material fact herein will subject me to the provisions of law relevant to the making and filing of false instruments and will render this statement null and void."

c. The form on which such statement shall be submitted shall be prepared by the commissioner and copies of such form shall be made available at the offices of the department in the county in which the property is located. The commissioner may, by rule, require such statement to be submitted electronically in such form and such manner as the commissioner may determine. For good cause, the commissioner may waive any rule requiring electronic filing and may permit a statement to be filed in such other manner as the commissioner may designate.

d. (1) In the event that an owner of income-producing property fails to file an income and expense statement within the time prescribed in subdivision a of this section (determined with regard to any extension of time for filing), such owner shall be subject to a penalty in an amount not to exceed three percent of the assessed value of such income-producing property determined for the current fiscal year in accordance with section fifteen hundred six of the charter provided, however, that if such statement is not filed by the thirty-first day of December, the penalty shall be in an amount not to exceed four percent of such assessed value. If, in the year immediately following the year in which an owner fails to file by the thirty-first of December, the owner again fails to file an income and expense statement within the time prescribed in subdivision a of this section (determined with regard to any extension of time for filing), such owner shall be subject to a penalty in an amount not to exceed five percent of the assessed value of such property determined for the current fiscal year. Such owner shall also be subject to a penalty of up to five percent of such assessed value in any year immediately succeeding a year in which a penalty of up to five percent could have been imposed, if in such succeeding year the owner fails to file an income and expense statement within the time prescribed in subdivision a of this section (determined with regard to any extension of time for filing). The penalties prescribed in this paragraph shall be determined by the commissioner after notice and an opportunity to be heard.

(2) The tax commission shall deny a hearing on any objection to the assessment of property for which an income and expense statement is required and has not been timely filed.

(3) Where an income and expense statement required under the provisions of this section has not been timely filed, the commissioner may compel by subpoena the production of the books and records of the owner relevant to the income and expenses of the property, and may also make application to any court of competent jurisdiction for an order compelling the owner to furnish the required income and expense statement.

e. As used in this section, the term "income-producing property" means property owned for the purpose of securing an income from the property itself, but shall not include property with an assessed value of forty thousand dollars or less, or residential property containing ten or fewer dwelling units or property classified in class one or two as defined in article eighteen of the real property tax law containing six or fewer dwelling units and one retail store.

f. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, the president or a commissioner or employee of the tax commission, any person engaged or retained by the department or the tax commission on an independent contract basis, or any person, who, pursuant to this section, is permitted to inspect any income and expense statement or to whom a copy, an abstract or a portion of any such statement is furnished, to divulge or make known in any manner except as provided in this subdivision, the amount of income and/or expense or any particulars set forth or disclosed in any such statement required under this section. The commissioner, the president of the tax commission, or any commissioner or officer or employee of the department or the tax commission charged with the custody of such statements shall not be required to produce any income and expense statement or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the department or the tax commission. Nothing herein shall be construed to prohibit the delivery to an owner or his or her duly authorized representative of a certified copy of any statement filed by such owner pursuant to this section or to prohibit the publication of statistics so classified as to prevent the

identification of particular statements and the items thereof, or making known aggregate income and expense information disclosed with respect to property classified as class four as defined in article eighteen of the real property tax law without identifying information about individual leases, or making known a range as determined by the commissioner within which the income and expenses of a property classified as class two falls, or the inspection by the legal representatives of the department or of the tax commission of the statement of any owner who shall bring an action to correct the assessment. Any violation of the provisions of this subdivision shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the department or the tax commission, the offender shall be dismissed from office.

g. The commissioner shall be authorized to promulgate rules and regulations necessary to effecuate the purposes of this section.

h. Subdivision f of this section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

HISTORICAL NOTE

Section added L.L. 63/1986 § 2 (with subd. e amendment)

Section added L.L. 24/1986 § 3

Subd. c amended chap 385/2006 § 1, eff. July 26, 2006.

Subd. e amended L.L. 41/1986 § 2

Subd. f amended chap 385/2006 § 1, eff. July 26, 2006.

Subd. h added chap 714/1989 § 1

NOTE

Provisions of L.L. 24/1986

Section 1. Declaration of legislative findings. The council finds that in determining the assessed value of an income-producing property, the actual income and expenses of the property are a most important factor. At the present time, assessors rarely have these figures for the current period made available to them. If such information were to be made available sufficiently in advance of the making of assessments, the work of the asseessor would be facilitated, assessments would be more accurate, the number of administrative and judicial review proceedings on objections would be lessened, the tax burden would be borne more fairly, and the amount of tax refunds would be substantially reduced.

The council further finds that the newly enacted system of taxation contained in chapter ten hundred fifty-seven of the laws of nineteen hundred eighty-five places like income-producing property in one class and all members of such class must share the tax burden of that class equally. However, owners of properties which are underassessed because assessors lack adequate income and expense data profit at the expense of other owners within the class. Full disclosure would provide for a more equitable sharing of tax obligations among class members. The council further finds that inequality is a major cause of complaint regarding tax assessments. Any data which will permit greater precision to the process of assessment will benefit both the taxing authority and the taxpayer.

CASE NOTES

¶ 1. Local Law No. 24 of the year 1986 was ruled invalid because the notice provisions of § 3-208 were violated. Pursuant to § 3-208, this notice "shall be published in the City Record and in such daily newspaper . . . selected by the Mayor for that purpose". The notice published in the City Record incorrectly indicated the hearing to be held on July 9,

1986. The public hearing was held July 8, 1986 after which the Mayor signed the local law. The error in the City Record was known on July 3 but uncorrected until July 7 when telephone calls were made to certain special interest groups and other messages sent out. There was time to rectify the situation and the one-day notice is a "departure in substance from the formula prescribed by statute".-41 Kew Gardens Associates v. Tyburski, 124 AD2d 553 [1986].

¶ 2. § 11-208.1 requiring owners of income producing property to furnish income and expense statements is constitutional on its face and a valid average of the city's home rule power. No distinctly "personal" financial information is required of anyone. Nor is Local Law No. 63 inconsistent with the State Constitution on equal protection grounds as Kew maintains. Though the law distinguishes between taxpayers based on the size or value of the property, there is a rational basis for such distinction.-Kew Gardens Assn. v. Tyburski, 70 NY2d 325 [1988].

FOOTNOTES

3

[Footnote 3]: * "Of" is omitted in L.L. 24/1986 § 1.

4

[Footnote 4]: ** "Statement of" is omitted in L.L. 24/1986 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-209

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-209 Taxable status of building in course of construction.

a. A building, other than a commercial building, in the course of construction, commenced since the preceding fifth day of January and not ready for occupancy on the fifth day of January following, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April.

b. (1) A commercial building in the course of construction, commenced since the fifth day of January one year preceding the taxable status date and not ready for occupancy or partially occupied on the taxable status date, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April following the taxable status date.

(2) A commercial building in the course of construction, commenced since the fifth day of January two years preceding the taxable status date and not ready for occupancy or partially occupied on the taxable status date, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April following the taxable status date.

(3) A commercial building in the course of construction, commenced since the fifth day of January three years preceding the taxable status date and not ready for occupancy or partially occupied on the taxable status date, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April following the taxable status date.

c. For purposes of this section, a "commercial building" shall mean a building that is intended to be used, and upon completion is used, exclusively for buying, selling or otherwise providing goods or services, or for other lawful business, commercial or manufacturing activities, excluding hotel services, except that a commercial building may contain a residential component other than a hotel, provided (i) that such residential component is receiving or has applied for and is eligible to receive a partial exemption from real property taxes pursuant to section four hundred twenty-one-a of the real property tax law, or (ii) that such residential component in its entirety, both land and building, is receiving or has applied for and is eligible to receive a full exemption from real property taxes. Notwithstanding the foregoing sentence, a "commercial building" shall not include any building that is constructed on block 1049, lot 29 as shown on the tax map of the city of New York for the borough of Manhattan as such map was in effect for the assessment roll published in calendar year two thousand.

d. Subdivision b of this section shall not apply to a tax lot that constitutes a part of a building unless the building viewed as a whole is a commercial building as defined in subdivision c of this section.

e. Any building that receives the benefit conferred pursuant to subdivision b of this section that is subsequently determined not to have been a commercial building as defined in subdivision c of this section for any year in which it received such benefit shall have its assessment corrected for any such year. Taxes shall be imposed in the amount that would have applied had the corrected taxable assessed value appeared on the final assessment roll.

HISTORICAL NOTE

Section amended L.L. 35/2001 § 1, eff. Aug. 2, 2001 and applying

to commercial buildings whose construction commenced after Jan. 5,

2000.

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-10.0 added LL 10/1968 § 12

Amended LL 82/1981 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-210

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-210 Books of annual record of assessed valuation of real estate indicated by parcel numbers; form and contents.

a. There shall be kept in the several offices of the department of finance, books of the annual record of the assessed valuation of real estate to be called "the annual record of the assessed valuation of real estate indicated by parcel numbers in the borough of.....", in which shall be entered in detail the assessed valuation of each separately assessed parcel indicated by a parcel number within the limits of the several boroughs.

b. The assessed valuation of each such parcel shall be set down in such books in two columns. In the first column shall be stated, opposite each such parcel, the sum for which such parcel would sell under ordinary circumstances if wholly unimproved; and in the second column, the sum for which such parcel would sell under ordinary circumstances with the improvements, if any thereon.

c. Such books shall be prepared in such manner that the assessed valuations entered therein shall be under sections and block headings as may be most convenient for use in connection with the tax maps described in section 11-203 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-11.0 added LL 10/1968 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-211

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-211 Books of annual record of assessed valuation of real estate indicated by identification numbers.

a. The assessed valuation of all taxable real property indicated by identification numbers shall be entered in the main office of the department of finance, and in the branch office in the borough where the same is assessed.

b. The assessors in the districts in the several boroughs which may be assigned to them for that purpose shall furnish to the commissioner of finance at the main office of the department of finance, a detailed statement under oath of the assessable real property indicated by an identification number in such districts, and shall file a duplicate of such statement in the branch office.

c. There shall be kept in the main office of the department of finance, books of the annual record of the assessed valuation of real estate to be known as "the annual record of the assessed valuation of real estate indicated by identification numbers", in which shall be entered the assessed valuations of the real property mentioned in this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-12.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-212

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-212 Power of the commissioner of finance to equalize assessments before opening books.

a. Before opening the several books of annual record of assessed valuation for public inspection, the commissioner of finance shall fix the valuations of property for the purpose of taxation throughout the city at such sums as will, in the commissioner's judgment, establish a just and equal relation between the valuations of property in each borough and throughout the entire city.

b. To this end the assessors or other persons having charge of the borough offices are required to transmit to the commissioner of finance in each year a report of the assessed valuation of real property in the several boroughs at such time prior to the fifteenth day of January as such commissioner may prescribe.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-13.0 added LL 10/1968 § 12

Sub b amended LL 82/1981 § 13

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-213

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-213 Errors in annual records or assessment-rolls.

The omission from the several books of annual record of assessed valuations or from the assessment-rolls in respect to the entry therein of the name of the rightful owner or owners of real estate, whether individuals or corporations, shall not invalidate any tax or assessment. In such case, however, no tax shall be collected except from the real estate so assessed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-14.0 added LL 10/1968 § 12

CASE NOTES FROM FORMER SECTION

¶ 1. Fact that petitioner was not sent tax bills for certain years or that tax rolls erroneously listed the property as exempt so that petitioner was not taxed does not bar the later levy of these taxes.-F.W. Eversley & Co., Inc. v. Finance Adm'r., 388 N.Y.S. 2d 192 [1975].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-214

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-214 Procedure on apportionment of assessment.

a. The commissioner of finance may apportion any assessment in such manner as he or she shall deem just and equitable, and forthwith cause such assessment to be cancelled and new assessments, equal in the aggregate to the cancelled assessment, to be made on the proper books and rolls. Within five days thereafter the commissioner of finance shall cause written notice of the new assessments to be mailed to the owners of record of the real estate so assessed at their last known residence or business address, and an affidavit of the mailing of such notice to be filed in the main office of the department of finance.

b. When such notice is mailed after the first day of February such owners may apply for correction of such assessments within twenty days after the mailing of such notice with the same force and effect as if such application were made on or before the first day of March in such year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-15.0 added LL 10/1968 § 12

Sub b amended LL 82/1981 § 14

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-215

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-215 Entry of corrections made by tax commission.

Upon receiving notice of a correction of an assessment made by the tax commission, the commissioner of finance shall cause the amount of the assessment as corrected to be entered upon the proper books of annual record and the assessment-rolls for the year for which such correction is made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-16.0 added LL 10/1968 § 12

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NYC Administrative Code 11-216

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-216 Reduction in assessments; publication.

a. There shall be published annually in the City Record a list of all reductions in real property assessments granted by the tax commission identifying the name of the property owner, the address and the amount of reduction.

b. No reduction shall be granted for an income-producing property unless there is submitted to the tax commission a statement of income and expenses in the form prescribed by the tax commission and which shall be, in the case of property valued at one million dollars or more certified by a certified public accountant. The commissioner granting such reduction in assessment shall state in a short memorandum the basis upon which the reduction is granted.

c. In all cases where the reduction in assessment for the current year is for fifty thousand dollars or more, the concurrence of the president of the tax commission shall be required.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-16.1 added LL 27/1973 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-217

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-217 Assessment-rolls; form and contents.

Assessment-rolls shall be so arranged with respect to number of columns and shall contain such entries as the commissioner of finance shall prescribe, sufficient to identify the property assessed and to show its total assessed valuation. Real estate shall be described therein by the numbers by which such property is designated on the tax maps and in the several books of the annual record of the assessed valuation of real estate, and such numbers shall import into the assessment-rolls any necessary identifying description shown by the tax maps.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-17.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-218

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-218 Assessment-rolls; delivery to council or city clerk.

a. The council shall meet at noon, on the day of delivery of the rolls, other than a Saturday, Sunday, or legal holiday, at the city hall or usual place of meeting for the purpose of receiving the assessment-rolls and performing such other duties in relation thereto as are prescribed by law.

b. If the council fails to meet as herein prescribed, the rolls shall be delivered to the city clerk with the same effect as if delivered to the council.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-18.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-219

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-219 Books of annual record; delivery for publication.

Within two weeks after the delivery of the assessment-rolls to the council, the commissioner of finance shall furnish to the director of the City Record a copy of the several books of the annual record of the assessed valuation of real estate, omitting, however, the two columns headed respectively "size of house" and "houses on lot."

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-19.0 added LL 10/1968 § 12

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NYC Administrative Code 11-220

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-220 Council; date of meeting to fix tax rate.

The council shall meet on a day other than a Saturday, Sunday or legal holiday, to fix the annual tax rate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-20.0 added LL 10/1968 § 12

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NYC Administrative Code 11-221

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-221 Extension of tax on assessment-rolls or upon assessment-roll cards.

The respective sums to be paid as taxes on the valuation of real property, may be set down in the assessment-rolls, or upon assessment-roll cards.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-21.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-222

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-222 Tax account of the commissioner of finance.

Upon notification from the public advocate of the amount of taxes mentioned in such assessment-rolls and tax warrants, the comptroller shall cause the proper sum to be charged to the commissioner of finance for collection.

HISTORICAL NOTE

Section amended L.L. 68/1993 § 28, eff. Jan. 1, 1994

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-22.0 added LL 10/1968 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-223

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-223 Apportionment of taxes.

a. If a sum of money in gross has been or shall be taxed upon any lands or premises, any person or persons claiming any dividend or undivided part thereof may pay such part of such sum so taxed and of any interest and charges due or charged thereon, as the commissioner of finance may deem to be just and equitable.

b. The commissioner of finance shall apportion the assessed valuation of such lands or premises.

c. The remainder of the sum of money so taxed and the interest and charges shall be a lien upon the residue of the land and premises only, and the tax lien upon such residue may be sold to satisfy such tax, interest or charges thereon, in the same manner as though the residue of said tax had been imposed only upon such residue of such lands or premises.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E17-23.0 added LL 10/1968 § 12

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Administrative Code of the City of New York

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NYC Administrative Code 11-224

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-224 Interest on unpaid taxes.

a. If any tax on real estate which shall have become due and payable prior to January first, nineteen hundred thirty-four, is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated to the date of payment at the rate of seven per centum per annum from the date when such tax or such part thereof became due and payable to January first, nineteen hundred thirty-four, at the rate of ten per centum per annum from January first, nineteen hundred thirty-four to May first, nineteen hundred thirty-seven, or at the rate of seven per centum per annum for such period if the comptroller and the commissioner of finance, in their discretion, both determine that the payment of any tax arrears at such reduced rate of interest may operate to save the property upon which such taxes are in arrears from foreclosure or encourage its development or is otherwise in the public interest, at the rate of seven per centum per annum from May first, nineteen hundred thirty-seven to August first, nineteen hundred sixty-nine, and from August first, nineteen hundred sixty-nine to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

b. If any tax on real estate which shall have become due and payable after January first, nineteen hundred

thirty-four and prior to April first, nineteen hundred thirty-seven, is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated to the date of payment at the rate of ten per centum per annum from the date on which such tax or such part thereof became due and payable to May first, nineteen hundred thirty-seven, or at the rate of seven per centum per annum for such period if the comptroller and the commissioner of finance, in their discretion, both determine that the payment of any tax arrears at such reduced rate of interest may operate to save the property upon which such taxes are in arrears from foreclosure or encourage its development or is otherwise in the public interest, at the rate of seven per centum per annum from May first, nineteen hundred thirty-seven to August first, nineteen hundred sixty-nine, from August first, nineteen hundred sixty-nine to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

c. If any tax on real estate which shall have become due and payable on or after April first, nineteen hundred thirty-seven and prior to August first, nineteen hundred sixty-nine is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated to the date of payment at the rate of seven per centum per annum from the day on which such tax or such part thereof became due and payable to August first, nineteen hundred sixty-nine, from August first, nineteen hundred sixty-nine to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

d. If any tax on real estate which shall have become due and payable on or after August first, nineteen hundred sixty-nine and prior to December thirty-first, nineteen hundred seventy-six, is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated from the date on which such tax or such part thereof became due and payable to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

e. If any tax on real estate which shall become due and payable at any time on or after January first, nineteen hundred seventy-seven, shall remain unpaid in whole or in part on the fifteenth day following the date on which the same shall become due and payable, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof remaining unpaid on that date, to be calculated from the day on which such tax or such part thereof became due and payable to the date of payment at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

f. If any tax on real estate which shall become due and payable at any time on or after July first, nineteen hundred seventy-nine, shall remain unpaid in whole or in part on the fifteenth day following the date on which the same shall become due and payable, or if any tax on real estate which became due and payable prior to July first, nineteen

hundred seventy-nine shall remain unpaid on that date, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof remaining unpaid, to be calculated, in the case of any tax which shall become due and payable on or after July first, nineteen hun- dred seventy-nine, from the day on which such tax or such part thereof became due and payable, and in the case of any tax which became due and payable prior to July first, nineteen hundred seventy-nine, from July first, nineteen hundred seventy-nine, to the date of payment at the rate of seven per centum per annum if the annual tax on a parcel is two thousand seven hundred fifty dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand seven hundred fifty dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land. Any interest accrued prior to July first, nineteen hundred seventy-nine, pursuant to the preceding subdivisions of this section shall be unaffected by the provisions of this subdivision.

g. No later than the twenty-fifth day of May of each year, the banking commission shall transmit a written recommendation to the council of a proposed interest rate to be charged for nonpayment of taxes on real estate in those cases where the annual tax on a parcel is more than two thousand seven hundred fifty dollars or where, irrespective of the annual tax, a parcel consists of vacant or unimproved land. In making such recommendations the commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and shall propose a rate of at least six per centum per annum greater than such rates. The council may by resolution adopt an interest rate to be applicable to the aforementioned parcels and may specify in such resolution the date on which such interest rate is to take effect. This subdivision shall not apply to any fiscal year beginning on or after July first, two thousand five.

h. Notwithstanding anything to the contrary contained in the recommendation transmitted by the banking commission to the city council relative to the proposed rate of interest to be charged during the fiscal year of the city commencing July first, nineteen hundred seventy-nine in the case of nonpayment of real estate taxes, or contained in the resolution adopted by the council in accordance with such recommendation, the council hereby sets the interest rate to be charged during the fiscal year of the city commencing July first, nineteen hundred seventy-nine for nonpayment of real estate taxes at eighteen per centum per annum where the annual tax on a parcel is more than two thousand seven hundred fifty dollars or where the parcel consists of vacant or unimproved land.

i. The interest mentioned in the foregoing subdivisions of this section shall be paid over and accounted for from time to time by such commissioner of finance as a part of the tax collected by him or her.

j. When an installment agreement has been entered into pursuant to any of the provisions of chapter four of this title, during the period beginning on the date this subdivision takes effect and ending April thirtieth, nineteen hundred eighty-two, the commissioner of finance shall, notwithstanding any higher rate of interest prescribed pursuant to applicable law, and unless a lower rate of interest is applicable to a parcel covered by such an agreement, charge, collect and receive interest on the arrears due and payable under such agreement, to be calculated at the rate of ten percent per annum from May first, nineteen hundred eighty-two to the date of payment of each installment. Any interest accrued or accruing prior to May first, nineteen hundred eighty-two shall not be affected by the provisions of this subdivision but shall be charged, collected and received in the manner and at the rates prescribed pursuant to applicable law. Such ten percent rate of interest shall be applicable only if, as of May first, nineteen hundred eighty-two, (i) there has been no default in such agreement, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. Where an installment agreement has been entered into prior to May fifth, nineteen hundred eighty-two pursuant to the provisions of either paragraph three of subdivision a of section 11-413 prior to March fourteenth, nineteen hundred seventy-nine or of subdivision a of section 11-405 or subdivision h of section 11-409 of chapter four of this title and said agreement is current as to both installment payments and current taxes, assessments and other legal charges, the commissioner of finance, on application of the party who entered into such agreement, may cancel said agreement and enter into a new agreement containing the terms provided on May fifth, nineteen hundred eighty-two. If any such prior agreement is not cancelled as herein provided, any installments due and payable under such agreement on or after May first, nineteen hundred eighty-two shall be subject to interest at the rate and under the conditions set forth above. In the event of any subsequent default or failure to make timely payment of

any installment payment or current tax, assessment or other legal charge, the ten percent rate of interest specified in this subdivision shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates prescribed pursuant to applicable law.

k. 1. Notwithstanding any other provision of this section to the contrary, but subject to the exception contained in paragraph two of this subdivision, in the case of an installment of tax on real property described in paragraph b of subdivision four of section fifteen hundred nineteen of the city charter, interest shall be charged, received and collected at the rate established pursuant to this section if such installment shall remain unpaid in whole or in part on the date on which it shall become due and payable. This paragraph shall not apply to any installment of tax that becomes due and payable on or after July first, two thousand five.

2. If the tax rate for any fiscal year of the city has not been set by the fifteenth day of June preceding the start of such fiscal year, interest shall not be charged, received and collected with respect to the first installment of tax which is due and payable on the first day of July in such fiscal year if such installment is paid on or before the extended payment date. For this purpose, the term "extended payment date" means the date which falls the same number of days after the first day of July in such fiscal year as the number of days the date such tax rate is set falls after such fifteenth day of June. This paragraph shall not apply to any installment of tax that becomes due and payable on or after July first, two thousand five.

l. No later than the fifth day following the date of enactment of this subdivision in the year nineteen hundred ninety and no later than May twenty-fifth of each succeeding year, the banking commission shall transmit a written recommendation to the council of proposed interest rates to be charged for nonpayment of taxes on real property in those cases in which the annual tax on a parcel, other than a parcel which consists of vacant or unimproved land, is not more than two thousand seven hundred fifty dollars. In making such recommendations, the banking commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city. In the case of any such parcel with respect to which the real property taxes are held in escrow and paid to the commissioner of finance by a "mortgage escrow agent," as that term is defined in section fifteen hundred nineteen of the city charter, the proposed rate shall be at least six percent per annum greater than such prevailing prime rate, and in the case of all other such parcels, the proposed rate shall be at least equal to such prevailing prime rate. The council may by resolution adopt interest rates to be applicable to the aforementioned parcels and may specify in such resolution the dates on which such interest rates are to take effect. In the event the council does not adopt interest rates as provided in this subdivision, the interest rates otherwise specified in this section shall be applicable. This subdivision shall not apply to any fiscal year beginning on or after July first, two thousand five.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. g amended L.L. 62/2005 § 5, eff. June 6, 2005.

Subd. k amended L.L. 62/2005 § 5, eff. June 6, 2005.

Subd. k added L.L. 47/1989 § 2

Subd. l amended L.L. 62/2005 § 5, eff. June 6, 2005.

Subd. l added L.L. 47/1990 § 2 eff. July 12, 1990. [See Notes.]

DERIVATION

Formerly § E17-24.0 added LL 10/1968 § 12

Sub a amended LL 46/1969 § 1

Sub b amended LL 46/1969 § 2

Sub c amended LL 46/1969 § 3

Sub e relettered LL 46/1969 § 4

(formerly sub d)

Sub d added LL 46/1969 § 5

Sub a amended LL 46/1976 § 1

Sub b amended LL 46/1976 § 2

Sub c amended LL 46/1976 § 3

Sub d amended LL 46/1976 § 4

Sub f relettered LL 46/1976 § 5

(formerly sub e)

Sub e added LL 46/1976 § 6

Sub g added LL 46/1976 § 7

Sub e amended LL 11/1978 § 2

Sub i relettered LL 32/1979 § 2

(formerly sub f relettered LL 46/1976)

Sub f added LL 32/1979 § 3

Sub g amended LL 32/1979 § 4

Sub h added LL 32/1979 § 5

(special provision LL 58/1981)

Sub j added LL 15/1982 § 12

(special provision LL 25/1986 § 1)

NOTE

Provisions of L.L. 11/1996 eff. Feb. 5, 1996 and retroactive

to Jan. 1, 1996:

A LOCAL LAW

In relation to the grace period for payment without interest of the installment of real property tax with respect to

certain real property that is due and payable on January 1, 1996.

Be it enacted by the Council as follows:

Section 1. Notwithstanding any inconsistent provisions of subdivision f of section 11-224 of the administrative code of the city of New York or of any other law, with respect to any real property other than that described in paragraph b of subdivision 4 of section 1519 of the New York city charter, if the installment of real property tax that is due and payable on January 1, 1996 is not paid on or before January 22, 1996, the commissioner of finance shall charge, receive and collect interest upon the amount of such installment not paid on or before such date, to be calculated from January 1, 1996 to the date of payment.

§ 2. This local law shall take effect immediately and shall be retroactive to and deemed to have been in full force and effect as of January 1, 1996.

CASE NOTES

¶ 1. In 1981 the city began an in rem tax foreclosure action and petitioner, acting to avoid a final judgment of foreclosure on March 6, 1984, entered into a payment agreement based on unpaid charges as of that date. Ad Cd §11-224(j) provides for a 10% interest rate in installment agreements applying to in rem installment agreements entered into between its effective date and April 3, 1982. Ad Cd §11-224(g) applies to this case entered into in 1984. Matter of Atrect Corp. v. O'Cleiracain, 204 AD2d 627 [1994].

¶ 2. The Commissioner of Finance does not have the authority to reduce the interest rate on real estate taxes due. Maspeth 5718 Assocs. v. City of New York, 292 A.D.2d 453, 739 N.Y.S.2d 414 (2d Dept. 2002).

¶ 3. A court has no power to stop the City's statutory sale of tax liens, absent evidence that the taxes and interest have been paid in full. Moreover, the court does not have the power to reduce the interest rate due on unpaid taxes. Delafield 246 Corp. v. City of New York, 11 A.D.3d 268, 782 N.Y.S.2d 441 (1st Dept. 2004), leave to appeal denied, 4 N.Y.3d 703, 792 N.Y.S.2d 1, 825 N.E.2d 133 (2005).

¶ 4. See Mill Creek Phase 1 Staten Island Bluebelt System, NYCTL 1998-1 Trust v. Vigliarolo, 38 A.D.3d 665, 831 NYS2d 532 (2d Dept. 2007), Note 5 to Adm. Code § 11-319.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-224.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-224.1 Interest on unpaid real property tax.

(a) For real property with an assessed value of two hundred fifty thousand dollars or less, if an installment of tax due and payable is not paid by July fifteenth, October fifteenth, January fifteenth or April fifteenth, interest shall be imposed on such unpaid amounts.

(b) For real property with an assessed value of over two hundred fifty thousand dollars, if an installment of tax due and payable is not paid by July first or January first, interest shall be imposed on such unpaid amounts.

(c) Interest rates on tax due and payable on or after July first, two thousand five.

If the council does not adopt interest rates, the rates shall be (a) for real property with an assessed value of two hundred fifty thousand dollars or less, seven percent per annum; and (b) for real property with an assessed value of over two hundred fifty thousand dollars, fifteen percent per annum.

(d) (i) Any tax or part of a tax that became due before July first, two thousand five and remains unpaid after June thirtieth, two thousand five, shall continue to accrue interest until paid at the rate applicable under this section.

(ii) This section shall not apply to interest accrued before July first, two thousand five.

(e) Council adopted rates. By May twenty-fifth of each year, the banking commission shall send a written

recommendation to the council of a proposed interest rate to be charged for nonpayment of taxes on real property. The commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and:

(i) for real property with an assessed value of two hundred fifty thousand dollars or less, shall propose a rate at least equal to such prevailing prime rate;

(ii) for real property with an assessed value of over two hundred fifty thousand dollars, shall propose a rate of at least six percent per annum greater than such prevailing prime rate.

The council may by resolution adopt interest rates to be applicable to the aforementioned properties and may specify in such resolution the date that such rates will take effect.

(f) If the tax rate for any fiscal year of the city is not set by the fifteenth of June preceding the start of such fiscal year, interest shall not be charged for the first installment of tax which is due on the first day of July in such fiscal year if such installment is paid on or before the extended payment date. For this purpose, the term "extended payment date" means the date which falls the same number of days after the first day of July in such fiscal year as the number of days the date such tax rate is set falls after such fifteenth day of June.

(g) For purposes of this section, property held in the cooperative form of ownership shall not be deemed to have an assessed value of over two hundred fifty thousand dollars if the property's assessed value divided by the number of residential dwelling units is two hundred fifty thousand dollars or less per unit.

HISTORICAL NOTE

Section added L.L. 62/2005 § 6, eff. June 6, 2005.

Subd. a amended L.L. 66/2008 § 7, eff. Dec. 29, 2008 and shall be retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Charter § 1519-a Note 1]

Subd. b amended L.L. 66/2008 § 8, eff. Dec. 29, 2008 and shall be retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Charter § 1519-a Note 1]

Subd. c amended L.L. 66/2008 § 9, eff. Dec. 29, 2008 and shall be retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Charter § 1519-a Note 1]

Subd. e amended L.L. 66/2008 § 10, eff. Dec. 29, 2008 and shall be retroactive to and deemed to have been in full force and effect as of Dec. 1, 2008. [See Charter § 1519-a Note 1]

Subd. g amended L.L. 66/2008 § 11, eff. Dec. 29, 2008 and shall be retroactive to and deemed to have been in full force and effect as

of Dec. 1, 2008. [See Charter § 1519-a Note 1]

NOTE

1. Provisions of L.L. 2/2009:

A Local Law in relation to the grace period for payment without interest of the installment of real property tax with respect to certain real property that is due and payable on January 1, 2009.

Be it enacted by the Council as follows:

Section 1. Notwithstanding any inconsistent provision of subdivision (b) of § 11-224.1 of the administrative code of the city of New York or of any other law, for real property with an assessed value of over two hundred fifty thousand dollars, if an installment of tax due and payable on January first, two thousand nine, is not paid by January sixteenth, two thousand nine, interest shall be imposed on such unpaid amounts.

§ 2. This local law shall take effect immediately and shall be retroactive to and deemed to have been in full force and effect as of January 1, 2009.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-225

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-225 Power of tax commission to remit or reduce taxes.

The tax commission shall have power to remit or reduce a tax imposed upon real property where lawful cause therefor is shown or where such tax is found to be excessive or otherwise erroneous, but such remission or reduction shall be made only with respect to an assessment for which an application for correction has been made pursuant to section one hundred sixty-three of the charter, and no such remission or reduction shall be made when a claim to correct the assessment or recover the tax would be barred by passage of time or other adequate defense, or when, at the time that the determination is rendered, applications for correction or other proceedings are pending to review the assessment of such property for more than one subsequent fiscal year. Notwithstanding the foregoing provisions of this section, the tax commission shall have no power to remit or reduce a tax pursuant to this section more than five years after the last day on which an application for correction could have been filed to appeal the unlawful or erroneous assessment upon which such tax was based. If such tax shall have been paid the commissioner of finance is authorized to refund or credit the amount of any such remission or reduction granted pursuant to this section. When the correction results from an application for correction made by the board of managers of a condominium, a refund may be paid to the board of managers for distribution to the individual unit owners with the consent of such board and on such conditions as the commissioner deems appropriate.

HISTORICAL NOTE

Section amended L.L. 88/1996 § 2, eff. Nov. 12, 1996.

Section added chap 907/1985 § 1

DERIVATION

Formerly § 153b-2.0 added chap 929/1937 § 1

Amended chap 100/1963 § 173

Amended LL 10/1968 § 14

CASE NOTES FROM FORMER SECTION

¶ 1. Proceeding under C.P.A. Art. 78 for order directing Tax Commissioners to remit taxes pursuant to Admin. Code § 153b-2.0 and to correct an alleged illegal assessment for the year 1947-48 predicated on fact that for prior years the assessment was considerably less, having been corrected by the court, was dismissed, as petitioner should have litigated the issue of overvaluation in a certiorari proceeding and might not litigate such issue in a mandamus proceeding now that the statutory period for bringing a certiorari proceeding had expired.-Commercial Nat. Bank & Trust Co. v. Chambers, 82 N.Y.S. 2d 661 [1948].

¶ 2. Admin. Code § 153(b)-2.0 was not designed to afford relief in the courts to those who fail to comply with the applicable provisions of the City Charter or to create new or additional remedies to purchasers of real property after March 15 of any year where there was default or failure to file protest prior to that date.-Bierman v. Boyland, 125 N.Y.S. 2d 86 [1953].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-226

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-226 Special right of entry; certificate of president.

A right of entry upon real property and into buildings and structures at all reasonable times to ascertain the character of the property shall not be allowed to any person acting in behalf of the tax commission, other than the officials mentioned in sections one hundred fifty-six and fifteen hundred twenty-one of the charter, unless a certificate therefor, executed in writing and signed by the president of the tax commission, is presented by such person to the owner, lessee or occupant of the premises or his agent before entry thereon is made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 156-1.0 added chap 929/1937 § 1

Amended chap 100/1963 § 174

Amended LL 10/1968 § 15

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-227

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-227 Duties of authorized employees in examining applicants.

a. Employees of the tax commission, when authorized to take testimony on application, shall reduce such testimony to writing.

b. Within ten days after the evidence on any application is taken, they shall transmit the application and testimony so taken, with their recommendation, to the tax commission at its main office or such other office as the commission may prescribe.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 164-1.0 added chap 929/1937 § 1

Amended LL 10/1968 § 16

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-228

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-228 Testimony taken on application to constitute part of record.

All written testimony taken by the tax commission, by a commissioner, or by an employee of the commission authorized to take testimony on applications, shall constitute part of the record of the proceedings upon any assessment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 164-2.0 added chap 929/1937 § 1

Amended LL 10/1968 § 17

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-229

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-229 Solicitation of retainers prohibited.

It shall be unlawful for any person or his or her or its agents or employee, or any person acting on his or her or its behalf, to solicit, or procure through solicitation, either directly or indirectly, any retainer or agreement:

(a) Authorizing such person, or his or her or its agent, employee or any person acting on his or her or its behalf, to make application to the commissioner of finance or tax commission for the correction of a tentative or final assessed valuation of real property on behalf of an owner of such property or other person claiming to be aggrieved, or

(b) Authorizing such person, or his or her or its agent, employee or any person acting on his or her or its behalf, to appear for such purpose or represent such owner or aggrieved person before such commission or a commissioner or any other officer or employee authorized by law to act upon such application, examine applicants, take testimony, make or recommend the making of a correction of any such assessed valuation, or take any other official action in relation to any such correction. Any violation of this section shall be a misdemeanor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 164-2.1 added LL 55/1952 § 1

Amended chap 100/1963 § 175

Amended LL 10/1968 § 18

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-230

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-230 Issuance of final determination; limitation of time.

Except as otherwise provided in section one hundred sixty-five of the charter, the final determination of the tax commission upon any application for the correction of an assessment and upon the evidence taken thereunder shall, where the evidence is taken by the commission or by a commissioner, be rendered within thirty days after the hearing of such application is closed. Where the evidence is taken by an employee of the tax commission authorized to take testimony on applications, the final determination shall be rendered within thirty days after the application and the testimony hereon shall have been filed with the commission at its main office.

Immediately upon making a correction of an assessment, the tax commission shall notify the commissioner of finance thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 165-1.0 added chap 929/1937 § 1

Amended LL 10/1968 § 19

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-231

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-231 Proceeding to review tax assessment; contents of petition.

a. Any person or corporation claiming to be aggrieved by the assessed valuation of real property may commence a proceeding to review or correct on the merits a final determination of the tax commission by serving on the president of the tax commission, or his or her duly authorized agent, a copy of a verified petition as prescribed by law. No such petition shall be accepted unless, prior to the service thereof, an index number has been obtained from the clerk of the county in which the property is located. Within ten days after a proceeding has been commenced as hereinbefore provided, the original verified petition with proof of service shall be filed in the office of the clerk of the court in which the proceeding is to be heard.

b. Such review shall be allowed only on one or more of the following grounds, which must be specified in such petition:

1. That the assessment is illegal, and stating the particulars of the alleged illegality, or

2. That the assessment is erroneous by reason of over-valuation, or

3. That the assessment is erroneous by reason of inequality, in that it has been made at a higher proportionate valuation than the assessment of other real property on the assessment rolls of the city for the same year, and for assessments made after December thirty-first, nineteen hundred eighty-one, other real property within the same class as

defined in section eighteen hundred two of the real property tax law, specifying the instances in which such inequality exists and the extent thereof, and stating that the petitioner is or will be injured thereby, or

4. That the real property is misclassified, and stating the class in which it is claimed the property should be classified.

c. The proceeding shall be maintained against the tax commission either by naming the president and the commissioners of the tax commission individually, or by naming the tax commission of the city of New York generally.

d. Such proceeding to review and all proceedings thereunder shall be brought at a special term of the supreme court in the judicial district where the real property so assessed is situated.

e. The justice or referee before whom such proceeding shall be heard may inspect the real property which is the subject of the proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended L.L. 68/1986 § 2

Subd. b amended L.L. 28/1986 § 2

DERIVATION

Formerly § 166-1.0 added chap 929/1937 § 1

Amended chap 550/1949 § 1

(special provision chap 550/1949 § 10)

Amended chap 818/1950 § 2

Sub e added chap 568/1952 § 1

Sub a amended chap 203/1979 § 1

Sub b amended LL 28/1986 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Inasmuch as the applications for correction of tax assessments made to the Tax Commission failed entirely to specify instances of inequality as required by Tax Law § 290 and Admin. Code § 166-1.0, that ground might not properly be urged as a basis for relief in a subsequent proceeding.-Mathews v. Chambers, 120 (80) N.Y.L.J. (10-25-48) 908, Col. 6 F.

¶ 2. An application for review of the determination of the Tax Commissioner which denied petitioner an exemption from taxation of its real property could not properly be made under Art. 78 of the Civil Practice Act. The New York City Charter provides a complete remedy for review of an assessment claimed to be erroneous because the property is exempt and such jurisdiction is exclusive. Only where the Charter is entirely silent may recourse be had to the Tax Law and the Civil Practice Act.-Matter of National Arts Club, 105 (58) N.Y.L.J. (3-12-41) 1121, Col. 3 M. See also Alwalt Realty Co. v. Boyland, 5 Misc. 2d 1061, 160 N.Y.S. 2d 504 [1957].

¶ 3. Portion of Art. 78 proceeding seeking to judicially review tax assessment was dismissed on the ground of lack

of jurisdiction of the court where neither the Tax Commission nor the president and the commissioners of the Tax Commission individually had been made parties.-Paragon Mutual Syndicate Number 5 v. Reichman, 163 (66) N.Y.L.J. (4-7-70) 18, Col. 5 M.

¶ 4. Local Law No. 128 of 1952 which purported to make the filing, with an application for review of a tax assessment, of a verified statement showing income and expenses paid in the operation of the property during the preceding year a prerequisite to review of the assessment is inconsistent with Code § 166-1.0 which sets forth the jurisdictional requirements of a petition to review an assessment and the local law is therefore invalid. The local law was an invalid attempt to restrict the jurisdiction of the Supreme Court in reviewing tax proceedings and under Article XVI, § 2 of the State Constitution only the Legislature can control the review of tax assessments.-Matter of 749 Broadway Realty Corp., 3 N.Y. 2d 737, 163 N.Y.S. 972 [1957], aff'g 1 App. Div. 2d 819, 148 N.Y.S. 2d 741 [1956].

¶ 5. Local Law No. 128 of 1952, amending § 163 of the Charter wherein all petitioners seeking to review tax assessments were required to file an income and expense statement **held** inconsistent with § 166-1.0 of the Admin. Code where, by legislative enactment, the Supreme Court acquired jurisdiction to entertain all tax proceedings upon the presentation of a petition which clearly stated the grounds of objection. Local law **held** invalid under the Constitution and the City Home Rule Law.-Schayes v. MacDuff, 285 App. Div. 1220, 140 N.Y.S. 2d 764 [1955].

¶ 6. Section 25-a of the General Construction Law, providing that when a certain period of time ends on Sunday or holiday, act may be done on next succeeding business day **held** not applicable to § 166 of the Charter requiring that tax review proceeding must be commenced before October 25, since that section does not involve any computation of time.-R.R. Heywood Co. v. Boland, 140 N.Y.S. 2d 769 [1955].

¶ 7. The owner of property was a person interested in a proceeding to review the 1954-55 assessment against the property where he had leased the property for 21 years in 1949 but the premises had been surrendered on March 15, 1954 after a petition for review had been filed by the tenant.-373 Realty Corp. v. Tax Commissioners, 133 (115) N.Y.L.J. (6-14-55) 8, Col. 5 M.

¶ 8. While a tax review proceeding everywhere else in the State is commenced by serving a petition and notice, in New York City it is commenced by the service of the petition alone.-Cahen v. Boyland, 1 N.Y. 2d 8, 150 N.Y.S. 2d 5, 132 N.E. 2d 890 [1956].

¶ 9. The president of 53 civic organizations in the Borough of Queens filed a petition for review of real estate assessments in behalf of 32,000 protestees and 250,000 owners of one and two-family houses in Queens. **Held:** the petition deals largely in generalities and irrelevancies and does not satisfy §§ 163-166 of the Charter or § 166-1.0 of the Admin. Code which set forth specifically the matter in which a review of an assessment may be obtained. There is, therefore, no basis set forth in this petition for a review of any single assessment of the 53 parcels of the named petitioners, or the 32,000 protestees, or of the 250,000 home owners or of the many more thousands of commercial properties contained in this assessment roll.-Matter of Lome, 19 Misc. 2d 803, 192 N.Y.S. 2d 787 [1959], aff'd 11 A.D. 2d 773, 204 N.Y.S. 2d 910 [1960].

¶ 10. The remedy provided for in §§ 163-166 of the Charter and § 166-1.0 of the Code relates only to proceedings involving the correctness of an assessment and does not extend to proceedings for tax abatement under § J41-2.4 of the Code. The latter section does not involve in the slightest the question of the correctness of the assessed amount of property.-Matter of Grossman, 20 Misc. 2d 707, 192 N.Y.S. 2d 557 [1959].

¶ 11. The Supreme Court would not entertain an action by a taxpayer for a declaratory judgment that her assessment was illegal and void, based on the contention that the assessor had not made a personal inspection, since the plaintiff's sole remedy is by a proceeding as set forth in this section.-Cedzich v. The City of New York, 19 Misc. 2d 572, 190 N.Y.S. 2d 741 [1959].

¶ 12. Fact that application for correction of taxes did not conform to requirements of this section which provides

for comparison of subject property with other property in the city but sought a comparison with other property situated only in the Borough of Bronx was not a jurisdictional defect, petitioner being allowed to allege as a ground of inequality any ground permitted under the Real Property Tax Law even though seemingly not permitted under this section.-Matter of Rokowsky v. Finance Administrator of City of N.Y., 80 Misc. 2d 80, 364 N.Y.S. 2d 730 [1975].

¶ 13. There is a rational basis for classification of one and two family homes at a different rate of taxation than cooperative apartments.-Clearview Gardens Fourth Corp. v. Michael, 110 Misc. 2d 1022 [1981].

¶ 14. This section is not a legislative authorization for a classified system of assessments in the City of New York and merely authorizes taxpayers who challenge their assessments of real property to present proof of inequality based on the theory that the assessment has been made at a higher proportionate valuation than the assessment of other real property of like character in the same ward or section or that the assessment has been made at a higher proportionate valuation than the assessment of other real property on the city assessment rolls for the same year.-Colt Industries v. Finance Administrator of City of N.Y., 54 N.Y. 2d 533 [1982].

CASE NOTES

¶ 1. Fractional lessee lacks standing to maintain tax certiorari proceeding pursuant to § 11-231 unless expressly conferred by lease. Assessment must have a direct adverse affect. Petitioner pays rent which includes a variable pro rata share of real property taxes is not an aggrieved party sufficient to challenge tax certiorari. Lease provisions did not provide increase in rent tied to a tax increase.-Waldbaum, Inc. v. Finance Adm., 141 AD2d 10 reversed 74 NY2 128 [1989].

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Administrative Code of the City of New York

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NYC Administrative Code 11-232

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-232 Comptroller; rates of interest on taxes and assessments.

The comptroller shall not reduce the rate of interest upon any taxes or assessments below the amount fixed by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-6.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-233

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-233 Cancellation of unpaid taxes.

When it shall appear to the comptroller that the unpaid taxes or assessments, or both, together with the interest and penalties thereon which may have been levied upon a parcel of real estate subject to easements which were in existence prior to the levying of such taxes or assessments, equal or exceed the sum for which, under ordinary circumstances, such parcel of real estate would sell subject to such easements, the comptroller, with the written approval of the corporation counsel, may settle and adjust such unpaid taxes or assessments, or both, with the interest and penalties thereon, and when it shall appear to the comptroller that such parcel of real estate would sell under ordinary circumstances subject to such easements for only a nominal sum, then the comptroller with the written approval of the corporation counsel may cancel such unpaid taxes and assessments together with the interest and penalties thereon.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-7.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff which, through an honest mistake, had caused the discharge of tax liens on defendant's property, believing such property to be part of a plot which it had acquired, **held** not entitled to have the tax liens revived and to be subrogated to the rights of the City of New York therein, where the property involved was burdened with easements of light, air and access in favor of plaintiff's property and by plaintiff's payment of the taxes defendant had been deprived of his right to apply for their cancellation pursuant to Admin. Code § 93d-7.0, which permits cancellation of unpaid taxes upon a showing that the affected parcel is burdened with an easement rendering the property of nominal value.-Roma Hldg. Corp. v. Stemmler, 31 N.Y.S. 2d 509 [1941].

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NYC Administrative Code 11-234

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-234 Cancellation of taxes and assessments in Queens county.

The comptroller, with the written consent of the corporation counsel, is authorized, on application being made by any person interested, to compromise and settle claims of the city for unpaid taxes and assessments, and sales for the same, within the territory formerly comprised within the boundaries of Queens county, now borough of Queens, as were imposed, confirmed, levied, or became liens upon the lands in the county of Queens, now borough of Queens, prior to January first, eighteen hundred ninety-eight.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-8.0 added chap 929/1937 § 1

Amended LL 50/1942 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-235

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-235 Board of estimate; power to cancel taxes, assessments and water rents.

The board of estimate, upon the written certificate of the comptroller approving the same, with whom application for relief under this section shall be filed, in its discretion and upon such terms as it may deem proper, by a unanimous vote, may cancel and annul all taxes, assessments and water rents and sales to the city of any or all of the same which now are or may hereafter become a lien against any real estate owned by any corporation, entitled to exemption of such real estate owned by it from local taxation under the provisions of the real property tax law formerly contained in article one, section four, subdivision six of the tax law, provided that all taxes and water rents from which relief is asked be apportioned as of the date such corporation took title to such real estate, and that such taxes and water rents so apportioned to the period before such date, and all assessments which became a lien before such date, be paid. The commissioner of finance shall mark the city's books and rolls of taxes, assessments and water rents in accordance with the determination of the board of estimate in every case in which action shall be taken under the provisions of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-9.0 added chap 929/1937 § 1

Amended chap 100/1963 § 142

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NYC Administrative Code 11-236

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-236 Powers of board of estimate to cancel taxes, water rents and assessments.

The council by local law may authorize the board of estimate, by unanimous vote, upon the written consent of the comptroller, to cancel and annul any taxes, water rents and assessments constituting a lien against any real property owned by a corporation whose property is exempt from taxation under the provisions of the real property tax law, notwithstanding that such taxes, water rents or assessments shall have become a lien against such real property while owned by a person or corporation not exempt under such section. The commissioner of finance shall mark the city's books and rolls of taxes and assessments in accordance with the determination of the board of estimate under such local law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-10.0 added chap 929/1937 § 1

Amended chap 100/1963 § 143

Administrative Code of the City of New York

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NYC Administrative Code 11-237

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-237 Cancellation of assessments, water and sewer rents on real property acquired by tax enforcement foreclosure proceedings.

Upon the cancellation of unpaid assessments, water and sewer rents by the city collector pursuant to section 11-353 of this title, the comptroller shall charge the unpaid amounts for assessments for local improvements, so cancelled, to the surplus in the appropriate assessment fund; the unpaid amounts for water charges, meter setting and repair, meter glasses and sewer rents, so cancelled, shall be deducted from the accounts receivable of the appropriate fund.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-12.0 added LL 90/1955 § 2

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Administrative Code of the City of New York

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NYC Administrative Code 11-238

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-238 Real property tax surcharge on absentee landlords.

a. Imposition of surcharge. A real property tax surcharge is hereby imposed on class one property, as defined in section eighteen hundred two of the real property tax law, excluding vacant land, that provides rental income and is not the primary residence of the owner or owners of such class one property, or the primary residence of the parent or child of such owner or owners, in an amount equal to zero percent of the net real property taxes for fiscal years beginning on or after July first, two thousand six. As used in this section, "net real property tax" means the real property tax assessed on class one property after deduction for any exemption or abatement received pursuant to the real property tax law or this title.

b. Rental income, primary residence and/or relationship to owner or owners. The property shall be deemed to be the primary residence of the owner or owners thereof, if such property would be eligible to receive the real property tax exemption pursuant to section four hundred twenty-five of the real property tax law, regardless of whether such owner or owners has filed an application for, or the property is currently receiving, such exemption. Proof of primary residence and the resident's or residents' relationship to the owner or owners and the absence of rental income shall be in the form of a certification as required by the rules of the com- missioner.

c. Rules. The department of finance shall have, in addition to any other functions, powers and duties which have been or may be conferred on it by law, the power to make and promulgate rules to carry out the purposes of this section, including, but not limited to, rules related to the timing, form and manner of any certification required to be submitted

under this section.

d. Penalties. 1. Notwithstanding any provision of any general, special or local law to the contrary, an owner or owners shall be personally liable for any taxes owed pursuant to this section whenever such owner or owners fail to comply with this section or the rules promulgated hereunder, or makes a false or misleading statement or omission and the commissioner determines that such act was due to the owner or owners' willful neglect, or that under such circumstances such act constituted a fraud on the department. The remedy provided herein for an action in personam shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by general, special or local law.

2. If the commissioner should determine, within three years from the filing of an application or certification pursuant to this section, that there was a material misstatement on such application or certification, he or she shall impose a penalty tax against the property of five hundred dollars, in accordance with the rules promulgated hereunder.

e. Cessation of use. In the event that a property granted an exemption from taxation pursuant to this section ceases to be used as the primary residence of such owner or owners or his, her or their parent or child, or produces rental income, such owner or owners shall so notify the commissioner.

HISTORICAL NOTE

Section added L.L. 47/2003 § 1, eff. July 14, 2003.

Subd. a amended L.L. 27/2006 § 1, eff. July 11, 2006 and retroactive to

July 1, 2006.

Subd. a amended L.L. 6/2004 § 1, eff. Apr. 15, 2004.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-239

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 1 ASSESSMENT ON REAL PROPERTY

§ 11-239 Real property tax rebate for certain residential property.

1. For fiscal years beginning the first of July, two thousand three and ending the thirtieth of June, two thousand nine, a rebate in the amount of the lesser of four hundred dollars or the annual tax liability imposed on the property shall be paid to an owner or tenant-stockholder who, as of the date the application provided for in subdivision four of this section is due, owns a one, two or three family residence or a dwelling unit in residential property held in the condominium or cooperative form of ownership that is the owner or tenant-stockholder's primary residence and meets all other eligibility requirements of this section. If, with respect to the fiscal year beginning on the first of July, two thousand eight and ending on the thirtieth of June, two thousand nine, an increase in average real property tax rates would otherwise be necessary in the resolution of the city council fixing real property tax rates for such fiscal year pursuant to the charter, then the rebate to be paid for such fiscal year shall be reduced or eliminated as follows: where the sum to be raised by such increase is less than seven hundred fifty million dollars, then such rebate shall be reduced by fifty cents for each dollar of increase, and where the sum to be raised by such increase is seven hundred fifty million dollars or more, then such rebate shall be eliminated. Notwithstanding anything to the contrary in sections four hundred twenty-one-a, four hundred twenty-one-b or four hundred twenty-one-g of the real property tax law, an owner or tenant-stockholder whose property is receiving benefits pursuant to such sections shall not be prohibited from receiving a rebate pursuant to this section if such owner or tenant-stockholder is otherwise eligible to receive such rebate. Tenant-stockholders of dwelling units in a cooperative apartment corporation incorporated as a mutual company pursuant to article two, four, five or eleven of the private housing finance law shall not be entitled to the rebate

authorized by this section. Such rebate shall be paid by the commissioner of finance to eligible owners or tenant-stockholders in accordance with rules promulgated by the commissioner of finance.

2. Eligibility requirements. a. To qualify for the rebate pursuant to this section (1) the property must be a one, two or three family residence or residential property held in the condominium or cooperative form of ownership;

(2) the property must serve as the primary residence of one or more of the owners or tenant-stockholders thereof; and

(3) the owner must not be in arrears in the payment of real property taxes in an amount in excess of twenty-five dollars for the fiscal year for which the rebate is claimed and all prior fiscal years, and for residential property held in the cooperative form of ownership, there must be no arrears in the payment of real property taxes in an amount in excess of an average of twenty-five dollars per dwelling unit in such cooperative apartment corporation for the fiscal year for which the rebate is claimed and all prior fiscal years.

b. If legal title to the property is held by one or more trustees, the beneficial owner or owners shall be deemed to own the property for purposes of this subdivision.

3. Definitions. As used in this section:

a. "Applicant" means the owner or owners or tenant-stockholder or tenant-stockholders of the property.

b. "Property" means a one, two or three family residence or a dwelling unit in residential property held in the condominium or cooperative form of ownership.

4. Application procedure. Application procedure. a. Generally. An application for a rebate pursuant to this section for the fiscal year beginning the first of July, two thousand three, shall be made no later than the date published by the commissioner of finance in the city record and in other appropriate general notices pursuant to this subdivision, which date shall be no earlier than thirty days after enactment of a state law authorizing such rebate. An application for a rebate pursuant to this section for fiscal years beginning on or after the first of July, two thousand four and ending on the thirtieth of June, two thousand six, shall be made no later than the fifteenth of March of the fiscal year for which the rebate is claimed. An application for a rebate pursuant to this section for fiscal years beginning on or after the first of July, two thousand six, shall be made no later than the first of September following the fiscal year for which the rebate is claimed. All owners or tenant-stockholders of property who primarily reside thereon must jointly file an application for the rebate on or before the application deadline, unless such owners or tenant-stockholders currently receive a real property tax exemption pursuant to section four hundred twenty-five, four hundred fifty-eight, four hundred fifty-eight-a, four hundred fifty nine-c*25 or four hundred sixty-seven of the real property tax law, in which case no separate application for a rebate pursuant to this section shall be required. Such application may be filed by mail if it is enclosed in a postpaid envelope properly addressed to the commissioner of finance, deposited in a post office or official depository under the exclusive care of the United States postal service, and postmarked by the United States postal service on or before the application deadline. Each such application shall be made on a form prescribed by the commissioner of finance, which shall require the applicant to agree to notify the commissioner of finance if his, her or their primary residence changes after receiving the rebate pursuant to this section, or after filing an application for such rebate, if his, her or their primary residence changes after filing such application, but before receiving such rebate. The commissioner of finance may request that proof of primary residence be submitted with the application. No rebate pursuant to this section shall be granted unless the applicant, if required to do so by this subdivision, files an application within the time periods prescribed in this subdivision.

b. Approval or denial of application. If the commissioner of finance determines that the applicant is entitled to the rebate pursuant to this section, the commissioner of finance shall approve the application and such owner or tenant-stockholder shall thereafter be entitled to the rebate as provided in this section. If the commissioner of finance determines that the applicant is not entitled to the rebate pursuant to this section, the commissioner of finance shall mail

to each applicant not entitled to the rebate a notice of denial of that application for the rebate for that year in accordance with rules for denial of applications to be promulgated by the commissioner of finance. The notice of denial shall specify the reason for such denial and shall be sent on a form prescribed by the commissioner of finance. Failure to mail any such notice of denial or the failure of any applicant to receive such notice shall not prevent the levy, collection and enforcement of taxes on such applicant's property.

c. Proof of residency. (1) Requests. From time to time, the commissioner of finance may request proof of residency from the owner or tenant-stockholder receiving a rebate pursuant to this section.

(2) Timing. A request for proof of residency shall be mailed at least sixty days prior to the ensuing application deadline. The owner or tenant-stockholder shall submit proof of his, her or their residency in an application to the commissioner of finance on or before the application deadline.

d. Review of submission. The burden shall be on the applicant to establish that the property is his, her or their primary residence and that any other requirements to obtain the rebate are satisfied. If the applicant submits proof of residency on or before the application deadline, and the submission demonstrates to the commissioner of finance's satisfaction that the property is the primary residence of the applicant, and if the requirements of this section are otherwise satisfied, the rebate shall be paid. Otherwise, the commissioner of finance shall discontinue the rebate and, where appropriate, shall proceed as further provided herein.

e. Oath. The commissioner of finance shall have the authority to require that statements made in connection with any application filed pursuant to this section be made under oath. Such application shall contain the following declaration: "I certify that all information contained in this application is true and correct to the best of my knowledge and belief. I understand that willful making of any false statement of material fact herein will subject me to the provisions of law relevant to the making and filing of false instruments and will render this application null and void." Such application shall also state that the applicant agrees to comply with and be subject to the rules promulgated from time to time by the commissioner of finance pursuant to this section.

5. Discontinuance of rebate. a. Generally. The commissioner of finance shall discontinue any rebate paid or granted pursuant to this section if it appears that: (1) the property may not be the primary residence of the owner or tenant-stockholder who received or applied for the rebate, (2) title to the property has been transferred to a new owner or tenant-stockholder, or (3) the property is otherwise no longer eligible for the rebate. For the purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides, and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder.

b. Rights of owners and tenant-stockholders. Upon determining that a rebate paid or granted pursuant to this section should be discontinued, the commissioner of finance shall mail a notice so stating to the affected owner or tenant-stockholder at the time and in the manner to be provided in rules promulgated by the commissioner of finance. Such owner or tenant-stockholder shall be entitled to seek administrative and judicial review of such action in the manner provided by law, provided, that the burden shall be on the owner or tenant-stockholder to establish eligibility for the rebate.

6. Recovery of prior rebate. If the commissioner of finance determines that the owner or tenant-stockholder was (a) not entitled to a rebate under this section, or (b) that a rebate was paid or calculated in error under this section, then the commissioner of finance shall recover or recalculate such rebate and the amount of the rebate or an amount equal to the difference between the rebate originally paid and the amount to which the owner or tenant-stockholder was entitled shall be deducted from any refund otherwise payable, and any balance of such amount remaining unpaid shall be paid to the commissioner of finance within thirty days from the date of mailing by the commissioner of finance of a notice of the amount payable. Such amount payable shall constitute a tax lien on the property as of the date of such notice and, if

not paid within such thirty-day period, penalty and interest at the rate applicable to delinquent taxes on such property shall be charged and collected on such amount from the date of such notice to the day of payment, and such amount payable shall be enforceable as a tax lien in accordance with provisions of law relating to the enforcement of tax liens in any such city.

7. Penalty for material misstatements. a. Generally. If the commissioner of finance determines, within three years from the payment of a rebate pursuant to this section, that there was a material misstatement in an application filed pursuant to this section or in an application filed pursuant to section four hundred twenty-five of the real property tax law and that such misstatement provided the basis for the payment of a rebate under this section, the commissioner of finance shall proceed to impose a penalty tax against the property of one thousand dollars in addition to recovering the amount of any prior rebate under subdivision six of this section. An application shall be deemed to contain a material misstatement for this purpose when either:

(1) the applicant claimed the property was his, her or their primary residence, when it was not;

(2) the applicant claimed the property was eligible for a rebate pursuant to this section, when it was not; or

(3) the applicant claimed that the applicant owned the property, when the applicant did not.

b. Procedure. When the commissioner of finance determines that a penalty tax should be imposed, the penalty tax shall be entered on the next ensuing tentative or final assessment roll. Each owner or tenant-stockholder shall be given notice of the possible imposition of a penalty tax, and shall be entitled to seek administrative and judicial review of such action in the manner provided by law.

c. Additional consequences. A penalty tax may be imposed pursuant to this subdivision whether or not the improper rebate has been revoked in the manner provided for by this section.

8. Rulemaking. The commissioner of finance shall be authorized to promulgate rules necessary to effectuate the purposes of this section.

9. Non-disclosure. The information contained in applications or statements in connection therewith filed with the commissioner of finance pursuant to subdivision four of this section shall not be subject to disclosure under article six of the public officers law.

HISTORICAL NOTE

Section added L.L. 40/2004 § 1, eff. Aug. 20, 2004 as per chap 60/2004

§§ V5, 6. [See Note 1]

Subd. 1 amended L.L. 40/2007 § 1, eff. Aug. 1, 2007.

Subd. 4 par a amended L.L. 40/2007 § 2, eff. Aug. 1, 2007.

NOTE

1. Provisions of Chap 60/2004:

Part V

. . . . . .

§ 5. Notwithstanding any inconsistent provision of section 2 of local law number 39 of the city of New York for

the year 2004, such local law shall take effect upon the effective date of this act. [The effective date of Part V of Chap 60/2004 is Aug. 20, 2004.] Notwithstanding any inconsistent provision of section 2 of local law number 40 of the city of New York for the year 2004, such local law shall take effect upon the effective date of this act. [The effective date of Part V of Chap 60/2004 is Aug. 20, 2004.]

§ 6. This act shall take effect immediately, [Aug. 20, 2004] provided that no local law adopted by a city having a population of one million or more pursuant to section one of this act [Section one of Part V adds § 467-e to the real property tax law-Rebate for owners or tenant-stockholders of one, two or three family residences or residential property held in the condominium or cooperative form of ownership in a city having a population of one million or more.] may provide for a rebate of real property taxes for any fiscal year of such city that begins on or after July 1, 2006, and provided further that any actions, including but not limited to enactment of local laws or promulgation of rules, taken to effectuate the purposes of any section of this act before the date when this act shall have become law shall be deemed valid as of the effective date of this act.

FOOTNOTES

25

[Footnote 25]: ** NB Effective until December 31, 2011. [See Derivation]

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NYC Administrative Code 11-241

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-241 Discrimination in tax exempt projects.

No exemption from taxation, for any project, other than a project hitherto agreed upon or contracted for, shall be granted to a housing company, insurance company, redevelopment company or redevelopment corporation, which shall directly or indirectly, refuse, withhold from, or deny to any person any of the dwelling or business accommodations in such project or property, or the privileges and services incident to occupancy thereof, on account of the race, color or creed of any such person.

Any exemption from taxation hereafter granted shall terminate sixty days after a finding by the supreme court of the state of New York that such discrimination is being or has been practiced in such project or property; if within sixty days such discriminaton shall have been ended, then the exemption shall not terminate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § J51-1.2 added LL 20/1944 § 1

Amended LL 45/1947 § 1

Renumbered chap 100/1963 § 1340

(formerly § J41-1.2)

CASE NOTES FROM FORMER SECTION

¶ 1. Defendant-owners and operators of housing development known as Stuyvesant Town, **held** not restrained by any constitutional or statutory provisions from selecting tenants of its own choice and from refusing housing accommodations to prospective tenants because of race, color, creed or religion. Admin. Code § J41-1.2, prohibiting granting of tax exemptions to companies discriminating against tenants, was inapplicable, as Stuyvesant Town was contracted for prior to effective date of such section.-Dorsey v. Stuyvesant Town Corp., 190 Misc. 187, 74 N.Y.S. 2d 220 [1947], aff'd 274 App. Div. 992, 85 N.Y.S. 2d 313 [1948], aff'd 299 N.Y. 512, 87 N.E. 2d 541 [1949]. Followed in Polier v. O'Dwyer, 118 (89) N.Y.L.J. (10-25-47) 1025, Col. 5 M.

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Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-242 Exemption and tax abatement in regard to improvements of substandard dwellings.

a. As used in this section, the following terms shall have the following meanings: 1. "Alteration" and "improvement": a physical change in an existing dwelling other than painting, ordinary repairs, normal replacements or maintenance items.

2. "Existing dwelling": a class A multiple dwelling in existence prior to the commencement of alterations for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year nineteen hundred fifty-five-nineteen hundred fifty-six.

3. "Start" on alteration or improvement: begin any physical operation undertaken for the purpose of making alterations or improvements to an existing dwelling.

4. "Complete" an alteration or improvement: conclude or terminate any physical operation such as is referred to in the preceding subparagraph, to an extent or degree which renders such building capable of use for the purpose for which the improvements or alterations were intended.

5. "Multiple dwelling": multiple dwellings as that term is defined in section four of the multiple dwelling law.

b. Any increase in assessed valuation resulting from alterations and improvements to existing dwellings to eliminate presently existing unhealthy or dangerous conditions in any existing dwelling or to replace inadequate and obsolete sanitary facilities in any such dwelling, any of which represent fire or health hazards, or to provide central or other appropriate and approved heating, except insofar as the gross cubic content of the building is increased thereby, shall be exempt from taxation for local purposes for a period of twelve years after the taxable status date immediately following the completion of the alterations and improvements, to the extent that such increase in assessed valuation result from the reasonable cost of such alterations and improvements, providing that construction is started after March first, nineteen hundred fifty-five and completed before December thirty-first, nineteen hundred fifty-nine. The asssessed valuation allocated to such dwelling after such alterations and improvements during such period of twelve years, exclusive of the increase in valuation which is exempted, shall not exceed the valuation of the previously existing dwelling appearing on the assessment rolls after the taxable status date immediately preceding the commencement of such alterations and improvements. The assessed valuation of the land occupied by such dwelling and any increase in valuation resulting from alterations and improvements other than those made pursuant to this section, shall not be affected by the provisions of this section.

c. The taxes upon any such property, including the land, shall be abated and reduced by an amount equal to eight and one-third per centum of the reasonable cost of such alterations and improvements each year for a period of nine years commencing with the first tax bill for the first tax year in which the exemption herein provided is effective, but such abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such period.

d. The department of buildings shall determine and certify the reasonable cost of any such alterations and improvements and for that purpose may adopt rules and regulations, administer oaths to and take testimony of any person, including but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such books, papers or other documents as the department shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such alterations and improvements, may establish maximum allowable costs for specified units, fixtures or work in such alterations or improvements, and may require the submission of plans and specifications of such alteration and improvements before the start thereof. Application forms for the benefits of this section shall be filed with the tax commission between February first and March fifteenth and the tax commission shall certify to the city collector the amount of taxes to be abated and reduced, pursuant to the certification of the commissioner of buildings as herein provided. No such application shall be accepted unless accompanied by copies of certificates of the city planning commission and the commissioner of buildings, as provided in this subdivision and in subdivision e of this section.

e. To the end that alterations and improvements in such property shall interfere as little as practicable with urgently needed public improvements, and the clearance and rebuilding of substandard and insanitary areas, and shall be confined to multiple dwellings which are structurally sound, comply with applicable provisions of law, and are provided with adequate central or other appropriate and approved heating exemption or abatement from taxation hereunder shall be restricted to dwellings which: (1) the city planning commission certify will not unduly interfere with projected public improvements or the clearance and rebuilding of substandard and insanitary areas which certification shall be evidenced by a certificate describing the property involved and shall be issued upon application to such city planning commission in such manner and in such form as may be prescribed by such city planning commission, and (2) which the department of buildings shall certify to be structurally sound, comply with applicable provisions of law and provide central or other appropriate and approved heating, which certification shall be evidenced by a certificate describing the property involved and shall be issued upon application to the department of buildings in such manner and in such form as may be prescribed by such department. Where the improvements and alterations include or benefit that part of a building which is occupied by stores or used for commercial purposes, the cost shall be apportioned so that the benefits of this section shall not be provided for the cost of the improvements or alterations made for store or commercial purposes.

f. Notwithstanding the provisions of the multiple dwelling law, or any local law, ordinance, provisions of this code, rule or regulation, any dwelling to which alterations and improvements are made pursuant to this section and which did not require a certificate of occupancy on April second, nineteen hundred forty-five, may be occupied lawfully after such date upon the completion of such alterations and improvements without such a certificate being obtained, provided, however, that such alterations and improvements shall have been made in conformity with law and the applicable provisions for fire protection required by articles six and seven of the multiple dwelling law.

g. No owner of a dwelling to which the benefits of this section shall be applied nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, or religion any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein.

h. Each agency to which functions are assigned by this section may adopt rules and regulations for the effectuation of the purposes of this section, and a copy, for each member of the city council, of such rules and regulations shall be filed with the clerk of the city council prior to promulgation.

i. Any person who shall knowingly and wilfully make any false statement as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days, or both.

j. The benefits of this section shall not apply to any multiple dwelling which is not subject to the provisions of the emergency housing rent control law, provided that this subdivision shall not operate to rescind any benefits granted by the tax commission under this section prior to July first, nineteen hundred fifty-eight; and further provided that where the benefits herein provided were or are granted by the tax commission on or after July first, nineteen hundred fifty-eight to any multiple dwelling which is decontrolled subsequent to the granting of such benefits, the tax commission shall withdraw such benefits, effective upon the commencement of the first tax year following the tax year in which such multiple dwelling is decontrolled.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § J51-2.4 added LL 118/1955 § 1

Amended LL 41/1956 § 1

Sub i amended LL 14/1959 § 2

Sub k added LL 14/1959 § 3

(legislative intent LL 14/1959 § 1)

(LL 14/1959 validated LL 106/1959 §§ 1, 5, 6)

Sub i amended LL 106/1959 § 2

Sub k added LL 106/1959 § 3

(legislative intent LL 106/1959 § 2)

Renumbered chap 100/1963 § 1345

(formerly § J41-2.4)

Sub i amended chap 100/1963 § 1345

CASE NOTES FROM FORMER SECTION

¶ 1. Since the fiscal year is January 25 to January 24, an improvement completed March 8, 1956 would first be the basis for an abatement for the fiscal year beginning January 25, 1957.-Holden v. Boyland, 5 Misc. 2d 703, 160 N.Y.S. 2d 383 [1957].

¶ 2. The owner of a multiple dwelling sought an abatement of taxes on the ground that he spent substantial sums for improvement. Upon the failure of the Tax Commission to react favorably, he commenced a proceeding under C.P.A., Art. 78. His petition is dismissed since his only remedy is under Tax Law, § 290 et seq., New York City Charter, §§ 163-166, and Admin. Code, § 166-1.0.-Matter of Alwat Realty Corp. v. Boyland, 5 Misc. 2d 1061, 160 N.Y.S. 2d 504 [1957].

¶ 3. This section as enacted by Local Law 118 of 1955 was amended by Local Law 41 of 1956, which amendment specifically provided that applications for the benefits of the statute shall be accompanied by copies of certificates of the City Planning Commission and the Commissioner of Buildings. Hence, where petitioner's application was not filed until eight months after the amendment had been in effect, without attached copies of the certificates, the Tax Commission properly refused to accept the application.-Kreulen v. Boyland, 8 Misc. 2d 895, 166 N.Y.S. 2d 179 [1957].

¶ 4. The period for filing applications for benefits under this section was set to accord with the administration of taxes generally in New York City. Those dates being between February 1 and March 15.-Kreulen v. Boyland, 8 Misc. 2d 895, 166 N.Y.S. 2d 179 [1957].

¶ 5. Where petitioner completed a substantial part of an alteration plan in July, 1954, then work was suspended for the convenience of tenants, and a modified plan was approved in August, 1956, he was entitled to no exemption with respect to work commenced after March 1, 1955.-In re Harby Realty Corp. (Gilroy), 17 Misc. 2d 76, 188 N.Y.S. 2d 1034 [1958].

¶ 5.1. A petitioner was not denied "due process" because no hearing was held on his application for reconsideration under this section, since the statute makes no provision for a hearing.-Matter of Harby Realty Corporation, 17 Misc. 2d 76, 188 N.Y.S. 2d 1034 [1958].

¶ 6. Before appealing to the Court from a denial of a tax abatement and exemption certificate, a property owner must exhaust his administrative remedies before the Board of Standards and Appeals. The issue was whether he had altered an existing structure or built a new one. Approval of his plans by the Department of Buildings was no assurance that he was entitled to a tax abatement.-In re 534 E. 88th St. Corp. (Crinnion), 122 N.Y.L.J. (12-26-58) 4, Col. 3 M.

¶ 7. The purpose of this section is to aid owners to remove fire and health hazards and to make less burdensome the replacement of inadequate and obsolete sanitary facilities by reducing the cost of these improvements by tax abatement. It was not the intent of the Legislature that, in addition to reduction of costs, the landlords would be entitled to receive rent increases based upon the total expenditures for these improvements. Accordingly, the State Rent Administrator properly modified certain rent increases, previously granted, by reducing the total thereof by an amount equal to two-thirds of the total annual tax remission received by the landlord.-Matter of Aronson, 17 Misc. 2d 71, 188 N.Y.S. 2d 1032 [1959].

¶ 7.1. A landlord was granted a rent increase for repairs prior to the enactment of this section. Thereafter, he was granted a tax abatement on the improvements made. The State Rent Administrator was entitled to reopen the previous rent proceeding and modify the increase granted.-Matter of Semel, 17 Misc. 2d 73, 188 N.Y.S. 2d 398 [1958].

¶ 8. Petitions of 26 taxpayers who charged that the 1959 amendment to this section was invalid, for the reason that the amending bill did not lay on council desks for seven days as provided by § 37 of the Charter, stated causes of action, where it was alleged that the bill enacted December 23, 1958 was not placed on desks of councilmen until December 17, 1958.-Matter of Grossman, 20 Misc. 2d 707, 192 N.Y.S. 2d 557 [1959].

¶ 8.1. The 1959 amendment of this section, which withdrew its benefits from uncontrolled or decontrolled dwellings, was not unconstitutional on the ground that the amendment impaired the obligations of contracts between petitioners and the City, since the City had not entered into any special contract with the petitioners.-Matter of Grossman, 20 Misc. 2d 707, 192 N.Y.S. 2d 557 [1959].

¶ 8.2. The remedy provided for in §§ 163-166 of the Charter and § 166-1.0 of the Code relates only to proceedings involving the correctness of an assessment and does not extend to proceedings for tax abatement under this section. The latter did not involve, in the slightest, the question of the correctness of the assessed amount of property.-Matter of Grossman, 20 Misc. 2d 707, 192 N.Y.S. 2d 557 [1959].

¶ 9. Subdivision k of this section was not validly enacted on December 23, 1958 because the bill had not laid on desks of the council for seven days prior to enactment. However, the allegedly defective enactment was cured by virtue of a curative statute enacted by the Council on September 22, 1959.-Matter of London, 22 Misc. 2d 360, 195 N.Y.S. 2d 550, aff'd 13 App. Div. 2d 479, 214 N.Y.S. 2d 647 [1961].

¶ 9.1. The petitioners contended that subdivision k violated the constitutional provision of equal protection, since owners who completed their alterations prior to July 1, 1958 received tax exemptions at the statutory rate, namely $8\frac{1}{3}$ percent of the cost of the alterations annually for 12 years. They claimed that this distinction was unfair and allowed discrimination against owners who made similar improvements solely on the basis of the time when the improvements were approved by the housing authorities. **Held:** The subdivision does not violate equal protection of the law. The City Council enacted the legislation to conform to an amendment of § 5-h of the Tax Law. The State law was prompted by recognition that an owner of decontrolled premises could and would get a return for improvements in increased rents. There was no public purpose to be served in giving him an additional inducement. So the statute was amended to prevent the future granting of tax abatement to decontrolled housing.-Matter of London, 22 Misc. 2d 360, 195 N.Y.S. 2d 550 [1959] aff'd 13 A.D. 2d 479, 214 N.Y.S. 2d 647 [1961].

¶ 10. Application for an order directing a tax abatement, pursuant to Admin. Code § J41-2.5 by reason of the structural improvement creating an increased number of family units. **Held,** denied on the ground that such section requires the property to be rent controlled, and it appears that petitioner is entitled to and in fact has an order of decontrol from the rent administrator.-Matter of Alco Realty Corp. (Davies) 145 (101) N.Y.L.J. (5-25-61) 16, Col. 3 M.

¶ 11. Owners of tenements were granted increase in rents because of the installation of a central heating plant. Subsequently they obtained both tax exemption and tax abatement for such installation pursuant to N.Y.C. Admin. Code § J41-2.4 effective for the fiscal year commencing July 1, 1960 for a period of nine years and covering 75% of the cost of the improvement. The court valued the property for condemnation purposes by a capitalization of the net income derived from the properties arrived at by considering the gross increased rentals and taking the full amount of taxes without abatement or exemption as an item of expense, and with no added value being given by reason of a tax abatement or exemption.-In re City of N.Y. (Public School 49), 150 (116) N.Y.L.J. (12-16-63) 14, Col. 1 F.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-243

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-243 Reextension of exemption and tax abatement in regard to improvements of substandard dwellings.

a. As used in this section, the following terms shall have the following meanings: 1. "Alteration" and "improvement": a physical change in an existing dwelling other than painting, ordinary repairs, normal replacement of maintenance items, provided, however, that ordinary repairs and normal replacement of maintenance items, as defined by rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, shall be eligible for tax exemption and tax abatement under this section provided that repairs and maintenance items:

(1) were started and completed within a twelve-month period,

(2) were made to any common area of the dwelling premises concurrently with a major capital improvement thereto, as defined by rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, and

(3) require the issuance of a permit for at least one item thereof by any city agency, and

(4) the amount of money expended thereon shall not exceed two times the amount expended on the major capital

improvement performed concurrently therewith.

"Alteration" and "improvement" shall also mean "an abatement" of lead-based paint hazards, as defined in part 745 of title forty of the code of federal regulations or any successor regulations in any existing dwelling including any common areas, and shall include an "inspection" and "risk assessment" for lead-based paint hazards, as defined in such part, in a dwelling unit whether such unit is vacant or occupied but shall not include any work performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the administrative code. For purposes of this paragraph, the term, "targeted area" shall mean the geographical area of New York city that is determined by the department of health and mental hygiene to have high rates of children with environmental intervention blood lead levels. The department of housing preservation and development shall establish two schedules of certified reasonable costs for items that are included in an abatement of lead-based paint hazards, one covering such abatement that is performed in an eligible dwelling unit or common area located in the targeted area, and one covering such abatement that is performed in an eligible dwelling unit or common area that is not located in the targeted area. The first such schedules shall be promulgated by the department of housing preservation and development within 180 days of the effective date of this local law and shall be used for any such abatements that are commenced on or after August 2, 2004. Such schedules shall be reviewed by such department biennially following their effective dates and amended as necessary. Notwithstanding any other provision of law or rule, an owner who performs an abatement of lead-based paint hazards pursuant to this paragraph shall not be required to comply with subdivision (y) of this section which provides for filing of a notice of intent form prior to the commencement of work, and no additional fee or penalty shall be due and owing the department at the time of issuance of a certificate of eligibility and reasonable cost for failure to file such notice of intent.

2. "Existing dwelling": except as hereinafter provided in subdivision d of this section, a class A multiple dwelling or a building consisting of one or two dwelling units over space used for commercial occupancy in existence prior to the commencement of alterations for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year immediately preceding the commencement of such alterations and improvements.

3. "Start" an alteration or improvement: begin any physical operation undertaken for the purpose of making alterations or improvements to an existing dwelling.

4. "Complete" an alteration or improvement: conclude or terminate any physical operation such as is referred to in the preceding paragraph, to an extent or degree which renders such building capable of use for the purpose for which the improvements or alterations were intended.

5. "Multiple dwelling": multiple dwellings as that term is defined in section four of the multiple dwelling law.

6. "Moderate rehabilitation": shall mean a scope of work which

(a) includes a building-wide replacement of a major component of one of the following systems:

(1) Elevator

(2) Heating

(3) Plumbing

(4) Wiring

(5) Window; and

(b) has a certified reasonable cost of not less than twenty-five hundred dollars, exclusive of any certified

reasonable cost for ordinary repairs, for each dwelling unit in existence at the commencement of the rehabilitation; except that the department of housing preservation and development may establish a minimum certified reasonable cost to be greater than twenty-five hundred dollars per dwelling unit pursuant to subdivision m of this section.

7. "Substantially occupied": shall mean an occupancy of not less than sixty percent of all dwelling units immediately prior and during rehabilitation, except that the department of housing preservation and development may establish higher percentages of occupancy pursuant to subdivision m of this section.

8. "Private dwelling" shall mean any building or structure designed and occupied for residential purposes by not more than two families. Private dwellings shall also be deemed to include a series of one-family or two-family dwelling units each of which faces or is accessible to a legal street or public thoroughfare, if each such dwelling unit is equipped as a separate dwelling unit with all essential services, and if each such unit is arranged so that it may be approved as a legal one-family or two-family dwelling.

b. Subject to the limitations provided in subdivision d of this section and the restrictions in this section on conversion of buildings used in whole or in part for single room occupancy, any increase in the assessed valuation of real property shall be exempt from taxation for local purposes to the extent such increase results from the reasonable cost of: (1) the conversion of a class B multiple dwelling to a class A multiple dwelling except insofar as the gross cubic content of such building is increased thereby; or (2) the conversion of any nonresidential building or structure situated in the county of New York to a class A multiple dwelling except insofar as the gross cubic content of such building is increased; or (3) the conversion of any nonresidential building or structure situated in the counties of Bronx, Kings, Queens or Richmond to a class A multiple dwelling except insofar as the gross cubic content of such building or structure is increased

thereby; or (4) alterations or improvements to the exterior of an otherwise eligible building or structure visible from a public street pursuant to a permit issued by the landmarks commission with respect to a designated historic or landmark site or structure; or (5) alterations or improvements constituting a moderate rehabilitation of a substantially occupied class A multiple dwelling except insofar as the gross cubic content of such building or structure is increased thereby; or (6) alterations or improvements to an otherwise eligible building or structure commenced after January first, nineteen hundred eighty designed to conserve the use of fuel, electricity or other energy sources or to reduce demand for electricity, including the installation of meters for purposes of measuring the amount of electricity consumed for each dwelling unit, and conversions of direct metering to a system that includes a master meter and submeters in any cooperative, condominium, or housing development fund company organized

under article eleven of the private housing finance law; or (7) alterations or improvements to existing dwellings to eliminate existing unhealthy or dangerous conditions in any such existing dwelling or replace inadequate and obsolete sanitary facilities in any such existing dwelling, any of which represents fire or health hazards, including as improvements asbestos abatement to the extent such asbestos abatement is required by federal, state or local law, except insofar as the gross cubic content of such existing dwelling is increased thereby; or (8) conversion of residential units qualified for the protection of article seven-C of the multiple dwelling law in buildings or portions thereof registered with the New York city loft board as interim multiple dwellings pursuant to such article to units which are in compliance with the standards of safety and fire protection set forth in article seven-B of the multiple dwelling law or to units which have a certificate of occupancy as class A multiple dwellings; or

(9) alterations or improvements commenced on or after September first, nineteen hundred eighty-seven constituting a substantial rehabilitation of a class A multiple dwelling, or a conversion of a building or structure into a class A multiple dwelling, as part of a program to provide housing for low and moderate income households as defined by the department of housing preservation and development pursuant to the rules and regulations promulgated pursuant to subdivision m of this section, provided that such alterations or improvements or conversions shall be aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality, including, in the discretion of the department of housing preservation and development, a subsidy in the form of a below market sale from the city of New York; or

(10) alterations or improvements to any private dwelling or conversion of any private dwelling to a multiple dwelling or conversion of any multiple dwelling to a private dwelling, provided that such

alterations, improvements or conversions are part of a project that has applied for or is receiving benefits pursuant to this section and shall be aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality. Such conversions, alterations or improvements shall be completed within thirty-six months after the date on which same shall be started except that such thirty-six month limitation shall not apply to conversions of residential units which are registered with the loft board in accordance with article seven-C of the multiple dwelling law pursuant to paragraph eight of this subdivision. Notwithstanding the foregoing, a sixty-month period for completion shall be available for alterations or improvements undertaken by a housing development fund company organized pursuant to article eleven of the private housing finance law, which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality

or which are carried out in a property transferred from the city of New York if alterations and improvements are completed within seven years after the date of transfer. In addition, the department of housing preservation and development may grant an extension of the period of completion for any project carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality, if such alterations, improvements or conversions are completed within sixty months from commencement of construction. Provided, further, that such conversions, alterations or improvements shall in any event be completed prior to December thirty-first, two thousand eleven. Exemption for conversions, alterations or improvements pursuant to paragraph one, two, three, four, six, seven, eight or ten of this subdivision shall continue for a period not to exceed fourteen years and begin no sooner than the first tax period immediately following the completion of such

conversions, alterations or improvements. Exemption for alterations or improvements pursuant to paragraph five or nine of this subdivision shall continue for a period not to exceed thirty-four years and shall begin no sooner than the first tax period immediately following the completion of such alterations or improvements. Such exemption shall be equal to the increase in the valuation, which is subject to exemption in full or proportionally under this subdivision for ten or thirty years, whichever is applicable. After such period of time, the amount of such exempted assessed valuation of such improvements shall be reduced by twenty percent in each succeeding year until the assessed value of the improvements is fully taxable. Provided, however, exemption for any conversions, alterations or improvements, which are aided by a loan or grant under article eight, eight-A, eleven, twelve, fifteen, or twenty-two of the private housing finance law, section six hundred ninety-six-a or section ninety-nine-h of the

general municipal law, or section three hundred twelve of the housing act of nineteen hundred sixty-four (42 U.S.C.A. 1452b), or the Cranston-Gonzalez national affordable housing act, (42 U.S.C.A. 12701 et seq.), or started after July first, nineteen hundred eighty-three by a housing development fund company organized pursuant to article eleven of the private housing finance law which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from the city of New York and where alterations and improvements are completed within seven years after the date of transfer may commence at the beginning of any tax period subsequent to the start of such conversions, alterations or improvements and prior to the completion of such conversions, alterations or improvements. The assessed valuation of the land occupied by such dwelling and any increase in assessed valuation resulting

from conversions, alterations, or improvements other than those made pursuant to this section shall not be affected by the provisions of this section.

b-1. Notwithstanding the provisions of subdivision b of this section, alterations, improvements or conversions of any building or structure that are eligible for benefits pursuant to subdivision b of this section except insofar as the gross cubic content of such building or structure is increased thereby shall be eligible for such benefits insofar as the gross cubic content of such building or structure is increased thereby provided that:

(1) for all tax lots now existing or hereafter created, at least fifty percent of the floor area of the completed building or structure consists of the pre-existing building or structure that was converted, altered or improved in accordance with subdivision b of this section, and

(2) for tax lots now existing or hereafter created within the following area in the borough of Manhattan, such conversions, alterations or improvements are aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality: beginning at the intersection of the United States pierhead line in the Hudson river and the center line of Chambers street extended, thence easterly to the center line of Chambers street and continuing along the center line of Chambers street to the center line of Centre street, thence southerly along the center line of Centre street to the center line of the Brooklyn Bridge to the intersection of the Brooklyn Bridge and the United States pierhead line in the East river, thence northerly along the United States pierhead line in the East river to the intersection of the United States pierhead line in the East river and the center line of one hundred tenth street extended, thence westerly to the center line of one hundred tenth street and continuing along the center line of one hundred tenth street to its westerly terminus, thence westerly to the intersection of the center line of one hundred tenth street extended and the United States pierhead line in the Hudson river, thence southerly along the United States pierhead line in the Hudson river to the point of beginning.

(3) For purposes of this subdivision, "floor area" shall mean the horizontal areas of the several floors or any portion thereof of a dwelling or dwellings and accessory structures on a lot measured from the exterior faces of exterior walls or from the center line of party walls.

(4) Nothing in this subdivision shall be construed to provide tax abatement benefits pursuant to subdivision c of this section for the costs attributable to the increased cubic content in any such building or structure.

c. (1) Except as provided in paragraphs two, three and four of this subdivision, the taxes upon any real property, including the land, may be abated each year for a period of not more than twenty years by an amount no greater than eight and one-third per centum of the reasonable cost of eligible conversions, alterations or improvements provided in paragraphs one through eight and paragraph ten of subdivision b of this section provided that the abatement in taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period; and provided further that alterations or improvements pursuant to paragraph four of subdivision b of this section shall only receive the benefits of this section if construction commenced after January first, nineteen hundred seventy-eight and that in no event shall the aggregate abatement exceed ninety per centum of the reasonable cost of conversions, alterations or improvements provided in paragraphs one, three, four, six, seven, and ten of subdivision b of this section, or exceed fifty per centum of the reasonable cost of conversions pursuant to paragraph one of subdivision b of this section if construction commenced after January first, nineteen hundred eight-two*11 and if such conversions are situated on any tax lots bordering on, or south of, ninety-sixth street in the county of New York to the extent such abatement is not otherwise restricted herein, or exceed fifty per centum of the reasonable cost of conversions pursuant to paragraphs two and eight of subdivision b of this section, or exceed one hundred per centum of the reasonable cost of alterations or improvements pursuant to paragraph five of subdivision b of this section provided that where alterations or improvements pursuant to paragraphs four and six of subdivision b of this section are done in conjunction with a conversion pursuant to paragraph two of subdivision b of this section, the aggregate abatement shall not exceed fifty per centum of the reasonable cost. Notwithstanding the foregoing, the taxes upon real property, including the land may be abated for a period of not more than twenty years at eight and one-third per centum of the reasonable cost of conversion pursuant to paragraph two of subdivision b of this section where construction actually commenced in good faith prior to July first, nineteen hundred eighty pursuant to an alteration permit issued by the department of buildings prior to July first, nineteen hundred eighty provided that the aggregate abatement shall not exceed ninety per centum of the reasonable cost thereof and provided further that in no event shall the abatement in taxes in any twelve-month period exceed the amount of taxes payable in such twelve-month period. In no event, however, shall the aggregate abatement for conversions, alterations or improvements pursuant to subdivision b of this section exceed such dollar limit per existing class A dwelling unit or additional unit created by conversion to a class A multiple dwelling as may be established pursuant to rules and regulations promulgated by the department of housing preservation and

development pursuant to subdivision m of this section. Only those items of work set forth in the itemized cost breakdown schedule contained in rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section shall be eligible for tax abatement. Such abatement shall commence on the later of July first, nineteen hundred seventy-eight or the first day of the first tax quarter following the completion of such construction and the filing for benefits as provided in subdivision h of this section except that such period of abatement may commence on the later of the first day of the first tax quarter following commencement of any conversion, alteration or improvement or (i) July first, nineteen hundred seventy-six, if aided by a loan pursuant to article eight of the private housing finance law and completed after December thirty-first, nineteen hundred seventy-five; or (ii) July first, nineteen hundred seventy-seven, if aided by a loan pursuant to article fifteen of the private housing finance law; or (iii) July first, nineteen hundred eighty, if aided by a loan pursuant to article eight-A of the private housing finance law; or (iv) July first, nineteen hundred eighty, if aided by a loan pursuant to section three hundred twelve of the housing act of nineteen hundred sixty-four (42 U.S.C.A. §1452b); or (v) July first, nineteen hundred ninety-two, if started after such date and aided by a loan or grant under article eleven, twelve, or twenty-two of the private housing finance law, section six hundred ninety-six-a or section ninety-nine-h of the general municipal law, or the Cranston-Gonzalez national affordable housing act (42 U.S.C.A. 12701 et seq.); or (vi) July first, nineteen hundred eighty-eight, if started after such date by or on behalf of a company not qualified under any of the above provisions, which is a not-for-profit corporation qualified pursuant to section 501(c)(3) of the internal revenue code and which has entered into a regulatory agreement with the local housing agency requiring operation of the property as housing for low and moderate income persons and families.

(2) In the case of alterations or improvements pursuant to paragraph five of subdivision b of this section which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing or financed with mortgage insurance by the New York city residential mortgage insurance corporation or the state of New York mortgage agency or pursuant to a program established by the federal housing administration for rehabiliation of existing multiple dwellings in a neighborhood strategy area as defined by the United States department of housing and urban development, the abatement of taxes on such property, including the land, shall not exceed the lesser of the actual cost of the alterations or improvements or one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under regulations of the department of housing preservation and development, and the annual abatement of taxes shall not exceed twelve and one-half per centum of such certified reasonable cost, provided that such abatement shall not be effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period.

(3) In the case of alterations or improvements carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing, or financed with mortgage insurance by the New York city residential mortgage insurance corporation or the state of New York mortgage agency or pursuant to a program established by the federal housing administration for rehabilitation of existing multiple dwellings in a neighborhood strategy area as defined by the United States department of housing and urban development where such alterations or improvements are done on property located in census tracts in which seventy-five percent or more of the population live in households which earn fifty percent or less of the median household income of the city, the abatement of taxes on such property, including the land, shall not exceed the lesser of the actual cost of the alterations or improvements or one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under regulations of the department of housing preservation and development, and the annual abatement of taxes shall not exceed twelve and one-half per centum of such certified reasonable cost, provided that such abatement shall not be effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve month period.

(4) In the case of alterations, improvements or conversions pursuant to paragraph nine of subdivision b of this

section, the abatement of taxes on such property, including the land, shall not exceed the lesser of the actual cost of the alterations or improvements or one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under regulations of the department of housing preservation and development, and the annual abatement of taxes shall not exceed twelve and one-half per centum of such certified reasonable cost, provided that such abatement shall not be effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period.

d. The benefits of this section shall apply:

(1) to any multiple dwelling which is altered, improved or increased in valuation with aid of a loan provided by the city of New York, the New York city housing development corporation or the United States department of housing and urban development for the elimination of conditions dangerous to human life or detrimental to health, including nuisances as defined in section three hundred nine of the multiple dwelling law, or other rehabilitation or improvement whether or not all of the units thereof were in existence prior to rehabilitation pursuant to the provisions of: (i) article two, eight or eight-A of the private housing finance law provided that such dwelling is made available solely to persons or families of low income as defined in said articles, (ii) article twelve of the private housing finance law, (iii) article fifteen of the private housing finance law or (iv) any federal law where the multiple dwelling is supervised or regulated by the United States department of housing and urban development.

(2) except as hereinafter provided, to any building or structure which is converted to a class A multiple dwelling or to any existing dwelling which is substantially rehabilitated, and further provided that the rents subsequent to conversion or substantial rehabilitation shall not exceed such amount as may be fixed: (i) by the United States department of housing and urban development, (ii) pursuant to the private housing finance law of the state of New York, or (iii) pursuant to chapter three or chapter four of title twenty-six of the code, provided that the initial legal regulated rent for the dwelling units shall be the rent charged and paid by the initial tenant and registered with the New York state division of housing and community renewal. Buildings or structures which are converted to class A multiple dwellings and existing dwellings which are substantially rehabilitated shall contain bedrooms in a number equal to at least fifty percent of the apartments created where an alteration permit has been issued by the department of buildings prior to April first, nineteen hundred eighty and seventy-five percent of the apartments created where an alteration permit has been issued by the department of buildings on or after April first, nineteen hundred eighty provided, however, that if a building or structure is converted from a non-residential use to a class A multiple dwelling and the units therein contain an average floor area of one thousand square feet, such requirement as to the number of bedrooms shall not be applicable and if an existing dwelling is substantially rehabilitated, the seventy-five percent bedroom requirement shall be reduced to the extent its application would necessitate a reduction in the number of units which are contained in the existing dwelling prior to commencement of substantial rehabilitation.

(3) to any multiple dwelling, building or structure otherwise eligible for any of the benefits of this section which:

(i) is operated exclusively for the benefit of persons or families who are or will be entitled to occupancy by reason of ownership of stock or membership in the corporate owner, or for the benefit of such persons or families and other persons or families entitled to occupancy under applicable provisions of law without ownership of stock or membership in the corporate owner, or (ii) is owned as a condominium and is occupied as the residence or home of three or more families living independently of each other; provided, however, that, in addition to all other conditions of eligibility for the benefits of this section, except for multiple dwellings in which units have been newly created by substantial rehabilitation of vacant buildings or conversions of non-residential buildings, the availability of benefits under this section for such multiple dwellings, buildings or structures shall be conditioned on the following: (a) alterations or improvements to at least one building-wide system are part of the application for benefits, and (b) (i) the assessed valuation of such multiple dwelling, building, or structure, including land, shall not exceed an average of thirty thousand dollars per dwelling unit at the time of the commencement of the alterations or improvements, and (ii) during the three years immediately preceding the commencement of the alterations or improvements the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five

percent of the maximum mortgage amount for a single family home eligible for purchase by the Federal National Mortgage Association; provided that if less than ten percent of the dwelling units or an amount of stock less than the amount allocable to ten percent of such dwelling units was not transferred during such preceding three year period, eligibility for benefits shall be conditioned upon the multiple dwelling, building, or structure having an assessed valuation per dwelling unit of no more than twenty-five thousand dollars at the time of the commencement of the alterations or improvements. Provided, further, that such benefits shall be available only for alterations or improvements commenced on or after June first, nineteen hundred eighty-six.

Notwithstanding the foregoing, the benefits of this section shall be available for any alterations or improvements commenced after August seventh, nineteen hundred ninety-two for such multiple dwellings, buildings or structures and shall be conditioned on the following: (1) the application for benefits may include any item of work designated in the rules adopted by the department of housing preservation and development as a major capital improvement or asbestos abatement to the extent such asbestos abatement is required by federal, state and local law; and (2) (i) the assessed valuation of such multiple dwelling, building or structure, including land, shall not exceed an average of forty thousand dollars per dwelling unit at the time of the commencement of the alterations or improvements; and (ii) the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five percent of the maximum mortgage amount for a single family home eligible for purchase by the Federal National Mortgage Association during the three years immediately preceding the commencement of the alterations or improvements; provided that if less than ten percent of the dwelling units or an amount of stock less than the amount allocable to ten percent of such dwelling units was not transferred during such preceding three year period, eligibility for benefits shall be conditioned upon the multiple dwelling, building, or structure having an assessed valuation per dwelling unit of no more than forty thousand dollars at the time of the commencement of the alteration or improvement. Notwithstanding the foregoing, benefits shall also be available under this section for work completed in any such multiple dwelling, building or structure within the first three years of its conversion to cooperative or condominium ownership, as evidenced by the date on which the first closing in a condominium to a bona fide purchaser occurs or in the case of a cooperative, the date on which the shares allocable to a unit are conveyed to a bona fide purchaser, provided, however, that the availability of such benefits for conversions, alterations or improvements commenced prior to June first, nineteen hundred eighty-six, except with respect to governmentally assisted projects as defined in regulations issued by the department of housing preservation and development, shall be conditioned upon the completion of such conversions, alterations or improvements within three years after acceptance for filing of the prospectus to establish such cooperative or condominium entity by the attorney general of the state of New York. The maximum amount of tax abatement which may be received in any tax period under this section by any such multiple dwelling, building or structure for any alterations and improvements commenced three or more years after its initial conversion to cooperative or condominium ownership shall be limited to an amount not in excess of two thousand five hundred dollars per dwelling unit of the certified reasonable cost of the alterations or improvements as determined under regulations of the department of housing preservation and devel- opment.

(3-a) Notwithstanding any contrary provision of paragraph three of this subdivision, the availability of any benefits under this section to any multiple dwelling, building or structure owned and operated by a limited-profit housing company established pursuant to article two of the private housing finance law shall not be conditioned upon the assessed valuation of such multiple dwelling, building or structure, including land, as calculated as an average dollar amount per dwelling unit, at the time of the commencement of the alterations or improvements; provided, however, that such limited-profit housing company (i) is organized and operating as a mutual company, (ii) continues to be organized and operating as a mutual company and to own and operate the multiple dwelling, building or structure receiving such benefits, and (iii) has entered into a binding and irrevocable agreement with the commissioner of housing of the state of New York, the supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such limited-profit housing company pursuant to section thirty-five of the private housing finance law for not less than fifteen years from the commencement of such benefits. For the purposes of this paragraph, the terms "mutual company" and "supervising agency" shall have the same meanings as set forth in section two of the private housing finance law.

(3-b) Notwithstanding any contrary provision of paragraph three of this subdivision, the availability of any benefits under this section to any multiple dwelling, building or structure owned and operated by a redevelopment company established pursuant to article five of the public housing finance law shall not be conditioned upon the assessed valuation of such multiple dwelling, building or structure, including land, as calculated as an average dollar amount per dwelling unit, at the time of the commencement of the alterations or improvements; provided, however, that such redevelopment company (i) is organized and operating as a mutual redevelopment company, (ii) continues to be organized and operating as a mutual redevelopment company and to own and operate the multiple dwelling, building or structure receiving such benefits, and (iii) has entered into a binding and irrevocable agreement with the commissioner of housing and community renewal of the state of New York, the supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such redevelopment company pursuant to section one hundred twenty-three of the private housing finance law until the earlier to occur of (i) fifteen years from the commencement of such benefits, or (ii) the expiration of any tax exemption granted to such redevelopment company pursuant to section one hundred twenty-five of the private housing finance law. For the purposes of this paragraph, the terms "mutual" and "supervising agency" shall have the same meaning as set forth in section one hundred two of the private housing finance law.

(4) provided that, in the case of any building or structure: (i) in which conversion, alteration or improvement commences on or after January first, nineteen hundred eighty-two, and (ii) which is located in the county of New York within an area designated herein as a minimum tax zone, the benefits of this section shall not be applied to abate or reduce the taxes upon the land portion of such real property, which shall continue to be taxed based upon the assessed valuation of the land and the applicable tax rate at the time such taxes are levied; provided, however, that the foregoing limitation with respect to abatement of taxes shall not apply:

(A) to any multiple dwelling which is eligible for benefits based upon moderate rehabilitation pursuant to paragraph five of subdivision b of this section, or (B) to any multiple dwelling which is governmentally assisted as such term is defined in regulations to be promulgated by the department of housing preservation and development pursuant to subdivision m of this section.

(5) provided that in the case of any building or structure: (i) in which conversion, alteration or improvement commences on or after January first, nineteen hundred eighty-two, and (ii) which is located in the county of New York within an area designated herein as a tax abatement exclusion zone, the benefits of this section shall not be applied to abate or reduce the taxes upon such real property, which shall continue to be taxed based upon the assessed valuation of the land and the improvements and the applicable tax rate at the time such taxes are levied; provided, however, that the foregoing limitation shall not deprive such real property of any benefits of exemption from taxation of an increase in assessed valuation to which it is entitled pursuant to this section; provided, however, that the foregoing limitation with respect to abatement of taxes shall not apply:

(A) to any alteration or improvement designated as a major capital improvement, by the regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section, provided that the maximum amount of tax abatement which may be received in any tax period under this section by any such multiple dwelling, building or structure for any alterations and improvements shall be limited to an amount not in excess of twenty-five hundred dollars per dwelling unit of the certified reasonable cost of the alterations and improvements as determined under regulations of the department of housing preservation and development, or (B) to any multiple dwelling which is governmentally assisted as such term is defined by said regulations.

(6) For purposes of this subdivision, the minimum tax zone in the county of New York shall be as follows: all tax lots now existing or hereafter created within the following designated area or adjacent to either side of any street forming the boundary of such designated area, which area is bounded and described as follows:

BEGINNING at Central Park West and 86th Street; thence easterly along 86th Street to the East River; thence southerly along the easterly boundary of New York county to 23rd Street; thence westerly along 23rd Street to Third

Avenue; thence southerly along Third Avenue to 14th Street; thence westerly along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to West Street; thence northerly along West Street to 14th Street; thence easterly along 14th Street to 9th Avenue; thence northerly along Ninth Avenue to 57th Street; thence westerly along 57th Street to the Hudson River; thence northerly along the westerly boundary of New York county to 72nd Street; thence easterly along 72nd Street to Central Park West; thence northerly along Central Park West to 86th Street and Central Park West, which is the place of beginning.

(7) For purposes of this subdivision, the tax abatement exclusion zone in the county of New York shall be as follows: all tax lots within the following designated area or adjacent to either side of any street forming the boundary of such designated area or adjacent to either side of any street designated as included in such area, which area is bounded and described as follows:

BEGINNING at the intersection of 96th Street and Central Park West; thence easterly to Park Avenue; thence southerly along Park Avenue to the intersection of Park Avenue and 72nd Street; thence easterly along 72nd Street to York Avenue; thence northerly along York Avenue to the Franklin Delano Roosevelt Drive; thence north-westerly along the Franklin Delano Roosevelt Drive to as far as 96th Street; thence easterly to the easterly border of New York county; thence southerly along such border to 34th Street; thence westerly along 34th Street to 8th Avenue; thence northerly, along 8th Avenue and Central Park West as far as 96th Street, which is the place of beginning. Additionally, the following North/South and East/West thoroughfares shall be included in the tax abatement exclusion zone: 96th Street between Central Park West and the East River; 86th Street between Central Park West and the East River; 79th Street between West End Avenue and the East River; 72nd Street between West End Avenue and the East River; West End Avenue from 72nd Street to 86th Street; and Riverside Drive from 72nd Street to 96th Street.

(8) Limitation on benefits. (a) The provisions of this paragraph shall apply to all conversions, alterations and improvements except the following:

(i) alterations or improvements under paragraphs four, six and seven of subdivision b of this section, where carried out:

(A) with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality, or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate incoming housing; or

(B) with mortgage insurance by the New York city residential mortgage insurance corporation or the state of New York mortgage agency; or

(C) in the areas bounded and described as follows:

AREAS IN THE COUNTY OF BRONX:

MOTT HAVEN-The area bounded by East 159th Street; Third Avenue; East 161st Street; Prospect Avenue; East 149th Street; Jackson Avenue; Bruckner Expressway; Major Deegan Expressway; Morris Avenue; East 149th Street and Park Avenue.

ALDUS GREEN-The area bounded by East 169th Street; East 167th Street; Westchester Avenue; Sheridan Expressway; Longfellow Avenue; Randall Avenue; Tiffany Street; Longwood Avenue; Bruckner Expressway; East 149th Street; and, Prospect Avenue.

MORRISANIA-The area bounded by Cross Bronx Expressway; Park Avenue; East 174th Street; Washington Avenue; Cross Bronx Expressway; Arthur Avenue; Crotona Park North; Waterloo Place; East 175th Street; Southern Boulevard; Cross Bronx Expressway; Sheridan Expressway; East 167th Street; East 169th Street; Prospect Avenue; East 161st Street; Third Avenue; East 159th Street; Park Avenue; and, Webster Avenue.

HIGHBRIDGE-CONCOURSE-The area bounded by Washington Bridge-Cross Bronx Expressway; Webster Avenue; Park Avenue; East 149th Street; and, the Harlem River.

WEST TREMONT-The area bounded by West Fordham Road; East Fordham Road; Webster Avenue; Cross Bronx Expressway; George Washington Bridge; and, the Harlem River.

BELMONT-BRONX PARK SOUTH-The area bounded by Southern Boulevard; Bronx Park South; Boston Road; East 180th Street; Bronx River Parkway; Cross Bronx Expressway; Crotona Parkway; East 175th Street; Waterloo Place; Crotona Park North; Arthur Avenue; Cross Bronx Expressway; Washington Avenue; East 174th Street; Park Avenue; Cross Bronx Expressway; and, Webster Avenue.

KINGSBRIDGE-The area bounded by Van Cortlandt Park South; West Gun Hill Road; Jerome Avenue; Bainbridge Avenue; East 211th Street and its prolongation; Conrail right of way; Bedford Park Boulevard; Webster Avenue; East Fordham Road; West Fordham Road; the Harlem River; Marble Hill Avenue; West 230th Street; Riverdale Avenue; Greystone Avenue; Waldo Avenue; Manhattan College Parkway; and, Broadway.

SOUND VIEW-The area bounded by the Cross Bronx Expressway; Bronx River Parkway; East Tremont Avenue; White Plains Road; Randall Avenue; Olmstead Avenue; Lacombe Avenue; Westchester Creek; East River; Bronx River; Westchester Avenue; and, Sheridan Expressway.

PELHAM PARKWAY-The area bounded by Adee Avenue; Mathews Avenue; Williamsbridge Road; Pelham Parkway South; Yates Avenue; Lydig Avenue; Williamsbridge Road; Neil Avenue; Bogart Avenue; East Tremont Avenue; Bronx River Parkway; and, Bronx Park East.

AREAS IN THE COUNTY OF KINGS:

WILLIAMSBURG-The area bounded by Metropolitan Avenue; Union Avenue; Conselyea Street; Wood Point Road; Frost Street; Morgan Avenue; Meserole Street; Bushwick Avenue; Flushing Avenue; Union Avenue; Division Avenue; and, the East River.

BEDFORD-STUYVESANT-The area bounded by Myrtle Avenue; Broadway; Ralph Avenue; Atlantic Avenue; and, Nostrand Avenue.

BUSHWICK-The area bounded by Flushing Avenue; Cypress Avenue; Menahan Street; St. Nicholas Avenue; Gates Avenue; Wycoff Avenue; Eldert Street; Irving Avenue; Chauncey Street; Central Avenue; property line of the Cemetery of the Evergreens; Conway Street; and, Broadway.

EAST-NEW YORK-The area bounded by Jamaica Avenue; Elderts Lane; Atlantic Avenue; Fountain Avenue; New Lots Avenue; and Sheffield Avenue.

SOUTH BROOKLYN (A)-The area bounded by The Buttermilk Channel; Congress Street; Hicks Street; Hamilton-Gowanus Parkway; the Gowanus Canal; and, the Gowanus Bay.

SOUTH BROOKLYN (B)-The area bounded by Fourth Avenue; Pacific Street; Flatbush Avenue; Sixth Avenue; and, 15th Street.

SUNSET PARK-The area bounded by the Upper New York Bay; the Gowanus Bay; 15th Street; Prospect Park S.W.; Coney Island Avenue; Caton Avenue; Fort Hamilton Parkway; 37th Street; Eighth Avenue; Long Island Railroad right of way; Gowanus Expressway; 64th Street; Shore Parkway; and, the Long Island Railroad right of way.

CROWN HEIGHTS-The area bounded by Pacific Street; Vanderbilt Avenue; Atlantic Avenue; Ralph Avenue; East New York Avenue; Utica Avenue; Winthrop Street; Flatbush Avenue; Parkside Avenue; Ocean Avenue; Empire Boulevard; Washington Avenue; Eastern Parkway; Grand Army Plaza; and, Flatbush Avenue.

CONEY ISLAND-The area bounded by the Coney Island Creek; Stillwell Avenue; the Boardwalk West; and, West 37th Street.

FLATBUSH-The area bounded by Parkside Avenue; Flatbush Avenue; Winthrop Street; New York Avenue; Clarendon Road; East 31st Street; Newkirk Avenue; Nostrand Avenue; Foster Avenue; New York Avenue; Avenue H; Flatbush Avenue; Avenue K; and, Coney Island Avenue.

EAST FLATBUSH-The area bounded by Clarkson Avenue; Utica Avenue; East New York Avenue; East 98th Street; Church Avenue; Ralph Avenue; Clarendon Road; and, New York Avenue.

BROWNSVILLE-The area bounded by Broadway; Rockaway Avenue; Atlantic Avenue; East New York Avenue; Christopher Avenue; Glenmore Avenue; Powell Street; Sutter Avenue; Van Sinderen Avenue; Dumont Avenue; Junius Street; Livonia Avenue; Stone Avenue; Linden Boulevard; Rockaway Avenue; Hegeman Avenue; Hopkinson Avenue; Riverdale Avenue; East 98th Street; East New York Avenue; Ralph Avenue; Atlantic Avenue; and, Saratoga Avenue.

AREAS IN THE COUNTY OF NEW YORK:

LOWER EAST SIDE-The area bounded by East 14th Street; the East River; Delancey Street; Chrystie Street; East Houston Street; and, Avenue A.

MANHATTAN VALLEY-The area bounded by Cathedral Parkway (West 110th Street); Central Park West; West 100th Street; and, Broadway.

EAST HARLEM-The area bounded by East 142nd Street; the Harlem River; East 96th Street; and, Fifth Avenue.

CENTRAL HARLEM-The area bounded by West 145th Street; the Harlem River; Fifth Avenue; Cathedral Parkway (West 110th Street); Morningside Avenue; West 123rd Street; St. Nicholas Avenue; West 141st Street; and, Bradhurst Avenue.

HAMILTON HEIGHTS-The area bounded by West 155th Street; Bradhurst Avenue; West 141st Street; Convent Avenue; West 140th Street; Amsterdam Avenue; West 133rd Street; and, Riverside Drive.

WASHINGTON HEIGHTS-The area bounded by the Harlem River; Teunissen Place; West 230th Street; Marble Hill Lane; the Harlem River; West 155th Street; and, the Hudson River.

AREAS IN THE COUNTY OF QUEENS:

HALLETS POINTS-The area bounded by the East River-East Channel, Hallets Cove and Pot Cove; Hoyt Avenue South; 21st Street; 31st Avenue; Vernon Boulevard; and, 35th Avenue.

JACKSON HEIGHTS-CORONA-EAST ELMHURST-The area bounded by Grand Central Parkway; Long Island Railroad right of way; 110th Street; Corona Avenue; Long Island Expressway; Junction Boulevard; Roosevelt Avenue; and, Brooklyn-Queens Expressway East.

RIDGEWOOD-The area bounded by Grand Avenue; Rust Street; 59th Drive; 60th Street; Bleecker Street; Forest Avenue; Myrtle Avenue; the Long Island Railroad right of way; and, Queens-Brooklyn boundary line.

JAMAICA SOUTH-The area bounded by the Long Island Railroad right of way; New York Boulevard; Southern Parkway (Sunrise Highway) and, Van Wyck Expressway.

FAR ROCKAWAY-The area bounded by the Jamaica Bay-Mott Basin; Queens-Nassau boundary line; Far Rockway*8 Beach; Beach 32nd Street; and, Norton Drive.

AREAS IN THE COUNTY OF RICHMOND:

PORT RICHMOND-The area bounded by the Kill Van Kull; Jewett Avenue and its prolongation; Forest Avenue; and, the Willow Brook Expressway.

NEW BRIGHTON-The area bounded by the Kill Van Kull; Westervelt Avenue; Brook Street; Castleton Avenue; and, North Randall Avenue and its prolongation.

STAPLETON-The area bounded by Victory Boulevard; the Upper New York Bay; Vanderbilt Avenue; Van Duzer Street; Cebra Avenue; and, St. Pauls Avenue.

FOX HILLS-The area bounded by Vanderbilt Avenue; the Upper New York Bay; the Staten Island Rapid Transit Railway right of way; and, the Staten Island Expressway.

(D) pursuant to a program established by the federal housing administration, federal national mortgage association, federal home loan mortgage corporation or government national mortgage association for the rehabilitation of existing multiple dwellings for persons of low or moderate income, or a program of mortgage insurance for the rehabilitation of existing multiple dwellings pursuant to section two hundred twenty-three-f of the national housing act as amended, or a program of mortgage insurance established by the federal housing administration for the rehabilitation of existing multiple dwellings for persons of low or moderate income; provided that properties receiving benefits under such programs are located in a neighborhood strategy area, as defined, by the United States department of housing and urban development, or in one of the areas listed in subparagraph (C) of this paragraph.

(ii) alterations or improvements under paragraph five of subdivision b of this section; and

(iii) conversion of residential units qualified for the protection of article seven-C of the multiple dwelling law under paragraph eight of subdivision b of this section.

(b) Abatement limitations. (1) The amount of abatement under subdivision c of this section shall not exceed the certified reasonable cost of the conversion, alteration or improvement, as determined under regulations of the department of housing preservation and development, provided that the amount of certified reasonable cost eligible for abatement under this section shall not exceed fifteen thousand dollars for a dwelling unit of three and one-half rooms, as determined under the applicable zoning resolution, and a comparable amount for dwelling units of other sizes, determined under regulations of the department of housing preservation and development, and further provided that the amount of certified reasonable cost eligible for abatement under this section may exceed fifteen thousand dollars or such comparable amount per dwelling unit, but not more than twenty-five percent above such amount, upon application of the property owner and a determination by the department of housing preservation and development that:

(A) in the case of a conversion under paragraph one, two or three of subdivision b of this section, the increased cost is necessary to comply with applicable law; or

(B) in the case of an alteration or improvement under paragraph seven of subdivision b of this section, the increased cost is necessary to eliminate the unhealthy or dangerous conditions or replace the inadequate and obsolete facilities in a satisfactory manner, or

(C) in the case of an alteration or improvement under paragraph six of subdivision b of this section, the increased cost is necessary to conserve energy in a satisfactory manner; or

(D) in the case of an alteration or improvement under paragraph four of subdivision b of this section, the increased cost, to the extent such cost is not offset by any and all tax credits received as a result of the alteration or improvement, is necessary to comply with any provision of law regulating historic or landmark buildings or structures.

(ii) Notwithstanding any other provisions of this subparagraph, and in addition to all other conditions of eligibility for the benefits of this section, the availability of abatements pursuant to subdivision c of this section for any multiple dwellings, buildings or structures not owned as a condominium or cooperative, except for multiple dwellings in which units have been newly created by substantial rehabilitation of vacant buildings or conversions of non-residential buildings, shall be conditioned on the assessed valuation of such multiple dwelling, building or structure, including land, not exceeding an average of thirty thousand dollars per dwelling unit at the time of commencement of the alterations or improvements, provided, however, that such average shall not exceed $40,000 per dwelling unit at the time of commencement of the alteration or improvement for alterations or improvements commenced after the effective date of this local law, which added this amendment.

(c) Exemption limitations. (i) The increase in assessed valuation of the real property resulting from the conversion, alteration or improvement under subdivision b of this section, shall be exempt from taxation as provided in this section, only to the extent provided in this subparagraph, provided that this subparagraph shall not apply to any conversions, alterations or improvements commenced on or after June first, nineteen hundred eighty-six, unless such conversions, alterations or improvements are carried out in buildings or structures located in the borough of Manhattan south of or adjacent to the south side of one hundred tenth street. The amount of the increased assessed valuation that is exempt from taxation shall depend on the amount of the total assessed value per dwelling unit calculated by dividing the amount of the total assessed valuation of the property, as determined under the real property tax law, by the number of dwelling units in the building after completion of the conversion, alteration or improvement. The amount of increased assessed valuation that will be exempt from taxation for buildings with total assessed valuation per dwelling unit of less than thirty-eight thousand dollars shall be calculated pursuant to the following formula: (A) any portion of total assessed valuation of the property attributable to the first eighteen thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be one hundred percent exempt; (B) any portion of total assessed valuation attributable to the next four thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be seventy-five percent exempt; (C) any portion of total assessed valuation attributable to the next four thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be fifty percent exempt; (D) any portion of total assessed valuation attributable to the next four thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be twenty-five percent exempt; (E) any portion of total assessed valuation attributable to the next eight thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation per dwelling unit, shall be fully taxable. Property with a total assessed valuation per dwelling unit of thirty-eight thousand dollars or more shall not be eligible for a tax exemption under this section.

(ii) In calculating the amount of increased assessed valuation that will be exempt from taxation pursuant to the formula in clause (i) of this subparagraph, the full amount of total assessed valuation that does not represent increased assessed valuation shall be applied in such formula prior to the inclusion of any amount of increased assessed valuation.

(iii) Where the real property is occupied in part for residential purposes and in part for non-residential purposes, the assessed valuation of the property shall be appropriately allocated between the residential and non-residential portions. In computing the total assessed valuation per dwelling unit under this subparagraph, only the amount of valuation so allocated to the residential portion shall be considered.

(iv) Commencing with the assessment roll for the year nineteen hundred eighty-four, where there has been a change in the level of assessment from the assessment roll of the prior year of properties receiving exemptions under this section, the department of finance may petition the state board to certify the percentage of such change for the purposes of this section. In such petition, the department of finance shall submit such information as the state board shall require in order to certify the percentage of such change. The state board may also make such a certification on its own motion. Upon receipt of such certification from the state board, the department of housing preservation and development may modify the dollar values of total assessed valuation per dwelling unit in clause (i) of this subparagraph to reflect the percentage change in the level of assessment as shown in such certification. As used in this subparagraph, the term "change in the level of assessment" means the net increase or decrease in the assessed valuation

of properties in the assessing unit that received exemptions under this section in the current year as compared to those that received exemptions under this section in the prior year as a result of assessing such properties at a higher or lower ratio of full value.

(v) (A) Notwithstanding the provisions of clause (i) of this subparagraph, the department of housing preservation and development may reduce or remove the limitations on the exemption from taxation provided in such clause with respect to a particular property undergoing alteration or improvement, upon application of the property owner and a determination by such department that the increased benefit will increase the number of dwelling units that will be affordable to persons of low and moderate income, and the increased benefit is necessary to make economically viable units or improvement in the quality of dwelling units that will be affordable to persons of low or moderate income.

(B) As used in this subparagraph, the term "persons of low or moderate income" shall mean persons who would qualify for housing subsidies pursuant to section two hundred thirty-five of the national housing act, as amended, at one hundred thirty-five percent of the income limitations provided therein.

(C) Upon receiving an application under this subparagraph in proper form, the department of housing preservation and development shall immediately submit it to the community board for the area in which the project is located, which may, within forty-five days of receiving it and after a public hearing, make recommendations to the department as to the application. The department shall act on the application within sixty days of receiving it from the property owner in proper form, but not before expiration of the time for the community board to make its recommendations, unless the board has acted sooner.

(d) The department of housing preservation and development may set forth preliminarily the terms of a determination under subparagraph (b) or (c) of this paragraph prior to the commencement of the conversion, alteration or improvement. Any such determination shall take effect after completion of the work in accordance with the terms of the application made by the property owner.

(e) Any determination of the department of housing preservation and development to increase an abatement under subparagraph (b) of this paragraph, or to reduce or remove the exemption limitations under subparagraph (c) of this paragraph shall state the basis for the determination and the data on which the determination was based. Such determination shall be published in the City Record for five consecutive days after the determination is rendered.

d-1. (1) A group of multiple dwellings which was developed as a planned community and which is owned as two separate condominiums containing a total of ten thousand or more dwelling units shall be eligible for tax exemption and abatement as provided in this subdivision.

(2) any increase in assessed valuation resulting from alterations or improvements financed with substantial governmental assistance to one or more multiple dwellings in a planned community described in paragraph one of this subdivision shall be exempt from taxation for local purposes. Such exemption shall be equal to the increase in the valuation which is subject to exemption under this paragraph for thirty years. After such period of time, the amount of such exempted assessed value shall be reduced by twenty percent in each succeeding year until the assessed value of the alterations or improvements is fully taxable. Such exemption may commence at the beginning of any tax quarter subsequent to the start of such alterations or improvements. In no event shall such alterations or improvements directly or indirectly result in an equalization increase in the assessed valuation of any multiple dwelling forming part of the planned community where such alterations or improvements are performed.

(3) the taxes on a planned community described in paragraph one of this subdivision, including the land, may be abated by an amount not to exceed the greater of (i) one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under the rules of the department of housing preservation and development, and (ii) the construction cost of the alterations or improvements identified in such rules. Such abatement shall not be

effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall not be greater than ten per centum of the total abatement granted and shall not exceed the amount of taxes payable in such consecutive twelve-month period. Such abatement shall begin no sooner than the first quarterly tax bill immediately following the completion of such alterations or improvements. The limitations set forth in the second paragraph of paragraph three of subdivision d of this section for multiple dwellings, buildings and structures owned as condominiums shall be inapplicable to benefits granted pursuant to this subdivision. Abatement benefits granted pursuant to this subdivision shall be apportioned among all of the condominium tax lots within the condominium in which the alterations or improvements are made, although such alterations or improvements may have been made to one or fewer than all of the multiple dwellings therein.

(4) in the event that multiple alterations or improvements are undertaken in a planned community described in paragraph one of this subdivision and separate applications for benefits therefor are made, all requirements concerning physical condition of and compliance with law by the multiple dwellings in such planned community shall apply only upon completion of all such alterations or improvements, provided that all such alterations or improvements are completed within six years.

(5) except as provided in this subdivision, all of the requirements imposed by this section on projects described in subdivision b of this section shall be applicable to alterations or improvements granted benefits pursuant to this subdivision.

(6) this subdivision shall be applicable only to alterations or improvements completed prior to December thirty-first, two thousand five.

(7) Alterations and improvements receiving tax benefits under this subdivision shall not be used as the basis of an application for a major capital improvement rent increase under state laws governing rent control and rent stabilization, provided, however, that such alterations and improvements may be eligible for a major capital improvement increase in an amount not to exceed the amount of the decrease in rents that occurs as a result of the installation of individual electrical metering for the residential units. Such major capital improvement increase shall be implemented on a per unit basis.

e. Notwithstanding any provision of this section or any other section of the code to the contrary, where such dwelling is in an area where a plan of redevelopment, program of neighborhood improvement, housing maintenance, demonstration rehabilitation or concentrated code enforcement is being carried out, the rents subsequent to conversion, alteration or improvement may exceed the maximum amount allowable pursuant to chapter four of title twenty-six of the code where necessity for the adjustment of such rents is certified by the department of housing preservation and development.

f. Subject to the provisions of subdivision d of this section, the department of housing preservation and development shall determine and certify the reasonable cost of any such conversions, alterations or improvements and eligibility for the benefits of this section and for that purpose may adopt rules and regulations, administer oaths to and take the testimony of any person, including but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such bills, books, papers or other documents as it shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such conversions, alterations or improvements, may establish maximum allowable costs of specified units, fixtures or work in such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements before the start thereof. Applications for certification shall include all bills and other documents showing the cost of construction or such other evidence of such cost as shall be satisfactory to the department of housing preservation and development, including, without limitation, certification of cost by a certified public accountant in accordance with generally accepted accounting principles. Applications for certification for a building eligible for benefits pursuant to paragraph three of subdivision d of this section, for alterations or improvements completed more

than three years after its conversion to cooperative or condominium ownership, shall include such documentation of the sale price of dwelling units or stock allocated to such dwelling units as may be required by the department of housing preservation and development, including but not limited to certification of sales price by a certified public accountant. In addition, such applications shall contain the consent of the applicant to allow the department of housing preservation and development access to records, including but not limited to other tax records, as the department may deem appropriate to enforce such conditions of eligibility. Applications for certification filed on or after January first, nineteen hundred seventy-nine pursuant to paragraphs one through seven and paragraph nine of subdivision b of this section shall be made after completion and within forty-eight months following the start of construction of the conversion, alteration or improvement, except that applications for certification for alterations or improvements undertaken by a housing development fund company organized pursuant to article eleven of the private housing finance law, which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from the city of New York shall be made after completion and within seventy-two months following the start of the construction of the alteration or improvement. Provided, however, the department of housing preservation and development is empowered to grant an extension of the period for application for any project carried out with the substantial assistance of loans, grants or subsidies from any federal, state or local governmental agency or instrumentality, if such application is made within seventy-two months from commencement of construction. Applications for certification pursuant to paragraph eight of subdivision b of this section shall be filed within twelve months of the date of completion as provided by such subdivision.

g. To the end that conversions, alterations or improvements in such property shall interfere as little as practicable with the clearance, rehabilitation or rebuilding of sub-standard and insanitary areas and shall be confined to buildings and structures which are structurally sound and comply with applicable provisions of law, eligibility for the benefits of this section shall be restricted to such buildings and structures which the department of housing preservation and development shall certify:

(1) to be structurally sound and to comply with applicable provisions of law, as determined by the department of buildings, which certification shall be evidenced by a certificate describing the property involved; and

(2) if in an area for which a final plan of clearance, replanning, reconstruction, rehabilitation, or redevelopment has been approved pursuant to article fifteen of the general municipal law, or if in an area for which an urban renewal plan or tests, studies or demonstrations have been approved pursuant to article fifteen of the general municipal law, to be improved in conformity with such replanning, reconstruction, rehabilitation, redevelopment, tests, studies, demonstrations or plan; and

(3) if in an area where a program of local neighborhood improvement or housing maintenance is being carried out, to be in conformity with such program.

h. Application forms for the benefits of this section shall be filed with the department of finance within the time periods to be established by rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section. The department of finance shall certify the amount of taxes to be abated, pursuant to the certification of the department of housing preservation and development as herein provided. No such application shall be accepted unless accompanied by a copy of the certificate of the department of housing preservation and development both as to reasonable cost and as to eligibility as provided in subdivision f of this section.

i. The benefits of this section shall not apply:

(1) except as provided in subdivision d of this section, to any existing dwelling which is not subject to the provisions of the emergency housing rent control law or to the city rent and rehabilitation law or to the city rent stabilization law or to the private housing finance law or to any federal law providing for supervision or regulation by the United States department of housing and urban development;

(2) to any private dwelling, notwithstanding any other provision of this section, unless it is in an area where a plan of redevelopment or program of neighborhood improvement, housing maintenance, demonstration rehabilitation or concentrated code enforcement is being carried out and the department of housing preservation and development finds that the conversion, alteration or improvement is in conformity with such plan of redevelopment, or program of neighborhood improvement, housing maintenance, demonstration rehabilitation or concentrated code enforcement; provided that, notwithstanding the foregoing, for the purposes of this section, a class A multiple dwelling may be deemed to include any garden-type maisonette dwelling project consisting of a series of dwelling units which together and in their aggregate were arranged or designed to provide three or more apartments and are provided as a group collectively with all essential services such as, but not limited to, water supply, house sewers and heat, and which are in existence and operated as a unit under single ownership on the date upon which an application for the benefits of this section is received by the department of housing preservation and development, even though certificates of occupancy were issued for portions thereof as private dwellings;

(3) to any property receiving tax exemption or abatement concurrently for rehabilitation or new construction under any other provision of New York state or New York city law with the exception of any alteration or improvement to property receiving such tax exemption or abatement under the provisions of the private housing finance law, provided, however, that the benefits of this section shall not apply to any alterations or improvements done in connection with the refinancing, pursuant to section 223f of the national housing act, as amended, of a housing project organized pursuant to article two and article four of the private housing finance law; (4) to any multiple dwelling for ordinary repairs and normal replacement of maintenance items, as provided in paragraph one of subdivision a, hereof in the event that the dwelling thereof is receiving the benefits of this section for other ordinary repairs and normal replacement of maintenance items as of the December thirty-first preceding the date of application;

(5) to the conversion of any building or structure, or portion thereof:

(i)(a) which is located within any district in the county of New York where a floor area ratio, as that term is defined in the zoning resolution of the city of New York, of fifteen or greater is permitted by said resolution, or (b) located in the city of New York where residential conversion as of right is not permitted by the zoning resolution, provided, however, that notwithstanding anything to the contrary contained in this subparagraph, the benefits of this section shall apply to any building or structure or portion thereof which was purchased from the city of New York on or after January first, nineteen hundred and eighty and prior to December thirty-first, nineteen hundred and eighty-four and which was granted a variance for conversion to residential use by the board of standards and appeals prior to nineteen hundred and eighty-four which variance has expired, and which has been granted a variance for a conversion to residential use by the board of standards and appeals on or after January first, nineteen hundred and ninety-four and prior to June thirtieth, nineteen hundred and ninety-five, and

(ii) where such benefits are eliminated by regulations to be promulgated by the department of housing preservation and development pursuant to subdivision m of this section, unless, in the case of a building or structure in the county of New York, construction actually commenced prior to January first, nineteen hundred eighty-two, pursuant to an alteration permit, or, in the case of a building or structure in the counties of Bronx, Kings, Queens and Richmond, construction actually commenced prior to October first, nineteen hundred eighty-three, pursuant to an alteration permit. A copy of any proposed regulation pursuant to this paragraph shall be transmitted to the city council not less than sixty days prior to its publication in the City Record, pursuant to section eleven hundred five of the charter, and

(iii) provided that the provisions of this paragraph shall not apply to conversions pursuant to paragraph eight of subdivision b of this section.

(6) to any conversion of or alteration or improvement, commenced on or after July first, nineteen hundred eighty-two, to any class B multiple dwelling or class A multiple dwelling used in whole or in part for single room occupancy, regardless of the status or use of the building after the conversion, alteration or improvement unless such conversion, alteration or improvement is carried out with the substantial assistance of grants, loans or subsidies from

any federal, state or local agency or instrumentality.

(7) to any conversion of or alteration or improvement, commenced on or after the effective date of this paragraph, to any property classified under the zoning resolution as a non-profit institution with sleeping accommodations, regardless of the status or use of the building after the conversion, alteration or improvement unless such conversion, alteration or improvement is carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality.

j. Notwithstanding the provisions of the multiple dwelling law, or any local law, ordinance, provisions of this code, rule or regulation, any dwelling to which alterations and improvements are made pursuant to this section and which did not require a certificate of occupancy on April second, nineteen hundred forty-five, may be occupied lawfully after such date upon the completion of such alterations and improvements without such a certificate being obtained, provided, however, that such alterations and improvements shall have been made in conformity with law and the applicable provisions for fire protection required by articles six and seven of the multiple dwelling law.

k. No owner of a dwelling to which the benefits of this section shall be applied, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or being eligible for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. 1437 et. seq., or the senior citizen rent increase exemption program, pursuant to either chapter seven of title twenty-six of this code or section 26-509 of such code, any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision shall have the meaning set forth in section 8-102 of the code. Nothing in this subdivision shall restrict such consideration in the development of housing accommodations for the purpose of providing for the special needs of a particular group.

l. Any person who shall knowingly and willfully make any false statement as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days, or both. The commissioner of the department of housing preservation and development may reduce or revoke past and future exemption or tax abatement authorized pursuant to this section if the application for tax exemption or tax abatement contains a false statement or false information as to a material matter or omits a material matter.

m. Each agency or department to which functions are assigned by this section may adopt and promulgate rules and regulations for the effectuation of the purpose of this section.

n. The department of housing preservation and development may require a filing fee in an amount as provided by the rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section.

o. Any tax abatement granted for a period of nine years to a multiple dwelling aided by a loan provided by the city of New York prior to January first, nineteen hundred seventy-one, shall upon application therefor be adjusted to extend for a period of up to twenty years, provided that the total abatement before and after such adjustment shall not exceed the total abatement to which such property was initially entitled under this section.

p. This section is enacted pursuant to the provisions of section four hundred eighty-nine of the real property tax law and subdivision two of section four hundred five of the private housing finance law.

q. No application for the benefits of this section shall be accepted by the department of finance if there are outstanding real estate taxes or water and sewer charges or payments in lieu of taxes which were due and owing as of the last day of the tax period preceding the date of such filing with the department of finance, provided that an applicant aided by article eight or article fifteen of the private housing finance law shall have such application accepted by the

department of finance if there are no outstanding real estate taxes or water and sewer charges due and owing as of the last day of the tax period preceding commencement of construction.

r. In the event that any building or structure receiving the benefits of this section shall become operated exclusively for commercial, hotel or transient hotel use, the tax commission shall withdraw benefits granted herein prospectively.

s. The benefits of this section shall not apply to alterations or improvements to existing dwellings in existence on December thirty-first, nineteen hundred seventy-five where (i) such alterations or improvements were completed on or before December thirty-first, nineteen hundred seventy-five, and (ii) no dwelling units thereof on December thirty-first, nineteen hundred seventy-five had rentals which were subject to control by the city rent agency pursuant to chapter four of title twenty-six of the code. This subdivision shall not apply to alterations or improvements to any building or structure which is benefitted by mortgage insurance pursuant to section two hundred thirteen of the national housing act for applications filed prior to January first, nineteen hundred seventy-nine.

t. Notwithstanding any law to the contrary, the owner of any building or structure eligible for any of the benefits of this section which is converted to a class A multiple dwelling, completed, or substantially rehabilitated on or after January one, nineteen hundred seventy-four, shall register the initial rent for each dwelling unit in such building or structure with the New York state division of housing and community renewal. After such registration, the rents of such dwelling units shall be fully subject to regulations under chapter four of title twenty-six of the code so long as the benefits of this section are in effect or for such longer period as may be provided by law.

u. Any tax exemption or tax abatement authorized pursuant to this section may be revoked retroactively by the commissioner of department of housing preservation and development or the department of finance of the city of New York at any time during the authorized term of such tax exemption or tax abatement if real estate taxes or water and sewer charges due to the city of New York remain unpaid for one year after the same are due and payable. In no event shall revocation be effective prior to the date such taxes or charges were first due and payable.

v. Where alterations, improvements, or conversions include or benefit that part of a building which is not occupied for dwelling purposes but is occupied by stores or otherwise used for commercial purposes or community facilities, the increase in assessed valuation and the cost of the alteration shall be apportioned so that the benefits of this title shall not be provided for alterations, improvements or conversions made for other than dwelling purposes.

w. If any provision of this section or its application to any person shall be held invalid, the remainder of this section and the applicability of its provisions to other persons or circumstances shall not be affected thereby.

x. Notwithstanding any provision of this section, no benefit pursuant to paragraph five of subdivision b of this section shall be granted for work commenced after January first, nineteen hundred eighty, unless the applicant establishes that the department of housing preservation and development and tenants of such class A multiple dwelling were given notice of (i) the proposed work prior to commencement of such work, (ii) the identity of the owner's representative, and (iii) the tenants' rights under applicable law with respect to such work, provided that, in the case of a loan program supervised by such department, notice to the department shall be unnecessary, and further provided that the department may itself provide the required notice to the tenants.

y. Applicants for benefits under the provisions of this section shall file with the department of finance a form supplied by said department which (i) states an intention to file for benefits under the provisions of this section, (ii) describes the work for which tax benefits will be claimed and (iii) estimates the cost of such work which will be eligible for benefits. Such form shall be filed prior to the commencement of such work. If the scope of such work or the estimated cost thereof changes materially, applicant shall file a revised statement. Applicants who fail to comply with the re- quirements of this subdivision shall be subject to a penalty not to exceed one hundred percent of the filing fee otherwise payable pursuant to subdivision n of this section.

z. A former tenant or former subtenant of premises in a nonresidential building which is the subject of an application for an alteration permit for conversion to a class A multiple dwelling, prior to the application for any tax exemption or abatement benefits for such building pursuant to this section, and as a condition to the grant thereof, shall be entitled to a relocation award under the terms and conditions set forth below:

(1) As used in this subdivision, the term "eligible tenant" shall mean any former tenant or former subtenant who:

(i) leased and used the vacated premises to conduct a manufacturing, warehousing, or wholesaling business for not less than two consecutive years immediately prior to vacating;

(ii) vacated such premises on or after April first, nineteen hundred eighty-one for any reason other than eviction for non-payment of rent;

(iii) vacated such premises (a) no earlier than twenty-four months prior to the filing date of an application for such alteration permit and (b) no later than the completion of the conversion as evidenced by the issuance of a permanent certificate of occupancy for a class A multiple dwelling;

(iv) either purchased or leased for a term of not less than eighteen months other premises within the city of New York with a floor area not less than one-third of the floor area of the vacated premises;

(v) relocated their business to such other premises within one year of vacating the vacated premises; and

(vi) paid all commercial rent or occupancy tax for the vacated premises. A subtenant shall be eligible to receive a relocation award notwithstanding any lack of eligibility of its prime tenant;

(2) the relocation award shall not exceed the greater of (i) the aggregate base rent which accrued and was paid by the eligible tenant during the final twenty-four months of its occupancy of the vacated premises or (ii) four dollars for each square foot that the eligible tenant occupied in the vacated premises during the final twenty-four months of its occupancy of the vacated premises. As used in this subdivision, base rent shall be calculated in the same manner as base rent is calculated for purposes of commercial rent or occupancy tax in the city of New York. However, the aggregate award payable to a prime tenant and/or any subtenants of such prime tenant shall not exceed the amount which would have been payable to the prime tenant had the prime tenant been eligible for an award based on the entire floor area it leased from the owner; and if such limitation applies, the awards shall be prorated based upon the total floor area used and occupied by each eligible tenant; (3) the relocation award shall become due and payable to an eligible tenant at the time the eligible tenant (i) either purchases or leases other premises in accordance with paragraph one of this subdivision, and (ii) certifies eligibility to, and demands payment of, the award from the owner of the vacated building. If the relocation award is not paid within thirty days of such certification and demand, interest shall accrue on the relocation award from the date of the certification and demand at the rate of twenty-four percent per annum;

(4) at any time after such certification and demand and prior to the date of the filing of an application for tax exemption or abatement for the vacated building pursuant to this section, an eligible tenant who has not received a relocation award shall have a right to file a notice of claim. Such notice of claim shall be filed with the county clerk of the county in which the vacated building is located and shall verify the claimant's name, its compliance with eligibility requirements, the address of the vacated premises, the floor area it occupied, the name of the prime tenant if the claimant is a subtenant, and all the base rent that accrued and was paid by the claimant during the final twenty-four months of its occupancy; (5) a notice of claim, filed in accordance with paragraph four of this subdivision, may be discharged by the filing of an undertaking with the clerk of the county in which the premises are located in an amount equal to the amount claimed and in accordance with the procedures set forth in subdivision four of section nineteen of the lien law, or by the payment into court of such amount in accordance with the procedures set forth in section fifty-five of such law;

(6) no tax exemption or abatement shall be granted pursuant to this section unless the department of housing

preservation and development receives an affidavit from the applicant for benefits of this section which verifies that:

(i) the applicant has caused to be published a notice in a newspaper of general circulation within the city of New York, no later than sixty days prior to filing of an application for tax exemption or abatement pursuant to this section, which advises former tenants and subtenants of their rights pursuant to this subdivision; and

(ii) no notice of claim has been filed or all claims have been released by the claimants, or secured in accordance with the provisions of paragraph five of this subdivision, or discharged as an improper claim by court order;

(7) the affidavit required pursuant to the provisions of paragraph six of this subdivision shall be considered part of the application for benefits pursuant to this section;

(8) if an eligible tenant has duly filed a notice of claim pursuant to paragraph four of this subdivision and did not receive a relocation award as provided herein, it may commence an action against any applicant who filed a false affidavit pursuant to paragraph six of this subdivision or any security posted by such applicant pursuant to paragraph five of this subdivision, within three years of such filing. In any action to enforce a claim pursuant to this subdivision, if the court finds that the claimant has wilfully exaggerated the amount of the claim, the claimant may be held liable in damages for an amount not to exceed the proper relocation award. An eligible tenant in whose favor a judgment is entered shall be entitled to costs and reasonable legal fees and disbursements provided that such judgment is in excess of the amount which the applicant or owner offered to pay the eligible tenant;

(9) any lease or other rental agreement provision exempting, waiving, releasing or discharging the obligation to pay a relocation award pursuant to this subdivision shall be void as against public policy and wholly unenforceable;

(10) the provisions of this subdivision shall not apply south of fifty-ninth street in the county of New York if the zoning resolution of the city of New York expressly provides for relocation loans and/or grants in lieu of the benefits of this subdivision.

aa. Harassment. (1) The provisions of this subdivision apply to and are additional requirements for claiming or receiving:

(a) any tax exemption under this section; or

(b) any tax abatement under this section where the certified reasonable cost per dwelling unit of the conversion, alteration or improvement (including the cost of any conversion, alteration or improvement for which an abatement was approved within four years prior to commencement of the conversion, alteration or improvement) exceeds seven thousand five hundred dollars.

(2) The owner of the property shall file with the department of housing preservation and development, not less than thirty days before the commencement of the conversion, alteration or improvement (hereinafter referred to as the "cut-off date"), an affidavit, or, where any information referred to in paragraph one of this subdivision changes prior to applying for or claiming any benefit under this section, an amending affidavit, setting forth the following information:

(a) every owner of record and owner of a substantial interest in the property or entity owning the property or sponsoring the conversion, alteration or improvement;

(b) a statement that none of such persons had, within the five years prior to the cut-off date, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency (including a non-governmental agency having appropriate legal jurisdiction) under the penal law, any state or local law regulating rents or any state or local law relating to harassment of tenants or unlawful eviction; and

(c) any change in the information required to be set forth.

(3) No conversion, alteration or improvement subject to this subdivision shall be eligible for tax exemption or tax abatement under this section where:

(a) any affidavit required under this subdivision has not been filed; or

(b) any such affidavit contains a willful misrepresentation or omission of any material fact; or

(c) any person referred to in subparagraph (a) of paragraph two of this subdivision has been found to have harassed or unlawfully evicted tenants as described in that paragraph, until and unless the finding is reversed on appeal, provided that any such finding after the cut-off date shall not apply to or affect any tax abatement or exemption for the conversion, alteration or improvement covered by the affidavit.

(4) The department of housing preservation and development and the department of finance shall maintain a list of affidavits as described in paragraph two of this subdivision. Each agency shall review that list with respect to each application or claim for benefits subject to this subdivision.

(5) "Substantial interest" as used in subparagraph (a) of paragraph two of this subdivision shall mean ownership of an interest of ten per centum or more in the property or entity owning the property or sponsoring the conversion, alteration or improvement.

(6) Where the conversion, alteration or improvement is commenced before August first, nineteen hundred eighty-three, the cut-off date shall be as set forth in this subdivision, but no affidavit shall be required to be filed until thirty days after the effective date of this subdivision.

bb. Notwithstanding any contrary provision of the private housing finance law, the benefits of this section shall apply to any limited profit housing company as provided in this section. Such multiple dwelling, building or structure shall be eligible for benefits where at least one building-wide improvement or alteration is part of the application for benefits. Furthermore, to the extent that such alterations or improvements are financed with grants, loans or subsidies from any federal, state, or local agency or instrumentality, such multiple dwelling, building or structure shall be eligible for benefits only if the limited profit housing company has entered into a binding and irrevocable agreement with the commissioner of housing of the state of New York, the supervising agency, as such term is defined in section two of the private housing finance law, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such limited profit housing company pursuant to section thirty-five of the private housing finance law for not less than fifteen years from the commencement of benefits. The abatement of taxes on such property, including the land, shall not be an amount greater than ninety per centum of the certified reasonable cost of such alterations or improvements, as determined under regulations of the department of housing preservation and development, nor greater than eight and one-third percent of such certified reasonable cost in any twelve month period, nor be effective for more than twenty years. The annual abatement of taxes in any twelve month period shall in no event exceed fifty percent of the amount of taxes payable in such twelve month period pursuant to the applicable exemption granted pursuant to article two of the private housing finance law or other applicable laws or fifty percent of payments required to be made in lieu of taxes in such twelve month period. Notwithstanding the foregoing, the annual abatement of taxes for alterations or improvements commenced prior to June first, nineteen hundred eighty-six may not be applied to reduce the amount of taxes payable or the amount of payments required to be made in lieu of taxes in any twelve month period to an amount less than the minimum amount of taxes required to be paid pursuant to section thirty-three of the private housing finance law.

cc. The commissioner of the department of housing preservation and development and the commissioner of the department of finance shall prepare an annual report which shall be submitted to the Mayor and the council on or before the first day of July next succeeding the year to which the report pertains, regarding the exemptions and abatements granted pursuant to this section and shall include, but not be limited to the following information: (i) the amount of real property tax that would have been paid in the aggregate by the owners of real property granted an exemption or

abatement if the property were fully taxable and the amount of tax actually paid in the aggregate by such owners, (ii) the geographic distribution of exemptions and abatements granted pursuant to this section, and (iii) a distribution by type of eligible categories as delineated in paragraphs one through nine of subdivision b of this section.

dd. Partial waiver of rent adjustments attributable to major capital improvements. (1) The provisions of this subdivision apply to and are additional requirements for claiming or receiving any tax abatement under this section, except as provided in paragraphs three and four of this subdivision.

(2) The owner of the property shall file with the department of housing preservation and development, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a portion of the total annual amount of any rent adjustment attributable to such major capital improvement which may be granted by the New York state division of housing and community renewal pursuant to the rent stabilization code equal to one-half of the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. Such waiver shall commence on the date of the first collection of such rent adjustment, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by such division, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with the New York state division of housing and community renewal. Such declaration shall be binding upon such owner, and his or her successors and assigns.

(3) The provisions of this subdivision shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with the substantial assistance of city, state or federal subsidies.

(4) The provisions of this subdivision shall apply only to alterations and improvements commenced after its effective date.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a par 1 amended L.L. 74/2005 § 1, eff. Aug. 9, 2005.

Subd. a par 1 amended L.L. 1/2004 § 8, eff. Aug. 2, 2004.

Subd. a par (8) added L.L. 49/1993 § 1 eff. June 15, 1993

Subd. b amended L.L. 57/2007 § 1, eff. Dec. 5, 2007.

Subd. b amended L.L. 16/2003 § 1, eff. Feb. 28, 2003.

Subd. b amended L.L. 72/1999 § 1, eff. Dec. 13, 1999.

Subd. b amended L.L. 49/1993 § 2 eff. June 15, 1993

Subd. b amended L.L. 41/1988 § 1

Subd. b par (6) amended L.L. 44/2001 § 2, eff. July 16, 2001. [See Note]

Subd. b-1 added L.L. 45/2004 § 1, eff. Oct. 14, 2004.

Subd. c par (1) amended L.L. 49/1993 § 3 eff. June 15, 1993

Subd. c par (1) amended L.L. 41/1988 § 2

Subd. c par (2) amended chap 702/1992 § 12 eff. Jan. 27, 1993

Subd. c par (3) amended chap 702/1992 § 13, eff. Jan. 27, 1993

Subd. c par (4) amended L.L. 49/1993 § 4 eff. June 15, 1993

Subd. c par (4) added L.L. 41/1988 § 3

Subd. d par (2) amended L.L. 41/1988 § 4

Subd. d par (3) amended L.L. 49/1993 § 5 eff. June 15, 1993

Subd. d par (3) amended L.L. 41/1988 § 5

Subd. d par (3-a) added L.L. 15/2007 § 1, eff. Apr.17, 2007.

Subd. d par (3-b) added L.L. 50/2008 § 1, eff. Oct. 20, 2008.

Subd. d par (5) amended L.L. 41/1988 § 6

Subd. d par (8) subpar (a) clause (i) subclause (B) amended ch. 702/1992 § 14, eff. Jan. 27, 1993

Subd. d par (8) subpar (a) clause (i) subclause (C) amended L.L. 41/1988 § 7

Subd. d par (8) subpar (b) amended L.L. 41/1988 § 8

Subd. d par (8) subpar (b) clause (ii) amended L.L. 49/1993 § 6 eff. June 15, 1993

Subd. d par (8) subpar (c) clause (i) amended L.L. 41/1988 § 9

Subd. d-1 added L.L. 24/1998 § 1, eff. July 6, 1998

Subd. f amended L.L. 49/1993 § 7 eff. June 15, 1993

Subd. f amended L.L. 41/1988 § 10

Subd. h amended L.L. 49/1993 § 8 eff. June 15, 1993

Subd. i par (5) subpar (i) amended L.L. 105/1993 § 1, eff. Dec. 28, 1993

Subd. i par (7) added L.L. 41/1988 § 11

Subd. k amended L.L. 44/1993 § 1 eff. June 1, 1993

Subd. q amended L.L. 49/1993 § 9 eff. June 15, 1993

Subd. t amended L.L. 41/1988 § 12

Subd. x amended L.L. 49/1993 § 10 eff. June 15, 1993

Subd. bb amended L.L. 14/2007 § 1, eff. Apr. 17, 2007.

Subd. bb added L.L. 41/1988 § 13

Subd. cc added L.L. 41/1988 § 14

Subd. dd added L.L. 41/1988 § 15

DERIVATION

Formerly § J51-2.5 added LL 50/1960 § 1

Sub d amended LL 4/1961 § 1

Subs c, j amended LL 73/1961 § 1

Sub b amended LL 52/1962 § 1

Sub c amended LL 52/1962 § 2

Sub d amended LL 52/1962 § 3

Sub i amended LL 52/1962 § 4

Renumbered chap 100/1963 § 1346

(formerly § J41-2.5)

Subs d, g amended chap 100/1963 § 1346

Sub g amended LL 39/1963 § 1

Sub b amended LL 57/1966 § 1

Subs b, c, d amended LL 53/1968 § 1

Subs g, i amended LL 53/1968 § 2

Sub n amended LL 53/1968 § 3

Sub a par 1 amended LL 6/1970 § 1

Subs b, c, d amended LL 9/1971 § 1

Sub f amended LL 9/1971 § 2

Sub g repealed and added LL 9/1971 § 3

Sub h amended LL 9/1971 § 4

Sub i amended LL 9/1971 § 5

Sub n amended LL 9/1971 § 6

(Special provision federal mortgage insurance for 20 years LL 9/1971 § 7)

Sub b amended LL 52/1974 § 1

Sub a pars 1, 2 amended LL 60/1975 § 1

Sub b amended LL 60/1975 § 2

Sub c amended LL 60/1975 § 3

Sub d pars 1, 2 amended LL 60/1975 § 4

(open par laid out)

Sub d par 3 amended LL 60/1975 § 5

Sub e designated & laid out LL 60/1975 § 5

(formerly sub d par 3 2nd unnumbered par)

Sub f amended LL 60/1975 § 6

Sub g first par amended LL 60/1975 § 6

Subs h, i amended LL 60/1975 § 6

Subs n, o added LL 60/1975 § 7

Sub p relettered LL 60/1975 § 8

(formerly sub n)

Subs q-u added LL 60/1975 § 9

Sub d par 3 amended LL 48/1976 § 1

Sub a par 1 amended LL 12/1978 § 1

Sub b amended LL 12/1978 § 2

Sub c amended LL 12/1978 § 3

Sub d amended LL 12/1978 § 4

Sub e amended LL 12/1978 § 5

Sub v relettered LL 12/1978 § 6

(formerly sub e added LL 50/1960)

Sub f amended LL 12/1978 § 7

Sub g amended LL 12/1978 § 8

Sub h amended LL 12/1978 § 9

Sub i pars 1, 2, 3 amended LL 12/1978 § 10

Sub k amended LL 12/1978 § 11

Sub m amended LL 12/1978 § 12

Sub n amended LL 12/1978 § 13

Sub p amended LL 12/1978 § 14

Sub q amended LL 12/1978 § 15

Sub s amended LL 12/1978 § 16

Sub u amended LL 12/1978 § 17

Sub w added LL 12/1978 § 18

Sub a pars 6, 7 added LL 77/1979 § 1

Sub a par 1 amended LL 77/1979 § 1

Sub b amended LL 77/1979 § 2

Sub c amended LL 77/1979 § 3

Sub d par 2 amended LL 77/1979 § 4

Sub f amended LL 77/1979 § 5

Sub l amended LL 77/1979 § 6

Sub v amended LL 77/1979 § 7

Sub x added LL 77/1979 § 8

Sub y added LL 77/1979 § 9

Sub b amended LL 24/1981 § 1

Sub c amended LL 24/1981 § 2

Sub i par 2 amended LL 25/1981 § 1

Sub i par 3 amended LL 26/1981 § 1

Sub d pars 4, 5, 6, 7 added LL 38/1981 § 1

Sub i par 5 added LL 38/1981 § 2

Sub c amended LL 38/1981 § 3

Sub z added LL 40/1981 § 1

Sub b par 6 amended LL 44/1981 § 1

Subs b, c, q amended LL 29/1982 § 8

Sub b amended LL 56/1983 § 1

Sub c amended LL 56/1983 § 2

Sub d par 2 amended LL 56/1983 § 3

Sub d par 8 added LL 56/1983 § 4

Sub aa added LL 56/1983 § 5

Sub i par 6 added LL 56/1983 § 6

Sub f amended LL 56/1983 § 7

Sub i par 5 amended LL 56/1983 § 8

Sub b amended LL 71/1983 § 1

Sub c par 1 amended LL 71/1983 § 2

Sub f amended LL 71/1983 § 3

Sub i par 5 amended LL 71/1983 § 4

NOTE

Provisions of L.L. 44/2001 § 1:

Section 1. Legislative findings and intent. The Council finds that the mechanisms available for conserving energy have changed in the last decade. In the past, conservation efforts consisted of trying to reduce the amount of energy used. Toward this end we provided tax benefits to master metered buildings, buildings where there was a single meter for the whole building, to install separate meters for each unit, called submetering, thus encouraging individuals to become conscience of their energy use and reduce their electrical consumption. Recently, discussions of energy conservation have changed from exclusively trying to reduce overall use, to also trying to shift use patterns from peak use to off-peak use. This reduction is a valuable energy conservation measure in that by reducing peak consumption the worst energy plants can eventually be retired and the most expensive and dirty energy can be avoided. An effective tool in the reduction in peak use is a pricing tool based on charging the most for electricity used during peak periods. Buildings that are master metered, where there is one meter for the entire building for which a utility company bills the building, pay for their electricity based on this model of billing, by time of use. In buildings where each apartment is separately metered and billed by the utility, called direct metering, the price is based exclusively on the overall amount of electricity used, not when it is used. The Council finds that changing from a system of direct metering, to a system where the electricity is charged based on time of use (demand) is a useful conversion for the purposes of conservation where strong tenant organizations are in place to monitor demand, educate and work with tenants to reduce demand during peak periods. Toward this end, the Council further finds that the City has a compelling interest in supporting buildings with strong tenant organizations to convert to submetered systems. For the purposes of this section the

Council finds that cooperatives and condominiums have the greatest likelihood of having the type of tenant organizations that would allow them to utilize this new technology to reduce peak demand.

CASE NOTES FROM FORMER SECTION

¶ 1. Petitioner was entitled to a tax abatement based upon the reasonable cost of improvements and alterations where, when he had purchased a four-story building in 1965 the street level floor was occupied as a store and the upper three stories were vacant and he remodeled the building so that it had modern apartments on the upper three floors. The fact that building was not being used residentially immediately prior to renovation did not deprive it of its basic character as part commercial and part residential property.-Martell's Restaurant Corp. v. Housing and Devel. Administration, 64 Misc. 2d 991, 316 N.Y.S. 2d 340 [1970], aff'd, 323 N.Y.S. 2d 389 [A.D. 1971].

¶ 2. In determining the reasonable costs of alterations and improvements for tax abatement purposes one of the factors that must be considered is the actual cost of the particular alterations and improvements.-Duell v. Housing and Development Administration, 40 A.D. 2d 803 (1972).

¶ 3. Denial by Housing and Development Administration of application for tax abatement certificate based upon failure of petitioners to establish that resale of the stock of their cooperatives at a profit was prohibited by their by-laws was not arbitrary where the Administrator had imposed such a requirement as a condition precedent for tax abatement.-In re M.P.P.M.P. Realty Inc. (Housing and Development Administration) 171 (118) N.Y.L.J. (6-19-74) 2, Col. 3 F.

CASE NOTES

¶ 1. Petitioner is not qualified for tax exemption for the renovation of single room occupancy (SRO) dwellings pursuant to NYC Ad CD § J51-2.5 (J-51 program) as enabled by Real Property Tax Law § 489. § 489 was amended by chap 401/1983 retroactive to June 1, 1982 to prevent the loss of SRO housing and discourage precipitous eviction of tenants. Petitioner was forewarned of retroactive expiration of State authorization and questionable validity of J-51 program past June 1, 1982.-Replan Dev. v. Dept. of Housing Preserv. & Dev., 70 NY2d 451 [1987].

¶ 2. In 1982, NYC changed policies amending administrative code § J51-2.5(i)(6) [11-243(i)(6)] to eliminate the J51 property tax abatements for the conversion of SRO dwellings to other uses. (Previously the city encouraged demolition and redevelopment because many SRO units were substandard.)-Replan Dev. v. Housing Preserv. Dep't, 70 NY2d 451 [1987] held this change of policy constitutional. Seawall Assoc. v. City of NY, 142 AD2d 72 [1988].

¶ 3. The NY City Department of Housing Preservation & Development's (HPD) determination that the reasonable cost of $422,540 certified in the January 29, 1985 Certificate of Eligibility issued to the petitioner be reduced to $196,200 based on the auditor's findings will not be disturbed where petitioner failed to supply the necessary documentation to HPD within a 16-month time period; pursuant to Ad Code § 11-243, the failure to prove the claimed costs in rehabilitating a building subjects the property to a reduction or revocation of part and future J-51 benefits.-10 Argyle Realty Assoc. v. NYC Dep't of Housing Pres. & Dev. 160 AD2d 1003.

¶ 4. Pursuant to § 11-243 and the J-51 regulations HPD correctly and rationally determined that certain items of renovation work that petitioner completed were ineligible for J-51 benefits and others had not been completed upon inspection by HPD. As a result the certified reasonable cost per dwelling unit did not amount to $2,500 disqualifying project from expanded tax benefits of a "moderate rehabilitation."-Acropolis Gardens Realty v. DHPD, 175 AD2d 242 [1991].

¶ 5. Petitioner received a "certificate of operation" for use of newly installed boiler/burner equipment from the Department of Environmental Protection within the three-year eligibility period, but did not receive a "sign-off" from the Department of Buildings until after the three-year period had elapsed. Failure to obtain a DOB "sign-off" within the three-year period was not a mere "minor technicality" in determining entitlement to J 51 benefits, §11-243(d)(3), under

the Building Code §27-787 et seq and the air pollution control provisions, §24-102 et seq only the DOB can certify that a boiler/burner meets minimum standards of safety and is properly burning fuel, generating energy and providing heat. Information submitted by cooperative conversion corporation to the Department of Housing Preservation and Development failed to establish that roofing work was completed within the three-year time limitation since, out of five checks submitted two were postdated cancelled checks for 70% of work and included no late payment fees. Petitioners claim for J 51 benefits under §11-243(d)(3) denied.-31171 Owners Corp. v. DHPD, 190 AD2d 441 [1993].

¶ 6. In order to be entitled to a "J-51" tax abatement, the applicant needs to obtain a Certificate of Eligibility and Reasonable Cost from the New York City Department of Housing Preservation and Development ("HPD"), and a certification from the Department of Buildings ("DOB") that the premises were free from violations and the work was satisfactorily performed. The HPD and DOB certifications are independent requirements. Thus, the owner can seek the certificate from HPD even before it has obtained the necessary certification from the DOB. Melohn v. New York City Department of Housing Preservation and Development, 212 A.D.2d 380, 622 N.Y.S.2d 36 (1st Dept. 1995).

¶ 7. The principle of comity under the federal Tax Injunction Act, 28 U.S.C. § 1341 barred federal court jurisdiction over challenges to the administration of the "J-51" program. The taxpayer was found to have adequate state law remedies available. Kraebel v. New York City Department of Housing Preservation and Development, 959 F.2d 395 (2d Cir. 1992).

¶ 8. The landlord is required to complete the project within a 36 month period. The regulations, which define the commencement of the 36 month period as being the date of issuance of a permit by a City agency, create only an evidentiary presumption, which can be rebutted by actual evidence of a different start date. In this case, the landlord argued that the 36 month period should begin at the date of issuance of the permit, even though the permit was issued eight months after the work actually began. The court, however, upheld an agency determination that the 36 month period began at the time of actual commencement of the work. Otherwise, the court said, an applicant would be able to take as long as it wanted to complete the project through the simple expedient of delaying its application for the necessary work permit, and thereby negate the statutory policy of encouraging the swift upgrading of multiple dwellings. 275 Wesbster Tenants, Inc. v. Wright, 238 AD2d 143; N.Y.L.J., Apr. 7, 1997, at 26, col. 4 (App.Div. 1st Dept.).

¶ 9. See Spaeda v. Bakirjy, N.Y.L.J., Apr. 19, 2000, page 27, col. 6 (Civ. Ct. New York Co.), under annotations to Admin. Code §§ 26, 504, regarding the rent stabilization status of buildings whose owners received tax benefits under §11-243.

¶ 10. The federal Section 8 program (42 U.S.C. § 1437 et seq.) does not pre-empt local rent laws. Thus, landlords who wish to continue in the tax abatement programs of Sec. 11-243 must continue to offer Section 8 status to rent stabilized tenants who reside at the premises. Landlords who accept the tax abatement program are required to offer renewal leases, and are not permitted to discriminate against tenants based on Section 8 status. Rosario v. Diagonal Realty LLC, 9 Misc.3d 681, 803 N.Y.S.2d 343 (Sup.Ct. N.Y. 2005), aff'd 32 A.D.3d 739, 821 N.Y.S.2d 71 (1st Dept. 2006), aff'd 8 N.Y.3d 755, 840 N.Y.S.2d 748 (2007).

¶ 11. See Timkovsky v. 56 Bennett, LLC, reported under case note 133 Admin. Code §8--107.

¶ 12. Where a landlord chooses to take advantage of the J-51 tax abatement program (Admin. Code §11-243, all rent stabilized apartments in the building are exempt from luxury decontrol. The landlord unsuccessfully argued that the exemption from luxury decontrol applied only to those apartments which became stabilized solely by reason of the landlord's participation in the J-51 plan. Roberts v. Tishman Speyer Properties, 62 A.D.3d 71, 874 N.Y.S.2d 97 (1st Dept. 2009).

¶ 13. See Kosoglyadov v. 3130 Brighton Seventh LLC, 54 A.D.3d 822, 863 N.Y.S.2d 777 (2d Dept. 2008), reported under note 134, Admin. Code §8-107.

FOOTNOTES

11

[Footnote 11]: * So in original. ("eight-two" s.b. "eighty-two").

8

[Footnote 8]: * As in law.

75 of 176 DOCUMENTS

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-244

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-244 Tax exemption and abatement for rehabilitated buildings.

a. As used in this section, the following terms shall have the following meanings:

1. "Eligible real property" shall mean:

(i) any class B multiple dwelling;

(ii) any class A multiple dwelling used for single room occupancy pursuant to section two hundred forty-eight of the multiple dwelling law which contains no more than twenty-five percent class A dwelling units which contain lawful sanitary and kitchen facilities within the dwelling unit, provided that in the case of a multiple dwelling containing ten dwelling units or less, up to forty percent of the dwelling units may be class A units;

(iii) not-for-profit institutions with sleeping accommodations.

Notwithstanding the foregoing, eligible real property shall not include college and school dormitories, club houses, or residences whose occupancy is restricted to an institutional use such as housing intended for use primarily or exclusively by the employees of a single company or institution. A building is an eligible real property only if it

qualifies as such after completion of the eligible improvements, but need not have been an eligible real property prior to the eligible improvements.

2. "Eligible improvements" shall be limited to the following categories of work, provided further that such work shall be in conformity with all applicable laws:

(i) replacement of a boiler or burner or installation of an entire new heating system;

(ii) replacement or upgrading of electrical system;

(iii) replacement or upgrading of elevators;

(iv) installation or replacement or upgrading of the plumbing system, including water main and risers;

(v) replacement or installation of walls, ceilings, floors or trim where necessary;

(vi) replacement or upgrading of doors, installation of security devices and systems;

(vii) installation, replacement or upgrading of smoke detectors, fire alarms, fire escapes, or sprinkler systems;

(viii) replacement or repair of roof, leaders and gutters;

(ix) replacement or installation of bathroom facilities;

(x) installation of wall and pipe insulation;

(xi) replacement or upgrading of street connections for water or sewer services;

(xii) replacement or installation of windows, or installation of window gates or guards;

(xiii) installation or replacement of boiler smoke stack;

(xiv) pointing, waterproofing and cleaning of entire building exterior surface;

(xv) improvements designed to conserve the use of fuel, electricity or other energy sources;

(xvi) work necessary to effect compliance with all applicable laws including but not limited to the multiple dwelling law, the New York city housing maintenance code and the building code; and

(xvii) improvements unique to congregate living facilities, as defined by rules and regulations promulgated by the department of housing preservation and development.

3. "Existing dwelling" shall mean any eligible real property in existence prior to the commencement of eligible improvements, for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year immediately preceding the commencement of construction of such eligible improvements.

4. "Commencement of eligible improvement" shall mean the beginning of any physical operation undertaken for the purpose of making eligible improvements to eligible real property.

5. "Completion of eligible improvement" shall mean the conclusion or termination of any physical operation referred to in the preceding paragraph, to an extent or degree which renders an eligible property capable of use for the purpose for which the improvements were intended.

6. "Permanent resident" shall mean a person who has resided in eligible real property for six months or more; has a lease or other rental agreement for a term of six or more months; or has requested a lease pursuant to the provisions of the rent stabilization code for housing accommodations located in hotels.

b. Any increase in the assessed valuation of eligible real property shall be exempt from taxation for local purposes for a period of thirty-two years to the extent such increase results from eligible improvements, provided that:

(i) the eligible improvements are commenced after July first, nineteen hundred eighty, and prior to December thirty-first, two thousand eleven, and are completed within thirty-six months from commencement;

(ii) the department of housing preservation and development determines and certifies the cost, qualification and eligibility of any improvement for benefits of this section;

(iii) the exemption may commence no sooner than the July first following the filing with the department of finance of a certification of eligibility issued by the department of housing preservation and development for benefits of this section; provided, however, that if the rehabilitation is carried out with substantial government assistance as part of a program for affordable housing the exemption may commence no sooner than the July first following the commencement of construction of eligible improvements;

(iv) immediately prior to, and during, the construction of eligible improvements, not less than fifty percent of the dwelling units in such eligible real property are occupied by permanent residents; provided that such occupancy requirement shall not apply to a vacant, governmentally owned multiple dwelling which had been vacant for not less than two years prior to the commencement of construction of eligible improvements, nor to a vacant multiple dwelling where the eligible improvements are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing;

(v) no outstanding real estate taxes, water and sewer charges, payments in lieu of taxes or other municipal charges are due and owing as of the tax quarter immediately preceding the commencement of tax exemption pursuant to this section; provided that an applicant aided pursuant to the provisions of the private housing finance law shall have such application accepted by the tax commission if there are no outstanding real estate, water and sewer taxes due and owing as of the last day of the tax quarter preceding commencement of construction of eligible improvements;

(vi) Except in the case of eligible real property which is receiving or has received assistance pursuant to a governmental rent subsidy program or which is owned by a not-for-profit corporation or by a wholly owned subsidiary of a not-for-profit corporation and which is receiving or has received assistance pursuant to a governmental loan subsidy program, as defined by the rules and regulations promulgated by the department of housing preservation and development, for the construction of eligible improvements, the initial rent after completion of eligible improvements, for ninety percent of the total number of dwelling units occupied by permanent residents in a class A or class B multiple dwelling other than apartments shall not exceed the greater of either the amount of any governmental rental assistance received by an occupant or seventy-five percent of the rent which is permitted to be charged for zero-bedroom units on the moderate rehabilitation fair market rent schedule as determined by the United States department of housing and urban development for the housing assistance payments program under section eight of the national housing act;

(vii) no person residing in eligible real property prior to or during the construction of eligible improvements shall be required by the owner to vacate the eligible real property solely in order to perform the eligible improvements or any related work.

c. Eligible real property which qualifies for exemption from taxation for local purposes for eligible improvements shall also be eligible for an annual abatement of real property taxes in an amount not to exceed twelve and one half percent of the reasonable cost of eligible improvements certified by the department of housing preservation and development, which abatement may commence on the first day of the first tax quarter following the filing with the

department of finance of a certification of eligibility issued by the department of housing preservation and development for benefits of this section; provided, however, that if the rehabilitation is carried out with substantial government assistance as part of a program for affordable housing the abatement may commence no sooner than the first day of the first tax quarter following the commencement of construction of eligible improvements, provided further that:

(i) the annual abatement shall not exceed the amount of taxes otherwise payable in the corresponding year;

(ii) the period during which such abatement is effective shall not exceed twenty consecutive years from the date such abatement first becomes effective; and

(iii) the total abatement shall not exceed the lesser of one hundred fifty percent of the certified reasonable costs of eligible improvements or the actual costs as determined by the department of housing preservation and development pursuant to its rules and regulations.

d. During the period of tax exemption or abatement pursuant to this section, each of the following shall be a condition precedent to the continuation of the exemption and/or abatement:

(i) compliance with all applicable provisions of law, including but not limited to the multiple dwelling law, the building code and the housing maintenance code;

(ii) all dwelling units, except owner occupied units, shall be subject to the emergency housing rent control law or the local housing rent control act or the tenant protection act of nineteen hundred seventy-four,*12 or any local laws enacted pursuant thereto or the rent stabilization law of nineteen hundred sixty-nine; provided, however, that the department of housing preservation and development may exempt from this requirement dwelling units that are not occupied by permanent residents in those buildings owned by a not-for-profit corporation and which are improved with the aid of a rehabilitation loan from any government agency or instrumentality or operated pursuant to a contract with a governmental entity.

(iii) eligible real property receiving tax exemption or tax abatement benefits under this section shall not receive tax exemption or tax abatement for new construction or rehabilitation under any other provision of law;

(iv) the eligible improvements shall not be used as the basis for any application for rent increases and the owner shall file a statement to such effect with the department of housing preservation and development and with any appropriate rent regulatory agency, provided, however, that rents of units improved with the aid of a rehabilitation loan from any governmental agency or instrumentality may within the limitations established by this section be increased pursuant to the rules and regulations of the department of housing preservation and development.

(v) A minimum of seventy-five percent of the dwelling units shall be rental units occupied by permanent residents; provided, however that the department of housing preservation and development may exempt from this requirement those buildings improved with the aid of a rehabilitation loan from any governmental agency or instrumentality or operated pursuant to a contract with a governmental entity.

e. During the period of tax exemption or abatement pursuant to this section, the owner shall submit an annual certification to the department of housing preservation and development in the form prescribed by such department. Failure to submit such certification in any given year may result in the revocation of benefits. The certification shall include the following:

(i) the total number of dwelling units within the eligible real property and the total number of dwelling units occupied by permanent residents;

(ii) the number of dwelling units subject to the provisions of the emergency housing rent control act, the emergency tenant protection act of nineteen hundred seventy-four*13 or any local laws enacted pursuant thereto; the

emergency housing rent control law or the rent stabilization law of nineteen hundred sixty-nine; and

(iii) all such other information required by the department of housing preservation and development.

f. Any tax exemption or tax abatement authorized pursuant to this section may be revoked or reduced by the department of housing preservation and development or by the department of finance of the city of New York at any time during the authorized term of such tax exemption or tax abatement upon a finding by either department that:

(i) the application for benefits pursuant to this section or the annual certification required hereunder contains a false statement or false information as to a material matter, or omits a material matter, in which case the revocation or reduction may be retroactive to the commencement of benefits pursuant to this section;

(ii) real estate taxes, water, sewer or other municipal charges, or payments in lieu of said taxes or charges are, and have remained, due and owing for more than one year, in which case the revocation or reduction may be retroactive to the commencement of benefits pursuant to this section, provided that in no event shall revocation be effective prior to the date such taxes or charges were first due and payable; or

(iii) the eligible real property fails to comply with one or more of the provisions or requirements of this section.

g. Application forms for the benefits of this section shall be filed with the tax commission within the time periods to be established by rules and regulations promulgated by the department of housing preservation and development, pursuant to subdivision i of this section. The tax commission shall certify to the department of finance the amount of taxes to be abated, pursuant to the certification of the department of housing preservation and development as herein provided. No such application shall be accepted unless accompanied by a copy of the certificate of the department of housing preservation and development both as to reasonable cost and as to eligibility as provided in subdivision b of this section.

h. No owner of a dwelling to which the benefits of this section apply, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, sex, disability, marital status, age, religion or sexual orientation any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision shall mean a physical, mental or medical impairment resulting from anatomical, physiological, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques. Nothing in this subdivision shall restrict such consideration in the availability of housing accommodations for the purpose of providing for the special needs of a particular group.

i. The department of housing preservation and development shall determine and certify the reasonable cost of any such conversions, alterations or improvements and eligibility for the benefits of this section and for that purpose may adopt rules and regulations, administer oaths to and take the testimony of any person, including, but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such bills, books, papers or other documents as it shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such conversions, alterations or improvements, may establish maximum allowable costs of specified units, fixtures or work in such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements before the start thereof. Applications for certification shall include all bills and other documents showing the cost of construction or such other evidence of such cost as shall be satisfactory to the department of housing preservation and development, including, without limitation, certification of cost by a certified public accountant in accordance with gennerally accepted accounting principles. Each additional agency to which functions are assigned by this section may adopt and promulgate rules and regulations for the effectuation of the purposes of this section.

j. The department of housing preservation and development may require a filing fee in an amount as provided by the rules and regulations promulgated by the department of housing preservation and development pursuant to

subdivision i of this section.

k. Any person who shall knowingly and wilfully make any false statements as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days, or both.

l. If any provision of this section or its application to any person shall be held invalid, the remainder of this section and the applicability of its provisions to other persons or circumstances shall not be affected thereby.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a par 1 amended L.L. 6/1992 § 1, eff. Jan. 6, 1992

Subd. a par 6 amended L.L. 6/1992 § 3, eff. Jan. 6, 1992

Subd. b open par amended L.L. 94/1995 § 1, eff. Dec. 29, 1995.

Subd. b par (i) amended L.L. 56/2007 § 1, eff. Dec. 5, 2007.

Subd. b par (i) amended L.L. 17/2003 § 1, eff. Feb. 28, 2003 and deemed

in full force and effect on and after Dec. 31, 2002.

Subd. b par (i) amended L.L. 73/1999 § 1, eff. Dec. 13, 1999.

Subd. b par (i) amended L.L. 94/1995 § 1, eff. Dec. 29, 1995.

Subd. b amended L.L. 6/1992 § 2, eff. Jan. 6, 1992

Subd. b par (iii) amended L.L. 6/1992 § 8, eff. Jan. 6, 1992

Subd. b par (vi) amended L.L. 6/1992 § 7, eff. Jan. 6, 1992

Subd. c amended L.L. 6/1992 § 9, eff. Jan. 6, 1992

Subd. c amended L.L. 6/1992 § 2, eff. Jan. 6, 1992

Subd. d amended L.L. 6/1992 § 2, eff. Jan. 6, 1992

Subd. d par (ii) amended L.L. 6/1992 § 5, eff. Jan. 6, 1992

Subd. d par (v) added L.L. 6/1992 § 4, eff. Jan. 6, 1992

Subd. e added L.L. 6/1992 § 6, eff. Jan. 6, 1992. Former subd. e bracketed

out of law by L.L. 6/1992 § 2, eff. Jan 6, 1992

Subds. f-j amended L.L. 6/1992 § 2, eff. Jan 6, 1992

Subd. k relettered by amendment L.L. 6/1992 § 2, eff. Jan. 6, 1992

(Formerly subd. l, former subd. k bracketed out of law L.L. 6/1992

§ 2)

Subd. l relettered by amendment L.L. 6/1992 § 2, eff. Jan. 6, 1992

(Formerly subd. m)

DERIVATION

Formerly § J51-5.0 added LL 39/1981 § 1

Sub a par 2 subpar xv amended LL 83/1981 § 1

Sub a par 2 subpar xvi amended LL 83/1981 § 2

Sub a par 2 subpar xvii amended LL 83/1981 § 3

Sub b par iv amended LL 83/1981 § 4

Sub b par vi amended LL 83/1981 § 5

Sub c amended LL 83/1981 § 6

Sub a par 1 subpar ii amended LL 56/1983 § 9

Sub b par iv open par amended LL 56/1983 § 10

(sub b open par laid out)

CASE NOTES

¶ 1. See Spaeda v. Bakirjy, 186 Misc.2d 557, 720 N.Y.S.2d 292, under annotations to Admin. Code §§ 26, 504, regarding the rent stabilization status of buildings whose owners received tax benefits under § 11-244.

FOOTNOTES

12

[Footnote 12]: * So in original. ("nineteen hundred seventy-four" s.b. "nineteen seventy-four").

13

[Footnote 13]: * So in original. ("nineteen hundred seventy-four" s.b "nineteen seventy-four").

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-245

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245 Area eligibility limitations on benefits pursuant to section four hundred twenty-one-a of the real property tax law.

(a)*6 No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after November twenty-ninth, nineteen hundred eighty-five and prior to December thirty-first, two thousand seven for any tax lots now existing or hereafter created which are located entirely within the geographic area in the borough of Manhattan bounded and described as follows: BEGINNING at the intersection of the bulkhead line in the Hudson River and 96th street extended; thence easterly to 96th street and continuing along 96th street to its easterly terminus; thence easterly to the intersection of 96th street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th street extended; thence westerly to 14th street and continuing along 14th street to Broadway; thence southerly along Broadway to Houston street; thence westerly along Houston street to Thompson street; thence southerly along Thompson street to Spring street; thence westerly along Spring street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam street; thence westerly along Vandam street to Varick street; thence northerly along Varick street to Houston street; thence westerly along Houston street and continuing to its westerly terminus; thence westerly to the intersection of Houston street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 11th avenue extended; thence northerly to 11th avenue and continuing

along 11th avenue to 14th street; thence easterly along 14th street to 10th avenue; thence northerly along 10th avenue to 30th street; thence westerly along 30th street to 11th avenue; thence northerly along 11th avenue to 41st street; thence westerly along 41st street and continuing to its westerly terminus; thence westerly to the intersection of 41st street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning.

(a)** No7 benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after November twenty-ninth, nineteen hundred eighty-five and prior to December thirty-first, two thousand seven for any tax lots now existing or hereafter created which are located entirely within the geographic area in the borough of Manhattan bounded and described as follows: BEGINNING at the intersection of the bulkhead line in the Hudson River and 96th street extended; thence easterly to 96th street and continuing along 96th street to its easterly terminus; thence easterly to the intersection of 96th street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th street extended; thence westerly to 14th street and continuing along 14th street to Broadway; thence southerly along Broadway to Houston street; thence westerly along Houston street to Thompson street; thence southerly along Thompson street to Spring street; thence westerly along Spring street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam street; thence westerly along Vandam street to Varick street; thence northerly along Varick street to Houston street; thence westerly along Houston street and continuing to its westerly terminus; thence westerly to the intersection of Houston street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 30th street extended; thence easterly along 30th street to 11th avenue; thence northerly along 11th avenue to 41st street; thence westerly along 41st street and continuing to its westerly terminus; thence westerly to the intersection of 41st street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning.

(a)*(1) No benefits31 under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after November twenty-ninth, nineteen hundred eighty-five and prior to the effective date of the local law that added this phrase for any tax lots now existing or hereafter created which are located entirely within the geographic area in the borough of Manhattan bounded and described as follows: BEGINNING at the intersection of the bulkhead line in the Hudson River and 96th street extended; thence easterly to 96th street and continuing along 96th street to its easterly terminus; thence easterly to the intersection of 96th street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th street extended; thence westerly to 14th street and continuing along 14th street to Broadway; thence southerly along Broadway to Houston street; thence westerly along Houston street to Thompson street; thence southerly along Thompson street to Spring street; thence westerly along Spring street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam street; thence westerly along Vandam street to Varick street; thence northerly along Varick street to Houston street; thence westerly along Houston street and continuing to its westerly terminus; thence westerly to the intersection of Houston street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 30th street extended; thence easterly along 30th street to 11th avenue; thence northerly along 11th avenue to 41st street; thence westerly along 41st street and continuing to its westerly terminus; thence westerly to the intersection of 41st street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning.

(2) No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after the effective date of the local law that added this paragraph for any tax lots now existing or hereafter created which are located entirely within the geographic area in the borough of Manhattan bounded and described as follows: BEGINNING at the intersection of the United States bulkhead line in the Hudson River and the prolongation of west 136th street; thence southeasterly along west 136th street to the intersection of west 136th street and Fifth avenue; thence southwesterly along Fifth avenue to the intersection of Fifth avenue and west 126th street; thence southeasterly along west 126th street to the intersection of west 126th street and Second avenue; thence southwesterly along Second avenue to the intersection of Second avenue and east 124th street; thence northwesterly

along east 124th street to the intersection of east 124th street and Park avenue; thence southwesterly along Park avenue to the intersection of Park avenue and east 117th street; thence southeasterly along east 117th street to the intersection of the prolongation of east 117th street and the United States bulkhead line in the East River; thence southwesterly along said bulkhead line in the East River to the southernmost tip of Manhattan and continuing along said bulkhead line to the Hudson River; thence continuing northeasterly along said bulkhead line in the Hudson River to the place of beginning.

(3) No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after the effective date of the local law that added this paragraph for any tax lots now existing or hereafter created which are located entirely within the geographic area in the borough of Queens bounded and described as follows: BEGINNING at the intersection of the United States bulkhead line in the East River and the northwesterly prolongation of 20th avenue; thence southeasterly along 20th avenue to the intersection of 20th avenue and 19th street; thence southwesterly along 19th street to the intersection of 19th street and 21st avenue; thence southeasterly along 21st avenue to the intersection of 21st avenue and 19th street; thence southwesterly along 19th street and thence along its southwesterly prolongation to its intersection with Astoria Park south; thence northwesterly along Astoria Park south to the intersection of Astoria Park south and 14th street; thence southwesterly along 14th street to 26th avenue; thence northwesterly along 26th avenue and its northwesterly prolongation to the intersection of 26th avenue and First street; thence southwesterly along First street to the intersection of First street and 27th avenue; thence southeasterly along 27th avenue to the intersection of 27th avenue and Eighth street; thence southwesterly along Eighth street to the intersection of Eighth street and 30th avenue; thence southeasterly along 30th avenue to the intersection of 30th avenue and 12th street; thence southwesterly along 12th street to the intersection of 12th street and Broadway; thence northwesterly along Broadway to the intersection of Broadway and Vernon boulevard; thence southwesterly along Vernon boulevard to the intersection of Vernon boulevard and 44th avenue; thence southerly along Vernon boulevard to the intersection of Vernon boulevard and 45th road; thence northwesterly along the northwesterly prolongation of 45th road to its intersection with Fifth street; thence southwesterly along Fifth street to the intersection of Fifth street and 50th avenue; thence northwesterly along 50th avenue to the intersection of 50th avenue and Second street; thence southwesterly along Second street to the intersection of Second street and 54th avenue; thence southeasterly along 54th avenue to the intersection of 54th avenue and Vernon boulevard; thence southwesterly along Vernon boulevard to its southerly terminus at the United States bulkhead line in Newtown Creek; thence westerly along said bulkhead line to the East River; thence northeasterly along said bulkhead line in the East River to the place of beginning.

(4) No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after the effective date of the local law that added this paragraph for any tax lots now existing or hereafter created which are located entirely within the geographic area in the borough of Brooklyn bounded and described as follows: BEGINNING at the intersection of the northeasterly prolongation of Meeker avenue and the United States bulkhead line of Newtown Creek; thence southwesterly along Meeker avenue to the intersection of Meeker avenue and Humboldt street; thence southeasterly along Humboldt street to the intersection of Humboldt street and Devoe street; thence easterly along Devoe street to the intersection of Devoe street and Bushwick avenue; thence southeasterly along Bushwick avenue to the intersection of Bushwick avenue and Flushing avenue; thence northeasterly along Flushing avenue to the intersection of Flushing avenue and Cypress avenue; thence southeasterly along Cypress avenue to the intersection of Cypress avenue and Dekalb avenue; thence southwesterly along Dekalb avenue to the intersection of Dekalb avenue and Evergreen avenue; thence southeasterly along Evergreen avenue to the intersection of Evergreen avenue and the perimeter of the Cemetery of the Evergreens; thence along the southern perimeter of the Cemetery of the Evergreens to the intersection of the southern perimeter of the Cemetery of the Evergreens with Bushwick avenue; thence southeasterly along Bushwick avenue to the intersection of Bushwick avenue and Jamaica avenue; thence southwesterly along Jamaica avenue to the intersection of Jamaica avenue and Fulton street, Williams street, East New York avenue and Broadway; thence northwesterly along Broadway to the intersection of Broadway and south 6th street; thence northwesterly along south 6th street to the intersection of south 6th street and Kent avenue; thence southerly along Kent avenue to the intersection of Kent avenue and Williamsburgh street; thence southwesterly

along Williamsburgh street to the intersection of Williamsburgh street and Flushing avenue; thence westerly along Flushing avenue to the intersection of Flushing avenue and Navy street; thence southerly along Navy street to its terminus at Myrtle avenue; thence easterly along Myrtle avenue to the intersection of Myrtle avenue and Classon avenue; thence southerly along Classon avenue to the intersection of Classon avenue and Eastern parkway; thence northwesterly along Eastern parkway to the intersection of Eastern parkway and Underhill avenue, thence southwesterly along Eastern parkway to the intersection of Eastern parkway and Prospect Park west; thence southwesterly along Prospect Park west to the intersection of Prospect Park west and 20th street; thence northwesterly along 20th street to the intersection of 20th street and Seventh avenue; thence southwesterly along Seventh avenue to the intersection of Seventh avenue and 23rd street; thence northwesterly along 23rd street to the intersection of 23rd street and Sixth avenue; thence southwesterly along Sixth avenue to the intersection of Sixth avenue and 24th street; thence northwesterly along 24th street to the intersection of 24th street and Fifth avenue; thence southwesterly along Fifth avenue to the intersection of Fifth avenue and 39th street; thence northwesterly along 39th street to the intersection of 39th street and Third avenue; thence northeasterly along Third avenue to the intersection of Third avenue and 19th street; thence northwesterly along 19th street to the intersection of 19th street and Hamilton avenue; thence northwesterly along Hamilton avenue to the intersection of the northwesterly prolongation of Hamilton avenue and the United States bulkhead line; thence northeasterly along said bulkhead line to the place of beginning; provided, however, that the foregoing shall not include any tax lots now existing or hereafter created which are located entirely within either the Greenpoint-Williamsburg waterfront exclusion area as described in subparagraph (ii) of paragraph (a) of subdivision six of section four hundred twenty-one-a of the real property tax law or the geographic area in the borough of Brooklyn bounded and described as follows: BEGINNING at the intersection of the United States bulkhead line in the East River and the northerly prolongation of Hudson avenue; thence southerly along said prolongation to Hudson avenue; thence southerly along Hudson avenue to the intersection of Hudson avenue and Navy street; thence southerly along Navy street to the intersection of Navy street and Flushing avenue; thence easterly along Flushing avenue to the intersection of Flushing avenue and Williamsburgh street; thence northerly along Williamsburgh street to the intersection of Williamsburgh street and Kent avenue; thence northwesterly along Kent avenue to the intersection of Kent avenue and Division avenue; thence northwesterly along Division avenue to the intersection of Division avenue and the United States bulkhead line in the East River; thence southwesterly along said bulkhead line to the place of beginning.

(a-1) Notwithstanding the provisions contained in subdivision (a) of this section concerning the date of commencement of construction, the amendments to such subdivision (a) made by local law number 22 for the year 2005 shall only apply to construction commenced on or after March seventh, two thousand six and prior to December thirty-first, two thousand seven.

(a-2)* Notwithstanding32 the provisions contained in subdivision (a) of this section concerning the date of commencement of construction, the amendments to such subdivision (a) made by the local law that added this subdivision shall only apply to construction commenced on or after the effective date of section three of the local law that added this subdivision and prior to December thirty-first, two thousand seven.

(a-2)** Notwithstanding33 the provisions contained in subdivision (a) of this section concerning the date of commencement of construction, the amendments to such subdivision (a) made by local law number 8 for the year 2006 shall only apply to construction commenced on or after May eleventh, two thousand seven and prior to the effective date of the local law that added this phrase.

(b)*** The34 limitations contained in subdivision a of this section shall not be applicable to:

(1) construction carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality where such assistance is provided pursuant to a program for the development of affordable housing, or

(2) projects where the department of housing preservation and development has imposed a requirement or has

certified that twenty percent of the units be affordable to households of low and moderate income, or

(3) construction carried out pursuant to an agreement with the department of housing preservation and development entered into prior to the effective date of the local law that added this phrase to create or substantially rehabilitate housing units offsite affordable to households of low and moderate income provided that:

(i) the number of any such low income units which may be made available to homeless households must be equal to a ratio of at least one low income unit for every six units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law; or

(ii) the number of any such low income units which may be made available must be equal to at least twenty percent of the number of units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law; or

(iii) the number of any such moderate income units which may be made available must be equal to at least twenty-five percent of the number of units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law; and

(iv) in any building containing more than one hundred thirty units of low and moderate income housing created or substantially rehabilitated pursuant to this paragraph, two of every three units in excess of one hundred thirty units shall at initial occupancy be affordable to moderate income households; and

(v) upon initial occupancy, all such housing units affordable to households of low and moderate income must be registered with the New York state division of housing and community renewal. Such units must remain rent stabilized for the entire period during which such units receive real estate tax benefits under any New York state or city tax abatement and/or exemption programs, or for twenty years, whichever is longer; future rent increases may not exceed the increases established by the rent guidelines board; upon vacancy, units must be re-rented at no more than the legal stabilized rent. All units must be rented to households earning no more than four times such annual rent at the time of initial occupancy; the lease for the tenants in occupancy of all units created pursuant to this paragraph at the expiration of the rent stabilization period pursuant to this sub-paragraph shall include the right to remain as rent stabilized tenants for the duration of their occupancy. Once units become vacant after termination of such rent stabilization period, the owner of such units shall have the option to de-stabilize such rents; and

(vi) the provisions of sub-paragraph (v) shall not apply to any unit owned as a cooperative or condominium and occupied by the shareholder or owner; and

(vii) nothing contained in this paragraph shall preclude a grant of benefits under section four hundred twenty-one-a of the real property tax law for any building or buildings located in the area described in subdivision (a) of this section if carried out pursuant to an agreement entered into prior to January first, nineteen hundred ninety-one, with the department of housing preservation and development to create or substantially rehabilitate housing units affordable to households of low and moderate income in a geographic area or areas outside the area described in subdivision (a) of this section, provided that the number of such low and moderate income units must be equal to at least twenty per cent of the number of units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law.

(b-1)* With35 respect to construction commenced on or after the effective date of the local law that added this subdivision, except as otherwise provided in section ten of the local law that added this subdivision, each restricted income unit required pursuant to subdivision b of this section shall be situated onsite. For the purposes of this subdivision, "onsite" shall mean that restricted income units shall be situated within the building or buildings for which benefits pursuant to section four hundred twenty-one-a of the real property tax law are being granted.

(b-2)* With respect to construction commenced on or after the effective date of the local law that added this subdivision, except as otherwise provided in section ten of the local law that added this subdivision, for the purposes of this section and of section 11-245.1-b of this chapter, any requirement that not less than twenty percent of onsite units be "restricted income" units shall mean that such units shall be affordable to and occupied or available for occupancy by individuals or families whose incomes at the time of initial occupancy do not exceed eighty percent of the area median income adjusted for family size; provided that, of such restricted income units, no more than a number equal to five percent of the number of units which commenced construction in buildings receiving tax benefits pursuant to section four hundred twenty one-a of the real property tax law in the previous calendar year shall be affordable to and occupied or available for occupancy by individuals or families whose incomes at the time of initial occupancy are between sixty percent and eighty percent of the area median income adjusted for family size.

(b) The limitations contained in subdivision (a) of this section shall not be applicable to:

(1) construction carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality, or

(2) projects where the department of housing preservation and development has imposed a requirement or has certified that twenty percent of the units be affordable to households of low and moderate income, or

(3) construction carried out pursuant to an agreement with the department of housing preservation and development to create or substantially rehabilitate housing units offsite affordable to households of low and moderate income provided that:

(i) the number of any such low income units which may be made available to homeless households must be equal to a ratio of at least one low income unit for every six units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law; or

(ii) the number of any such low income units which may be made available must be equal to at least twenty per cent of the number of units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law; or

(iii) the number of any such moderate income units which may be made available must be equal to at least twenty-five per cent of the number of units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law; and

(iv) in any building containing more than one hundred thirty units of low and moderate income housing created or substantially rehabilitated pursuant to this paragraph, two of every three units in excess of one hundred thirty units shall at initial occupancy be affordable to moderate income households; and

(v) upon, initial occupancy, all such housing units affordable to households of low and moderate income must be registered with the New York state division of housing and community renewal. Such units must remain rent stabilized for the entire period during which such units receive real estate tax benefits under any New York state or city tax abatement and/or exemption programs, or for twenty years, whichever is longer; future rent increases may not exceed the increases established by the rent guidelines board; upon vacancy, units must be rerented at no more than the legal stabilized rent. All units must be rented to households earning no more than four times such annual rent at the time of initial occupancy; the lease for the tenants in occupancy of all units created pursuant to this paragraph at the expiration of the rent stabilization period pursuant to this sub-paragraph shall include the right to remain as rent stabilized tenants for the duration of their occupancy. Once units become vacant after termination of such rent stabilization period, the owner of such units shall have the option to de-stabilize such rents; and

(vi) the provisions of sub-paragraph (v) shall not apply to any unit owned as a cooperative or condominium and

occupied by the shareholder or owner; and

(vii) nothing contained in this paragraph shall preclude a grant of benefits under section four hundred twenty-one-a of the real property tax law for any building or buildings located in the area described in subdivision (a) of this section if carried out pursuant to an agreement entered into prior to January first, nineteen hundred ninety-one, with the department of housing preservation and development to create or substantially rehabilitate housing units affordable to households of low and moderate income in a geographic area or areas outside the area described in subdivision (a) of this section, provided that the number of such low and moderate income units must be equal to at least twenty per cent of the number of units in the building or buildings located in the area described in subdivision (a) of this section which receive benefits pursuant to section four hundred twenty-one-a of the real property tax law.

(c) No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any construction commenced on or after November twenty-ninth, nineteen hundred eighty-five of any multiple dwelling, or portion thereof, which is located within any district in the county of New York where a maximum base floor area ratio, as that term is defined in the zoning resolution, of fifteen or greater was permitted as of right by provisions of such resolution in effect on April fourteenth, nineteen hundred eighty-two; provided, however, that this limitation on benefits shall not apply to any such construction commenced on or after October first, nineteen hundred ninety-three and before December thirty-first, two thousand seven.

(d)* For36 purposes of subdivisions (a) and (c) of this section and section 11-245.1-b of this part, construction shall be deemed to have commenced on the date immediately following the issuance by the department of buildings of a building or alteration permit for a multiple dwelling (based upon architectural, plumbing and structural plans approved by such department) on which the excavation and the construction of initial footings and foundations commences in good faith, as certified by an architect or professional engineer licensed in the state, provided that the construction of such multiple dwelling has been completed without undue delay, as certified by such architect or professional engineer. Notwithstanding the foregoing, if a project includes new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure, construction shall be deemed to have commenced on the date immediately following the issuance by the department of buildings of an alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by such department) on which the actual construction of such concurrent conversion, alteration or improvement of the pre-existing building or structure commences in good faith, as certified by an architect or professional engineer licensed in the state, provided that the construction of such multiple dwelling has been completed without undue delay, as certified by such architect or professional engineer.

(d) For purposes of subdivisions (a) and (c) of this section, construction shall be deemed to have commenced on the date im- mediately following the iussuance by the department of buildings of a new building permit for an entire new building (based upon architectural, plumbing and structural plans approved by such department) on which the excavation and construction of initial footings and foundations commences in good faith, on vacant land and for the entire project site, as certified by an architect or professional engineer licensed in the state, provided that installation of footings and foundations is similarly certified by such architect or engineer to have been completed without undue delay.

(e)* The37 department of housing preservation and development may promulgate rules and regulations for the effectuation of the purposes of this section including, but not limited to, rules and regulations regarding the terms and conditions of employment of employees in buildings for which any benefits pursuant to this section are sought or received.

(e) The department of housing preservation and development may promulgate rules and regulations for the effectuation of the purposes of this section.

(f)* The limitations on eligibility for benefits contained in this section shall be in addition to those contained in

any other law, rule or regulation.

(f) The limitations on eligibility for benefits contained in this section shall be in addition to those contained in any other law or regulation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended L.L. 58/2006 §§ 1, 2 eff. Dec. 28, 2007 and expiring Dec. 28, 2010 and reverting to previous language. [See Note 1]

Subd. (a) amended L.L. 8/2006 § 1, eff. May 11, 2007.

Subd. (a) amended L.L. 22/2005 § 1, eff. Mar. 7, 2006.

Subd. (a) amended L.L. 42/2003 § 1, eff. June 30, 2003.

Subd. (a) amended L.L. 28/2000 § 1, eff. May 12, 2000.

Subd. (a) amended L.L. 39/1997 § 1, eff. June 3, 1997.

Subd. (a) amended L.L. 20/1994 § 1, eff. June 30, 1994

Subd. (a) amended L.L. 97/1989 § 1

Subd. (a-1) added L.L. 8/2006 § 2, eff. May 11, 2006.

Subd. (a-2) amended L.L. 58/2006 § 3 eff. Dec. 28, 2007 and expiring Dec. 28, 2010 and reverting to previous language. [See Note 1]

Subd. (a-2) added L.L. 8/2006 § 3, eff. May 11, 2007.

Subd. (b) amended L.L. 58/2006 § 4, eff. Dec. 28, 2007 and expiring Dec. 28, 2010 and reverting to previous language. [See Note 1]

Subd. (b) repealed and added L.L. 97/1989 § 2

Subd. (b-1) added L.L. 58/2006 § 5, eff. Dec. 28, 2007 and expiring Dec. 28, 2010. [See Note 1]

Subd. (b-2) added L.L. 58/2006 § 5, eff. Dec. 28, 2007 and expiring Dec. 28, 2010. [See Note 1]

Subd. (c) amended L.L. 42/2003 § 2, eff. June 30, 2003.

Subd. (c) amended L.L. 76/1999 § 1, eff. Dec. 22, 1999 and deemed to have been in full force and effect on Oct. 1, 1999.

Subd. (c) amended L.L. 1/1997 § 1, eff. Jan. 7, 1997.

Subd. (c) amended L.L. 1/1997 § 1, eff. Jan. 7, 1997

Subd. (c) amended L.L. 106/1993 § 1, eff. Dec. 28, 1993

Subd. (d) amended L.L. 58/2006 § 8 eff. Dec. 28, 2007 and expiring Dec.

28, 2010 and reverting to previous language. [See Note 1]

Subd. (e) amended L.L. 58/2006 § 8 eff. Dec. 28, 2007 and expiring Dec.

28, 2010 and reverting to previous language. [See Note 1]

Subd. (f) amended L.L. 58/2006 § 8 eff. Dec. 28, 2007 and expiring Dec.

28, 2010 and reverting to previous language. [See Note 1]

DERIVATION

Formerly § J51-4.0 added LL 78/1984 § 2

(Legislation findings, tax incentives for residential constructions LL

78/1984 § 1)

Sub a open par amended LL 79/1985 § 1

NOTE

1. Provisions of L.L. 58/2006:

§ 10. Notwithstanding any provision of this local law, an agreement with the department of housing preservation and development entered into prior to the effective date of this local law to create or substantially rehabilitate offsite housing units affordable to households of low and moderate income, shall remain in full force and effect, and the housing units developed pursuant to such agreement shall continue to make a building or buildings located in the areas described in subdivision a of section 11-245 of the administrative code of the city of New York eligible to receive benefits pursuant to section four hundred twenty-one-a of the real property tax law on or after the effective date of this local law.

§ 11. A project shall not be subject to the provisions of this local law if (1) on or before December thirty-first two thousand six, such project received special permits pursuant to the New York city zoning resolution with respect to all buildings to be constructed on the development site, and (2) on December thirty-first two thousand six, a portion of such development site was owned by the state of New York and contained a New York power authority temporary generating facility, and (3) such project commenced construction before the later of three years from the effective date of this local law or eighteen months from the removal of all such temporary generating facilities.

§ 12. This local law shall take effect one year after enactment [Dec. 28, 2007], provided that the commissioner of housing preservation and development shall take such actions as are necessary for its implementation prior to such effective date and further provided, that sections one through eight of this local law shall expire four years after their enactment [Dec. 28, 2010].

FOOTNOTES

6

[Footnote 6]: ** Effective until May 11, 2007.

7

[Footnote 7]: ** Effective May 11, 2007 until Dec. 28, 2007 and again on and after Dec. 28, 2010 when the amendments made by L.L. 58/2006 expire.

31

[Footnote 31]: * Effective Dec. 28, 2007 to Dec. 28, 2010 when the amendments made by L.L. 58/2006 §§ 1, 2 exire.

32

[Footnote 32]: *** Effective until Dec. 29, 2007 and again on and after Dec. 28, 2010 when the amendments made by L.L. 58/2006 § 3 expire.

33

[Footnote 33]: *** Effective Dec. 28, 2007 to Dec. 28, 2010 when the amendments made by L.L. 58/2006 § 3 expire.

34

[Footnote 34]: *** This subd. b effective Dec. 28, 2007 to Dec. 28, 2010 when the amendments made by L.L. 58/2006 § 4 exire and the language reverts to the main volume.

35

[Footnote 35]: * Effective Dec. 28, 2007 to Dec. 28, 2010 when subds. (b-1) and (b-2) expire per L.L. 58/2006 § 12.

36

[Footnote 36]: * Effective Dec. 28, 2007 through Dec. 28, 2010 when the amendments made by L.L. 58/2006 § 8 expires and language reverts to that in the main volume.

37

[Footnote 37]: * Effective Dec. 28, 2007 through Dec. 28, 2010 when the amendments made by L.L. 58/2006 § 8 expires and language reverts to that in the main volume.

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.1 Site eligibility limitations on benefits pursuant to section four hundred twenty-one-a of the real property tax law.

(a) Where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction commenced on or after November twenty-ninth, nineteen hundred eighty-five and before May twelfth, two thousand on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a floor area ratio which was twenty percent or less of the maximum floor area ratio for residential buildings, or

(2) had an assessed valuation equal to or less than twenty percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred

maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision and subdivisions (a-1) through (a-4) of this section, construction shall be deemed to have commenced on the date immediately following the issuance by the department of buildings of a new building permit for an entire new building (based upon architectural, plumbing and structural plans approved by such department) on which the excavation and the construction of initial footings and foundations commences in good faith, on vacant land and for the entire project site, as certified by an architect or professional engineer licensed in the state, provided that installation of footings and foundations is similarly certified by such architect or engineer to have been completed without undue delay.

(a-1) Except as provided in subdivision (a-2) of this section, where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction commenced on or after May twelfth, two thousand and before the effective date of the local law that added subdivisions (a-3) and (a-4) of this section on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a floor area ratio which was seventy-five percent or less of the maximum floor area ratio for residential buildings, or

(2) had an assessed valuation equal to or less than seventy-five percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(a-2) Where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction on any tax lot now existing or hereafter created which is located south of or adjacent to either side of one hundred tenth street in the borough of Manhattan which construction commenced on or after May twelfth, two thousand and before the effective date of the local law that added subdivisions (a-3) and (a-4) of this section on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a floor area ratio which was fifty percent or less of the maximum floor area ratio for residential buildings, or

(2) had an assessed valuation equal to or less than fifty percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a)

of this section.

(a-3) Except as provided in subdivision (a-4) of this section, where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction commenced on or after the effective date of the local law that added this subdivision on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and either (i) had a floor area ratio which was seventy-five percent or less of the maximum floor area ratio for residential buildings in such zoning district, or (ii) if the land was not zoned to permit residential use on the date thirty-six months prior to the commencement of construction, had a floor area ratio which was seventy-five percent or less of the floor area ratio of the residential building which replaces such non-residential building, or

(2) had an assessed valuation equal to or less than seventy-five percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(a-4) Where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction on any tax lot now existing or hereafter created which is located south of or adjacent to either side of one hundred tenth street in the borough of Manhattan which construction commenced on or after the effective date of the local law that added this subdivision on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and either (i) had a floor area ratio which was fifty percent or less of the maximum floor area ratio for residential buildings in such zoning district, or (ii) if the land was not zoned to permit residential use on the date thirty-six months prior to the commencement of construction, had a floor area ratio which was fifty percent or less of the floor area ratio of the residential building which replaces such non-residential building, or

(2) had an assessed valuation equal to or less than fifty percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(b) The department of housing preservation and development may promulgate rules and regulations for the effectuation of the purposes of this section.

(c) The limitations on benefits contained in this section shall be in addition to those contained in any other law or regulation.

HISTORICAL NOTE

Section renumbered chap 839/1986 § 46 (formerly § 11-245.01)

Section added chap 907/1985 § 1

Subd. (a) amended L.L. 29/2002 § 1, eff. Oct. 15, 2002.

Subd. (a) amended L.L. 25/2000 § 1, eff. May 12, 2000.

Subd. (a-1) amended L.L. 29/2002 § 1, eff. Oct. 15, 2002.

Subd. (a-1) added L.L. 25/2000 § 2, eff. May 12, 2000.

Subd. (a-2) amended L.L. 29/2002 § 1, eff. Oct. 15, 2002.

Subd. (a-2) added L.L. 25/2000 § 2, eff. May 12, 2000.

Subd. (a-3) added L.L. 29/2002 § 2, eff. Oct. 15, 2002.

Subd. (a-4) added L.L. 29/2002 § 2, eff. Oct. 15, 2002.

DERIVATION

Formerly § J51-4.1 added LL 79/1984 § 1

CASE NOTES

¶ 1. In order to qualify for "J-51" benefits, the applicant must show that the building can no longer be used productively in its former capacity. 845 U.N. Limited Partnership v. Department of Housing Preservation and Development, N.Y.L.J., page 18, col. 4 (Sup.Ct. New York Co.).

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.1-a Boundary38 review commission.

(a) There shall be established a boundary review commission consisting of eleven members, including the commissioner of finance, the commissioner of housing preservation and development, the commissioner of buildings, the chairperson of the department of city planning, the director of the office of management and budget, the executive director of the board of standards and appeals and five members chosen by the speaker of the council. The appointees of the speaker of the council shall serve at the pleasure of the speaker. The commission shall elect a chairperson from among its members.

(b) The boundary review commission shall undertake a biennial review of the tax benefit program established pursuant to section four hundred twenty-one-a of the real property tax law to determine whether the areas for which the tax benefits are restricted pursuant to those provisions of the administrative code which relate to such program should be revised in any manner.

(c) In conducting a review to determine whether geographic exclusion zones restricting benefits provided pursuant to section four hundred twenty-one-a of the real property tax law should be revised, the commission shall review measures of housing activity and housing market conditions throughout the city including (i) the amount of new

development; (ii) values in land sales, residential sales prices and rents; (iii) trends in land sales, residential sales prices and rents and other development trend data including land use trends, lot consolidation and board of standards and appeals actions; (iv) development potential; (v) relationship between volume of potential development and existing housing; and (vi) financial feasibility of development with and without the benefits provided pursuant to section four hundred twenty-one-a of the real property tax law.

(d) On or before December first of each even numbered year following the enactment of the local law that added this section, such commission shall submit a report to the speaker of the council and the mayor on its deliberations and shall include recommendations for revisions to such boundaries that it deems appropriate or why no revisions were recommended, including the methodology by which it applied the criteria in subdivision c of this section to arrive at its recommendations, and all data used to make such recommendations. Any recommendations shall be consistent with the provisions of section four hundred twenty-one-a of the real property tax law.

HISTORICAL NOTE

Section added L.L. 58/2006 § 6, eff. Dec. 28, 2007 to Dec. 28, 2010

when section expires per L.L. 58/2006 § 12. [See § 11-245 Note 1]

FOOTNOTES

38

[Footnote 38]: * Section effective Dec. 28, 2007 to Dec. 28, 2010 when section expires per L.L. 58/2006 § 12.

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Title 11 Taxation and Finance

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.1-b Limitations39 on benefits pursuant to section four hundred twenty-one-a of the real property tax law.

(a) As used in this section, the following terms shall have the following meanings:

(1) "Residential tax lot" shall mean a tax lot that contains dwelling units.

(2) "Non-residential tax lot" shall mean a tax lot that does not contain any dwelling units.

(3) "Annual limit" shall mean sixty-five thousand dollars, which amount shall be increased by three percent, compounded annually, on each taxable status date following the first anniversary of the effective date of the local law that added this section.

(4) "Certificate of occupancy" shall mean the first certificate of occupancy covering all residential areas of the building on or containing a tax lot.

(5) "Unit count" shall mean (i) in the case of a residential tax lot that does not contain any commercial, community facility or accessory use space, the number of dwelling units in such tax lot, and (ii) in the case of a residential tax lot that contains commercial, community facility or accessory use space, the number of dwelling units in

such tax lot plus one.

(6) "Exemption cap" shall mean the unit count multiplied by the annual limit.

(b) The provisions of this section shall apply only to projects that commence construction on or after the effective date of the local law that added this section.

(c) No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any multiple dwelling containing fewer than four dwelling units, as set forth in the certificate of occupancy, unless the construction of such multiple dwelling is carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality where such assistance is provided pursuant to a program for the development of affordable housing.

(d) The portion of the assessed valuation of any residential tax lot exempted from real property taxation in any year pursuant to section four hundred twenty-one-a of the real property tax law shall not exceed the exemption cap on or after the first taxable status date after the building on or containing such tax lot receives its certificate of occupancy unless, in accordance with a regulatory agreement with or approved by the department of housing preservation and development that is applicable to such tax lot, (1) the construction of such building is carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality and such assistance is provided pursuant to a program for the development of affordable housing, or (2) the department of housing preservation and development has imposed a requirement or has certified that twenty per cent of the units be restricted income units. All such restricted income units must be situated onsite. For the purposes of this section, "onsite" shall mean that restricted income units shall be situated within the building or buildings for which benefits pursuant to section four hundred twenty-one-a of the real property tax law are being granted. A dwelling unit that is located in two or more tax lots shall be ineligible to receive any benefits under section four hundred twenty-one-a of the real property tax law. The portion of the assessed valuation of all non-residential tax lots in the building on or containing such non-residential tax lots exempted from real property taxation in any year pursuant to section four hundred twenty-one-a of the real property tax law shall not exceed a cumulative total equal to the annual limit on or after the first taxable status date after the building on or containing such non-residential tax lots receives its certificate of occupancy.

(e) A new multiple dwelling that is situated in (1) a neighborhood preservation program area as determined by the department of housing preservation and development as of June first, nineteen hundred eighty-five, (2) a neighborhood preservation area as determined by the New York city planning commission as of June first, nineteen hundred eighty-five, (3) an area that was eligible for mortgage insurance provided by the rehabilitation mortgage insurance corporation as of May first, nineteen hundred ninety-two, or (4) an area receiving funding for a neighborhood preservation project pursuant to the neighborhood reinvestment corporation act (42 U.S.C. § 8101 et seq.) as of June first, nineteen hundred eighty-five, shall only be eligible for the benefits available pursuant to subparagraph (iii) of paragraph (a) of subdivision two of section four hundred twenty-one-a of the real property tax law if:

a. the construction is carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality and such assistance is provided pursuant to a program for the development of affordable housing, or

b. the department of housing preservation and development has imposed a requirement or has certified that twenty percent of the units be restricted income units. All such restricted income units must be situated onsite.

(f) The department of housing preservation and development may promulgate rules and regulations to effectuate the purposes of this section.

(g) The limitations on eligibility for benefits contained in this section shall be in addition to those contained in any other law, rule or regulation.

(h) Notwithstanding anything to the contrary contained herein, the limitations on eligibility for benefits contained in this section shall not apply to a covered project as defined in subparagraph (i) of paragraph a of subdivision six of section four hundred twenty-one-a of the real property tax law.

HISTORICAL NOTE

Section added L.L. 58/2006 § 7, eff. Dec. 28, 2007 to Dec. 28, 2010

when section expires per L.L. 58/2006 § 12. [See § 11-245 Note 1]

FOOTNOTES

39

[Footnote 39]: * Section effective Dec. 28, 2007 to Dec. 28, 2010 when section expires per L.L. 58/2006 § 12.

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PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.2 Exemption for real property of certain water-works corporations.

Real property owned by a water-works corporation subject to the provisions of the public service law and used exclusively for the sale, furnishing and distribution of water for domestic, commercial and public purposes, shall not be taxable.

HISTORICAL NOTE

Section added L.L. 55/1985 § 1

Section number assigned by the Legislative Bill Drafting Commission per

chap 907/1985 § 14

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PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.3 Exemption for persons sixty-five years of age or over.

1. Real property owned by one or more persons, each of whom is sixty-five years of age or over, or real property owned by husband and wife or by siblings, one of whom is sixty-five years of age or over, or real property owned by one or more persons, some of whom qualify under this section and section 11-245.4 of this part shall be exempt from taxes on real estate to the extent of fifty per centum of the assessed valuation thereof. For the purposes of this section, siblings shall mean a brother or a sister, whether related through halfblood, whole blood or adoption.

2. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.

3. No exemption shall be granted:

(a) if the income of the owner or the combined income of the owners of the property exceeds the sum of twenty-six thousand dollars beginning July first, two thousand six, twenty-seven thousand dollars beginning July first, two thousand seven, twenty-eight thousand dollars beginning July first, two thousand eight, and twenty-nine thousand dollars beginning July first, two thousand nine for the income tax year immediately preceding the date of making

application for exemption. Income tax year shall mean the twelve month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum, except where the husband or wife, or ex-husband or ex-wife is absent from the property as provided in subparagraph (ii) of paragraph (d) of this subdivision, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include gifts, inheritances, a return of capital, payments made to individuals because of their status as victims of Nazi persecution as defined in P.L. 103-286, monies earned through employment in the federal foster grandparent program, and veterans disability compensation as defined in title 38 of the United States Code, and any such income shall be offset by all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income.

(b) unless the title of the property shall have been vested in the owner or one of the owners of the property for at least twelve consecutive months prior to the date of making application for exemption, provided, however, that in the event of the death of either husband or wife in whose name title of the property shall have been vested at the time of death and then becomes vested solely in the survivor by virtue of devise by or descent from the deceased husband or wife, the time of ownership of the property by the deceased husband or wife shall be deemed also a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of twelve consecutive months, and provided further, that in the event of a transfer by either husband or wife to the other spouse of all or part of the title to the property, the time of ownership of the property by the transferer spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of twelve consecutive months, and provided further, that where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceeding, except a tax sale, and where a residence is sold and replaced with another within one year and both are within the state, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section. Where the owner of owners transfer title to property which as of the date of transfer was exempt from taxation under the provisions of this section, the reacquisition of title by such owner or owners within nine months of the date of transfer shall be deemed to satisfy the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve consecutive months. Where, upon or subsequent to the death of an owner or owners, title to property which as of the date of such death was exempt from taxation under such provisions, becomes vested, by virtue of devise or descent from the deceased owner or owners, or by transfer by any other means within nine months after such death, solely in a person or persons who, at the time of such death, maintained such property as a primary residence, the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve consecutive months shall be deemed satisfied; (c) unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this section;

(d) unless the property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property; except where, (i) an owner is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section twenty-eight hundred one of the public health law, provided that any income accruing to that person shall be income only to the extent that it exceeds the amount paid by such owner, spouse, or co-owner for care in the facility, and provided further, that during such confinement such property is not occupied by other than the spouse or co-owner of such owner; or, (ii) the real property is owned by a husband and/or wife, or an ex-husband and/or an ex-wife, and either is absent from the residence due to divorce, legal

separation or abandonment and all other provisions of this section are met provided that where an exemption was previously granted when both resided on the property, then the person remaining on the real property shall be sixty-two years of age or over.

4. Application for such exemption must be made by the owner, or all of the owners of the property, on forms prescribed by the state board to be furnished by the department of finance and shall furnish the information and must be executed in the manner required or prescribed in such form and shall be filed in the department of finance in the borough in which the real property is located between the fifteenth day of January and the fifteenth day of March. Notwithstanding any other provision of law, any person otherwise qualifying under this section shall not be denied the exemption under this section if he or she becomes sixty-five years of age after the taxable status date and on or before December thirty-first of the same year.

5. At least sixty days prior to the fifteenth day of January the department of finance shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed between the fifteenth day of January and the fifteenth day of March every two years from the year in which such exemption was granted and be approved in order for the exemption to be granted. The department of finance shall, within three days of the completion and filing of the tentative assessment roll, notify by mail any applicant who has included with his application at least one self-addressed, prepaid envelope, of the approval or denial of the application; provided, however, where an applicant has included two such envelopes, the department of finance shall, upon the filing of the application, send by mail, notice of receipt of that application. Where an applicant is entitled to notice of denial provided herein, such notice shall state the reasons for such denial and shall further state that such determination is reviewable in a manner provided by law. Failure to mail any such application form or notices or the failure of such person to receive any or all of the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

6. Any conviction of having made any willful false statement in the application for such exemption shall be punishable by a fine of not more than one hundred dollars and shall disqualify the applicant or applicants from further exemption for a period of five years.

7. Notwithstanding the maximum income exemption eligibility level provided in subdivision three of this section, an exemption, subject to all other provisions of this section, shall be granted as indicated in the following schedule:

Annual Income as of July 1, 2006	Percentage Assessed Valuation Exempt From Taxation
More than $26,000 but less than $27,000	45 per centum
$27,000 or more but less than $28,000	40 per centum
$28,000 or more but less than $29,000	35 per centum
$29,000 or more but less than $29,900	30 per centum
$29,900 or more but less than $30,800	25 per centum
$30,800 or more but less than $31,700	20 per centum
$31,700 or more but less than $32,600	15 per centum
$32,600 or more but less than $33,500	10 per centum
$33,500 or more but less than $34,400	5 per centum

Annual Income as of July 1, 2007	Percentage Assessed Valuation Exempt From Taxation
More than $27,000 but less than $28,000	45 per centum
$28,000 or more but less than $29,000	40 per centum
$29,000 or more but less than $30,000	35 per centum
$30,000 or more but less than $30,900	30 per centum
$30,900 or more but less than $31,800	25 per centum

$31,800 or more but less than $32,700	20 per centum
$32,700 or more but less than $33,600	15 per centum
$33,600 or more but less than $34,500	10 per centum
$34,500 or more but less than $35,400	5 per centum

Annual Income as of July 1, 2008	Percentage Assessed Valuation Exempt From Taxation
More than $28,000 but less than $29,000	45 per centum
$29,000 or more but less than $30,000	40 per centum
$30,000 or more but less than $31,000	35 per centum
$31,000 or more but less than $31,900	30 per centum
$31,900 or more but less than $32,800	25 per centum
$32,800 or more but less than $33,700	20 per centum
$33,700 or more but less than $34,600	15 per centum
$34,600 or more but less than $35,500	10 per centum
$35,500 or more but less than $36,400	5 per centum

Annual Income as of July 1, 2009	Percentage Assessed Valuation Exempt From Taxation
More than $29,000 but less than $30,000	45 per centum
$30,000 or more but less than $31,000	40 per centum
$31,000 or more but less than $32,000	35 per centum
$32,000 or more but less than $32,900	30 per centum
$32,900 or more but less than $33,800	25 per centum
$33,800 or more but less than $34,700	20 per centum
$34,700 or more but less than $35,600	15 per centum
$35,600 or more but less than $36,500	10 per centum
$36,500 or more but less than $37,400	5 per centum

8. Any exemption provided by this section shall be computed after all partial exemptions allowed by law have been subtracted from the total amount assessed.

9. Exemption from taxation as provided in this section on real property owned by husband and wife, one of whom is sixty-five years of age or older, once granted, shall not be rescinded solely because of the death of the older spouse so long as the surviving spouse is at least sixty-two years of age.

10. a. For the purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder. That proportion of the assessment of real property owned by a cooperative apartment corporation, determined by the relationship of such real property vested in such tenant-stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such tenant-stockholder resides, shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the department of finance against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder. Each cooperative apartment corporation shall notify each tenant-stockholder in residence thereof of such provisions as are set forth in this section.

b. Notwithstanding any other provision of law, a tenant-stockholder who resides in a dwelling which is subject to the provisions of either article II, IV, V or XI of the private housing finance law and who is eligible for a rent

increase exemption pursuant to chapter seven of title twenty-six of this code shall not be eligible for an exemption pursuant to this subdivision. Notwithstanding any other provision of law, a tenant-stockholder who resides in a dwelling which is subject to the provisions of either article II, IV, V or XI of the private housing finance law and who is not eligible for a rent increase exemption pursuant to chapter seven of title twenty-six of this code but who meets the requirements for eligibility for an exemption pursuant to this section shall be eligible for such exemption provided that such exemption shall be in an amount determined by multiplying the exemption otherwise allowable pursuant to this section by a fraction having a numerator equal to the amount of real property taxes or payments in lieu of taxes that were paid with respect to such dwelling and a denominator equal to the full amount of real property taxes that would have been owed with respect to such dwelling had it not been granted an exemption or abatement of real property taxes pursuant to any provision of law, provided, however, that any reduction in real property taxes received with respect to such dwelling pursuant to chapter seven of title twenty-six of this code or pursuant to this section shall not be considered in calculating such numerator. Any tenant-stockholder who resides in a dwelling which was or continues to be subject to a mortgage insured or initially insured by the federal government pursuant to section two hundred thirteen of the national housing act, as amended, and who is eligible for both a rent increase exemption pursuant to chapter seven of title twenty-six of this code and an exemption pursuant to this subdivision, may apply for and receive either a rent increase exemption pursuant to such chapter or an exemption pursuant to this subdivision, but not both.

11. Exemption Option. Notwithstanding any provision of this part to the contrary, real property owned by one or more persons where one of such owners qualifies for a real property tax exemption pursuant to this section or section 11-245.4 of this part, and another of such owners qualifies for a different tax exemption pursuant to such sections of this part as authorized by state law, such owners shall have the option of choosing the one exemption which is most beneficial to such owners. Such owners shall not be prohibited from taking one such exemption solely on the basis that such owners qualify for more than one exemption and therefore are not eligible for any exemptions.

HISTORICAL NOTE

Section added L.L. 8/1992 § 1, eff. Jan. 1, 1992

Subd. 1 amended L.L. 42/2006 § 1, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

Subd. 1 amended L.L. 95/1992 § 1, eff. Dec. 21, 1992

Subd. 3 par (a) amended L.L. 42/2006 § 2, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

Subd. 3 par (a) amended L.L. 93/2005 § 1, eff. Nov. 15, 2005.

Subd. 3 par (a) amended L.L. 68/2003 § 1, eff. Nov. 13, 2003 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2004.

Subd. 3 par (a) amended L.L. 4/2003 § 1, eff. Jan. 7, 2003 and applying to assessment rolls prepared on the basis of taxable status dates

occurring on or after January 1, 2003.

Subd. 3 par (a) amended L.L. 71/2000 § 1, eff. Dec. 14, 2000 and applying to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2001.

Subd. 3 par (a) amended L.L. 38/1998 § 1, eff. Sept. 16, 1998.

Subd. 3 par (a) amended L.L. 15/1998 § 1, eff. Apr. 6, 1998.

Subd. 3 par (a) amended L.L. 34/1997 § 1, eff. May 30, 1997.

Subd. 3 par (a) amended L.L. 75/1996 § 1, eff. Aug. 14, 1996

Subd. 3 par (a) amended L.L. 47/1994 § 1, eff. Nov. 10, 1994

Subd. 3 par (a) amended L.L. 95/1992 § 2, eff. Dec. 21, 1992

Subd. 3 par (b) amended L.L. 1/1996 § 5, eff. Jan. 1, 1996

Subd. 3 par (d) amended L.L. 95/1992 § 3, eff. Dec. 21, 1992

Subd. 4 amended L.L. 95/1992 § 4, eff. Dec. 21, 1992

Subd. 7 amended L.L. 42/2006 § 3, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

Subd. 7 amended L.L. 68/2003 § 2, eff. Nov. 13, 2003 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2004.

Subd. 7 amended L.L. 4/2003 § 2, eff. Jan. 7, 2003 and applying to assessment rolls prepared on the basis of taxable status dates occurring on or after January 1, 2003.

Subd. 7 amended L.L. 71/2000 § 2, eff. Dec. 14, 2000 and applying to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2001.

Subd. 7 amended L.L. 38/1998 § 2, eff. Sept. 16, 1998.

Subd. 7 amended L.L. 75/1996 § 2, eff. Aug. 14, 1996

Subd. 7 amended L.L. 2/1996 § 1, eff. Jan. 12, 1996 and applying

to assessment rolls prepared on and after Jan. 1, 1996

Subd. 7 amended L.L. 47/1994 § 2, eff. Nov. 10, 1994

Subd. 10 amended L.L. 40/1996 § 1, eff. May 14, 1996 and applying to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 1996, and further applications for exemptions for fiscal year beginning July 1, 1996 are considered timely if filed on or before Apr. 1, 1996

Subd. 10 added L.L. 1/1996 § 6, eff. Jan. 12, 1996 (as per amendment of L.L. 1/1996 § 7 by L.L. 40/1996 § 2)

Subd. 11 added L.L. 42/2006 § 4, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

NOTE

1. Provisions of L.L. 42/2006:

§ 5. If any subdivision, sentence, clause, phrase or other portion of the local law that amended this section is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that amended this section, which remaining portions shall remain in full force and effect.

§ 6. This local law shall take effect immediately and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after January 1, 2007.

CASE NOTES

¶ 1. Real property was not entitled to 50% real estate tax exemption provided to property owned by senior citizens where owner's son who was under 65 had a one-third interest but it was alleged that the continued recordation of his interest after 1963 was the result of an oversight.-Hassberg v. Tax Comm. of City of N. Y., 81 Misc. 2d 252 [1974], affirmed, 44 A. D. 2d 909, 355 N. Y. S. 2d 1014 affirmed, 36 N. Y. 2d 817, 338 N. E. 2d 680, 370 N. Y. S. 2d 899 [1975].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-245.4

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.4 Exemption for persons with disabilities.

1. (a) Real property owned by one or more persons with disabilities, or real property owned by a husband, wife, or both, or by siblings, at least one of whom has a disability, or real property owned by one or more persons, some of whom qualify under this section and section 11-245.3 of this part, and whose income, as hereafter defined, is limited by reason of such disability, shall be exempt from taxes on real estate to the extent of fifty per centum of the assessed valuation thereof as hereinafter provided. For purposes of this section, sibling shall mean a brother or a sister, whether related through half blood, whole blood or adoption.

(b) For purposes of this section, a person with a disability is one who has a physical or mental impairment, not due to current use of alcohol or illegal drug use, which substantially limits such person's ability to engage in one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and who (i) is certified to receive social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal social security act, or (ii) is certified to receive railroad retirement disability benefits under the federal railroad retirement act, or (iii) has received a certificate from the state commission for the blind and visually handicapped stating that such person is legally blind, or (iv) is certified to receive a United States postal service disability pension. An award letter from the social security administration or the railroad

retirement board or a certificate from the state commission for the blind and visually handicapped or an award letter from the United States postal service shall be submitted as proof of disability.

2. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.

3. No exemption shall be granted:

(a) if the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the sum of twenty-six thousand dollars beginning July first, two thousand six, twenty-seven thousand dollars beginning July first, two thousand seven, twenty-eight thousand dollars beginning July first, two thousand eight, and twenty-nine thousand dollars beginning July first, two thousand nine. Income tax year shall mean the twelve month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum, except where the husband or wife, or ex-husband or ex-wife is absent from the property due to divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include a return of capital, gifts, inheritances or monies earned through employment in the federal foster grandparent program and any such income shall be offset by all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income;

(b) unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this section;

(c) unless the real property is the legal residence of and is occupied in whole or in part by the disabled person; except where the disabled person is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section twenty-eight hundred one of the public health law, provided that any income accruing to that person shall be considered income for purposes of this section only to the extent that it exceeds the amount paid by such person or spouse or sibling of such person for care in the facility.

4. Application for such exemption must be made annually by the owner, or all of the owners of the property, on forms prescribed by the state board, and shall be filed with the department of finance on or before the fifteenth day of March of the appropriate year; provided, however, proof of a permanent disability need be submitted only in the year exemption pursuant to this section is first sought or the disability is first determined to be permanent.

5. At least sixty days prior to the fifteenth day of March of the appropriate year, the department of finance shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed on or before the fifteenth day of March and be approved in order for the exemption to continue to be granted. Failure to mail such application form or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

6. Notwithstanding the maximum income exemption eligibility level provided in subdivision three of this section, an exemption, subject to all other provisions of this section, shall be granted as indicated in the following schedule:

Annual Income as of July 1, 2006	Percentage Assessed Valuation Exempt From Taxation

More than $26,000 but less than $27,000	45 per centum
$27,000 or more but less than $28,000	40 per centum
$28,000 or more but less than $29,000	35 per centum
$29,000 or more but less than $29,900	30 per centum
$29,900 or more but less than $30,800	25 per centum
$30,800 or more but less than $31,700	20 per centum
$31,700 or more but less than $32,600	15 per centum
$32,600 or more but less than $33,500	10 per centum
$33,500 or more but less than $34,400	5 per centum

Annual Income as of July 1, 2007	Percentage Assessed Valuation Exempt From Taxation
More than $27,000 but less than $28,000	45 per centum
$28,000 or more but less than $29,000	40 per centum
$29,000 or more but less than $30,000	35 per centum
$30,000 or more but less than $30,900	30 per centum
$30,900 or more but less than $31,800	25 per centum
$31,800 or more but less than $32,700	20 per centum
$32,700 or more but less than $33,600	15 per centum
$33,600 or more but less than $34,500	10 per centum
$34,500 or more but less than $35,400	5 per centum

Annual Income as of July 1, 2008	Percentage Assessed Valuation Exempt From Taxation
More than $28,000 but less than $29,000	45 per centum
$29,000 or more but less than $30,000	40 per centum
$30,000 or more but less than $31,000	35 per centum
$31,000 or more but less than $31,900	30 per centum
$31,900 or more but less than $32,800	25 per centum
$32,800 or more but less than $33,700	20 per centum
$33,700 or more but less than $34,600	15 per centum
$34,600 or more but less than $35,500	10 per centum
$35,500 or more but less than $36,400	5 per centum

Annual Income as of July 1, 2009	Percentage Assessed Valuation Exempt From Taxation
More than $29,000 but less than $30,000	45 per centum
$30,000 or more but less than $31,000	40 per centum
$31,000 or more but less than $32,000	35 per centum
$32,000 or more but less than $32,900	30 per centum
$32,900 or more but less than $33,800	25 per centum
$33,800 or more but less than $34,700	20 per centum
$34,700 or more but less than $35,600	15 per centum
$35,600 or more but less than $36,500	10 per centum
$36,500 or more but less than $37,400	5 per centum

7. Any exemption provided by this section shall be computed after all other partial exemptions allowed by law have been subtracted from the total amount assessed; provided, however, that no parcel may receive an exemption pursuant to both this section and section 11-245.3.

8. (a) For purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides, and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder. That proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant-stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the department of finance against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

(b) Notwithstanding any other provision of law, a tenant-stockholder who resides in a dwelling which is subject to the provisions of either article II, IV, V or XI of the private housing finance law shall not be eligible for an exemption pursuant to this subdivision.

9. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to subdivision one of this section, were such person or persons the owner or owners of such real property.

10. Exemption Option. Notwithstanding any provision of this part to the contrary, real property owned by one or more persons where one of such owners qualifies for a real property tax exemption pursuant to this section or section 11-245.3 of this part, and another of such owners qualifies for a different tax exemption pursuant to such sections of this part as authorized by state law, such owners shall have the option of choosing the one exemption which is most beneficial to such owners. Such owners shall not be prohibited from taking one such exemption solely on the basis that such owners qualify for more than one exemption and therefore are not eligible for any exemptions.

HISTORICAL NOTE

Section added L.L. 13/1998 § 1, eff. Apr. 6, 1998 and apply to assessment rolls prepared on and after Jan. 1, 1999.

Subd. 1 par (a) amended L.L. 41/2006 § 1, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

Subd. 1 par (b) amended L.L. 70/2000 § 1, eff. Dec. 14, 2000 and applying to assessment rolls prepared on the basis of a taxable status date occurring on or after Jan. 1, 2001.

Subd. 3 par (a) amended L.L. 41/2006 § 2, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

Subd. 3 par (a) amended L.L. 84/2003 § 1, eff. Dec. 22, 2003 and

applying to assessment rolls prepared on the basis of a taxable status date occurring on or after Jan. 1, 2004.

Subd. 3 par (a) amended L.L. 31/2002 § 2, eff. Oct. 25, 2002 and shall apply to assessment rolls prepared on the basis of a taxable status date occurring on or after January 1, 2003.

Subd. 3 par (a) amended L.L. 70/2000 § 2, eff. Dec. 14, 2000 and applying to assessment rolls prepared on the basis of a taxable status date occurring on or after Jan. 1, 2001.

Subd. 4 amended chap 531/2006 § 13, eff. Aug. 16, 2006.

Subd. 5 amended chap 531/2006 § 13, eff. Aug. 16, 2006.

Subd. 6 amended L.L. 41/2006 § 3, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

Subd. 6 amended L.L. 84/2003 § 2, eff. Dec. 22, 2003 and applying to assessment rolls prepared on the basis of a taxable status date occurring on or after Jan. 1, 2004.

Subd. 6 amended L.L. 31/2002 § 3, eff. Oct. 25, 2002 and shall apply to assessment rolls prepared on the basis of a taxable status date occurring on or after January 1, 2003.

Subd. 6 amended L.L. 70/2000 § 3, eff. Dec. 14, 2000 and applying to assessment rolls prepared on the basis of a taxable status date occurring on or after Jan. 1, 2001.

Subd. 10 added L.L. 41/2006 § 4, eff. Oct. 17, 2006 and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2007. [See Note 1]

NOTE

1. Provisions of L.L. 41/2006:

§ 5. If any subdivision, sentence, clause, phrase or other portion of the local law that amended this section is,

for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that amended this section, which remaining portions shall remain in full force and effect.

§ 6. This local law shall take effect immediately and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after January 1, 2007.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-245.45

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Title 11 Taxation and Finance

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.45 Exemption for veterans.

Pursuant to paragraph (d) of subdivision eight of section four hundred fifty-eight of the real property tax law, the city hereby authorizes real property owned by a cooperative apartment corporation to be exempt from taxation in accordance with such section and any local laws adopted pursuant to such section beginning July first, nineteen hundred ninety-eight.

HISTORICAL NOTE

Section renumbered (former § 11-245.4) L.L. 31/2002 § 1, eff.

Oct. 25, 2002.

Section added L.L. 68/1997 § 1, eff. Aug. 19, 1997.

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.5 Alternative exemption for veterans.

Pursuant to paragraph (d) of subdivision six of section four hundred fifty-eight-a of the real property tax law, the city hereby authorizes real property owned by a cooperative apartment corporation to be exempt from taxation in accordance with such section and any local laws adopted pursuant to such section beginning July first, nineteen hundred ninety-eight.

HISTORICAL NOTE

Section added L.L. 68/1997 § 2, eff. Aug. 19, 1997.

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.6 Alternative exemption for veterans; maximum exemptions allowable.

Pursuant to subparagraph (ii) of paragraph (d) of subdivision two of section four hundred fifty-eight-a of the real property tax law, the city hereby increases the maximum exemptions allowable in paragraphs (a), (b) and (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law. The maximum exemption allowable in such paragraph (a) shall be fifteen percent of the assessed value of the qualifying residential real property; provided, however, that such exemption shall not exceed fifty-four thousand dollars or the product of fifty-four thousand dollars multiplied by the latest class ratio, whichever is less. In addition to the exemption provided by such paragraph (a), as increased by this section, the maximum exemption allowable in such paragraph (b) shall be ten percent of the assessed value of the qualifying residential real property; provided, however, that such exemption shall not exceed thirty-six thousand dollars or the product of thirty-six thousand dollars multiplied by the latest class ratio, whichever is less. In addition to the exemptions provided by such paragraphs (a) and (b), as increased by this section, the maximum exemption allowable in such paragraph (c) shall be the product of the assessed value of the qualifying residential real property multiplied by fifty percent of the veteran's disability rating; provided, however, that such exemption shall not exceed one hundred eighty thousand dollars or the product of one hundred eighty thousand dollars multiplied by the latest class ratio, whichever is less. The maximum exemptions allowable in such paragraphs (a), (b) and (c), as increased by this section, shall not apply to any assessment roll completed and filed prior to the first day of January, two

thousand six.

HISTORICAL NOTE

Section amended L.L. 136/2005 § 1, eff. Jan. 2, 2006.

Section added L.L. 82/1997 § 1, eff. Oct. 20, 1997.

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NYC Administrative Code 11-245.7

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.7 Alternative exemption for veterans; gold star parent.

Pursuant to paragraph (b) of subdivision seven of section four hundred fifty-eight-a of the real property tax law, and in accordance with such section and any local laws adopted pursuant thereto, the city hereby includes a gold star parent within the definition of "qualified owner" as provided in paragraph (c) of subdivision one of such section, and includes property owned by a gold star parent within the definition of "qualifying residential real property" as provided in paragraph (d) of subdivision one of such section, provided that such property is the primary residence of the gold star parent.

HISTORICAL NOTE

Section added L.L. 69/2000 § 1, eff. Dec. 14, 2000 and applying to assessment rolls prepared on the basis of taxable status dates occurring on or after Jan. 1, 2001.

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.8 ENERGY28 STAR appliances.

a. For the purposes of this section, the following definitions shall apply in conjunction with the definitions found in sections 27-232 and 27-2004 of this code:

(1) The term "ENERGY STAR" shall mean a designation from the United States environmental protection agency or department of energy indicating that a product meets the energy efficiency standards set forth by the agency for compliance with the ENERGY STAR program.

(2) The term "household appliance" shall mean any refrigerator, room air conditioner, dishwasher or clothes washer, within a dwelling unit in a multiple dwelling that is provided by the owner of such multiple dwelling. This definition shall also include any boiler or furnace that provides heat or hot water for any dwelling unit in a multiple dwelling.

b. For any building for which any benefit is conferred pursuant to four hundred eighty-nine of the real property tax law, whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for any dwelling unit in a multiple dwelling, is installed or replaced with a new household appliance, such new

appliance shall be certified as Energy Star.

c. For any building for which any benefit is conferred pursuant to section four hundred twenty-one-a of the real property tax law, whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for any dwelling unit in a multiple dwelling, is installed or replaced with a new household appliance, such new appliance shall be certified as Energy Star.

d. The commissioner may enact rules requiring additional energy conservation measures for any building for which any benefit is conferred pursuant to section four hundred eighty-nine of the real property tax law or section four hundred twenty-one-a of the real property tax law.

e. The commissioner shall inform applicants for any benefits affected by this section of the requirements of this section.

f. The requirements of subdivisions b and c of this section shall not apply where:

1) an ENERGY STAR certified household appliance of appropriate size is not manufactured, such that movement of walls or fixtures would be necessary to create sufficient space for such appliance; or

2) an ENERGY STAR certified boiler or furnace of sufficient capacity is not manufactured.

HISTORICAL NOTE

Section added L.L. 107/2005 § 2, eff. Mar. 19, 2006 except that subd. c

shall take effect Dec. 19, 2006. [See Note 1]

NOTE

1. Provisions of L.L. 107/2005:

Section 1. Statement of findings and purpose. Home electricity and gas expenses represent a substantial cost for many low-income New Yorkers in rental apartments. For example, nationally in 1997, households in multi-family buildings spent an average of $848 per year on energy.**29 In addition, since much of New York City's electricity is produced within the City, energy consumption translates directly into greater local pollution, including emissions of sulfur dioxide, nitrogen oxides, particulate matter, carbon dioxide and mercury. These pollutants contribute to respiratory disease, heart disease, smog, acid rain and climate change. Moreover, as energy demand rises, so does our reliance on dirty, inefficient power plants and the City and nation's dependence on foreign oil and natural gas.

The United States Environmental Protection Agency and the Department of Energy certify a wide range of household appliances and building materials as energy efficient through the ENERGY STAR program, including refrigerators, room air conditioners, dishwashers, clothes washers and windows. For example, ENERGY STAR qualified dishwashers use 25% less energy than the federal minimum standard for energy consumption. ENERGY STAR certified products are widely available and generally have little or no cost premium compared with uncertified products. Even when Energy Star products are more expensive than conventional options, these products more than pay for the increased price over time through reduced energy costs.

When people buy appliances for their own homes, they have an incentive to ensure that the appliances use the least energy possible because homeowners pay for their energy costs. When landlords or developers, however, purchase appliances, they do not have the same incentive. Since it is tenants or future owners who generally pay for energy costs, the primary financial concern for landlords and developers is to limit the up-front costs of appliances, without regard for energy consumption.

The Council finds that the increased use of Energy Star certified appliances for apartments in New York City will substantially reduce household energy costs as well as the City's electricity consumption and air pollution. Accordingly, the Council declares that it is reasonable and necessary to require those who receive certain tax benefits from the City to purchase Energy Star certified appliances when they replace appliances in rental apartments.

FOOTNOTES

28

[Footnote 28]: *** There are 2 sections 11-245.8.

29

[Footnote 29]: *** U.S. Energy Information Administration, Department of Energy, Residential Energy Consumption and Expenditures per Household Member and per Building.

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PART 1 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-245.8 Notice30 of residential property tax exemptions.

a. The department shall mail to the owners of all class one properties and class two residential properties held in the condominium form of ownership, notice, each year, of the availability of the following residential real property tax exemptions:

1. the senior citizen homeowner exemption pursuant to section 11-245.3 of this chapter;

2. the exemption for persons with disabilities pursuant to section 11-245.4 of this chapter;

3. the alternate exemption for veterans pursuant to section four hundred fifty-eight-a of the real property tax law;

4. the exemption for gold star parents pursuant to section 11-245.7 of this chapter;

5. the school tax relief (STAR) exemption pursuant to section four hundred twenty-five of the real property tax law; and

6. any other residential real property tax exemption which, in the discretion of the commissioner, should be

included in such notification.

b. The notice required pursuant to this section shall include:

1. a brief description of each exemption program; and

2. a phone number at the department and a website address where taxpayers can obtain additional information on the exemption programs and all necessary forms and applications.

HISTORICAL NOTE

Section added L.L. 9/2006 § 1, eff. May 11, 2006 and the department

shall mail the first notice required pursuant to this section before the

end of fiscal year 2007.

FOOTNOTES

30

[Footnote 30]: *** There are 2 sections 11-245.8.

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 2 EXEMPTION FOR CERTAIN NONPROFIT ORGANIZATIONS

§ 11-246 Taxation of property of nonprofit organizations, pharmaceutical societies and dental societies.

1. a. Pursuant to the requirements of sections four hundred twenty-a and four hundred forty-six of the real property tax law, real property owned by a corporation or association which is organized or conducted exclusively for religious, charitable, hospital, educational or cemetery purposes, or for the purposes of the moral or mental improvement of men, women or children or for two or more such purposes shall not be taxable.

b. Real property owned by a corporation or association which is organized or conducted exclusively for Bible, tract, benevolent, missionary, infirmary, public playground, scientific, literary, library, patriotic or historical purposes, for the development of good sportsmanship for persons under the age of eighteen years through the conduct of supervised athletic games, or for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association, or by another such corporation or association as provided in section four hundred twenty-b of the real property tax law shall not be taxable. Any corporation or association which uses real property exempted from taxation pursuant to this paragraph shall make available to the city council, the commissioner of finance and the public a report, in such form as may be prescribed by the commissioner of finance, setting forth the efforts of such corporation or association undertaken in the previous calendar year to provide assistance to city programs and city residents, by

filing such report with the city clerk not later than June first of each year.

c. Real property owned by a corporation or association which is organized or conducted exclusively for bar association or medical society purposes, or both such purposes, and used exclusively for carrying out thereupon one or both such purposes either by the owning corporation or association, or by another such corporation or association shall be taxable pursuant to the authority contained in section four hundred twenty-b of the real property tax law.

2. Real property from which no rent is derived and which is owned by an incorporated pharmaceutical society which is either wholly or partly within the city, which society has heretofore been or may hereafter be authorized and empowered by act of the legislature to establish and which has established or may hereafter establish a college of pharmacy in this city shall be taxable.

3. Real property from which no income is derived which is owned by a dental society of any judicial district which judicial district is wholly or partly within the city, which dental society was incorporated under the education law shall be taxable.

4. Real property previously exempt from taxation but made taxable pursuant to this section as of the first day of January, nineteen hundred seventy-two shall be taxed for the period from the first day of January to and including the thirtieth day of June, nineteen hundred seventy-two by applying one-half of the tax rate for the fiscal year nineteen hundred seventy-one, seventy-two to the assessments made and exemptions claimed with reference to the taxable status date falling on the twenty-fifth day of January, nineteen hundred seventy-two. The taxes thus computed for the period from the first day of January to and including the thirtieth day of June, nineteen hundred seventy-two shall be due and payable on the first day of June, nineteen hundred seventy-two.

5. Real property which is taxable under this section shall be subject to any special ad valorem levies and special assessments which are imposed to defray the cost of improvements or services furnished by the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § J51-3.0 added LL 46/1971 § 1

Sub 1 amended LL 3/1984 § 2

(Legislative findings, contributions of non-profit groups to art, music,

etc., loss of federal funding, LL 3/1984 § 1)

CASE NOTES FROM FORMER SECTION

¶ 1. Real property of Association of Bar of City of New York used for association purposes did not qualify for exemption from real property taxes because it was not organized and conducted primarily for charitable and educational purposes, and this section is not unconstitutional. Association of the Bar of City of N.Y. v. Lewisohn, 34 N.Y. 2d 143, 313 N.E. 2d 30, 356 N.Y.S. 2d 555 [1974].

¶ 2. Real property of organization conducted for scientific purposes was not entitled to tax exemption although it had adjunctive charitable and educational attributes. Matter of Explorers Club v. Lewisohn, 34 N.Y. 2d 143, 313 N.E. 2d 30, 356 N.Y.S. 2d 555 [1974], reversing, 42 A.D. 2d 538, 344 N.Y.S. 2d 723 [1973].

¶ 3. To be subject to loss of tax exemption real property must be owned by a corporation or association which is

organized and conducted exclusively for bible, tract or missionary purposes and is not conducted for exclusively religious purposes.-Watchtower Bible & Tract Soc. v. Lewisohn, 35 N.Y. 2d 92, 315 N.E. 2d 801, 358 N.Y.S. 2d 757 [1974].

¶ 4. Provision in L.L. No. 46 of 1971 to include January 1 through June 30, 1972 in its coverage was in contravention of enabling legislation which was applicable only to assessments made with reference to a tax status date after January 1, 1972 where the status of the property falling on or after that date determined its taxability for the succeeding fiscal year of July 1, 1972 to June 30, 1973 and hence petitioner was entitled to a refund of taxes paid for January 1 to June 30, 1972.-In re Colonial Dames of America (Lewisohn), 170 (68) N.Y.L.J. (10-5-73) 2, Col. 4 F; Matter of Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the U.S. of Amer. (Lewisohn), 169 (21) N.Y.L.J. (1-30-73) 16, Col. 4 M.

¶ 5. A missionary society whose principal use of its property is for religious purposes would be entitled to tax exemption if its missionary activities are merely incidental to its exempt purposes.-Matter of Domestic and Foreign Missionary Soc. of the Protestant Episcopal Church in the U.S. of Amer. (Lewisohn), 169 (21) N.Y.L.J. (1-30-73) 16, Col. 4 M.

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PART 3 TAX EXEMPTION FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-247 Definitions.

When used in this part:

a. "Applicant" means any person or corporation obligated to pay real property taxes on the property for which an exemption is sought, or in the case of exempt property, the record owner thereof, provided, however, that such property is not commercial property located in an area designated as excluded pursuant to section 11-249 of this part;

b. "Board" means the industrial and commercial incentive board;

c. "Commercial" means any non-residential property used primarily for the buying, selling or otherwise providing of goods or services, provided that the use of such property has not been designated as a restricted commercial use pursuant to section 11-249 of this part;

d. "Construction" means the building of new industrial or commercial structures on vacant or predominantly vacant land, or the modernization, rehabilitation or expansion or other improvements of an existing commercial structure where such modernization, rehabilitation, expansion or other improvement is not physically or functionally

integrated with the existing structure or results in additional usable square footage fifty per centum greater than the square footage of the existing structure;

e. "Industrial" means property used primarily for the manufacturing or assembling of goods or the processing of raw materials;

f. "Predominantly vacant land" means land, including land under water, on which not more than fifteen percent of the lot area contains enclosed, permanent improvements; in addition, such land may include existing foundations. A fence, shed, garage, attendant's booth, paving, pier, bulkhead, lighting fixtures, and similar items, or any improvement having an assessed value of less than two thousand dollars shall not constitute an enclosed, permanent improvement;

g. "Reconstruction" means the modernization, rehabilitation, expansion or other improvement of an existing commercial or industrial structure where the total proposed project cost is in an amount equal to at least twenty per centum of the assessed value of the property at the time an application for a certificate of eligibility pursuant to this part is made, and where such modernization, rehabilitation, expansion or other improvement is physically and functionally integrated with the existing structure and does not create additional usable square footage greater than fifty per centum of the usable square footage of the existing structure except in a case where the existing structure has been substantially destroyed by fire or other casualty;

h. "Residential property" shall mean property, other than property used for hotel purposes, on which will exist upon completion of construction a building or structure containing more than one independent dwelling unit or where more than one-third of the total square footage of said structure is to be used for residential purposes; it shall also mean, in the case of reconstruction, property on which exists or will exist upon completion of the reconstruction a building or structure where more than one-third of the total square footage is used or is to be used for dwelling purposes;

i. "Vacant land" means land, including land under water, which contains no enclosed, permanent improvement. A fence, shed, garage, attendant's booth, paving, pier, bulkhead, lighting fixtures, and similar items, or any improvement having an assessed value of less than two thousand dollars shall not constitute an enclosed, permanent improvement.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1301 added LL 58/1976 § 1

Subs e, f amended LL 85/1977 § 1

Amended LL 49/1979 § 1

Amended LL 8/1982 § 1

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§ 11-248 Industrial and commercial incentive board.

There shall be an industrial and commercial incentive board to consist of the deputy mayor for economic policy and development who shall be chairperson of the board, the commissioner of finance, the chairperson of the city planning commission and the director of management and budget, each of whom shall have the power to designate an alternate to represent him or her at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation be in writing to the chairperson of the board, and three other members to be appointed by the mayor. In addition, the borough president of each borough or his or her designated representative, shall be a member of such board for the purpose of taking action with respect to property located in his or her borough. The members of the board who shall be agents, officers, or employees of the city shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. The members of the board who are not agents, officers, or employees of the city shall receive as compensation for their services one hundred dollars per diem, provided, however, that the total compensation paid to any such member shall not exceed twelve hundred dollars for any calendar year. Four members of the board shall constitute a quorum.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1302 added LL 58/1976 § 1

Amended LL 37/1978 § 1

Amended LL 49/1979 § 2

Amended LL 8/1982 § 2

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§ 11-249 Functions, powers and duties of the board; annual designation of exemption areas and restricted commercial uses.

a. The members of the board shall have the following functions, powers and duties:

1. to receive and review applications for certificates of eligibility pursuant to the charter and pursuant to subdivision thirteen of section 11-604 and subdivision (e) of section 11-503 of this title;

2. to make findings and determinations on the qualifications of applicants for certificates of eligibility pursuant to this part and pursuant to subdivision thirteen of section 11-658 and subdivision (e) of section 11-503 of this title;

3. to issue certificates of eligibility and amendments thereto;

4. to make recommendations to the tax commission on the termination of a tax exemption pursuant to section 11-253 of this part; 5. to designate annually, pursuant to subdivision b of this section, areas in which exemptions for commercial construction or reconstruction shall be granted as of right, areas from which such exemptions shall be excluded and commercial uses for which the granting of exemptions shall be restricted; and

6. to make and promulgate rules and regulations to carry out the purposes of the board.

b. (1) Not later than October first of each year the board shall publish a notice at least once in the official paper or a newspaper of general circulation in the city setting forth: (i) the proposed boundaries of areas in which commercial construction or reconstruction shall be granted exemptions as of right, proposed boundaries of areas from which exemptions for commercial construction or reconstruction shall be excluded and proposed restricted commercial uses; and (ii) the date, not earlier than ten nor later than thirty days following the publication of such notice, on which the board will hold a public hearing to hear all persons interested in the designation of such boundaries and restricted commercial uses.

(2) Not earlier than ten nor later than thirty days following the conclusion of the public hearing provided for in paragraph one of this subdivision, the board shall designate the boundaries of areas in which exemptions for commercial construction or reconstruction shall be granted as of right and areas from which such exemptions shall be excluded and shall also designate restricted commercial uses. Such designations shall be made upon the following determinations:

(i) With respect to areas in which exemption for commercial construction or reconstruction shall be granted as of right, the board shall determine that market conditions in each area are such that exemptions are required to attract commercial construction or reconstruction to the area and that attracting such construction or reconstruction, and the granting of exemptions therefor, are in the public interest. In making such determination, the board may consider, among other factors, that the area is experiencing economic distress or is characterized by an unusually large number of vacant, underutilized, unsuitable or substandard structures, or by other substandard, unsanitary, deteriorated or deteriorating conditions, with or without tangible blight, or that commercial development in the area will be beneficial to the city's economy.

(ii) With respect to areas from which exemptions for commercial construction or reconstruction are to be excluded, the board shall determine that market conditions in each area are such that exemptions are not required to attract commercial construction or reconstruction to the area, or that it is not in the public interest to grant exemptions for commercial construction or reconstruction in the area. No applications for exemptions for commercial construction or reconstruction shall be accepted from such areas.

(iii) With respect to restricted commercial uses, the board shall determine that it is not in the public interest to grant exemptions for such uses unless the board further determines that in certain areas designated pursuant to this subdivision, such uses will have an especially positive impact on the area's economy. All applications for exemptions for restricted commercial uses shall be determined pursuant to paragraphs two and three of subdivision b of section 11-251 of this part.

(3) Designations made pursuant to this subdivision shall be effective on the first day of January of each year.

c. So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective heads to the board for the carrying out of the functions stated in this part. The head of any department or agency shall furnish information in the possession of such department or agency when the board, after consultation with the mayor, so requests.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1303 added LL 58/1976 § 1

Sub a pars 1, 2 amended LL 66/1977 § 6

Amended LL 8/1982 § 3

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§ 11-250 Real property tax exemption.

a. A real property tax exemption pursuant to this part shall be granted to an applicant who, within a period of thirty-six months, or following an extension pursuant to section 11-254 of this part within a period of forty-eight months, from the date of issuance of a certificate of eligibility has completed reconstruction or construction work in accordance with the plans approved by the board in the certificate of eligibility. The amount of the tax exemption shall be determined as follows:

(1) In the case of an applicant who has completed industrial construction or reconstruction work, or commercial reconstruction work designated as of right pursuant to section 11-249 of this part or as specially needed pursuant to section 11-251 of this part, the tax exemption shall continue for nineteen tax years in an amount decreasing by five per centum each year from an exemption of ninety-five per centum of the exemption base, as defined in paragraph four of this subdivision.

(2) In the case of an applicant who has completed other commercial reconstruction work, or new commercial construction work designated as of right pursuant to section 11-249 of this part or as specially needed pursuant to section 11-251 of this part, the tax exemption shall continue for ten tax years, in an amount decreasing by five per

centum each year from an exemption of fifty per centum of the exemption base.

(3) In the case of an applicant who has completed other new commercial construction work, the exemption shall continue for five tax years in an amount decreasing by ten per centum each year from an exemption of fifty per centum of the exemption base.

(4) The term "exemption base" shall mean the difference between the final assessed value of the property as determined upon completion of the construction or reconstruction work and the lesser of (i) the assessed value of the property at the time an application for certificate of eligibility pursuant to this part is made, or (ii) the assessed value as may thereafter be reduced pursuant to application to the tax commission.

The tax exemption shall be computed according to the following tables:

[See tabular material in printed version]

b. The taxes payable during the period from the issuance of a certificate of eligibility to the approval of the tax exemption pursuant to section 11-252 of this part shall be paid on the lesser of:

(1) the assessed value of the property at the time an application for a certificate of eligibility pursuant to this part is made, or

(2) the assessed value as may thereafter be reduced pursuant to application to the tax commission, provided, however, that if reconstruction or construction is not completed in accordance with the plans approved in the certificate of eligibility including any amendments thereto, taxes shall be due and payable retroactively as otherwise required by law.

c. In all cases where the board shall have issued a certificate of eligibility prior to January first, nineteen hundred eighty-two, the exemption percentage shall apply to any subsequent increase in the assessed valuation of the property during the tenure of the exemption. Where the board has issued a certificate of eligibility on or after January first, nineteen hundred eighty-two, the exemption percentage shall apply to any subsequent increase in the assessed valuation of the property during the first two years after approval of the tax exemption pursuant to section 11-252 of this part. Commencing two years after approval of the tax exemption pursuant to section 11-252 of this part, the exemption percentage shall apply to any subsequent increase in assessed valuation of the property only to the extent such increase is attributable to the construction or reconstruction work approved in the certificate of eligibility.

d. The provisions of this part shall not apply to any increase in assessed value resulting from the construction or reconstruction of a residential structure on any property receiving an exemption under the provisions of this part. The provisions of this part shall apply exclusively to those structures and the lands underlying them which were identified explicitly in the certificate of eligibility.

e. The provisions of this part shall not apply if any new or rehabilitated construction displaces or replaces a building or buildings containing more than twenty-five occupied dwelling units in existence on the date an application for certificate of eligibility is submitted for preliminary approval pursuant to section 11-251 of this part, which are administered under the local emergency housing rent control act, the rent stabilization law of nineteen hundred sixty-nine or the emergency tenant protection act of nineteen seventy-four, unless a certificate of eviction has been issued for any of the displaced or replaced units pursuant to the powers granted by the city rent and rehabilitation law.

f. The provisions of this part shall not apply to an applicant who has commenced construction or reconstruction work prior to the granting of a certificate of eligibility except where applicant, having filed an application for a certificate of eligibility, receives written permission to commence from the board or its designated representative prior to the granting of a certificate of eligibility. Demolition of existing structures, site preparation limited to grading, filling or clearing, or the curing of a safety or sanitary hazard shall not be deemed to be commencement of construction or

reconstruction work.

g. Any property enjoying the benefits of a tax exemption approved by the board shall be ineligible for any subsequent or additional tax exemption pursuant to the provisions of this part until the expiration of the original exemption period or earlier termination of the existing exemption by action of the tax commission.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1304 added LL 58/1976 § 1

Sub a amended LL 85/1977 § 2

Sub a amended LL 37/1978 § 1

Amended LL 49/1979 § 3

Amended LL 8/1982 § 4

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§ 11-251 Applications for certificates of eligibility.

a. Applications for a certificate of eligibility pursuant to this part shall be submitted for preliminary approval to the office for economic development commencing immediately after March first, nineteen hundred eighty-two and continuing until the thirty-first day of January, nineteen hundred eighty-six, on such form or forms as shall be prescribed by the board. In addition to any other information required by the board, the application shall include plans for reconstruction or construction that have been certified by a professional engineer or an architect of the applicant's choice and cost estimates or bids for the proposed reconstruction or construction. Upon a finding by such office that the application satisfies the requirements of reconstruction or construction as defined in this part, the application shall be presented to the board for evaluation and written notice thereof shall be given to the community board of the district in which the application site is located.

b. (1) In the case of an application for construction or reconstruction of an industrial structure or a commercial structure located in an area designated as of right, the board shall issue a certificate of eligibility upon determining that the application satisfies the requirements of construction or reconstruction as defined in this part, that the applicant has obtained plans for construction or reconstruction certified by a professional engineer or architect, and that the applicant has otherwise complied with the provisions of this part and other applicable provisions of law.

(2) In the case of an application for construction or reconstruction of a commercial structure not located in an as of right area, or involving a restricted commercial use, the board shall issue a certificate of eligibility upon making the determination specified in paragraph one of this subdivision and upon making the further determination that the granting of a tax exemption for the construction or reconstruction of such a structure in the proposed location is in the public interest. In making such determination, the board shall make findings that there is a need in the area for the services the enterprise will provide, that the enterprise will generate or retain employment in the area, and that a tax incentive is required to attract construction or reconstruction of such a structure to the area. In addition, the board shall consider the economic impact such commercial structure will have in the area.

(3) In the case of an application for construction or reconstruction of a commercial structure not located in an as of right area, or involving a restricted commercial use, the board may make a further determination that special circumstances warrant designating the proposed construction or reconstruction as "specially needed". In making such determination, the board shall make findings that the commercial services to be provided will have an especially positive impact on the area's or the city's economy and that the applicant has demonstrated that the project cannot go forward without the greater exemption granted by such designation.

c. Any meeting of the board at which an application for a certificate of eligibility is to be considered shall be open to the public, and notice of such meeting shall be given at least two weeks prior thereto by publication in a newspaper of general circulation within the city.

d. The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting a tax exemption pursuant to this part have been satisfied, and the board shall have the authority to require that statements made in consideration of the application be taken under oath.

e. After the issuance of a certificate of eligibility the applicant shall apply to the city tax commission, during the period provided by law for filing applications for corrections of assessed valuations, for a tax exemption as provided for in section 11-250 of this part. The application shall be accompanied by a copy of the certificate of eligibility.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1305 added LL 58/1976 § 1

Amended LL 85/1977 § 3

Amended LL 37/1978 § 1

Repealed and added LL 49/1979 § 4

Amended LL 8/1982 § 5

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§ 11-252 Approval of tax exemption.

On completion of the reconstruction or construction work the applicant shall notify the board in writing of said completion. The board shall determine the eligibility of the applicant for the tax exemption as provided in section 11-250 of this part and shall notify the tax commission of such determination. If the applicant is determined to be qualified the commission shall approve the tax exemption.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1306 added LL 58/1976 § 1

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§ 11-253 Continuation of tax exemption; termination of tax exemption.

The tax exemption approved by the board shall continue in accordance with this part, provided that the applicant files an annual certificate of continuing use stating that the structure and property continue to be used for the industrial or commercial purposes justifying the issuance of the certificate of eligibility. The certificate of continuing use shall be filed with the tax commission on such form or forms and containing such information as shall be prescribed by the tax commission. The tax commission shall have authority to terminate a tax exemption on failure of an applicant to file an annual certificate of continuing use or on the recommendation of the commissioner of finance who, in reviewing the certificate filed by an applicant, has determined that the structure or property has ceased to be used for the industrial or commercial purposes justifying the issuance of the certificate of eligibility.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1307 added LL 58/1976 § 1

Amended LL 49/1979 § 5

Amended LL 8/1982 § 6

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§ 11-254 Extension of time for completion.

Where an applicant has received a certificate of eligibility but has not completed or will not be able to complete the construction or reconstruction work within thirty-six months, the board shall, upon application, extend to forty-eight months, from the time of issuance of such certificate, the time for completion of the construction or reconstruction work; provided the applicant has completed not less than two-thirds of the work as specified in the certified plans previously filed with the application at the time of such application for extension.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1308 added LL 85/1977 § 4

Amended LL 49/1979 § 5

Amended LL 8/1982 § 7

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 3 TAX EXEMPTION FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-255 Prior certificates of eligibility.

Any project for which a certificate of eligibility has been approved by the board prior to the enactment of this section shall be eligible for a tax exemption computed according to the tax exemption tables and formulae in effect on the date of such approval.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1309 added LL 49/1979 § 6

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-256 Definitions.

When used in this part:

a. "Applicant" means any person obligated to pay real property taxes on the property for which an exemption from or abatement or deferral of real property tax payments is sought, or in the case of exempt property, the record owner or lessee thereof.

b. "Approved plans" means plans submitted to and approved by the department of buildings in connection with the applicant's building permit, including any amendments to such plans approved by such department before final inspection of the work for which such permit was issued.

c. "Benefit period" means the period of time when a recipient is eligible to receive benefits pursuant to this part including in the case of a recipient of a certificate of eligibility for commercial construction work in a deferral area, the period of time when tax payments are to be deferred, the interim period when no tax payments are to be deferred and no deferred tax payments are required to be made, and the period of time when the deferred tax payments are to be made.

d. "Commission" means the temporary commercial incentive area boundary commission.

e. "Commercial construction work" means the construction of a new building or structure, or portion thereof, or the modernization, rehabilitation, expansion, or other improvement of an existing building or structure, or portion thereof, for use as commercial property.

f. "Commercial property" means nonresidential property: (1) on which will exist after completion of commercial construction work, a building or structure used for the buying, selling or otherwise providing of goods or services including hotel services, or for other lawful business, commercial or manufacturing activities; and (2) (a) where, except as provided in subparagraph (b) of this paragraph and paragraph (3) of this subdivision, not more than fifteen per centum of the total net square footage of any building or structure on such property was used for manufacturing activities at any one or more times during the twenty-four months immediately preceding the date of application for a certificate of eligibility or (b) where not more than fifteen per centum of the total net square footage of any building or structure on such property was used for manufacturing activities at any one or more times during the sixty months immediately preceding the date of application for a certificate of eligibility if such property is located, in whole or in part, in the area in the borough of Manhattan lying south of the center line of 96th Street; and (3) in the commercial revitalization area, and with respect to an application for a certificate of eligibility filed on or after July first, two thousand, "commercial property" means nonresidential property on which will exist after completion of commercial construction work, a building or structure used for the buying, selling or otherwise providing of goods or services including hotel services, or for other lawful business, commercial or manufacturing activities.

f-1. "Commercial revitalization area" means any district that is zoned C4, C5, C6, M1, M2, or M3 in accordance with the zoning resolution in any area of the city except the area lying south of the center line of 96th street in the borough of Manhattan.

g. "Deferral area" means an area in which deferral of payment of real property taxes in accordance with section 11-257 of this part shall be available to a recipient who has performed commercial construction work.

h. "Excluded area" means each area specified in paragraphs (1), (2) and (3) of subdivision d of section 11-258 of this part.

i. "Exemption base." (1) For purposes of computing the exemption pursuant to subdivision a, b, c or d of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of June 30, 1992 or before: (a) for the first, second and third taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to commercial or industrial construction work described in approved plans; and (b) for all other years, the assessed value of such improvements which have been made before the fourth taxable status date following the effective date of such certificate.

(2) For purposes of computing the exemption pursuant to subdivision c, d or e of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July 1, 1992 or after: (a) for the first through fifth taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to commercial or renovation construction work described in approved plans; and (b) for all other years, the assessed value of such improvements which have been made before the sixth taxable status date following the effective date of such certificate.

(3) For purposes of computing the exemption pursuant to subdivision a or b of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July 1, 1992 or after: (a) for the first through fifth taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable

exclusively to commercial or industrial construction work described in approved plans plus any equalization increases or minus any equalization decreases in the assessed value of the property so improved (excluding the land) occurring subsequent to the effective date of such certificate; and (b) for all other years, the assessed value of such improvements made before the sixth taxable status date following the effective date of such certificate plus any equalization increases or minus any equalization decreases in the assessed value of the property so improved (excluding the land) occurring subsequent to the effective date of such certificate but before the fourteenth taxable status date following the effective date of such certificate. For purposes of the preceding sentence: no adjustment shall be made to the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph for any portion of an equalization increase or decrease which is being phased in pursuant to section eighteen hundred five of the real property tax law subsequent to the effective date of the certificate of eligibility if such increase or decrease occurred prior to such effective date; with respect to any taxable year, an adjustment for an equalization increase or decrease shall reflect only the portion of such increase or decrease which is being phased in during such taxable year or which was phased in during a prior taxable year; no adjustment for an equalization decrease shall reduce the exemption base to an amount less than the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph, and, to the extent that any such decrease would reduce the exemption base below such amount, such decrease shall reduce the taxable portion of the assessed value; and no adjustment shall be made for an equalization increase or decrease if the improvements referred to in subparagraphs (a) and (b) of this paragraph do not result in a physical increase in the assessed value of the property.

(4) Notwithstanding paragraph (1) of this subdivision, for purposes of computing the exemption pursuant to subdivision a of section 11-257 of this part, "exemption base" shall mean, with respect to industrial property that is located in the area in the borough of Manhattan lying north of the center line of 96th Street, or that is located in the Bronx, Brooklyn, Queens or Staten Island; and that is the subject of a certificate of eligibility with an effective date after December 31, 1989 and before July 1, 1992: (a) for the first, second and third taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to industrial construction work described in approved plans; and (b) for all other years, the assessed value of such improvements made before the fourth taxable status date following the effective date of such certificate plus any equalization increases or minus any equalization decreases in the assessed value of the property so improved (excluding the land) occurring subsequent to the fourth taxable status date following the effective date of such certificate but before the fourteenth taxable status date following the effective date of such certificate. For purposes of the preceding sentence: no adjustment shall be made to the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph for any portion of an equalization increase or decrease which is being phased in pursuant to section eighteen hundred five of the real property tax law subsequent to the effective date of the certificate of eligibility if such increase or decrease occurred prior to such effective date; with respect to any taxable year, an adjustment for an equalization increase or decrease shall reflect only the portion of such increase or decrease which is being phased in during such taxable year or which was phased in during a prior taxable year; no adjustment for an equalization decrease shall reduce the exemption base to an amount less than the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph, and, to the extent that any such decrease would reduce the exemption base below such amount, such decrease shall reduce the taxable portion of the assessed value; and no adjustment shall be made for an equalization increase or decrease if the improvements referred to in subparagraphs (a) and (b) of this paragraph do not result in a physical increase in the assessed value of the property.

(5) For purposes of computing the exemption: (a) pursuant to subdivision e.1 of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July 1, 1995 or after and that is located in the new construction exemption area specified in paragraph (1) of subdivision e of section 11-258 of this part: for any taxable year following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to the construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part as described in approved plans, provided such improvements are made within thirty-six months of the effective date of such certificate or by December 31, 1999, whichever is earlier; and (b) pursuant to subdivision e.1 of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject

of a certificate of eligibility with an effective date of July 1, 1995 or after and that is located in the new construction exemption area specified in paragraph (2) of subdivision e of section 11-258 of this part: for any taxable year following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to the construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part as described in approved plans, provided such improvements are made within forty-two months of the effective date of such certificate.

(6) For purposes of this subdivision "equalization increase or decrease" means an increase or decrease in the assessed value of property which is not attributable to construction work, fire, demolition, destruction or other change in the physical characteristics of the property (excluding gradual physical deterioration or obsolescence), or to a change in the description or boundaries of the property.

j. "Industrial construction work" means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property.

k. "Industrial property" means nonresidential property on which will exist after completion of industrial construction work a building or structure wherein at least seventy-five per centum of the total net square footage is used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials.

l. "Initial assessed value" means the lesser of: (1) the taxable assessed value of real property appearing on the books of the annual record of the assessed valuation of real property on the effective date of a recipient's certificate of eligibility; or (2) the assessed value to which such assessment is thereafter reduced pursuant to application to the tax commission or court order. Where the real property is used for both residential and nonresidential purposes on the effective date of such certificate of eligibility, the initial assessed value of such real property, determined as provided in the preceding sentence, shall be apportioned between the residential and nonresidential portions thereof in such manner as shall properly reflect the initial assessed value of each such portion. Such apportionment shall be in accordance with rules promulgated by the department of finance.

m. "Manufacturing activity" means an activity involving the assembly of goods or the fabrication or processing of raw materials.

n. "Minimum required expenditure" means expenditure for commercial, renovation or industrial construction work in an amount equal to twenty per centum of the initial assessed value; provided, however, that with respect to a recipient who filed an application on or after July 1, 1995 for a certificate of eligibility for industrial construction work or for commercial construction work in a special exemption area or a regular exemption area, minimum required expenditure means expenditure for such work in an amount equal to ten per centum of the initial assessed value; provided, however, that with respect to a recipient who filed an application on or after July 1, 1995 for a certificate of eligibility for industrial construction work and for the purpose of receiving an abatement of real property taxes in accordance with paragraph (3) of subdivision a of section 11-257 of this part, minimum required expenditure means expenditure for such work in an amount equal to twenty-five per centum of the initial assessed value; and provided further that if the department of finance, after consultation with the deputy mayor for finance and economic development, determines that a greater expenditure is required to encourage significant industrial and commercial development it may establish by rule a higher percentage of initial assessed value, not to exceed fifty per centum thereof, as the minimum required expenditure. Expenditure for residential construction work shall not be included in the minimum required expenditure; provided, however, that for mixed-use property, expenditures for construction work related to the common areas and systems of such property shall be allocated, in accordance with rules promulgated by the department of finance, between the residential and nonresidential portions of the property. If real property was used for both residential and nonresidential purposes on the effective date of the certificate of eligibility, the initial assessed value of such real property, for purposes of this subdivision, shall be the initial assessed value apportioned to the nonresidential portions thereof.

o. "Person" means an individual, corporation, partnership, association, agency, trust, estate, foreign or domestic government or subdivision thereof, or other entity.

p. "Recipient" means an applicant to whom a certificate of eligibility has been issued pursuant to this part, or the successor in interest of such applicant, provided that where a person who has entered into a lease or purchase agreement with the owner or lessee of exempt property has been a co-applicant, such person or the successor in interest of such person shall be the recipient.

q. "Regular exemption area" means an area in which a regular exemption from taxes in accordance with section 11-257 of this part shall be available to a recipient who performs commercial construction work.

r. "Residential construction work" means any construction, modernization, rehabilitation, expansion or improvement of dwelling units other than dwelling units in a hotel.

s. "Residential property" means property, other than property used for hotel purposes, on which exists, or will exist upon completion of construction work, a building or structure used for residential purposes.

t. "Restricted activity" means any entertainment activity which the department of finance has identified in regulations promulgated pursuant to this part as an activity which, in the public interest, should not be encouraged through the benefits of this part.

u. "Special exemption area" means an area in which the commission has determined that a special exemption from real property taxes in accordance with subdivision b of section 11-257 of this part shall be available to a recipient who performs commercial construction work and, in addition, means the area specified in paragraph (4) of subdivision c of section 11-258 of this part.

v. "Mixed-use property" means property on which exists, or will exist upon completion of construction work, a building or structure used for both residential and nonresidential purposes.

w. "Renovation construction work" means the modernization, rehabilitation, expansion or improvement of an existing building or structure, or portion thereof, for use as commercial property in a renovation exemption area where such modernization, rehabilitation, expansion or improvement is physically and functionally integrated with the existing building or structure, or portion thereof, does not increase the bulk of the existing building or structure by more than thirty per centum and does not increase the height of the existing building or structure by more than thirty per centum.

x. "Renovation exemption area" means the area specified in paragraph (4) of subdivision d of section 11-258 of this part in which a renovation exemption from taxes in accordance with subdivision e of section 11-257 of this part shall be available to a recipient who performs renovation construction work.

y. "New construction exemption areas" means the areas specified in subdivision e of section 11-258 of this part in which an exemption from real property taxes in accordance with subdivision e.1 of section 11-257 of this part shall be available to a recipient who constructs a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 58/1995 § 1, eff. July 1, 1995

Subd. e amended L.L. 73/1992 § 1, eff. July 1, 1992

Subd. f amended L.L. 42/2001 § 1, approved July 12, 2001 effective Aug.

16, 2000.

Subd. f amended L.L. 58/1995 § 2, eff. July 1, 1995

Subd. f amended L.L. 73/1992 § 2, eff. July 1, 1992

Subd. f-1 added L.L. 42/2001 § 2, approved July 12, 2001 effective Aug.

16, 2000.

Subd. h amended L.L. 73/1992 § 3, eff. July 1, 1992

Subd. i amended L.L. 73/1992 § 4, eff. July 1, 1992

Subd. i pars (1)-(4) amended L.L. 58/1995 § 3, eff. July 1, 1995

Subd. i par (5) added L.L. 58/1995 § 4, eff. July 1, 1995

Subd. i par (6) renumbered L.L. 58/1995 § 4, eff. July 1, 1995

(formerly par (5))

Subd. l amended L.L. 73/1992 § 5, eff. July 1, 1992

Subd. n amended L.L. 58/1995 § 5, eff. July 1, 1995

Subd. n amended L.L. 73/1992 § 6, eff. July 1, 1992

Subd. s amended L.L. 73/1992 § 7, eff. July 1, 1992

Subd. u amended L.L. 58/1995 § 6, eff. July 1, 1995

Subds. v, w, x added L.L. 73/1992 § 8, eff. July 1, 1992

Subd. y added L.L. 58/1995 § 7, eff. July 1, 1995

DERIVATION

Formerly § 1310 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-257 Real property tax exemption; deferral of tax payments.

The city shall be divided into six classes of areas as provided in this part and pursuant to designation of areas to be made by the temporary commercial incentive area boundary commission. Within such areas, the following benefits shall be available to qualified recipients:

a. (1) A recipient who, following the effective date of a certificate of eligibility, has performed industrial construction work in any area of the city shall be eligible for an exemption from real property taxes as follows: For the first thirteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the fourteenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for industrial construction work:

Tax year following effective date of certificate of eligibility:	Amount of exemption:

1 through 13	Tax on 100% of exemption base
14	Tax on 90% of exemption base
15	Tax on 80% of exemption base
16	Tax on 70% of exemption base
17	Tax on 60% of exemption base
18	Tax on 50% of exemption base
19	Tax on 40% of exemption base
20	Tax on 30% of exemption base
21	Tax on 20% of exemption base
22	Tax on 10% of exemption base

(2) Notwithstanding paragraph (1) of this subdivision, a recipient who filed an application for a certificate of eligibility for industrial construction work in any area of such city on or after July 1, 1995, and who, following the effective date of such certificate of eligibility, has performed such industrial construction work shall be eligible for an exemption from real property taxes as follows: for the first sixteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the seventeenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for industrial construction work pursuant to this paragraph:_____

Tax year following effective date of certificate of eligibility:	Amount of exemption:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 16	Tax on 100% of exemption base
17	Tax on 90% of exemption base
18	Tax on 80% of exemption base
19	Tax on 70% of exemption base
20	Tax on 60% of exemption base
21	Tax on 50% of exemption base
22	Tax on 40% of exemption base
23	Tax on 30% of exemption base
24	Tax on 20% of exemption base
25	Tax on 10% of exemption base

(3) (a) A recipient who filed an application for a certificate of eligibility for industrial construction work in any area of such city on or after July 1, 1995, and who, following the effective date of such certificate of eligibility, both commenced and completed such work, shall be eligible for an abatement of real property taxes as follows: for the first tax year immediately following completion of such work, and for the second, third and fourth tax years following completion of such work, the abatement shall equal fifty per centum of the real property tax that was imposed on the property which is the subject of the certificate of eligibility for the tax year immediately preceding the effective date of such certificate of eligibility, provided, however, that if such property was fully or partially exempt from real property taxes during such tax year, then the abatement shall equal fifty per centum of the real property tax that would have been

imposed on such property but for such full or partial exemption. For the fifth and sixth tax years, the abatement shall equal forty per centum of such amount; for the seventh and eighth tax years, the abatement shall equal thirty per centum of such amount; for the ninth and tenth tax years, the abatement shall equal twenty per centum of such amount; and for the eleventh and twelfth tax years, the abatement shall equal ten per centum of such amount. Notwithstanding any inconsistent provision of this paragraph, a recipient shall not be eligible for an abatement for the first tax year following completion of such work, unless the recipient submits proof satisfactory to the department of finance that such work was completed on or before the taxable status date for such first tax year no later than thirty days after such taxable status date. Where the recipient fails to submit such proof in accordance with the foregoing sentence, a recipient shall not be eligible for an abatement until the second tax year following completion of such work. In such case, a recipient shall submit proof satisfactory to the department of finance that such work was completed on or before the taxable status date for such first tax year no later than thirty days after the taxable status date for such second tax year. A recipient whose abatement begins in the second tax year following completion of such work shall not thereby have his or her twelve-year benefit period shortened.

The following table shall illustrate the computation of the abatement for industrial construction work pursuant to this paragraph:

Tax year following completion of industrial construction work:	Amount of abatement:
1	50%
2	50%
3	50%
4	50%
5	40%
6	40%
7	30%
8	30%
9	20%
10	20%
11	10%
12	10%

(b) If, due to a determination of the department of finance or tax commission of such city or a court, the real property tax imposed on such property for the tax year immediately preceding the effective date of such certificate of eligibility is changed, then any abatement that was granted in accordance with this paragraph prior to such reduction shall be recalculated and any abatement to be granted in accordance with this paragraph shall be based on the real property tax imposed on such property for the tax year immediately preceding the effective date of such certificate of eligibility, as changed by such determination. The amount equal to the difference between the abatement originally granted and the abatement as so recalculated shall be deducted from any refund otherwise payable or remission otherwise due as a result of a change due to such determination, and any balance of such amount remaining unpaid after making any such deduction shall be paid to the department of finance within thirty days from the date of mailing by the department of finance of a notice of the amount payable. Such amount payable shall constitute a tax lien on such property as of the date of such notice and, if not paid within such thirty-day period, penalty and interest at the rate applicable to delinquent taxes on such property shall be charged and collected on such amount from the date of such notice to the date of payment.

(c) No property which is the subject of a certificate of eligibility pursuant to this part shall receive more than one abatement pursuant to this part and no abatement shall exceed one consecutive twelve-year period as specified in

subparagraph (a) of this paragraph.

(d) In no event shall an abatement granted pursuant to this part exceed in any tax year the real property taxes imposed on the property which is the subject of a certificate of eligibility pursuant to this part.

(e) For the purpose of calculating an abatement of real property taxes pursuant to this part, where a tax lot contains more than one building or structure and not all of the buildings or structures comprising such tax lot are the subject of a certificate of eligibility for industrial construction work pursuant to this part, the real property taxes imposed on such tax lot for the year immediately preceding the effective date of such certificate of eligibility shall be apportioned among the buildings, structures and land comprising such tax lot and only such real property taxes as are allocable to the property which is the subject of the certificate of eligibility pursuant to this part shall be abated in accordance with this paragraph. Such apportionment shall be in accordance with rules promulgated by the department of finance.

(f) A recipient who filed an application for a certificate of eligibility for industrial construction work in the commercial revitalization area on or after July first, two thousand, and who, following the effective date of such certificate of eligibility, both commenced and completed such work, shall be eligible for an abatement of real property taxes in accordance with subparagraph (a) of this paragraph, provided, however, that where the total net square footage of the industrial property used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials is less than seventy-five per centum of the total net square footage of the industrial property, the abatement of real property taxes shall be determined in accordance with rules promulgated by the department of finance. Notwithstanding the foregoing sentence, no such abatement shall be allowed where the total net square footage of the industrial property used or immediately available and held out for use for such manufacturing activities after completion of industrial construction work is less than the total net square footage used or immediate available and held out for use for such manufacturing activities before the commencement of such construction work. For purposes of this subparagraph only, the term "industrial construction work" shall mean the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property and the term "industrial property" shall mean nonresidential property on which will exist after completion of industrial construction work a building or structure wherein at least twenty-five per centum of the total net square footage is used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials.

b. (1) A recipient who, following the effective date of a certificate of eligibility, has performed commercial construction work in a special exemption area shall be eligible for an exemption from real property taxes as follows: For the first thirteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the receipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the fourteenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a special exemption area:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 13	Tax on 100% of exemption base
14	Tax on 90% of exemption base
15	Tax on 80% of exemption base
16	Tax on 70% of exemption base
17	Tax on 60% of exemption base
18	Tax on 50% of exemption base

19	Tax on 40% of exemption base
20	Tax on 30% of exemption base
21	Tax on 20% of exemption base
22	Tax on 10% of exemption base

(2) Notwithstanding paragraph (1) of this subdivision, a recipient who filed an application for a certificate of eligibility for commercial construction work in a special exemption area on or after July 1, 1995, and who, following the effective date of such certificate of eligibility, has performed such commercial construction work shall be eligible for an exemption from real property taxes as follows: For the first sixteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the seventeenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a special exemption area pursuant to this paragraph:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 16	Tax on 100% of exemption base
17	Tax on 90% of exemption base
18	Tax on 80% of exemption base
19	Tax on 70% of exemption base
20	Tax on 60% of exemption base
21	Tax on 50% of exemption base
22	Tax on 40% of exemption base
23	Tax on 30% of exemption base
24	Tax on 20% of exemption base
25	Tax on 10% of exemption base

c. (1) A recipient who, following the effective date of a certificate of eligibility, has performed commercial construction work in a regular exemption area shall be eligible for an exemption from real property taxes as follows: For the first eight tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the ninth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a regular exemption area:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 8	Tax on 100% of exemption base
9	Tax on 80% of exemption base
10	Tax on 60% of exemption base
11	Tax on 40% of exemption base
12	Tax on 20% of exemption base

(2) Notwithstanding paragraph (1) of this subdivision, a recipient who filed an application for a certificate of eligibility for commercial construction work in a regular exemption area on or after July 1, 1995, and who, following the effective date of such certificate of eligibility, has performed such commercial construction work shall be eligible for an exemption from real property taxes as follows: For the first eleven tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the twelfth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a regular exemption area pursuant to this paragraph:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 11	Tax on 100% of exemption base
12	Tax on 80% of exemption base
13	Tax on 60% of exemption base
14	Tax on 40% of exemption base
15	Tax on 20% of exemption base

d. Except as provided in paragraphs (2) and (3) of subdivision d of section 11-258 of this part, a recipient who, following the effective date of a certificate of eligibility, has performed commercial construction work in a deferral area shall be eligible for a deferral of tax payments as follows: For the first three tax years following the effective date of a certificate of eligibility, the tax payment on one hundred per centum of the exemption base shall be deferred. For the following four tax years, the tax payment on a percentage of the exemption base beginning at eighty per centum thereof in the fourth tax year and decreasing by twenty per centum each year shall be deferred. The total amount of tax payments deferred pursuant to this part shall be paid subsequently over the course of ten tax years as follows: Commencing in the eleventh tax year following the effective date of the certificate of eligibility, through and including the twentieth tax year following such effective date, an amount equal to ten per centum of the total amount of tax payments deferred pursuant to this section shall be added to the amount of tax otherwise assessed and payable in each such tax year on the property subject to such deferral.

The following table shall illustrate the computation of deferral and payment of taxes for commercial construction work in a deferral area:

Tax year following effective date of certificate of eligibility:	Amount of tax payments to be deferred or paid:
1 through 3	Deferral of tax payment on 100% of the exemption base
4	Deferral of tax payment on 80% of the exemption base
5	Deferral of tax payment on 60% of the exemption base
6	Deferral of tax payment on 40% of the exemption base
7	Deferral of tax payment on 20% of the exemption base
8 through 10	No tax payments are to be deferred and no deferred tax payments are required to be made
11 through 20	Payment each year of 10% of total dollar amount of tax payments deferred pursuant to this part

e. A recipient who, following the effective date of a certificate of eligibility, has performed renovation construction work in a renovation exemption area shall be eligible for an exemption from real property taxes as follows: For the first eight tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the ninth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for renovation construction work in a renovation exemption area:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 8	Tax on 100% of exemption base
9	Tax on 80% of exemption base
10	Tax on 60% of exemption base
11	Tax on 40% of exemption base
12	Tax on 20% of exemption base

e.1. A recipient who, following the effective date of a certificate of eligibility, constructs a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in the new construction exemption area specified in paragraph (1), (2) or (3) of subdivision e of section 11-258 of this part shall be eligible for an exemption from real property taxes as follows: for the first four tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the fifth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for the construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in the new construction exemption area specified in paragraph (1), (2) or (3) of subdivision e of section 11-258 of this part:

Tax year following effective date of certificate of eligibility:	Amount of exemption:
1 through 4	Tax on 100% of exemption base
5	Tax on 80% of exemption base
6	Tax on 60% of exemption base
7	Tax on 40% of exemption base
8	Tax on 20% of exemption base

f. There shall be no exemption from or deferral of payment of real property taxes available pursuant to this part to any person who performs commercial or renovation construction work in an excluded area, except as provided in paragraphs (2) and (3) of subdivision d of section 11-258 of this part.

g. The benefits of this part shall be granted exclusively for industrial, commercial or renovation construction work described in approved plans. No benefits shall be granted for residential construction work. Any parcel which is partly located in an excluded area shall be deemed to be entirely located in such area.

h. No benefits pursuant to this part shall be granted for work which is the subject of a certificate of eligibility issued pursuant to part three of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Open par amended L.L. 58/1995 § 8, eff. July 1, 1995

Open par amended L.L. 73/1992 § 9, eff. July 1, 1992

Subds. a amended L.L. 58/1995 § 9, eff. July 1, 1995

Subd. a par (3) subpar (f) added L.L. 42/2001 § 3, approved July 12, 2001 effective Aug. 16, 2000.

Subds. b, c amended L.L. 58/1995 § 9, eff. July 1, 1995

Subd. d amended L.L. 58/1995 § 9, eff. July 1, 1995

Subd. d amended L.L. 73/1992 § 10, eff. July 1, 1992

Subd. e amended L.L. 58/1995 § 9, eff. July 1, 1995

Subd. e added L.L. 73/1992 § 11, eff. July 1, 1992

Subd. e.1 amended L.L. 48/2003 § 1, eff. July 1, 2003.

Subd. e.1 added L.L. 58/1995 § 10, eff. July 1, 1995

Subd. f relettered and amended L.L. 73/1992 §§ 11, 12, eff. July 1, 1992 (formerly subd. e)

Subd. g relettered and amended L.L. 73/1992 §§ 11, 13, eff. July 1, 1992 (formerly subd. f)

Subd. h relettered L.L. 73/1992 § 11, eff. July 1, 1992 (formerly subd. g)

DERIVATION

Formerly § 1311 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-258

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-258 Temporary commercial incentive area boundary commission; classes of area; excluded areas.

a. There shall be a temporary commercial incentive area boundary commission to consist of the deputy mayor for economic development and planning, the commissioner of finance, the chair of the city planning commission, the director of management and budget, the borough presidents, the speaker of the city council and a public member appointed by the mayor to serve at the mayor's pleasure. Each member except the public member shall have the power to designate an alternate to represent him or her at commission meetings to exercise all the rights and powers of such member, including the right to vote, provided that such designation be made in writing to the chair of the commission. The deputy mayor for economic development and planning shall be the chair of the commission. Each borough president shall be entitled to vote only on the designation of areas within his or her borough. Commission members who shall be officers or employees of the city shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. Any other commission member shall receive as exclusive compensation for his or her services one hundred dollars per diem, provided, however, that the total compensation paid to any such member shall not exceed twelve hundred dollars for any calendar year. A majority of members of such commission entitled to vote on a matter shall constitute a quorum for such issue. Decisions shall be made by majority vote of those present entitled to vote on a matter.

b. (1) The commission shall meet in nineteen hundred ninety-two, nineteen hundred ninety-five and nineteen hundred ninety-nine to determine the boundaries of the various areas which it is authorized to designate pursuant to this section. The areas designated by the commission in effect as of December thirty-first, nineteen hundred ninety-one shall remain in effect until the first taxable status date after the city council approves a new designation pursuant to paragraph (4) of this subdivision.

(2) Not later than October first of each year when areas are to be designated, the commission shall publish notice of proposed boundaries of areas to be designated, and the date, not earlier than five nor later than fifteen days following the publication of such notice, on which the commission will hold a public hearing to hear all persons interested in the designation of areas. The notice required by this paragraph shall be published in the City Record and a newspaper of general circulation in the city, and copies thereof shall be forwarded to each council member and community board.

(3) The commission shall make such designation, and notify the city council of such designation, not later than November first of each year when areas are to be designated. The designation shall be effective as provided in paragraph (4) of this subdivision.

(4) Within thirty days after the first stated meeting of the city council following the receipt of notice of such designation, the city council may, by majority vote, disapprove such designation. If, within such thirty-day period, the city council fails to act or fails to act by the required vote, the city council shall be deemed to have approved such designation. Such designation shall be effective as of the first taxable status date after the city council approves such designation and shall remain in effect until the first taxable status date after the city council approves a new designation pursuant to this paragraph.

c. (1) The commission may designate any area other than the area lying south of the center line of 96th Street in the borough of Manhattan to be a special exemption area if it determines that market conditions in the area are such that the availability of a special exemption is required in order to encourage commercial construction work in such area. In making such determination, the commission shall consider, among other factors, the existence in such area of a special need for commercial and job development, high unemployment, economic distress or unusually large numbers of vacant, underutilized, unsuitable or substandard structures, or other substandard, unsanitary, deteriorated or deteriorating conditions, with or without tangible blight.

(2) Any area in the city, other than the area lying south of the center line of 96th Street, which the commission has not designated as a special exemption area shall be a regular exemption area.

(3) On or after January 1, 1992, the commission shall not designate any area to be either a deferral area or an excluded area, nor shall the commission make any new designation in any urban renewal area designated pursuant to Article 15 of the General Municipal Law so as to reduce the level of benefits available pursuant to this title in such area.

(4) Notwithstanding any other provision of this part, any area in the city of New York designated as an empire zone in accordance with article eighteen-b of the general municipal law, which the commission has not designated as a special exemption area, shall be a special exemption area as of July 1, 1995 or as of the date of the designation of such area as an empire zone, whichever is later.

d. (1) The following area in the borough of Manhattan shall, except as otherwise provided in paragraphs (2), (3) and (4) of this subdivision and subdivision e of this section, be an excluded area: the area in the borough of Manhattan lying south of the center line of 96th Street and north of the center line of 23rd Street.

(2) The following areas in the borough of Manhattan shall, except as otherwise provided in paragraph (4) of this subdivision and subdivision e of this section, be excluded areas as of July 1, 1992; provided, however, that if an application for a certificate of eligibility has been filed for commercial construction work in such areas on or before December 31, 1992 and the recipient presents evidence satisfactory to the department of finance: (a) (i) for a new building or structure, that construction has been completed on a foundation, as described in approved plans, on or before

June 30, 1993; or (ii) for an existing building or structure, that at least five per centum of the minimum required expenditure has been made for commercial construction work, as described in approved plans, on or before June 30, 1993; and (b) that all other requirements of this part have been met; then, a deferral of tax payments pursuant to subdivision d of section 11-257 of this part shall be granted for such commercial construction work, except that no deferral of tax payments shall be granted for commercial construction work on mixed-use property:

(i) the area delineated by a line beginning at the point where the center line of 96th Street would intersect the Hudson River Pierhead line and running easterly along the center line of 96th Street to the center line of Central Park West; thence southerly along said center line to the center line of 59th Street; thence westerly along said center line to the Hudson River Pierhead line; thence northerly along said Pierhead line to the point of beginning; and

(ii) the area delineated by a line beginning at a point where the center line of 59th Street would intersect with a point one hundred fifty feet west of the center line of 8th Avenue and running easterly along the center line of 59th Street to a point one hundred fifty feet west of the center line of the Avenue of the Americas; thence southerly parallel to the Avenue of the Americas to a point which is the midpoint between the center line of 42nd Street and the center line of 41st Street; thence westerly parallel to 41st Street to a point one hundred fifty feet west of the center line of 8th Avenue; thence northerly parallel to 8th Avenue to the point of beginning.

(3) The following area in the borough of Manhattan shall, except as otherwise provided in paragraph (4) of this subdivision and subdivision e of this section, be an excluded area as of January 1, 1993; provided, however, that if an application for a certificate of eligibility has been filed for commercial construction work in such area on or before December 31, 1992 and the recipient presents evidence satisfactory to the department of finance: (a)(i) for a new building or structure, that construction has been completed on a foundation, as described in approved plans, on or before December 31, 1993; or (ii) for an existing building or structure, that at least five per centum of the minimum required expenditure has been made for commercial construction work, as described in approved plans, on or before December 31, 1993; and (b) that all other requirements of this part have been met, then, a deferral of tax payments pursuant to subdivision d of section 11-257 of this part shall be granted for such commercial construction work, except that no deferral of tax payments shall be granted for commercial construction work on mixed-use property: the area delineated by a line beginning at the point where the center line of 59th Street would intersect with the Hudson River Pierhead line; thence southerly along said Pierhead line to the center line of Liberty Street; thence easterly along said center line to the center line of Church Street; thence northerly along said center line to the center line of Fulton Street; thence easterly along said center line to the East River Pierhead line; thence northerly along said Pierhead line to a point which is the midpoint between the center line of 34th Street and the center line of 33rd Street; thence westerly parallel to 33rd Street to a point one hundred fifty feet west of the center line of the Avenue of the Americas; thence northerly parallel to the Avenue of the Americas to a point which is the midpoint between the center line of 42nd Street and the center line of 41st Street; thence westerly parallel to 41st Street to a point one hundred fifty feet west of the center line of 8th Avenue; thence northerly parallel to 8th Avenue to the center line of 59th Street; thence westerly along said center line to the point of beginning.

(4) Notwithstanding the provisions of paragraphs (1), (2) and (3) of this subdivision, the following areas in the borough of Manhattan shall be renovation exemption areas: (a) as of July 1, 1992 and until June 30, 2008: the area in the borough of Manhattan lying south of the center line of 23rd Street; (b) as of July 1, 1992 and until January 31, 1995: the area in the borough of Manhattan lying south of the center line of 96th Street and north of the center line of 23rd Street; and (c) as of July 1, 1995 and until June 30, 2008: the area in the borough of Manhattan lying south of the center line of 59th Street and north of the center line of 23rd Street.

e. Notwithstanding the provisions of subdivision d of this section, the areas in the borough of Manhattan specified in paragraphs (1), (2) and (3) of this subdivision, except the "Project Area" described in a lease held by the Battery Park City Authority as tenant and originally dated as of November 24, 1969 and thereafter from time to time amended, shall be new construction exemption areas: (1) as of July 1, 1995 and until December 31, 1996: the area in the borough of Manhattan lying south of the center line of 96th Street, excluding the area specified in paragraph (2) of this

subdivision; and (2) as of July 1, 1995 and until June 30, 2003: the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through city hall park with the center line of Frankfort Street and running easterly along the center line of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street; and (3) as of July 1, 2003 and until June 30, 2008: the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center line of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street, except the area in the borough of Manhattan bounded by Church Street on the east starting at the intersection of Liberty Street and Church Street; running northerly along the center line of Church Street to the intersection of Church Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Broadway; running northerly along the center line of West Broadway to the intersection of West Broadway and Barclay Street; running westerly along the center line of Barclay Street to the intersection of Barclay Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Street; running southerly along the center line of West Street to the intersection of West Street and Liberty Street; and running easterly along the center line of Liberty Street to the intersection of Liberty Street and Church Street.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 44/1999 § 1, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. a amended L.L. 76/1990 § 1, eff. Dec. 7, 1990

Subd. b amended L.L. 73/1992 § 14, eff. July 1, 1992

Subd. b par (1) amended L.L. 44/1999 § 2, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. b par (1) amended L.L. 20/1992 § 2, eff. Jan. 1, 1992

Subd. b par (1) amended L.L. 76/1990 § 2, eff. Dec. 7, 1990

Subd. b par (2) amended L.L. 44/1999 § 3, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. b par (3) amended L.L. 20/1992 § 3, eff. Jan. 1, 1992

Subd. c pars (1), (2) amended L.L. 58/1995 § 11, eff. July 1, 1995

Subd. c par (3) added L.L. 73/1992 § 15, eff. July 1, 1992

Subd. c par (4) "economic development zone" redesignated "empire zone" by the Legislative Bill Drafting Commission per Memorandum of Instruction issued per chap 63/2000 § GG15.

Subd. c par (4) added L.L. 58/1995 § 12, eff. July 1, 1995

Subd. d repealed and added L.L. 73/1992 § 16, eff. July 1, 1992

Subd. d par (1) amended L.L. 58/1995 § 13, eff. July 1, 1995

Subd. d par (4) amended L.L. 41/2007 § 1, eff. Aug. 2, 2007 and deemed in full force and effect as of July 1, 2007.

Subd. d par (4) amended L.L. 48/2003 § 2, eff. July 1, 2003.

Subd. d par (4) amended L.L. 58/1995 § 13, eff. July 1, 1995

Subd. d par (4) amended L.L. 44/1999 § 4, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. d par (4) amended L.L. 40/1994 § 1, eff. Oct. 6, 1994 and retroactive to July 1, 1994

Subd. e amended L.L. 48/2003 § 3, eff. July 1, 2003.

Subd. e amended L.L. 44/1999 § 5, eff. Aug. 26, 1999 and retroactive to July 1, 1999

Subd. (e) added L.L. 58/1995 § 14, eff. July 1, 1995

Subd. e par (3) amended L.L. 41/2007 § 2, eff. Aug. 2, 2007 and deemed in full force and effect as of July 1, 2007.

DERIVATION

Formerly § 1312 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-259 Eligibility for benefits.

a. A recipient of a certificate of eligibility with an effective date of June 30, 1992 or before must make one-half the minimum required expenditure within eighteen months of the effective date of such recipient's certificate of eligibility, and make the minimum required expenditure within thirty-six months of the effective date of such certificate to be eligible to receive the benefits of this part. A recipient of a certificate of eligibility with an effective date of July 1, 1992 or after must make one-half the minimum required expenditure within thirty months of the effective date of such recipient's certificate of eligibility, and make the minimum required expenditure within sixty months of the effective date of such certificate to be eligible to receive the benefits of this part; provided, however, that a recipient of a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of paragraph (4) of subdivision d of section 11-258 of this part must make one-half the minimum required expenditure within eighteen months of the effective date of such recipient's certificate of eligibility, or by December 31, 1994, whichever is earlier, and make the minimum required expenditure within thirty-six months of the effective date of such certificate, or by December 31, 1995, whichever is earlier, to be eligible to receive the benefits of this part; provided, further, however, that a recipient who filed an application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of

paragraph (4) of subdivision d of section 11-258 of this part on or after July 1, 1994, but before February 1, 1995, must make one-half the minimum required expenditure within eighteen months of the effective date of such certificate, or by July 31, 1995, whichever is earlier, and make the minimum required expenditure within thirty-six months of the effective date of such certificate, or by July 31, 1996, whichever is earlier, to be eligible to receive the benefits of this part, provided, further, however, that a recipient who filed an application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (a) or (c) of paragraph (4) of subdivision d of section 11-258 of this part on or after July 1, 1995, must make one-half the minimum required expenditure within eighteen months of the effective date of such certificate, and make the minimum required expenditure within thirty-six months of the effective date of such certificate, to be eligible to receive the benefits of this part. Any recipient who shall fail to make such expenditures shall become ineligible and shall pay, with interest, any taxes for which an exemption or deferral was claimed pursuant to this section. This subdivision shall not apply to the recipient of a certificate of eligibility for construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in a new construction exemption area.

b. No benefits pursuant to this part shall be granted for construction work on any condominium unit unless such unit is in a building or structure which, if viewed as a whole and as if it were under single ownership, would qualify as commercial or industrial property. The minimum required expenditure applicable to any recipient of a certificate of eligibility for construction work on a condominium unit shall be equal to the minimum expenditure which would apply if a certificate of eligibility were issued for construction work on the entire property where such unit is located. Nothing in this subdivision shall be construed to prevent owners of condominium units in the same property from forming an association to be a recipient. This subdivision shall not apply to any applicant whose property would be, or recipient whose property is, the subject of a certificate of eligibility with an effective date of July 1, 1992 or after.

c. (1) No benefits pursuant to this part shall be granted for any construction work unless the applicant filed an application for such benefits on or before the date of issuance of a building permit for such work. The requirements of this subdivision may be satisfied where the applicant's architect, contractor or other representative authorized to file the appliction for such building permit files with the department of finance on behalf of the applicant a preliminary application containing such information as the department of finance shall prescribe by regulation.

2. Notwithstanding paragraph (1) of this subdivision, an applicant may file an application for benefits pursuant to this part for renovation construction work for property located in the areas specified in paragraph (3) of this subdivision, regardless of whether a building permit for such work was issued before such application was filed, provided that such permit was not issued before January 1, 1990 or after June 30, 1992, and provided further that a final application is filed with, and accepted by, the department of finance, on or before December 31, 1992. The department of finance shall issue a certificate of eligibility to such an applicant upon determining that the applicant satisfies all other requirements of this part. The effective date of such certificate shall be the date of acceptance by the department of finance of a final application containing such information as prescribed by rule of the department of finance. No benefits pursuant to this part shall be granted for construction work performed before the effective date of the recipient's certificate of eligibility.

(3) Pursuant to paragraph (2) of this subdivision, an applicant may file an application for benefits pursuant to this part for renovation construction work for property located in the following areas in the borough of Manhattan lying south of 96th Street:

(a) the area delineated by a line beginning at the point where the center line of 96th Street would intersect the East River Pierhead line and running westerly along the center line of 96th Street to the center line of Fifth Avenue; thence southerly along said center line to the center line of 59th Street; thence westerly along said center line to a point one hundred fifty feet west of the center line of the Avenue of the Americas; thence southerly parallel to the Avenue of the Americas to the center line of 34th Street; thence easterly along said center line to the East River Pierhead line; thence northerly along said Pierhead line to the point of beginning; and

(b) the area delineated by a line beginning at the point where the center line of Fulton Street would intersect the East River Pierhead line and running westerly along the center line of Fulton Street to the center line of Church Street; thence southerly along said center line to the center line of Liberty Street; thence westerly along said center line to the Hudson River Pierhead line; thence southerly and along said Pierhead line to the point of beginning.

(4) Notwithstanding paragraph (1) of this subdivision, an applicant may file an application for benefits pursuant to this part for renovation construction work for property located in the renovation exemption area specified in subparagraph (c) of paragraph (4) of subdivision d of section 11-258 of this part within sixty days of the date of enactment of local law number 58 for the year 1995, regardless of whether a building permit for such work was issued before such application was filed, provided that such permit was not issued before February 1, 1995, and provided further that a final application is filed with, and accepted by, the department of finance, on or before December 31, 1995. The department of finance shall issue a certificate of eligibility to such an applicant upon determining that the applicant satisfied all other requirements of this part. The effective date of such certificate shall be the date of acceptance by the department of finance of a final application containing such information as prescribed by rule of the department of finance. No benefits pursuant to this part shall be granted for construction work performed before the effective date of such certificate of eligibility.

d. No benefits pursuant to this part shall be granted to any recipient for construction work on property any part of which is to be used for a restricted activity.

e. No benefits pursuant to this part shall be granted for any construction work unless the applicant shall file, together with the application, an affidavit setting forth the following information:

(1) a statement that within the seven years immediately preceding the date of application for a certificate of eligibility, neither the applicant, nor any person owning a substantial interest in the property as defined in paragraph four of this subdivision, nor any officer, director or general partner of the applicant or such person was finally adjudicated by a court of competent jurisdiction to have violated section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another state with respect to any building, or was an officer, director or general partner of a person at the time such person was finally adjudicated to have violated such law;

(2) a statement setting forth any pending charges alleging violation of section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another jurisdiction with respect to any building by the applicant or any person owning a substantial interest in the property as defined in paragraph four of this subdivision, or any officer, director or general partner of the applicant or such person; and

(3) a statement that the applicant has posted notice in a conspicuous place at the premises which are the subject of the application and published notice in a newspaper of general circulation in the city, in such form as shall be prescribed by the department of finance, stating that persons having information concerning any violation by the applicant or a person having a substantial interest in the property as defined in paragraph four of this subdivision has violated section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another jurisdiction may submit such information to the department of finance to be considered in determining the applicant's eligibility for benefits.

(4) "Substantial interest" as used in this subdivision shall mean ownership and control of an interest of ten per centum or more in a property or of any person owning a property.

f. If any person described in the statement required by paragraph two of subdivision e of this section is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to this part and shall pay with interest any taxes for which an exemption, abatement or deferral was claimed pursuant to this part.

g. In addition to any other qualifications for exemption from or abatement or deferral of payment of taxes set forth in this part, an applicant must be:

(1) obligated to pay real property tax on the property for which an exemption, abatement or deferral is sought, whether such obligation arises because of record ownership of such property, or because the obligation to pay such tax has been assumed by contract; or

(2) the record owner or lessee of property which is exempt from real property taxation who has entered into an agreement to sell or lease such property to another person. Such person shall be a co-applicant with such owner or lessee.

h. A co-applicant with a public entity shall be an eligible recipient pursuant to this part, provided that for such period as the property which is the subject of the certificate of eligibility is exempt from real property taxation because it is owned or controlled by a public entity no benefits shall be available to such recipient pursuant to this part. Such recipient shall receive benefits pursuant to this part when such property ceases to be eligible for exemption pursuant to other provisions of law, as follows: the recipient shall, commencing with the date such tax exemption ceases, and continuing until the expiration of the benefit period pursuant to this part, receive the benefits to which such recipient is entitled in the corresponding tax year pursuant to this part.

i. (1)(a) No benefits pursuant to this part shall be granted for construction of a new building or structure in the new construction exemption area specified in paragraph (1) of subdivision e of section 11-258 of this part unless (i) construction of the foundation of such building or structure has been completed within twelve months of the effective date of the recipient's certificate of eligibility, or by December 31, 1997, whichever is earlier; and (ii) construction of such building or structure has been completed within thirty-six months of the effective date of the recipient's certificate of eligibility, or by December 31, 1999, whichever is earlier. (b) No benefits pursuant to this part shall be granted or reconstruction of a new building or structure in the new construction exemption area specified in paragraph (2) of subdivision e of section 11-258 of this part unless: (i) construction of the foundation of such building or structure has been completed within twenty-four months of the effective date of the recipients' certificate of eligibility; and (ii) construction of such building or structure has been completed within forty-two months of the effective date of the recipient's certificate of eligibility. (c) No benefits pursuant to this part shall be granted for construction of a new building or structure in the new construction exemption area specified in paragraph (3) of subdivision e of section 11-258 of this part unless: (i) construction of the foundation of such building or structure has been completed within twenty-four months of the effective date of the recipient's certificate of eligibility; and (ii) construction of such building or structure has been completed within forty-two months of the effective date of the recipient's certificate of eligibility.

(2) No benefits pursuant to this part shall be granted for construction of a new building or structure in a new construction exemption area unless such building or structure meets the requirements set forth in subparagraphs (a) and (b) of this paragraph and, in addition, meets at least two of the five requirements set forth in subparagraphs (c) through (g) of this paragraph.

(a) The height of at least fifty per centum of the floors in such building or structure shall be not less than twelve feet, nine inches measured from the top of the slab comprising the floor to the bottom of the slab comprising the ceiling;

(b) Such building or structure shall be served by fiber optic telecommunications wiring and shall contain vertical penetrations for the distribution of fiber optic cabling to individual tenants on each floor;

(c) The total square footage of such building or structure is not less than five hundred thousand gross square feet;

(d) A minimum of two hundred thousand gross square feet or twenty-five per centum of such building or structure is comprised of floors of not less than forty thousand gross square feet;

(e) At least ten per centum of the gross square footage of such building or structure is comprised of floors that contain no more than eight structural columns, excluding any columns within the core or on the periphery of such building or structure;

(f) The electrical capacity of such building or structure is not less than six watts per net square foot;

(g) Emergency backup power sufficient to accommodate a need of six watts per net square foot is available in at least two hundred thousand gross square feet or twenty-five per centum of such building or structure.

j. No benefits pursuant to this part shall be granted for construction work performed pursuant to a building permit issued after July thirty-first, two thousand eight, except that if a building permit is issued on or before July thirty-first, two thousand eight for construction work on a building or structure described in an application for a certificate of eligibility filed on or before June thirtieth, two thousand eight, construction work performed as described in such application pursuant to any additional building permit issued on or after August first, two thousand eight shall be eligible for benefits pursuant to this part in accordance with this subdivision.

(1) Except as provided in paragraph (2) of this subdivision, all construction work performed pursuant to any such application shall be completed on or before December thirty-first, two thousand thirteen. No benefits shall be granted for construction work performed after such date, and any exemption granted pursuant to this part in relation to property on which such construction work was performed shall not exceed the amount of the exemption in effect for such property on the tax roll for which the taxable status date is January fifth, two thousand fourteen.

(2) All construction work performed pursuant to any such application for the construction of a new building or structure in the new construction exemption area specified in paragraph (3) of subdivision e of section 11-258 of this part shall be completed in accordance with subparagraph (c) of paragraph (1) of subdivision i of this section and, if not completed in accordance with such subparagraph, shall not be eligible for benefits pursuant to this part.

(3) For purposes of this subdivision, construction work as described in an application for a certificate of eligibility shall be deemed completed on the date on which the department of buildings issues a temporary or final certificate of occupancy or, if such construction work does not require the issuance of a certificate of occupancy, the date on which the applicant and the applicant's architect or professional engineer for such construction work submit to the department of finance an affidavit certifying that such construction work has been completed. For purposes of this subdivision, a demolition permit shall be deemed to be a building permit issued for construction work.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 58/1995 § 15, eff. July 1, 1995

Subd. a amended L.L. 40/1994 § 2, eff. Oct. 6, 1994 and retroactive to July 1, 1994

Subd. a amended L.L. 73/1992 § 17, eff. July 1, 1992

Subd. b amended L.L. 73/1992 § 18, eff. July 1, 1992

Subd. c amended L.L. 73/1992 § 19, eff. July 1, 1992

Subd. c par (4) amended L.L. 44/1999 § 6, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. c par (4) added L.L. 58/1995 § 16, eff. July 1, 1995

Subds. f, g amended L.L. 58/1995 § 17, eff. July 1, 1995

Subd. i added L.L. 58/1995 § 18, eff. July 1, 1995

Subd. i par (1) subpar (c) added L.L. 48/2003 § 4, eff. July 1, 2003.

Subd. j added L.L. 47/2008 § 1, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

DERIVATION

Formerly § 1313 added LL 71/1984 § 1

CASE NOTES

¶ 1. A developer who fails to apply to the Department of Finance for Industrial and Commercial Incentive Program benefits, before obtaining building permits authorizing construction work, will be ineligible for benefits. Ava Land Development, Inc. v. City of New York, 160 A.D.2d 526, 554 N.Y.S.2d 178 (1st Dept. 1990).

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-260 Application for certificate of eligibility.

a. Application for a certificate of eligibility pursuant to this part may be made immediately and continuing until June 30, 2008; provided, however, that application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of paragraph (4) of subdivision d of section 11-258 of this part may not be made after January 31, 1995; provided, further, however, that application for a certificate of eligibility for construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in the new construction exemption area specified in paragraph (1) of subdivision e of section 11-258 of this part may not be made after December 31, 1996; provided, further, however, that application for a certificate of eligibility for construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in the new construction exemption area specified in paragraph (2) of subdivision e of section 11-258 of this part may not be made after June 30, 2003. Such application shall state whether it is for industrial, commercial or renovation construction work, and shall be filed with the department of finance. In addition to any other information required by such department, the application shall include cost estimates or bids for the proposed construction and an affidavit of a professional engineer or architect of the applicant's choice, certifying that detailed plans for the construction work have been submitted to the department of buildings. Such application shall

also state that the applicant agrees to comply with and be subject to the rules issued from time to time by the department of finance to secure compliance with all applicable city, state and federal laws or which implement mayoral directives and executive orders designed to ensure equal employment opportunity. Such application shall also certify that all taxes currently due and owing on the property which is the subject of the application have been paid or are currently being paid in timely installments pursuant to written agreement with the department of finance.

b. The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting an exemption from or abatement or deferral of payment of taxes pursuant to this part have been satisfied. The department of finance shall have the authority to require that statements in connection with the application be made under oath.

c. Upon receipt of an application, the department of finance shall send written notice thereof to the council member representing the district where the proposed construction work is to take place.

d. The department of finance shall issue a certificate of eligibility upon determining that the applicant satisfies the requirements for industrial, commercial or renovation construction work in an area where benefits are available for such work. Such certificate shall state whether such benefits are to be granted for industrial, commercial or renovation construction work, and in which class of area the property is located. The effective date of such certificate, except as provided in paragraph (2) or paragraph (4) of subdivision c of section 11-259 of this part, shall be the earlier of (1) the date on which a building permit for the construction work is issued by the department of buildings, or (2) the last day before the effective date of any designation of boundaries by the commission which changes the class of area in which the property is located so as to reduce the level of benefits for commercial construction work on such property. Where the effective date of the certificate of eligibility is July 1, 1992 or after, the benefits granted for industrial, commercial or renovation construction work pursuant to this part shall be in accordance with the provisions of this part as amended by local law number 73 for the year 1992, local law number 40 for the year 1994, local law number 58 for the year 1995, local law number 44 for the year 1999, local law number 48 for the year 2003 and the local law for the year 2007 that added this clause. Where the effective date of the certificate of eligibility is June 30, 1992 or before, the benefits granted for industrial or commercial construction work pursuant to this part shall be in accordance with the provisions of this part as it was in effect until June 30, 1992 immediately prior to its amendment by local law number 73 for the year 1992. No recipient whose property is the subject of a certificate of eligibility for commercial construction work in a deferral area shall be eligible to apply for a certificate of eligibility for renovation construction work on the same property, where the renovation construction work is the same as, or similar to, the commercial construction work for which the deferral area certificate was issued, until three years after the effective date of the deferral area certificate. No recipient shall receive a tax deferral and a tax exemption for the same expenditure on eligible construction work.

e. A copy of the certificate of eligibility shall be filed by the department of finance in the manner prescribed for recording a mortgage pursuant to section two hundred ninety-one-d of the real property law.

f. The department of finance may provide by rule for reasonable administrative charges or fees necessary to defray expenses in administering the benefit program provided by this part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 47/2008 § 2, eff. Oct. 10, 2008 and retroactive to

and deemed to have been in full force and effect as of July 1, 2008.

Subd. a amended L.L. 41/2007 § 3, eff. Aug. 2, 2007 and deemed to have

been in full force and effect as of July 1, 2007.

Subd. a amended L.L. 48/2003 § 5, eff. July 1, 2003.

Subd. a amended L.L. 44/1999 § 7, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. a amended L.L. 58/1995 § 19, eff. July 1, 1995

Subd. a amended L.L. 40/1994 § 3, eff. Oct. 6, 1994 retroactive to July 1, 1994

Subd. a amended L.L. 73/1992 § 20, eff. July 1, 1992

Subd. a amended L.L. 20/1992 § 1, eff. Jan. 1, 1992

Subd. a amended L.L. 76/1990 § 3, eff. Dec. 7, 1990

Subd. b amended L.L. 58/1995 § 19, eff. July 1, 1995

Subd. d amended L.L. 41/2007 § 3, eff. Aug. 2, 2007 and deemed to have been in full force and effect as of July 1, 2007.

Subd. d amended L.L. 48/2003 § 5, eff. July 1, 2003.

Subd. d amended L.L. 44/1999 § 8, eff. Aug. 26, 1999 and retroactive to July 1, 1999.

Subd. d amended L.L. 58/1995 § 19, eff. July 1, 1995

Subd. d amended L.L. 40/1994 § 3, eff. Oct. 6, 1994 retroactive to July 1, 1994

Subd. d amended L.L. 73/1992 § 21, eff. July 1, 1992

Subd. f so designated and amended L.L. 58/1995 § 19, eff. July 1, 1995 (formerly subd. g)

Subd. f bracketed out of law L.L. 58/1995 § 19, eff. July 1, 1995

DERIVATION

Formerly § 1314 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-261 Reporting requirement; termination of benefits.

a. Upon approval by the department of buildings of the plans submitted in connection with the building permit and any amendments to such plans, the recipient shall file with the department of finance a narrative description of such approved plans describing the industrial, commercial or renovation construction work for which such recipient seeks benefits pursuant to this part.

b. For the duration of the benefit period the recipient shall file annually with the department of finance, on or before the taxable status date, a certificate of continuing use stating the purposes for which the property described in the certificate of eligibility is being used and the net square footage allotted to each such purpose. Such certificate of continuing use shall be on a form prescribed by the department of finance and shall state the total number of workers employed on the property and the number of such workers who are city residents. The department of finance shall have authority to terminate benefits pursuant to this part upon failure of a recipient to file such certificate by the taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department of finance shall have the authority to require that statements made in such certificate shall be made under oath.

c. A recipient shall file an amendment to the latest certificate of continuing use prior to (1) converting square footage within property which is the subject of a certificate of eligibility for industrial construction work from use for the manufacturing activities described in such certificate of continuing use where such conversion results in less than sixty-five per centum of total net square footage being used or held out for use for manufacturing activities; or (2) converting any portion of property which is the subject of a certificate of eligibility to use for any restricted activity or as residential property.

d. No later than eighteen months after the effective date of a certificate of eligibility with an effective date of June 30, 1992 or before, the recipient shall present evidence to the department of finance demonstrating that the recipient has made one-half of the minimum required expenditure. Not later than thirty-six months after the effective date of such certificate, such recipient shall present evidence to such department demonstrating that the recipient has made the minimum required expenditure. Not later than thirty months after the effective date of a certificate of eligibility with an effective date of July 1, 1992 or after, the recipient shall present evidence to the department of finance demonstrating that the recipient has made one-half of the minimum required expenditure; provided, however, that a recipient of a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of paragraph (4) of subdivision d of section 11-258 of this part shall present such evidence not later than eighteen months after the effective date of such certificate, or by December 31, 1994, whichever is earlier; provided, further, however, that a recipient who filed an application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of paragraph (4) of subdivision d of section 11-258 of this part on or after July 1, 1994, but before February 1, 1995, shall present such evidence not later than eighteen months after the effective date of such certificate, or by July 31, 1995, whichever is earlier, provided, further, however, that a recipient who filed an application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (a) or (c) of paragraph (4) of subdivision d of section 11-258 of this part on or after July 1, 1995, shall present such evidence not later than eighteen months after the effective date of such certificate. Not later than sixty months after the effective date of a certificate of eligibility with an effective date of July 1, 1992 or after, the recipient shall present evidence to such department demonstrating that the recipient has made the minimum required expenditure; provided, however, that a recipient of a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of paragraph (4) of subdivision d of section 11-258 of this part shall present such evidence not later than thirty-six months after the effective date of such certificate, or by December 31, 1995, whichever is earlier; provided, further, however, that a recipient who filed an application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (b) of paragraph (4) of subdivision d of section 11-258 of this part on or after July 1, 1994, but before February 1, 1995, shall present such evidence not later than thirty-six months after the effective date of such certificate, or by July 31, 1996, whichever is earlier, provided, further, however, that a recipient who filed an application for a certificate of eligibility for renovation construction work for property located in the renovation exemption area specified in subparagraph (a) or (c) of paragraph (4) of subdivision d of section 11-258 of this part on or after July 1, 1995, shall present such evidence not later than thirty-six months after the effective date of such certificate. Such evidence shall be presented in the form and manner prescribed by such department. The burden of proof shall be on the recipient to show by clear and convincing evidence that the required expenditures have been made. This subdivision shall not apply to the recipient of a certificate of eligibility for construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in a new construction exemption area.

e. A recipient of a certificate of eligibility for construction of a new building or structure in a new construction exemption area shall present evidence to the department of finance demonstrating that the requirements of subdivision i of section 11-259 of this part have been met. Such evidence shall be presented in the form and manner and at the time prescribed by such department. The burden of proof shall be on the recipient to show by clear and convincing evidence that such requirements have been met.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 73/1992 § 22, eff. July 1, 1992

Subd. b amended L.L. 58/1995 § 20, eff. July 1, 1995

Subd. d amended L.L. 58/1995 § 20, eff. July 1, 1995

Subd. d amended L.L. 40/1994 § 4, eff. Oct. 6, 1994 retroactive to July 1, 1994

Subd. d amended L.L. 73/1992 § 23, eff. July 1, 1992

Subd. e added L.L. 58/1995 § 21, eff. July 1, 1995

DERIVATION

Formerly § 1315 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

Administrative Code of the City of New York

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NYC Administrative Code 11-262

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Title 11 Taxation and Finance

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§ 11-262 Conversion of property.

a. Any recipient whose property is the subject of a certificate of eligibility for commercial or renovation construction work, and who, prior to the expiration of the benefit period, used such property as industrial property, shall continue to receive benefits for commercial or renovation construction work as the case may be.

b. Any recipient whose property is the subject of a certificate of eligibility for industrial construction work, and who, prior to the expiration of the benefit period, uses such property as commercial property, shall cease to be eligible for further exemption or abatement for industrial construction work as of the last date to which such recipient proves by clear and convincing evidence that such property was used as industrial property, and shall pay with interest any taxes for which an exemption or abatement was claimed after such date, except that

(1) a recipient of a certificate of eligibility for industrial construction work in a special exemption area who would have been eligible to receive a certificate of eligibility for commercial construction work at the time such recipient applied for benefits shall continue to receive an exemption for industrial construction; and

(2) a recipient of a certificate of eligibility for industrial construction work in a regular exemption area who would have been eligible to receive a certificate of eligibility for commercial construction work at the time such recipient applied for benefits shall, commencing with the date of conversion to commercial property and continuing until the expiration of the benefit period for commercial construction work, receive any exemption which such recipient would have received in the corresponding tax year pursuant to a certificate of eligibility for commercial construction work; and

(3) a recipient of a certificate of eligibility for industrial construction work in any area of the city on whose property at least sixty-five per centum of the net square footage continues to be used or held out for use for manufacturing activities after conversion to commercial property, shall not be required to pay the pro rata share of tax for which an exemption was claimed during the tax year in which such conversion occurred.

c. Except as provided in subdivision d of this section, any recipient whose property is the subject of a certificate of eligibility for commercial, industrial or renovation construction work, and who uses such property as residential property or for any restricted activity prior to the expiration of the benefit period, shall cease to be eligible for further exemption, abatement or deferral as of the date such property was first used as residential property or for any restricted activity. In the case of property in an area that was designated as an exemption area at the time the certificate of eligibility was issued, such recipient shall pay with interest any taxes for which an exemption was claimed after such date, including the pro rata share of tax for which any exemption was claimed during the tax year in which such use occurred. In the case of industrial property, such recipient shall pay with interest any taxes for which an exemption or abatement was claimed after such date, including the pro rata share of tax for which any exemption or abatement was claimed during the tax year in which such use occurred. In the case of property in an area that was designated as a deferral area at the time the certificate of eligibility was issued, all deferred tax payments on the property shall become due and payable immediately.

d. Notwithstanding subdivision c of this section, any recipient whose property is the subject of a certificate of eligibility for commercial or renovation construction work with an effective date of July 1, 1992 or after, and who, prior to the expiration of the benefit period, uses a portion of such property as residential property, shall cease to be eligible for further exemption for commercial or renovation construction work for that portion of such property used as residential property as of the date such portion of the property was first used as residential property. Such recipient shall pay, with interest, any taxes for which an exemption was claimed after such date attributable to that portion of the property used as residential property, including the pro rata share of tax for which such exemption was claimed during the tax year in which such use occurred. Such recipient shall continue to receive an exemption for commercial or renovation construction work for that portion of the property which continues to be used as commercial property.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended (as open par of subd. a) L.L. 73/1992 § 24, eff.

July 1, 1992

Subd. b so designated L.L. 58/1995 § 22, eff. July 1, 1995

Subd. b open par amended L.L. 58/1995 § 22, eff. July 1, 1995

Subd. c amended L.L. 58/1995 § 22, eff. July 1, 1995

Subd. c amended L.L. 73/1992 § 25, eff. July 1, 1992

Subd. d added L.L. 73/1992 § 26, eff. July 1, 1992

DERIVATION

Formerly § 1316 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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§ 11-263 Administration of the benefit program.

a. The department of finance shall have, in addition to any other functions, powers and duties which have been or may be conferred on it by law, the following functions, powers and duties:

(1) To publicize the availability of benefits pursuant to this part for industrial, commercial and renovation construction work.

(2) To receive and review applications for certificates of eligibility, issue such certificates where authorized pursuant to section 11-260 of this part, and record the issuance of such certificates as prescribed in such section.

(3) To receive evidence of expenditures made for construction, and where such expenditures do not equal the amount required to qualify for exemption from or abatement or deferral of tax payments to take appropriate action, including but not limited to denying, reducing, suspending, terminating or revoking benefits pursuant to this part.

(4) To enter and inspect property to determine whether it is industrial or commercial or mixed-use and to

determine whether (a) any such property is being used for any restricted use, or (b) any property which is the subject of a certificate of eligibility for industrial construction work is being used as commercial property, or (c) any industrial or commercial property is being used as residential or mixed-use property, or (d) all or part of the nonresidential portion of mixed-use property is being used as residential property.

(5) To collect all real property taxes for which payment is deferred pursuant to this part.

(6) To collect all real property taxes, with interest, due and owing as a result of reduction, suspension, termination or revocation of any exemption from or abatement or deferral of taxes granted pursuant to this part.

(7) To make and promulgate regulations to carry out the purposes of this part including, but not limited to, regulations requiring applicants to publish notice of their applications, defining manufacturing and commercial activities and specifying the nature of work for which expenses may be included in the minimum required expenditure, provided, however, that any regulation increasing the minimum required expenditure shall not apply to any person who is a recipient on the effective date of such regulation. Such regulations shall include a requirement that with respect to the construction work recipients and their contractors shall be equal opportunity employers and shall also provide that persons employed in the construction work shall implement a training program for economically disadvantaged persons enrolled or eligible to be enrolled in training programs approved by the department of labor, with particular reference to city residents.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a par (1) amended L.L. 73/1992 § 27, eff. July 1, 1992

Subd. a par (3) amended L.L. 58/1995 § 23, eff. July 1, 1995

Subd. a par (4) amended L.L. 58/1995 § 23, eff. July 1, 1995

Subd. a par (4) amended L.L. 73/1992 § 27, eff. July 1, 1992

Subd. a par (6) amended L.L. 58/1995 § 23, eff. July 1, 1995

Subd. a par (7) amended L.L. 44/1999 § 9, eff. Aug. 26, 1999 and

retroactive to July 1, 1999.

Subd. b bracketed out of law L.L. 58/1995 § 23, eff. July 1, 1995

DERIVATION

Formerly § 1317 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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NYC Administrative Code 11-264

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§ 11-264 Tax lien; interest rate.

a. All taxes plus interest required to be paid retroactively pursuant to this part shall constitute a tax lien as of the date it is determined such taxes and interest are owed. All interest shall be calculated from the date the taxes would have been due but for the exemption, abatement or deferral claimed pursuant to this part at three per centum above the applicable rate of interest imposed by the city generally for non-payment of real property tax on such date.

b. All taxes for which payment is deferred pursuant to section 11-257 of this part shall constitute a tax lien as of the date they are due and payable in accordance with the provisions of that section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 58/1995 § 24, eff. July 1, 1995

DERIVATION

Formerly § 1318 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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§ 11-265 Penalties for non-compliance, false statements and omissions.

a. The department of finance may deny, reduce, suspend, revoke or terminate any exemption from or abatement or deferral of tax payments pursuant to this part whenever:

(1) a recipient fails to comply with the requirements of this part or the rules and regulations promulgated by the department of finance pursuant thereto; or

(2) an application, certificate, report or other document delivered by an applicant or recipient hereunder contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading, and may declare any applicant or recipient who makes such false or misleading statement or omission to be ineligible for future exemption, abatement or deferral pursuant to this part for the same or other property.

b. Notwithstanding any other law to the contrary, a recipient shall be personally liable for any taxes owed pursuant to this part whenever such recipient fails to comply with such law and rules or makes such false or misleading

statement or omission, and the department of finance determines that such act was due to the recipient's willful neglect, or that under the circumstances such act constituted a fraud on the department of finance or a buyer or prospective buyer of the property. The remedy provided herein for an action in personam shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by any general, special or local law. Any lease provision which obligates a tenant to pay taxes which become due because of willful neglect or fraud by the recipient, or otherwise relieve or indemnify the recipient from any personal liability arising hereunder, shall be void as against public policy except where the imposition of such taxes or liability is occasioned by actions of the tenant in violation of the lease.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b amended L.L. 58/1995 § 25, eff. July 1, 1995

DERIVATION

Formerly § 1319 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-266

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-266 Code violations; suspension of benefits.

a. If a court, or the environmental control board with respect to matters within its jurisdiction, finds that at the property which is the subject of a certificate of eligibility there has been a violation of any of the provisions of the building, fire and air pollution control codes set forth in subdivision b of this section, all benefits pursuant to such certificate shall be suspended unless within one hundred eighty days after the department of finance has sent notice of such finding to the recipient, and all other persons having a financial interest in the property who have filed a timely request for such notice in such form as may be prescribed by the department of finance, the recipient submits to the department of finance, certification from the department of buildings, the fire department or the department of environmental protection respectively that the underlying code violation has been cured. If the recipient fails to submit the required certification within the one hundred eighty day period, the period of suspension shall be effective retroactively to the time of the finding by the court or the environmental control board. The suspension of benefits shall continue until the recipient submits to the department of finance the required certification that the violation has been cured.

If the original finding of violation or the denial of certification is appealed and a court or appropriate

governmental agency finally determines that the finding of violation or denial of certification was invalid, any benefits lost pursuant to this section to which the recipient was entitled shall be restored retroactively.

As applied to a recipient who is eligible for deferral of tax payments pursuant to subdivision d of section 11-257 of this part, suspension of benefits shall be deferred by operation of such section and interest at the rate charged by the department of finance for overdue taxes shall be charged on the amount of any tax payments already deferred by operation of such section. The interest charged shall accrue from the beginning of the period of suspension.

b. The provisions of subdivision a of this section shall apply to violations of the following provision of the code:

(1) section 27-4260;

(2) section 27-4265;

(3) section 27-4267;

(4) section 27-954;

(5) section 27-339;

(6) subdivision (c) of section 27-353;

(7) paragraph twelve of subdivision (f) of section 27-972;

(8) paragraph ten of subdivision (g) of section 27-972;

(9) subdivision (c) of section 27-975;

(10) subdivision (c) of section 27-989;

(11) the following provisions to the extent applicable to cabarets as defined in article two of subchapter two of the building code:

(a) section 27-542;

(b) subparagraph d of paragraph two of subdivision (b) of section 27-547;

(c) paragraph three of subdivision (a) of section 27-549;

(d) subdivision (b) of section 27-549;

(12) section 27-127 when the violation concerns an unsafe condition on a facade of a building which exceeds six stories in height; (13) section five hundred one of reference standard 13-1;

(14) section one thousand three of reference standard 13-1;

(15) paragraph six of subdivision (b) of section 24-178; and

(16) section 24-185.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1320 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

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PART 4*14 TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-267 Annual report.

The department of finance shall submit an annual report to the council, on April first of each year, concerning the status of the program established pursuant to this part and its effects in the city, including information on certificates of eligibility issued and jobs created in each area where benefits are available.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1321 added LL 71/1984 § 1

FOOTNOTES

14

[Footnote 14]: * Added by L.L. 1984, No. 71, November 5.

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CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-268 Definitions.

When used in this part:

a. "Commercial construction work" means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as commercial property.

b. "Commercial exclusion area" means an area as defined in subdivision d of section 11-274 of this part.

c. "Commercial property" means nonresidential property on which will exist after completion of commercial construction work a building or structure, or portion thereof, used for the buying, selling or otherwise providing of goods or services including hotel services, or for other lawful business, commercial or manufacturing activities; provided that property or portions of property dedicated to utility property shall not be considered commercial property for purposes of this part.

d. "Commissioner" means the commissioner of finance of the city of New York.

e. "Completion of construction," or "completion," when relating to new construction, means the earlier of the date on which the department of buildings issues a final certificate of occupancy, or when the department has otherwise determined that construction is complete.

f. "Department" means the department of finance of the city of New York.

g. "Industrial construction work" means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property.

h. "Industrial property" means nonresidential property on which will exist after completion of industrial construction work a building or structure, or portion thereof, with at least seventy-five percent of the total net square footage of the property used or immediately available and held out for manufacturing activities involving assembling goods or the fabrication or processing of raw materials; provided that property or portions of property dedicated to utility property shall not be considered industrial property for purposes of this part.

i. "Manufacturing activity" means an activity involving the assembly of goods or the fabrication or processing of raw materials, but shall not include: (1) such activity when conducted for the purpose of retail sale on the premises; or (2) utility services.

j. "Minimum required expenditure" means the amount that an applicant must expend on construction work for a project in order to qualify for benefits as provided in this part.

k. "Mixed-use property" means property on which exists, or will exist upon completion of construction work, a building or structure used for both residential and nonresidential purposes.

l. "Renovation construction work" means the modernization, rehabilitation, expansion or improvement of an existing building or structure where such modernization, rehabilitation, expansion or improvement is physically and functionally integrated with the existing building or structure, or portion thereof, does not increase the bulk of the existing building or structure by more than thirty percent, and does not increase the height of the existing building or structure by more than thirty percent.

m. "Residential construction work" means any construction, modernization, rehabilitation, expansion or improvement of dwelling units other than dwelling units in a hotel.

n. "Restricted activity" means any entertainment activity that the department has identified in rules promulgated by such department pursuant to this part as an activity which, in the public interest, should not be encouraged through the benefits of this part.

o. "Retail purposes" means any activity that consists predominately of (1) the final sale of tangible personal property or services by a vendor as defined in section eleven hundred one of the tax law, (2) the sale of services that generally involve the physical, mental, and/or spiritual care of individuals or the physical care of the personal property of individuals, (3) retail banking services, or (4) the final sale of food and/or beverage by a vendor as defined in section eleven hundred one of the tax law, including the assembly, processing or packaging of goods, provided that sales of such tangible personal property or services are predominately to purchasers who personally visit the facilities at which such sales are made or such property and services are provided. "Retail purposes" shall not include hotel uses as described in subdivision d of section 11-270 of this part.

p. "Temporary commercial incentive area boundary commission" means a commission as defined in section 11-274 of this part.

q. "Utility property" means property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of the real property tax law that is used in the ordinary course of

business by its owner or any other entity or property as described in paragraphs (a) and (b) of subdivision twelve of section one hundred two of such law that is owned by any entity that uses in the ordinary course of business property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of such law, without regard to the classification of such property and equipment for real property tax purposes pursuant to section eighteen hundred two of such law, except that any such property and equipment used solely to serve the building to which they are attached shall not be deemed utility property.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

40

[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-269 Industrial and commercial real property tax abatement.

a. Subject to the provisions of this part, tax abatement benefits shall be available to eligible recipients in accordance with the provisions of this section.

b. Amount of abatement base. (1) Calculation of abatement base. Except as provided in paragraph (5) of subdivision c of this section, the abatement base used to determine the amount of the abatement provided under this part shall be the amount by which the post-completion tax on a building or structure exceeds one hundred fifteen percent of the initial tax levied on a building or structure.

(2) Initial tax on building or structure. (a) Determination of initial tax. The initial tax shall be determined by multiplying the final taxable assessed value, without regard to any exemptions, shown on the assessment roll with a taxable status date immediately preceding the issuance of the first building permit by the initial tax rate. For purposes of this subdivision, the initial tax rate shall be the final tax rate applicable to the assessment roll with a taxable status date immediately preceding the issuance of the first building permit. If no permit was required, the initial tax and the initial tax rate shall be determined based on the assessment roll with a taxable status date immediately preceding the

commencement of construction.

(b) Effect of tax lot apportionment or merger. For a property as to which an applicant has applied for benefits pursuant to this part, if such property is apportioned or merged and such apportionment or merger is not reflected in the assessment roll described in subparagraph (a) of this paragraph, the initial tax for the newly created tax lot or lots shall be based on the initial tax of the lot or lots from which they have been created, which shall be apportioned among the newly created tax lot or lots in the manner established by the department for purposes of assessed valuation of real property.

(3) Post-completion tax on building or structure. For purposes of calculating the abatement base only, the post-completion tax is determined by multiplying the initial tax rate by the final taxable assessed value, without regard to any exemptions, that would be shown on the assessment roll but for the abatement, on the assessment roll with a taxable status date immediately following the earlier of:

(a) completion of construction; or

(b) four years from the date of issuance of the first building permit, or if no permit was required, the commencement of construction.

(4) (a) If the taxable assessed value is later reduced by a court order or application to the tax commission, then the initial tax or the post-completion tax shall be the tax as reduced.

(b) The taxable assessed value used for the calculations in this subdivision shall be the lower of the actual and transitional value as provided in subdivision three of section eighteen hundred five of this chapter.

(5) Mixed-use property. For a mixed-use property, the initial tax and post-completion tax shall be apportioned between the residential and nonresidential portions. The department may promulgate rules to determine the method of apportionment.

(6) Initial taxes not to be reduced by abatement. Except as provided in paragraph (5) of subdivision c of this section, the abatement provided under this part shall not be applicable in any year of the benefit period to the initial tax or to the tax on the portion of the assessment attributable to land. Additionally, the abatement shall not result in any credit or refund of real property taxes.

c. Industrial and commercial abatements. (1) Abatement for commercial construction work. Upon approval by the department of a final application for benefits, an applicant who has performed commercial construction work outside of a special commercial abatement area, as designated pursuant to subdivision b of section 11-274 of this part, or a renovation area, as defined by subdivision c of section 11-274 of this part, shall be eligible for an abatement of real property taxes, as follows:

(a) Amount of abatement. The first year of the abatement shall be the tax year with the first taxable status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was used, or if no permit was required, the commencement of construction. For years one through eleven, the abatement shall be the amount of the abatement base. For years twelve through fifteen, the abatement shall decrease by twenty percent each year. The following table illustrates the abatement computation:

Tax year during benefit period:	Amount of abatement:
Years 1 through 11	100% of abatement base
12	80% of abatement base
13	60% of abatement base

14 40% of abatement base

15 20% of abatement base

(b) Minimum required expenditure. For commercial construction work, the minimum required expenditure is thirty percent of the property's taxable assessed value in the tax year with a taxable status date immediately preceding the issuance of the first building permit, or if no permit was required, the commencement of construction. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities shall not be included in the minimum required expenditure.

(2) Abatement for industrial construction work or commercial construction work in special commercial abatement areas on buildings where not more than ten percent of the building or structure is used for retail purposes. Upon approval by the department of a final application for benefits, an applicant who has performed industrial construction work in any area, where not more than ten percent of the building or structure on which such work has been performed is used for retail purposes, or commercial construction work in a special commercial abatement area, as designated pursuant to subdivision b of section 11-274 of this part, where not more than ten percent of the building or structure on which such work has been performed is used for retail purposes, shall be eligible for an abatement of real property taxes, as follows:

(a) Amount of abatement. The first year of the abatement shall be the tax year with the first taxable status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction. For years one through sixteen, the abatement shall be the amount of the abatement base. The abatement shall be adjusted for inflation protection as provided in subparagraph (b) of this paragraph. For years seventeen through twenty-five, the abatement shall decrease by ten percent each year. The following table illustrates the abatement computation:

Tax year during benefit period: Amount of abatement:

Years 1 through 16 100% of abatement base

17 90% of abatement base

18 80% of abatement base

19 70% of abatement base

20 60% of abatement base

21 50% of abatement base

22 40% of abatement base

23 30% of abatement base

24 20% of abatement base

25 10% of abatement base

(b) Inflation protection. (i) Industrial construction work. (A) Effect of assessed valuation increases. For years two through thirteen of the benefit period, except as provided in item (B) of this clause, if there is any increase in tax in that year that is based on an increase of taxable assessed valuation since the immediately prior tax year, such excess tax liability shall be added to the amount of the abatement base. Such addition to the amount of the abatement base shall be determined using the initial tax rate.

(B) Physical increases. Notwithstanding the provisions of item (A) of this clause, if in any of years two through thirteen of the benefit period, a physical change to the property results in an increase in the taxable assessed value of the property of more than five percent for that year, then any increase in taxes for that year shall not be added to the amount of the abatement base in any year.

(C) If the taxable assessed value upon which an adjustment to the abatement under this paragraph is based is later reduced by a court order or application to the tax commission, then the appropriate adjustment to the abatement base shall be made in accordance with the reduced taxable assessed value.

(i) Commercial construction work in special commercial abatement areas on buildings where not more than ten percent of the building or structure is used for retail purposes. (A) Effect of assessed valuation increases. For years two through thirteen of the benefit period, except as provided in item (B) of this clause, if there is any increase in tax in that year that is based on an increase of taxable assessed valuation since the immediately prior tax year that exceeds five percent, such excess tax liability shall be added to the amount of the abatement base. Such addition to the amount of the abatement base shall be determined using the initial tax rate.

(B) Physical increases. Notwithstanding the provisions of item (A) of this clause, if in any of the years two through thirteen of the benefit period, a physical change to the property results in an increase in the taxable assessed value of the property of more than five percent for that year, then any increase in taxes for that year shall not be added to the amount of the abatement base in any year.

(C) If the taxable assessed value upon which an adjustment to the abatement under this paragraph is based is later reduced by a court order or application to the tax commission, then the appropriate adjustment to the abatement base shall be made in accordance with the reduced taxable assessed value.

(ii) Mixed-use property. For a property as to which benefits are given for both industrial and commercial construction, the inflation protection provided under this subparagraph shall be based on the predominant use of the property as determined by the department.

(c) Minimum required expenditure. For industrial construction work or commercial construction work in a special commercial abatement area, the minimum required expenditure is thirty percent of the property's taxable assessed value in the tax year with a taxable status date immediately preceding the issuance of the first building permit, or if no permit was required, the commencement of construction. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities shall not be included in the minimum required expenditure.

(3) Abatement for industrial construction work or commercial construction work in special commercial abatement areas on buildings where more than ten percent of the building or structure is used for retail purposes. Upon approval by the department of a final application for benefits, an applicant who has performed industrial construction work in any area, where more than ten percent of the building or structure on which such work has been performed is used for retail purposes, or commercial construction work in a special commercial abatement area, as designated pursuant to subdivision b of section 11-274 of this part, where more than ten percent of the building or structure on which such work has been performed is used for retail purposes, shall be eligible for an abatement of real property taxes on the non-retail portion of such building or structure and up to ten percent of such building or structure used for retail purposes, in accordance with paragraph (2) of this subdivision, and shall be eligible for an abatement of real property taxes on the remaining retail portion of such building or structure, as follows:

(a) Amount of abatement. The first year of abatement shall be the tax year with the first taxable status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction. For years one through eleven, the abatement shall be the amount of the abatement base. For years twelve through fifteen, the abatement shall decrease by twenty percent each

year. The abatement shall be adjusted for inflation protection as provided in subparagraph (b) of this paragraph. The following table illustrates the abatement computation:

Tax year during benefit period:	Amount of abatement:
Years 1 through 11	100% of abatement base
12	80% of abatement base
13	60% of abatement base
14	40% of abatement base
15	20% of abatement base

(b) Inflation protection. (i) Industrial construction work. (A) Effect of assessed valuation increase. For years two through thirteen of the benefit period, except as provided in item (B) of this clause, if there is any increase in tax in that year that is based on an increase of taxable assessed valuation since the immediate prior tax year, such excess tax liability shall be added to the amount of the abatement base. Such addition to the amount of the abatement shall be determined using the initial tax rate.

(B) Physical increases. Notwithstanding the provisions of item (A) of this clause, if in any of the years through thirteen of the benefit period, a physical change to the property results in an increase in the taxable assessed value of the property of more than five percent for that year, then any increase in taxes for that year shall not be added to the amount of the abatement base in any year.

(C) If the taxable assessed value upon which an adjustment to the abatement under this paragraph is based is later reduced by a court order or application to the tax commission, then the appropriate adjustment to the abatement base shall be made in accordance with the reduced taxable assessed value.

(i) Commercial construction work in special commercial abatement areas on buildings where more than ten percent of the building or structure is used for retail purposes. (A) Effect of assessed valuation increases. For years two through thirteen of the benefit period, except as provided in item (B) of this clause, if there is any increase in tax in that year that is based on an increase of taxable assessed valuation since the immediately prior tax year that exceeds five percent, such excess tax liability shall be added to the amount of the abatement base. Such addition to the amount of the abatement base shall be determined using the initial tax rate.

(B) Physical increases. Notwithstanding the provisions of item (A) of this clause, if in any of years two through thirteen of the benefit period, a physical change to the property results in an increase in the taxable assessed value of the property of more than five percent for that year, then any increase in taxes for that year shall not be added to the amount of the abatement base in any year.

(C) If the taxable assessed value upon which an adjustment to the abatement under this paragraph is based is later reduced by a court order or application to the tax commission, then the appropriate adjustment to the abatement base shall be made in accordance with the reduced taxable assessed value.

(ii) Mixed-use property. For a property as to which benefits are given for both industrial and commercial construction, the inflation protection provided under this subparagraph shall be based on the predominant use of the property as determined by the department.

(c) Minimum required expenditure. For industrial construction work or commercial construction work in a special commercial abatement area, the minimum required expenditure is thirty percent of the property's taxable assessed value in the tax year with a taxable status date immediately preceding the issuance of the first building permit,

or if no permit was required, the commencement of construction. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities shall not be included in the minimum required expenditure.

(4) Abatement for renovation construction work in renovation areas. Subject to the provisions of subparagraph (c) of this paragraph, upon approval by the department of a final application for benefits, an applicant who has performed renovation construction work in a renovation area, as defined by subdivision c of section 11-274 of this part, shall be eligible for an abatement of real property taxes, as follows:

(a) Amount of abatement. For the renovation areas defined in paragraphs (1) and (2) of subdivision c of section 11-274 of this part, the first year of the abatement shall be the tax year with the first taxable status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction. For years one through eight, the abatement shall be the amount of the abatement base. For years nine through twelve, the abatement shall decrease by twenty percent each year. The following table illustrates the abatement computation:

Tax year during benefit period:	Amount of abatement:
Years 1 through 8	100% of abatement base
9	80% of abatement base
10	60% of abatement base
11	40% of abatement base
12	20% of abatement base

(b) Amount of abatement. For the renovation area defined in paragraph (3) of subdivision c of section 11-274 of this part, the first year of the abatement shall be the tax year with the first taxable status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction. For years one through five, the abatement shall be the amount of the abatement base. For years six through nine, the abatement shall decrease by twenty percent each year. In year ten, the abatement shall be twenty percent of the abatement base. The following table illustrates the abatement computation:

Tax year during benefit period:	Amount of abatement:
Years 1 through 5	100% of abatement base
6	80% of abatement base
7	60% of abatement base
8	40% of abatement base
9	20% of abatement base
10	20% of abatement base

(c) If more than five percent of any building or structure upon which renovation construction work is performed is used for retail purposes, no abatement shall be granted for the retail portions of such building or structure in excess of five percent, but five percent of such building or structure used for retail purposes shall be eligible for an abatement of real property taxes in accordance with subparagraph (a) or subparagraph (b) of this paragraph, as applicable; provided,

however, that notwithstanding any other provision of this part, any building or structure located in the renovation area defined in paragraph (1) of subdivision c of section 11-274 of this part shall be eligible for an abatement in accordance with subparagraph (a) of this paragraph regardless of the amount of the building or structure used for retail purposes.

(d) Minimum required expenditure. For renovation construction work in renovation areas, the minimum required expenditure is thirty percent of the property's taxable assessed value in the tax year with a taxable status date immediately preceding the issuance of the first building permit, or if no permit, was required, the commencement of construction. Expenditures for construction work on portions of the property to be used for retail purposes that exceed five percent of the building or structure in renovation areas defined in paragraphs (2) and (3) of subdivision c of section 11-274 of this part, for residential construction work, or for construction work on portions of the property to be used for restricted activities, shall not be included in the minimum required expenditure.

(5) Additional industrial abatement. In addition to the abatement for industrial construction work provided in paragraph (2) of this subdivision, an applicant who performs industrial construction work that meets the eligibility requirements set forth in this part shall be eligible for an additional abatement, calculated as a percentage of the initial tax, as follows:

(a) Amount of abatement. The first year of the abatement shall be the tax year with the first taxable status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction. The amount of the additional industrial abatement shall be as follows:

Tax year during benefit period:	Amount of additional abatement:
Years 1 through 4	50% of the initial tax amount
5	40% of the initial tax amount
6	40% of the initial tax amount
7	30% of the initial tax amount
8	30% of the initial tax amount
9	20% of the initial tax amount
10	20% of the initial tax amount
11	10% of the initial tax amount
12	10% of the initial tax amount

(b) Minimum required expenditure. For the additional industrial abatement, the minimum required expenditure is forty percent of the property's taxable assessed value in the tax year with the taxable status date immediately preceding the issuance of the first building permit, or if no permit was required, the commencement of construction. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities shall not be included in the minimum required expenditure.

(6) Abatement for commercial construction work on new construction in certain areas of the borough of Manhattan. Notwithstanding any other provision of law, upon approval by the department of a final application for benefits, an applicant who has performed commercial construction work on a new building or structure, in the geographical area as specified in subparagraph (d) of this paragraph, shall be eligible for an abatement of real property taxes, as follows: (a) Amount of abatement. The first year of the abatement shall be the tax year with the first taxable

status date that follows the sooner of (i) completion of construction; or (ii) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction. For years one through four, the abatement shall be the amount of the abatement base. For years five through eight, the abatement shall decrease by twenty percent each year. The following table illustrates the abatement computation:

Tax year during benefit period:	Amount of abatement:
Years 1 through 4	100% of abatement base
5	80% of abatement base
6	60% of abatement base
7	40% of abatement base
8	20% of abatement base

(b) Minimum required expenditure. The minimum required expenditure is thirty percent of the property's taxable assessed value in the tax year with a taxable status date immediately preceding the issuance of the first building permit, or if no permit was required, the commencement of construction. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities shall not be included in the minimum required expenditure.

(c) Special eligibility requirements. Notwithstanding any other provision of this part, no benefits shall be granted pursuant to this paragraph unless the building or structure meets the requirements of clauses (i) and (ii) of this subparagraph, and further meets at least two of the requirements set forth in clauses (iii) through (vii) of this subparagraph:

(i) The height of at least forty percent of the floors in such building or structure shall be not less than twelve feet, nine inches measured from the top of the slab comprising the floor to the bottom of the slab comprising the ceiling;

(ii) Such building or structure shall be served by fiber-optic telecommunications wiring and shall contain vertical penetrations for the distribution of fiber optic cabling to individual tenants on each floor;

(iii) The total square footage of such building or structure is not less than five hundred thousand gross square feet;

(iv) A minimum of two hundred thousand gross square feet or twenty-five per centum of such building or structure is comprised of floors of not less than forty thousand gross square feet;

(v) At least ten per centum of the gross square footage of such building or structure is comprised of floors that contain no more than eight structural columns, excluding any columns within the core or on the periphery of such building or structure;

(vi) The electrical capacity of such building or structure is not less than six watts per net square foot;

(vii) Emergency backup power sufficient to accommodate a need of six watts per net square foot is available in at least two hundred thousand gross square feet or twenty-five per centum of such building or structure.

(d) Geographical area. Abatements will only be granted for new construction work pursuant to this paragraph in the following geographical area; the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center line of Frankfort

and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street, except the area in the borough of Manhattan bounded by Church Street on the east starting at the intersection of Liberty Street and Church Street; running northerly along the center line of Church Street to the intersection of Church Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Broadway; running northerly along the center line of West Broadway to the intersection of West Broadway and Barclay Street; running westerly along the center line of Barclay Street to the intersection of Barclay Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Street; running southerly along the center line of West Street to the intersection of West Street and Liberty Street; and running easterly along the center line of Liberty Street to the intersection of Liberty Street and Church Street.

d. Limitations on abatement. (1) Subsequent abatement. With respect to any property that has received or is receiving abatement benefits under this part, an applicant shall not file a preliminary application for new abatement benefits under this part for an additional construction project on the same portion of the property for which construction work is the subject of abatement benefits under this part until at least four years have elapsed since the first day of the first tax year of such abatement benefits under the prior abatement, and, in the event that such new benefits are granted, then notwithstanding any other provision of this part or any other law, the initial tax for any such new abatement will be determined without regard to the prior abatement and any other abatement or exemption granted to the property.

(2) Abatement benefits granted under this part shall not in any year exceed the real property taxes imposed on such property.

(3) Once an abatement is granted, no additional benefits pursuant to this part shall be granted for construction work that is substantively a part of eligible construction work for which benefits have been approved or granted.

(4) No benefits shall be granted for residential construction work.

(5) Any parcel partly located in an excluded area shall be deemed to be entirely located in such area.

(6) Where a tax lot contains multiple structures or buildings with eligible and non-eligible uses, the initial tax shall be apportioned under rules promulgated by the commissioner and only the tax attributable to the eligible portion of the property shall be abated.

(7) (a) No benefits under this part may be received by a property that is concurrently receiving exemption or abatement of real property taxes under any other law, except for an exemption under (i) section four hundred twenty-a, four hundred twenty-b or four hundred fifty-nine-b of the real property tax law; or (ii) any section of the real property tax law as to which the city has enacted a local law to implement such exemption and as to which exemption is granted only if the property is the primary or legal residence of one or more of the owners of the property, including such sections in which exemption may be granted if an owner is absent from the residence while receiving medical benefits; or (iii) title two-D of article four of the real property tax law for a separate project involving separate parts of the building or structure that was completed prior to the application for benefits.

(b) For purposes of this paragraph, "property" means the real property contained by an individual tax lot.

(c) Notwithstanding subparagraph (b) of this paragraph, where a property is owned in condominium form, and an application for benefits under this part includes more than one tax lot in the same condominium, then for purposes of this paragraph, "property" shall include any or all such tax lots that are included in the application.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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NYC Administrative Code 11-270

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PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-270 Eligibility for benefits.

a. Time limit for meeting minimum required expenditure. Applicants must meet the appropriate minimum required expenditure as provided in subdivision c of section 11-269 of this part relating to the abatement for which such project qualifies as follows: (1) No later than four years from the date of issuance of the first building permit, or if no permit was required, the commencement of con- struction.

(2) Mixed use properties. Expenditures for construction work related to the common areas and systems of such property shall be allocated under rules promulgated by the department between the residential, nonresidential and retail, if any, portions of the property.

b. Time limit for completion of construction. Construction of buildings or structures for which benefits have been approved shall be completed no later than five years from the date of issuance of the first building permit, or if no permit was required, the commencement of construction. Failure to meet this requirement shall result in termination of any inflation protection provided under subdivision c of section 11-269 of this part for any tax year that begins following the date by which completion of construction is required under this paragraph.

c. Non-permissible uses. To be eligible for benefits, the property may not be used for a non-permissible purpose. Accordingly, no abatement benefits under this part shall be granted for work to be performed on property to be used for the following purposes:

(1) Residential. No abatement benefits under this part shall be granted for construction work for residential purposes, or for work on a structure or building where twenty percent or more of the total rentable square footage of such property is or will be dedicated to residential purposes, provided however that where less than five percent of a property's rentable square footage is or will be dedicated to residential purposes, that use shall be considered de minimus and shall not be considered in determining benefits under this part.

(a) For purposes of this paragraph, "property" means the real property contained by an individual tax lot.

(b) Notwithstanding subparagraph (a) of this paragraph, where a building or structure is owned in condominium form, and an application for benefits under this part includes more than one property in the same condominium, then for purposes of this paragraph, the five percent and twenty percent of the rentable square footage shall be determined based on the aggregate usage of all such properties.

(c) Hotel uses, as described in subdivision d of this section, shall not be considered residential.

(2) Utility property. No abatement benefits under this part shall be provided for utility property.

(3) Restricted activity. No benefits pursuant to this part shall be granted for construction work on property any part of which is to be used for a restricted activity.

d. Hotel uses. Benefits shall be available for commercial construction work or renovation construction work on a building or structure for the property's square footage used to provide lodging and support services for transient guests.

e. Filing requirements. (1) Time to file. (a) Preliminary application. (i) Building permit. No benefits pursuant to this part shall be granted for any construction work unless the applicant filed a preliminary application for such benefits on or before the date of issuance of the first building permit for such work. This requirement may be satisfied where the applicant's architect, contractor or other representative authorized to file the application for such building permit files with the department on behalf of the applicant a preliminary application containing such information as the department shall prescribe by rule.

(ii) No building permit required. Where construction work does not require a building permit, a notarized letter from the project's architect or engineer notifying the department of this fact shall be filed within thirty calendar days of the commencement of construction. In such circumstance, such letter shall also satisfy the requirement of a preliminary application if the letter contains all of the information required for a preliminary application under rules prescribed by the department.

(b) Final application. Applicants shall file a final application for benefits no later than one year from the date of issuance of the first building permit for construction work, or, where construction work does not require a building permit, no later than one year from the date of commencement of construction.

(2) Who may file for benefits. An applicant shall be:

(a) obligated to any real property tax on the property, either by virtue of ownership or contract; or

(b) the record owner or lessee of property that is exempt from real property taxation who has entered into an agreement to sell or lease such property to another person. Such applicant shall be a co-applicant with such owner or lessee.

(3) Applicant affidavit. No benefits pursuant to this part shall be granted for any construction work unless the

applicant provides, together with the final application, an affidavit setting forth the following information:

(a) a statement that within the seven years immediately preceding the date of the preliminary application for benefits, neither the applicant, nor any person owning a substantial interest in the property as defined in subparagraph (c) of this paragraph, nor any officer, director or general partner of the applicant or such person was finally adjudicated by a court of competent jurisdiction to have violated section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another state with respect to any building, or was an officer, director or general partner of a person at the time such person was finally adjudicated to have violated such law; and

(b) a statement setting forth any pending charges alleging violation of section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another jurisdiction with respect to any building by the applicant or any person owning a substantial interest in the property as defined in subparagraph (c) of this paragraph or any officer, director or general partner of the applicant or such person.

(c) "Substantial interest" as used in this subdivision shall mean ownership and control of an interest of ten percent or more in a property or any person owning a property.

(d) If any person described in the statement required by subparagraph (b) of this paragraph is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to this part and shall pay with interest any taxes for which an abatement was claimed pursuant to this part.

(4) Minority-and women-owned business enterprises. No benefits pursuant to this part shall be granted for any construction work unless the applicant participates in the program established in section 11-278 of this part to ensure meaningful participation of minority-and women-owned business enterprises in construction work for which the applicant receives benefits.

f. Requirement to file income and expense statements. No benefits pursuant to this part shall be granted for any property unless income and expense statements are filed for the property with respect to the tax year as to which the assessment roll described in paragraph (2) of subdivision b of section 11-269 of this part applies, and all subsequent tax years up to and including the tax year on which the assessment roll described in paragraph (3) of subdivision b of section 11-269 of this part applies.

g. Co-application with public entity. A co-applicant with a public entity may be eligible for abatement benefits, provided that for any period for which the property is exempt from real property tax because it is owned or controlled by a public entity, no benefits shall be available to such recipient under this part. Such recipient may receive benefits under this part when the property is no longer eligible for an exemption as follows: (1) No benefits under this part shall be provided during the period of exemption; (2) during such period of exemption, the years of the benefit period applicable to the project provided in subdivision c of section 11-269 of this part shall not be tolled, but shall run in accordance with the applicable schedule provided therein; and (3) the recipient shall starting with the date the exemption ceases, and continuing until the abatement benefit period expires, receive the abatement benefits to which such recipient is entitled in the tax year that corresponds to the year of the benefit period provided in subdivision c of section 11-269 of this part.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

Subd. e par (4) added L.L. 67/2008 § 1, eff. Feb. 27, 2009.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-271 Applying for benefits.

a. Application. (1) Application for benefits pursuant to this part may be made immediately following the effective date of the local law that added this section and continuing until March first, two thousand eleven.

(2) Application content. The preliminary and final applications shall be in any format designated by the commissioner, including electronic format. The applications shall require, and applicants shall provide, information and documentation sufficient to determine eligibility for abatement benefits. The required information and documentation for both applications shall be prescribed by the department by rule. Such information and documentation may include, but need not be limited to, certified statements related to the project, project costs, filings with other governmental entities, and work performed or to be performed on such project. At the department's sole discretion, an applicant may be required to furnish certified statements made by the applicant's architect or engineer or both.

(3) Compliance. The application shall also state that the applicant agrees to comply with and be subject to the rules issued from time to time by the department to secure compliance with all applicable city, state and federal laws or which implement mayoral directives and executive orders designed to ensure equal employment opportunity. Such

application shall also state that the applicant agrees to comply with the program established by section 11-278 to ensure meaningful participation of minority and women-owned business enterprises in construction work for which the applicant receives benefits.

(4) Affidavit of no violations. No benefits pursuant to this part shall be granted for any construction work unless the applicant shall file with the application, the affidavit required under paragraph (3) of subdivision e of section 11-270 of this part.

(5) Electronic filing of application. The commissioner may, by rule, require any application for benefits under this part to be submitted electronically in such form and manner as the commissioner may determine. For good cause, the commissioner may waive any rule requiring electronic filing and may permit an application to be filed in another manner.

b. Fees. The department may provide by rule for reasonable administrative charges or fees necessary to defray expenses in administering this benefit program.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

Subd. a par (3) amended L.L. 67/2008 § 2, eff. Feb. 27, 2009.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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§ 11-272 Reporting requirement.

a. Continuing use. For the duration of the benefit period, the recipient of benefits shall file biennially with the department, on or before the appropriate taxable status date, a statement of the continuing use of such property and any changes in use that have occurred. This statement shall be in a form determined by the department and may be in any format the department determines, in its discretion, is appropriate, including electronic format. The department shall have authority to terminate such benefits upon failure of a recipient to file such statement by the appropriate taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department shall have the authority to require that statements filed under this subdivision be certified.

b. Conversion of construction. A recipient shall file an amendment to the latest statement of continuing use prior to:

(1) converting square footage within property that is the subject of benefits for industrial construction work from use for the manufacturing activities described in such statement of continuing use where such conversion would result in less than sixty-five percent of total net square footage being used or held out for use for manufacturing activities; or

(2) converting any portion of property that is the subject of benefits for industrial construction work for use for any restricted activity or as residential property.

(3) For all other use conversions, applicants shall immediately notify the department of a change in use, in a manner that the department may determine.

c. Minimum required expenditure. No later than sixty days after the minimum required expenditure must be made under subdivision a of section 11-270 of this part, the applicant shall submit to the department a certified statement that the applicant has made the minimum required expenditure as required by this part.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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§ 11-273 Conversion of property.

a. Conversion from commercial to industrial use. Where a property has been granted benefits for commercial or renovation construction work, but such property is used as industrial property before the benefits period expires, such property shall continue to receive benefits for commercial or renovation construction work.

b. Conversion from industrial use to commercial use. Where a property has been granted benefits for industrial construction work, and where, before the benefit period expires, less than seventy-five percent of the total net square footage is used or held out for use for manufacturing activities, no further benefits for industrial construction work shall be provided except as provided in this subdivision. Taxes, together with interest, shall become due and owing after such date of the use for purposes other than industrial, except as provided in this subdivision.

(1) Any applicant whose property has been granted a tax abatement under this part for industrial construction work in a special commercial abatement area who would have been eligible to receive benefits for commercial construction work at the time such applicant applied for benefits shall continue to receive an abatement for industrial construction work.

(2) Any applicant whose property has been granted benefits under this part for industrial construction work other than in a special commercial abatement area who would have been eligible to receive benefits for commercial construction work at the time such applicant applied for benefits shall, commencing with the date of conversion to commercial property and continuing until the expiration of the benefit period for commercial construction work, receive any abatement which such applicant would have received in the corresponding tax year pursuant to the benefits granted for commercial construction work.

(3) Any applicant whose property has been granted benefits under this part for industrial construction work in any area of the city on whose property at least sixty-five percent of the net square footage continues to be used or held out for use for manufacturing activities after conversion to commercial property, shall not be required to pay the pro rata share of tax for which an abatement was claimed during the tax year in which such conversion occurred.

(4) Where the property is receiving the additional industrial abatement pursuant to paragraph (5) of subdivision c of section 11-269 of this part, such additional industrial abatement shall cease from the date of conversion to commercial property.

c. Conversion to restricted use. Any applicant whose property has been granted benefits for commercial, industrial or renovation construction work, and who uses such property for any restricted activity prior to the expiration of the benefit period, shall cease to be eligible for further abatement as of the date such property was first used for any restricted activity. Such recipient of benefits that cease under this subdivision shall pay with interest any taxes for which an abatement was claimed after such date, including the pro rata share of tax for which any abatement was claimed during the tax year in which such use occurred.

d. Conversion to residential use. (1) Any applicant whose property has been granted benefits for commercial, industrial or renovation construction work and who, before the benefit period expires, uses the property or a portion of the property as residential property, shall cease to be eligible for further abatement for commercial, industrial or renovation construction work as of the date such property was first used as residential property, as follows:

(a) if twenty percent or more of the rentable square footage of the property is used as residential property, then the entire building shall cease to be eligible for further abatement;

(b) if less than twenty percent of the rentable square footage of the property is used as residential property, then that portion of such property used as residential property shall cease to be eligible for further abatement; (c) notwithstanding subparagraph (b) of this paragraph, where less than five percent of a property's rentable square footage is used as residential property, that use will be considered de minimums and will not be a basis for benefits to cease under this subdivision; and

(d) such recipient of benefits that cease under this subdivision shall pay, with interest, any taxes for which an abatement was claimed after the conversion of the property as described in this subdivision, including the pro rata share of tax for which such abatement was claimed during the tax year in which such use occurred. The abatement shall continue for the commercial, industrial or renovation construction work for the portion of the property that continues to be used for commercial purposes.

(2) For purposes of paragraph (1) of this subdivision, "property" means the real property contained by an individual tax lot.

(3) Notwithstanding paragraph (2) of this subdivision, where a building or structure is owned in condominium form, and an application for benefits under this part includes more than one property in the same condominium, then for purposes of this subdivision, the five percent and twenty percent of the rentable square footage shall be determined based on the aggregate usage of all such properties.

e. Conversion to retail use. (1) Where a property has been granted benefits for industrial or commercial

construction work in special commercial abatement areas on buildings where not more than ten percent of the building or structure is used for retail purposes and where, before the benefit period expires, the property or a portion thereof is converted so that ten percent or more of the building or structure is used for retail purposes, the department shall recalculate the abatement upon conversion as provided in subdivision six of this section.

(2) Where a property has been granted benefits for renovation construction work in renovation areas and where, before the benefit period expires, the property or a portion of the property is converted so that more than five percent of the building or structure is used for retail purposes, the department shall recalculate the abatement upon conversion as provided in subdivision f of this section.

f. Recalculation of abatement upon conversion. If, during the benefit period, a recipient converts square footage within any building or structure, the department may recalculate the benefit granted pursuant to this part to reflect the benefit for which the current use is eligible under this part and rules that may be promulgated by the department.

g. The burden shall at all times be on the recipient to demonstrate by clear and convincing evidence that property subject to benefits under this part is used as stated in the preliminary and applications for benefits filed by the recipient with the department.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-274 Temporary commercial incentive area boundary commission; designation of special commercial abatement areas; excluded and renovation areas.

a. Commission members. There shall be a temporary commercial incentive area boundary commission to consist of the deputy mayor for economic development and planning, the commissioner of finance, the chair of the city planning commission, the director of management and budget, the borough presidents, the speaker of the city council and a public member appointed by the mayor to serve at the mayor's pleasure. Each member except the public member shall have the power to designate an alternate to represent him or her at commission meetings to exercise all the rights and powers of such member, including the right to vote, provided that such designation be made in writing to the chair of the commission. The deputy mayor for economic development and planning shall serve as commission chair. Each borough president shall be entitled to vote only on the designation of areas within his or her borough. Commission members who shall be officers or employees of such city shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. Any other commission member shall receive as exclusive compensation for his or her services one hundred dollars per diem, or another reasonable amount as determined by the deputy mayor for economic development and planning, provided, however, that the total compensation paid to any such member shall not exceed twelve hundred dollars for any calendar year, or another

reasonable amount determined by the deputy mayor for economic development and planning. A majority of members of such commission entitled to vote on a matter shall constitute a quorum for such issue. Decisions shall be made by majority vote of those present entitled to vote on a matter. Notwithstanding any other law to the contrary, no officer or employee of the state or any of its subdivisions or any public benefit corporation shall be deemed to have forfeited his or her office or employment or any benefits provided under the retirement and social security law or under any public retirement system maintained by the state or any of its subdivisions by reason of accepting membership on such commission.

b. Designation of special commercial abatement areas. (1) The commission shall meet in two thousand nine and at least once every five years thereafter to determine the boundaries of special commercial abatement areas which it is authorized, but not required, to designate pursuant to this section. The areas designated by the commission established pursuant to title two-D of article four of the real property tax law in effect as of June thirtieth, two thousand eight shall remain in effect until the first taxable status date after the city council approves a new designation pursuant to paragraph (4) of this subdivision.

(2) In years when special commercial abatement areas are to be designated, no later than October first, the commission shall provide public notice of such designation by publishing a notice at least once in a newspaper of general circulation setting forth the proposed boundaries. Notice may also be provided electronically or in an electronic medium, such as a website, in a manner the commission determines to be appropriate. Notice must be provided not earlier than five nor later than fifteen days before the date of the commission's public hearing to hear all persons interested in the designation of the areas. The notice required by this paragraph shall be published in the City Record and a newspaper of general circulation in the city, and copies thereof shall be forwarded to each council member and community board.

(3) The commission shall make such designation, and notify the city council of such designation, not later than November first of each year when special commercial abatement areas are to be designated.

(4) Within thirty days after the first stated meeting of the city council following the receipt of notice of such designation, the city council may, by majority vote, disapprove such designation. If, within such thirty-day period, the city council fails to act or fails to act by the required vote, the city council shall be deemed to have approved such designation. Such designation shall take effect on the first taxable status date after the city council approves such designation and shall remain in effect until the first taxable status date after the city council approves such new designation.

(5) The commission may designate any area other than the area lying south of the center line of 96th Street in the borough of Manhattan, to be a special commercial abatement area if it determines that market conditions in the area are such that the availability of a special abatement is required in order to encourage commercial construction work in such area. In making such determination, the commission shall consider, among other factors, the existence in such area of a special need for commercial and job development, high unemployment, economic distress or unusually large numbers of vacant, underutilized, unsuitable or substandard structures, or other substandard, unsanitary, deteriorated or deteriorating conditions, with or without tangible blight.

(6) If the commission fails to meet for more than five years, all new applications for special commercial abatement area benefits postmarked after the fifth anniversary of the commission's last meeting shall be deemed applications for regular area benefits.

c. Renovation areas. The following areas in the borough of Manhattan shall be designated as renovation areas. Except as provided in paragraph (6) of subdivision c of section 11-269 of this part, new commercial construction in a renovation area shall not be eligible for abatement benefits. Renovation areas shall be limited to:

(1) the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of

West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center line of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connection through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street;

(2) the area in the borough of Manhattan defined as the special garment center district by chapter one of article XII of the zoning resolution of the city; and

(3) the area in the borough of Manhattan south of the center line of 59th street, other than the areas designated renovation areas by paragraphs (1) and (2) of this subdivision.

d. Commercial exclusion area. Except as provided in paragraph (6) of subdivision c of section 11-269 of this part, any area in the borough of Manhattan lying south of the center line of 96th Street, other than the area designated renovation areas by subdivision c of this section, shall be a commercial exclusion area. Commercial construction projects in the commercial exclusion area shall not be eligible to receive tax abatements pursuant to this part.

e. Eligible industrial construction projects may receive tax abatements pursuant to paragraphs (2) and (5) of subdivision c of section 11-269 of this part in any area of the city.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

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FOOTNOTES

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§ 11-275 Administration of the benefit program.

The department shall have the following additional functions, powers and duties:

a. To require that any documents submitted in support of or as part of an application be certified;

b. To audit documents submitted by an applicant, to require the production of books, records and documents with respect to information relating to any application made pursuant to, or whether the applicant has complied with, the requirements of this part;

c. To revoke or suspend benefits due to non-compliance with a request made under this section;

d. to enter and inspect property to determine a property's use and to determine whether (1) any such property is being used for any restricted use, or

(2) any property for which benefits have been granted for industrial construction work is being used as commercial property, or

(3) any industrial or commercial property is being used as residential or mixed-use property, or

(4) all or part of the nonresidential portion of mixed-use property is being used as residential property;

e. To make and promulgate a rule that increases up to fifty percent the amount of the minimum required expenditure required under this part, if, after consultation with the deputy mayor for economic development and planning, the commissioner determines that a greater minimum required expenditure is required to encourage significant industrial and commercial development; and

f. To make and promulgate any other rules to carry out the purposes of this part. Such rules shall provide that for construction work, recipients of benefits and their contractors shall be equal opportunity employers and may also provide that persons employed in the construction work shall implement a training program for economically disadvantaged persons enrolled or eligible to be enrolled in training programs approved by the department of labor.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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NYC Administrative Code 11-276

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-276 Penalties for non-compliance, false statements and omissions.

Denial, reduction, suspension, termination or revocation. The department may deny, reduce, suspend, terminate or revoke any abatement benefits where: a. A recipient fails to comply with the requirements of this part or the related rules promulgated by the department; or

b. An application, certificate, report or other document delivered by an applicant or recipient hereunder contains a false or misleading statement as to a material fact or omits to state any material fact necessary to make the statements not false or misleading, and may declare any applicant or recipient who makes such false or misleading statement or omission ineligible for future tax abatements for this property or another property.

HISTORICAL NOTE

Section added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

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PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-277 Code violations; suspension of benefits.

a. If a court, or the environmental control board with respect to matters within its jurisdiction, finds that there has been a violation of the city construction codes, the 1968 building code or other law or rule enforced by the department of buildings classified as immediately hazardous pursuant to chapter two of title twenty-eight of the administrative code or the rules of the department of buildings; a violation of subdivision a of section 1-102 of title fifteen of the rules of the city of New York; or a violation of the city fire code or title three of the rules of the city of New York, relating to the failure to provide a fire protection system or emergency power system, or maintain it in good working order, to prepare or, where required, submit for fire department approval, a fire safety and evacuation plan or emergency action plan, or to provide a fire safety and evacuation plan or emergency action plan staff, or relating to the obstruction of a means of egress at any property receiving benefits pursuant to this part, such benefits shall be suspended unless, within one hundred eighty days after the department of finance has sent notice of such finding to the recipient, the recipient submits to the department of finance documentation from the department of buildings, the department of environmental protection or the fire department, whichever is applicable, certifying that the underlying violation has been legally cured or corrected. Such notice may be in any form determined by the department of finance, including in electronic form, and shall be sent to the recipient on the next quarterly statement of account after the department of finance has learned of

such finding. If the recipient fails to make the required submission within the one hundred eighty day period, the suspension of benefits shall continue until the recipient makes such submission to the department of finance. After the recipient makes such submission, benefits shall resume, but benefits lost during the period of suspension shall not be restored.

b. If the original finding of violation or denial of certification is appealed and a court or appropriate governmental agency finally determines that the finding of violation or denial of certification was invalid or erroneous, all benefits to which the recipient was otherwise entitled shall be restored retroactively.

HISTORICAL NOTE

Section added L.L. 61/2008 § 1, eff. Dec. 1, 2008 and retroactive to and

deemed to have been in full force and effect as of July 1, 2008.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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Title 11 Taxation and Finance

CHAPTER 2 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

SUBCHAPTER 2 EXEMPTIONS FROM REAL PROPERTY TAXATION

PART 5 ABATEMENT OF TAX PAYMENTS FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES*40

§ 11-278 Participation by minority- and women-owned business enterprises.

a. Policy and program established. It is the policy of the city to encourage meaningful participation of minority- and women-owned business enterprises in construction work for which an applicant receives benefits under this part. A program is hereby established to further the stated policy that will be administered by the division of economic and financial opportunity within the department of small business services, or any successor thereto, in accordance with the provisions of this section.

b. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Directory" shall have the same meaning as provided in paragraph thirteen of subdivision c of section 6-129 of this code.

2. "Division" shall mean the division of economic and financial opportunity within the department of small business services.

3. "Minority-owned business enterprise" shall mean a minority-owned business enterprise certified in accordance with section 1304 of the charter.

4. "Women-owned business enterprise" shall mean a women-owned business enterprise certified in accordance with section 1304 of the charter.

c. Information to be provided with the application for benefits. The department shall provide with the application for benefits information concerning how an applicant can access the directory from the division. Making such information available may include, but need not be limited to, providing information to applicants on how to access and search the directory in electronic format. The application shall also include information concerning an applicant's obligations under this part.

d. For construction projects between seven hundred fifty thousand dollars and one million five hundred thousand dollars in cost, the applicant shall certify that it accessed the directory. The applicant shall file such certification with the department in conjunction with the final application for benefits along with a report of whether or not efforts were made by the applicant to include minority- and women-owned business enterprises in the construction work on property for which benefits are sought in accordance with this part, and if so, what such efforts were.

e. For construction projects one million five hundred thousand dollars in cost and over, the applicant must comply with the following requirements in order to obtain benefits under this part:

1. Subsequent to filing a preliminary application for benefits, the applicant shall inform the division of contracting and subcontracting opportunities at construction sites where the applicant will be performing construction work subject to benefits pursuant to this part. The division shall make information on such contracting and subcontracting opportunities available to the general public by posting such opportunities on its website.

2. The applicant shall review the directory to identify minority- or women-owned business enterprises that may be qualified to perform contracting or subcontracting work on construction projects subject to benefits pursuant to this part.

3. For each subcontract on the project, the applicant shall solicit or arrange for the solicitation of bids from at least three of such minority- or women-owned enterprises to perform such subcontracting work.

4. The applicant shall maintain records demonstrating its compliance with the provisions of this subdivision.

5. When filing a final application for benefits with the department, the applicant shall certify that it has complied with and will continue to comply with the provisions of this subdivision. The certification shall also include: (i) the name and contact information of every minority- or women-owned business enterprise that the applicant solicited bids from pursuant to the provisions of paragraph three of this subdivision and (ii) whether any such minority- or women-owned firm was awarded a subcontract.

f. The division shall have authority to audit the records maintained by each applicant pursuant to paragraph four of subdivision e of this section to ensure compliance with the requirements of such subdivision.

HISTORICAL NOTE

Section added L.L. 67/2008 § 3, eff. Feb. 27, 2009 and shall apply only

to applicants that file preliminary applications for benefits with the

finance department after Feb. 27, 2009.

FOOTNOTES

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[Footnote 40]: * Part 5 added L.L. 47/2008 § 3, eff. Oct. 10, 2008 and retroactive to and deemed to have been in full force and effect as of July 1, 2008.

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NYC Administrative Code 11-301

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-301 When taxes, assessments, sewer rents, sewer surcharges and water rents to be liens on land assessed.

All taxes and all assessments and all sewer rents, sewer surcharges and water rents, and the interest and charges thereon, which may be laid or may have heretofore been laid, upon any real estate now in the city, shall continue to be, until paid, a lien thereon, and shall be preferred in payment to all other charges. The words "water rents" whenever they are used in this chapter shall include uniform annual charges and extra and miscellaneous charges for the supply of water, charges in accordance with meter rates, minimum charges for the supply of water by meter, annual service charges and charges for meters and their connections and for their setting, repair and maintenance, penalties and fines and all lawful charges for the supply of water imposed pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law. Charges for expense of meters, their connections, setting, repair or maintenance shall not be due or become a charge or lien on the premises where a water meter shall be installed or against which a charge shall be made, until such charge shall have been definitely fixed by the commissioner of environmental protection, and an entry of the amount thereof shall have been made with the date of such entry in the book in which the charges for water supplied by meter against such premises are to be entered. A charge in accordance with meter rates or minimum charges for the supply of water measured by meter, and a service charge shall not be due or become a lien or charge upon the premises where such meter is installed until an entry shall have been made indicating that such premises are metered, with the date of such entry in the book in which the charges for water by meter measurement against such premises are to be entered. The words "sewer rents" when used in this chapter shall mean any rents or charges imposed pursuant to section 24-514 of the code or pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law. The words "sewer surcharges" when used in this chapter shall mean the charges imposed pursuant to section 24-523 of the code or pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of

article five of the public authorities law. Whenever an increase in the amount of uniform annual charges or extra or miscellaneous charges shall have been made or a charge shall have been made for water services for any building completed subsequent to the first day of January in each year, the amount of such increase of the charge or new charge for such new building shall not be due or become a lien or charge against the premises until the amounts thereof shall have been entered with the date of such entries, respectively, in the books in which the uniform annual charges and extra or miscellaneous charges against such premises are to be entered. The words "tax lien" when used in this chapter shall mean the lien arising pursuant to the provisions of this chapter or pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law, as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter if the tax lien is sold, interest and penalties thereon and the right of the city to receive such amounts. The words "tax lien certificate" when used in this chapter shall mean the instrument evidencing a tax lien and executed by the commissioner of finance or his or her designee at such time as such lien is transferred to a purchaser upon sale of such lien by the city.

HISTORICAL NOTE

Section amended L.L. 68/2007 § 1, eff. Dec. 31, 2007.

Section amended L.L. 26/1996 § 1, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-7.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 102/1950 § 2

(special provisions LL 102/1950 §§ 3-5)

Amended LL 2/1961 § 3

Amended chap 100/1963 § 324

CASE NOTES FROM FORMER SECTION

¶ 1. Claim of City for water charges **held** superior to rights of mortgagee, notwithstanding the water charges were not entered against the mortgaged premises until subsequent to recording of the mortgage, since the City's books disclosed that no charge for water for the period had been made prior to the mortgage, and mortgagee was bound to take notice that water charges in due course would be made (Admin. Code §§ 415(1)-7.0, 415(1)-17.0).-Home Owners Loan Corp. v. Wood, 170 Misc. 74, 9 N.Y.S. 2d 834 [1938].

¶ 2. In condemnation proceeding the City of New York was entitled to collect interest on unpaid taxes, assessments and water rents on the damage parcel from date of vesting of title to date when they were paid, inasmuch as the tax statutes made no provision for cessation of interest upon the taking but on the contrary prohibited the reduction of interest thereon below the amount fixed by law, and provided that all taxes, assessments and water rents with interest thereon should constitute liens until paid [Admin. Code §§ 415(1)-7.0, 415(1)-8.0], and upon vesting of title the lien was shifted from the land to the award. Some relief from interest was available under Admin. Code § B15-29.0, which permits an application for advance payment of 50 percent of the damages, and of course interest could be stopped by paying the delinquent taxes.-In re Public Parks (Rockaway Beach), 288 N.Y. 51, 41 N.E. 2d 454 [1942], modf'g 261

App. Div. 936, 25 N.Y.S. 2d 511 [1941], which modified 172 Misc. 877, 17, N.Y.S. 2d 209 [1939].

¶ 3. Condemnation award would be applied first to payment of tax arrears on the property and then to payment of water charges, where the award was insufficient to pay both taxes and water charges. This allocation was just, inasmuch as taxes are a lien upon real property only, whereas a personal liability also exists with respect to water charges (Admin. Code §§ 415(1)-7.0, 415(1)-19.0).-City of N.Y. v. Idlewild Beach Co., 182 Misc. 205, 213, 43 N.Y.S. 2d 567 [1943], aff'd 182 Misc. 213, 50 N.Y.S. 2d 341 [1944].

¶ 4. Owner of property taken in condemnation was not entitled to an apportionment of the annual frontage charge for water which was a lien on the property when title vested in the condemnor.-Two Avenue D Corp. v. City of N.Y., 188 Misc. 873, 69 N.Y.S. 2d 699 [1947].

¶ 5. Fact that the arrears of taxes were converted into a transfer of tax lien did not have the effect of reducing the period of the lien to the period of the statute of limitations.-Hirsch v. N.Y. City Housing Authority, 125 (87) N.Y.L.J. (5-4-51) 1642, Col. 5 F.

¶ 6. The provisions of the Admin. Code making taxes a lien until paid take precedence over general statute of limitations in §§ 47-a and 48(2) of the Civil Practice Act. Therefore the holder of such a lien could foreclose it after the expiration of six years.-L.K. Land Corp. v. Gordon, 1 N.Y. 2d 465, 154 N.Y.S. 2d 32, 136 N.E. 2d 500 [1956]; rev'g 1 A.D. 2d 699, 147 N.Y.S. 2d 463 [1955].

¶ 7. Although readings from a water meter were entered on the books of the city for over ten years but not billed to plaintiff during this period, plaintiff was liable for the water meter charges that accrued more than six years before the bills were rendered because under this section the charges became liens upon the affected property and remained liens until paid.-Marver Realty v. City of N.Y., 117 Misc. 2d 763 [1983].

CASE NOTES

¶ 1. Normally, an attorney's charging lien under Judiciary Law § 475 would take priority over a City's tax lien against property. However, where, in a condemnation proceeding involving property that was subject to a tax lien, the counsel for the property owner participated directly in the client's acceptance of partial payments against the condemnation award, and the City waived payment of the tax lien until the final payment of the award, the counsel in effect gave up the right to claim priority of the charging lien over the tax lien. In Re City of New York, 9 Misc.3d 896, 804 N.Y.S.2d 612 (Sup.Ct. Kings Co. 2005).

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NYC Administrative Code 11-302

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-302 Interest rates not to be reduced.

The commissioner of finance shall not reduce the rate of interest upon any taxes or assessment below the amount fixed by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-8.0 added chap 929/1937 § 1

Amended chap 100/1963 § 325

Amended LL 54/1977 § 31

CASE NOTES FROM FORMER SECTION

¶ 1. In a condemnation proceeding, the City of New York was entitled to collect interest on unpaid taxes, assessments and water rents on the damaged parcel from the date of vesting of title to the date when the taxes were paid. The tax statutes make no provision for cessation of interest upon the taking in condemnation but on the contrary prohibit the reduction of interest below the amount fixed by law and provide that all taxes, assessments and water rents, with interest thereon, shall constitute liens until paid.-In re Public Park (Rockaway Beach), 288 N.Y. 51, 41 N.E. 2d 454

[1942].

CASE NOTES

¶ 1. The statute provides that the Commissioner of Finance shall not reduce the rate of interest upon any tax or assessment below the amount fixed by law. Thus, interest continues to accrue on all delinquent taxes through the date of payment. Although the tax statutes recognize that the City may take property by eminent domain, there is no provision for the cessation of interest upon the happening of that event. In Re City of New York, 9 Misc.3d 896, 804 N.Y.S.2d 612 (Sup.Ct. Kings Co. 2005).

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***** Current through December 2009 ****

NYC Administrative Code 11-302.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-302.1 Error in record of payment of tax or assessment.

(a) If the records of the department of finance show a charge as paid due to a misapplied payment or other error, and the department later corrects the records, interest shall not be imposed until after the department (i) corrects the error and (ii) sends a statement of account or other similar bill or notice stating the amount due and when the charge must be paid to avoid the accrual of interest.

(b) The provisions of this section shall not apply to an installment of tax or an assessment for which payment, made electronically, by check, or by other means, was dishonored.

(c) The provisions of this section shall not apply where the error in the records of the department was made as a result of fraud or other criminal conduct by the taxpayer or any person acting on his or her behalf or at his or her request.

HISTORICAL NOTE

Section added L.L. 62/2005 § 7, eff. June 6, 2005.

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NYC Administrative Code 11-303

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Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-303 Arrears to be provided for in assessment rolls.

There shall be ruled in the yearly assessment rolls of the taxes in each section or ward, a column headed "arrears," in which the commissioner of finance or his or her designee shall annually before any taxes for the year are collected, cause to be entered the word "arrears" opposite to the ward, lot, town, block and map numbers on which any arrears of taxes, sewer rents, sewer surcharges or water rents, and interest and penalties thereon shall be due, or on which any assessment and interest and penalties thereon shall remain unpaid which was due or confirmed one month prior to the first of July, then last past.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 2, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-9.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 4

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CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-304 Bills for taxes to show arrears.

There shall be ruled a column for "arrears" in every bill rendered for taxes for lots on which such arrears or assessments, sewer rents, sewer surcharges or water rents, and interest and penalties thereon may be due as aforesaid, or may have been sold and yet be redeemable, in which shall be written in a conspicuous place, "arrears". The columns for arrears shall indicate lots sold for arrears, or to be sold therefor; arrears to be paid and lots redeemed at the department of finance.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 3, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-10.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 29/1957 § 1

Amended LL 2/1961 § 5

Amended chap 746/1970 § 1

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CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-305 Commissioner of finance to publish notice of confirmation of assessments.

It shall be the duty of the commissioner of finance to give public notice, by advertisement, for at least ten days, in the City Record and as soon as practicable and within ten days after the confirmation of any assessment, that the same has been confirmed, specifying the title of such assessment, and the date of its confirmation, and also the date of entry in the record of titles of assessments kept in the department of finance, addressed as a class to all persons, owners of property affected by any such assessment, that unless the amount assessed for benefit on any person or property shall be paid within ninety days after the date of the entry of any such assessment, interest shall be thereafter collected thereon as provided in section 11-306 of this chapter.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 4, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-11.0 added chap 929/1937 § 1

Amended chap 100/1963 § 326

Amended LL 54/1977 § 32

Administrative Code of the City of New York

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NYC Administrative Code 11-306

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-306 Interest to be charged if assessments unpaid for ninety days; payment in installments.

If any assessment shall remain unpaid for the period of ninety days after the date of the entry thereof on the record of titles of assessments, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon, at the rate of seven percent per annum, to be calculated to the date of payment from the date when such assessment became a lien as provided by section three hundred fourteen of the charter in force at the time of the adoption of the New York city charter by referendum in the year nineteen hundred sixty-one, provided, however, that the commissioner of finance or his or her designee shall accept and credit as payments on account of assessments now or hereafter levied against any parcel or plot of property, such sums of money not less than twenty-five dollars or multiples thereof in amount as may be tendered for payment on account of any assessment now or hereafter levied against any property. Upon requisition by the commissioner of finance for the assessed valuation of the property affected by any assessment, the president of the tax commission, or any tax commissioner duly assigned by him or her, shall forthwith certify the same to the commissioner of finance.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 5, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-12.0 added chap 929/1937 § 1

Amended chap 100/1963 § 327

Amended LL 54/1977 § 33

Administrative Code of the City of New York

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NYC Administrative Code 11-307

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-307 Payments in installments of assessments heretofore or hereafter confirmed.

Upon the application in writing of the owner of a parcel of real property affected by an unpaid assessment heretofore or hereafter confirmed the amount of which is one hundred dollars or more, the commissioner of finance shall divide the assessment upon such parcel into fifteen parts or, if the application so requests, into five parts, as nearly equal as may be, or if the amount of such assessment is fifty dollars or more but less than one hundred dollars the commissioner of finance shall divide the assessment upon such parcel into five parts as nearly equal as may be. One part thereof in any event shall be due and payable, and in each case as many more of such parts shall be due and payable as years may have elapsed since the entry of such original assessment for collection. Such parts thereof with interest at the rate of seven percent per annum on the amount of the assessment unpaid shall be paid at the time of application as a condition of the extension of time of payment of the remainder as provided in this section. Upon payment of such parts and interests, the balance of such assessments shall cease to be a lien upon such real property except as hereinafter provided; and the remaining parts shall be paid in annual installments as herein provided. Of such installments the first, with interest at the rate of four percent thereon, and on the installments thereafter to become due, from the date of payment of the parts of such assessment paid as hereinbefore provided, shall become due and payable and be a lien on the real property assessed, on the next ensuing anniversary of the date of entry of the assessment in the record of titles of assessments confirmed; and one, with interest at the rate of four percent per annum thereon and on the installments thereafter to become due shall become due and payable and be a lien upon the real property assessed, annually thereafter. After the time herein specified for annual installments and interest to become due, the amount of the lien thereon shall bear interest at the rate of seven percent per annum. Any installment assessment shall not be further divided into installments. The first installment of an assessment divided within the ninety-day period provided by section 11-306 of this chapter during which assessment may be paid without interest shall not be subject to interest, but

the second installment with interest at the rate of four percent per annum from the original date of entry shall become due and payable and be a lien upon the real property on the anniversary date of entry of the assessment and the remaining installments with interest shall become due and payable and be a lien on the real property as hereinbefore provided. The installments not due with interest at the rate of four percent per annum to the date of payment may be paid at any time. The provisions of this chapter with reference to the sale of tax liens shall apply to the several unpaid installments and the interest thereon in the same manner as if each installment and the interest thereon had been imposed as an assessment payable in one payment, at the time such installment became a lien. In the event of the acquisition by condemnation by the city for public purposes any property upon which there are installments not due, such installments shall become due as of the date of the entry of the final order of the supreme court or the confirmation of the report of the commissioners in the condemnation proceedings, and shall be set off against an award that may be made for the property acquired.

When an award for damage shall accrue to the same person who is or was at the time the assessment was confirmed liable for the assessments for benefit on the abutting property in the same proceedings, only the portion of the assessment in excess of such award may be considered in levying in installments under the provisions of this section. Except as provided in this section, no such annual installment shall be a lien or deemed to be an encumbrance upon the title to the real property assessed until it becomes due as herein provided.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-13.0 added chap 929/1937 § 1

Amended LL 11/1943 § 1

Amended LL 70/1960 § 1

Amended chap 100/1963 § 328

Amended LL 15/1967 § 1

Amended LL 22/1967 § 1

Amended LL 54/1977 § 34

CASE NOTES FROM FORMER SECTION

¶ 1. Where City had condemned realty four weeks before benefit sewer assessment became a lien, City could not accelerate the assessment installments and set them off against condemnation award.-Application of Joseph E. Marx Co. Inc., 139 N.Y.S. 2d 311 [1954].

¶ 2. Only the portion of a benefit sewer assessment in excess of an award for abutting property could be levied in installments and the City was not estopped from asserting this right by the inconsistent act of its employee in accepting from petitioner a first installment of the benefit assessment.-In re Joseph E. Marx Co., Inc., Id.

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NYC Administrative Code 11-308

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-308 Apportionment of assessment.

If a sum of money in gross has been or shall be assessed upon any lands or premises in the city, any person or persons claiming any divided or undivided part thereof may pay such part of the sums of money so assessed, also of the interest and charges due or charged thereon, as the commissioner of finance may deem to be just and equitable. The remainder of the sum of money so assessed, together with the interest and charges, shall be a lien upon the residue of the land and premises only, and the tax lien upon such residue may be sold in pursuance of the provisions of this chapter, to satisfy the residue of such assessment, interest, or charges thereon, in the same manner as though the residue of such assessment had been imposed upon such residue of such land or premises.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-14.0 added chap 929/1937 § 1

Amended LL 50/1942 § 32

Amended chap 100/1963 § 329

Amended LL 54/1977 § 35

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-309

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-309 Notifying taxpayers of assessments.

a. The owner of any lot, piece or parcel of land in the city of New York or any person interested in such lot, piece or parcel, may file with the department of finance, a statement containing a brief description of such land, together with the section, block and lot number thereof, or such other identifying information as at the time is established by the department of finance, and a statement of the applicant's interest therein, together with a written request that such lot, piece or parcel of land be registered in the name of the applicant. In such statement the applicant shall designate a post office address to which notifications addressed to such applicant shall be sent. A brief description of such lot, piece or parcel of land corresponding to the description thereof in the statement so filed, together with the name of the applicant and his or her post office address and the date of such application, shall thereupon be registered in the department of finance.

b. As soon as any assessment for a local improvement shall have been confirmed, including assessments confirmed by a court of record, and the list thereof shall have been entered and filed in the department of finance, such assessment list shall be examined and thereupon, within twenty days after such entry there shall be mailed a notice addressed to each person in whose name any lot, piece or parcel of land, affected by such assessment, is registered, at the post office address registered in the records of the department of finance, which notice shall contain the brief description of the lot, piece or parcel of land registered in the name of the person to whom such notice is addressed, together with the amount assessed thereon, date of entry, and title of the improvement for which such assessment is made, and a statement of the rate of interest or penalty imposed for the nonpayment of such assessment, and the date from which the interest or penalty will be computed. Failure to comply with the provisions herein, however, shall in no manner affect the validity or collectibility of any assessment heretofore or hereafter confirmed, nor shall any claim arise

or exist against the comptroller, the commissioner of finance, or any officer of the city by reason of such failure.

c. The commissioner of finance or his or her designee shall for the purpose of this section provide appropriate records for each section of the city, included within the respective boroughs, as the same shall appear upon the tax maps of the city.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 6, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-15.0 added chap 929/1937 § 1

Amended chap 100/1963 § 330

Amended LL 54/1977 § 36

CASE NOTES FROM FORMER SECTION

¶ 1. This section should be given a broad interpretation. Thus, where a clerk in the office of the tax collector gave plaintiff a tax bill for property belonging to another and after plaintiff paid that bill, thinking it was his property, he was compelled to pay the taxes on his own property with interest, he could not recover from the City on a theory of negligence. Inasmuch as an action against the various collecting officers of the City was barred by this section, any claim against the City was also barred.-M.S.H. Realty Corp. v. City of New York, 188 Misc. 1039, 70 N.Y.S. 2d 154 [1947].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-310

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-310 Water charges and sewer rents to be transmitted to commissioner of finance.

The commissioner of environmental protection shall cause to be transmitted to the commissioner of finance an account of all water rents, charges, fines and penalties and all sewer rents, charges, fines and penalties as the same become due or accrue.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-16.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended chap 100/1963 § 331

Amended LL 54/1977 § 37

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-311

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-311 Sewer surcharges to be transmitted to commissioner of finance.

The commissioner of environmental protection shall cause to be transmitted to the commissioner of finance an account of all sewer surcharges, fines and penalties as the same become due or accrue.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 51, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-16.1 added LL 2/1961 § 6

Amended chap 100/1963 § 332

Amended LL 54/1977 § 38

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-312

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-312 Water rents; when payable; penalty for nonpayment.

a. One-half (i) the uniform annual water charges and extra and miscellaneous charges for water not metered and (ii) annual service charges shall become due and payable, in advance if entered on January first, nineteen hundred seventy-four for the period commencing January first, nineteen hundred seventy-four and ending June thirtieth, nineteen hundred seventy-four. Commencing on June thirtieth, nineteen hundred seventy-four, uniform annual water charges and extra and miscellaneous charges for water not metered and annual service charges shall be due and payable in advance on the thirtieth day of June in each year, if entered. If any of such rents and charges which become due and payable on or before June thirtieth, nineteen hundred seventy-six shall not have been paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date when such rents and charges became due and payable to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment. If any of such rents and charges which shall become due and payable on or after June thirtieth, nineteen hundred seventy-seven are not paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date when such rents and charges became due and payable to the date of payment. If not so entered and payable, but entered at any time subsequent thereto, they shall be due and payable when entered and notice thereof shall be mailed within five days of such entry to the premises against which they are imposed addressed to either the owner or the occupant and, if entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his

or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment.

b. All charges for meters and their connections and for their setting, repair and maintenance, and all charges in accordance with meter rates for supply of water measured by meter, including minimum charges for the supply of water measured by meter, shall be due and payable when entered, and notice thereof shall be mailed within five days of such entry stating the amount due and the nature of the rent or charge to the last known address of the person whose name appears on the record of such rents and charges as being the owner, occupant or agent or, where no name appears, to the premises addressed to either the owner or the occupant, and if entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the thirtieth day following the date of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment.

c. No later than the twenty-fifth day of May in each year, the banking commission shall transmit a written recommendation to the council of a proposed interest rate to be charged for nonpayment of water rents. In making such recommendations the commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and shall propose a rate of at least six per centum per annum greater than such rates. The council may by resolution adopt an interest rate to be charged for nonpayment of water rents pursuant to section 11-224 of the code and, for nonpayment of water rents that become due and payable on or after July first, two thousand five, pursuant to section 11-224.1 of the code, and may specify in such resolution the date on which such interest rate is to take effect.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 7, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

Subd. c amended L.L. 62/2005 § 8, eff. June 6, 2005.

DERIVATION

Formerly § 415(1)-17.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 102/1950 § 2

(special provisions LL 102/1950 §§ 3-5)

Amended LL 40/1953 § 1

Sub a amended LL 31/1973 § 1

Sub a amended LL 12/1974 § 1

Amended LL 47/1976 § 1

Sub b amended LL 6/1978 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The owner of property taken in condemnation was not entitled to an apportionment of the annual frontage charge for water which was a lien on the property when title vested in the condemnor. Plaintiff had enjoyed the property for eleven months of the year before it was condemned.-Two Avenue D Corp. v. City of New York, 188 Misc. 873, 69 N.Y.S. 2d 699 [1947].

¶ 2. The claim of the City for water charges was superior to the rights of a mortgagee, notwithstanding that water charges were not entered against the mortgaged premises until subsequent to the recording of the mortgage. The City's books disclosed that no charge for water for the period had been made prior to the mortgage, and mortgagee was bound to take notice that water charges in due course would be made.-Home Owners Loan Corp. v. Wood, 170 Misc. 74, 9 N.Y.S. 2d 834 [1938].

¶ 3. Where city failed to render bills for water charges for a ten year period interest did not commence to accrue on such charges until the bill was rendered.-Marver Realty v. City of N.Y., 117 Misc. 2d 263 [1983].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-313

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-313 Sewer rents; when payable; penalty for nonpayment.

a. As used in this section:

1. The term "metered premises" shall mean premises, or any part thereof, (a) to which water is supplied by the municipal water supply system or by a private water company, and (b) at which the quantity of water supplied is measured by a water meter.

2. The term "unmetered premises" shall mean premises, or any part thereof, (a) to which water is supplied by the municipal water supply system or by a private water company, and (b) at which the quantity of water supplied is not measured by a water meter.

b. The sewer rents charged against metered premises in accor- dance with the provisions of paragraphs two and three of subdivision b of section 24-514 of the code and the rules duly promulgated pursuant to such section, including the minimum rents for the use of the sewer system, charged pursuant to such section and rules, and the sewer rents charged against any premises in accordance with the provisions of paragraphs four and five of subdivision b of section 24-514 of the code and rules duly promulgated pursuant to such section, including the minimum rents for the use of the sewer system, charged pursuant to such section and rules shall become due and shall become a charge or lien on the premises when the amount thereof shall have been fixed by the commissioner of environmental protection, and an entry thereof shall have been made against such premises with the date of such entry, in the book in which sewer rents are to be entered. The sewer surcharges charged against any premises pursuant to section 24-523 of the code shall become due and shall become a charge or lien on the premises when the amount thereof shall have been fixed by the commissioner of environmental protection and an entry thereof shall have been made against such premises in the book

in which sewer surcharges are to be entered. A notice thereof, stating the amount due and the nature of the rent, surcharge or charge shall be mailed, within five days after such entry, to the last known address of the person whose name appears upon the records in the office of the department of finance as being the owner, occupant or agent or, where no name appears, to the premises addressed to either the owner or the occupant. If such rent, surcharge or charge shall have been entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the thirtieth day following the date of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment. The rents or charges for the use of the sewer system charged during any specified period of time pursuant to the provisions of section 24-514 of the code and the rules promulgated thereunder shall be computed, in accordance with the provisions of such section and the rules duly promulgated thereunder, on the basis of water rents or charges computed for the same period.

c. Sewer rents charged against unmetered premises in accor- dance with the provisions of paragraphs two and three of subdivision b of section 24-514 of the code and the rules and regulations duly promulgated pursuant to such section, for the use of the sewer system during the one-year period commencing on the first day of July of each year, shall be due and payable and shall become a charge or lien on the premises on the first day of January following such first day of July, if entered, except that commencing on June thirtieth, nineteen hundred seventy-four such sewer rents shall be due and payable in advance on the thirtieth day of June in each year, if entered, and shall become a charge or lien on the premises on such date. If any of such rents or charges which became due and payable on or before June thirtieth, nineteen hundred seventy-six shall not have been paid to the commissioner of finance or his or her designee within thirty days after such first day of January, or, commencing on the thirtieth day of June, nineteen hundred seventy-four, on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date when such charges became due and payable to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment. If any of such rents or charges which shall become due and payable on or after June thirtieth, nineteen hundred seventy-seven are not paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date when such rents or charges became due and payable to the date of payment. If not so entered and payable, but entered at any time subsequent thereto, they shall be due and payable and shall become a charge or lien on the premises when entered and notice thereof shall be mailed within five days after such entry, to the last known address of the person whose name appears upon the records in the department of finance as the owner or the occupant or if no name appears, to the premises addressed to either the owner or occupant. If any of such rents or charges which were entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment. The sewer rents charged against unmetered premises for the use of the sewer system during the one-year period commencing on the first day of July of each year shall be computed in accordance with the provisions of section 24-514 of the code and the rules duly promulgated thereunder, upon the basis of water rents or charges computed for the same period.

d. Whenever an increase in the amount of the sewer rent charged against unmetered premises shall have been made or a charge shall have been made for sewer services for any building completed subsequent to the first day of July in each year, the amount of such increase of the charge or new charge for such new building shall not be due or become a lien or charge against the premises until the amounts thereof shall have been entered with the date of such entries, respectively, in the books in which sewer rents charged against such premises are to be entered.

e. No later than the twenty-fifth day of May in each year, the banking commission shall transmit a written recommendation to the council of a proposed interest rate to be charged for nonpayment of sewer rents. In making such recommendations the commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and shall propose a rate of at least six per centum per annum greater than such rates. The council may by resolution adopt an interest rate to be charged for nonpayment of sewer rents pursuant to section 11-224 of the code and, for nonpayment of sewer rents that become due and payable on or after July first, two thousand five, pursuant to section 11-224.1 of the code, and may specify in such resolution the date on which such interest rate is to take effect.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 8, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

Subd. b amended L.L. 59/1996 § 52, eff. Aug. 8, 1996

Subd. e amended L.L. 62/2005 § 9, eff. June 6, 2005.

DERIVATION

Formerly § 415(1)-17.1 added LL 102/1950 § 1

Sub b amended LL 41/1953 § 1

Sub b amended LL 2/1961 § 7

Subs b, c amended chap 100/1963 § 333

Sub c amended LL 12/1974 § 2

Sub b amended LL 47/1976 § 2

Sub c amended LL 47/1976 § 3

Sub e added LL 47/1976 § 4

Sub b amended LL 6/1978 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-314

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-314 Notice of rules and regulations; penalty for nonpayment; water supply cut off.

The rates and charges for supply of water, the annual service charges and minimum charges, the sewer rents, the sewer surcharges, the rules and regulations concerning the use of water, all other rules and regulations affecting users of water or concerning charges for supply of water, restrictions of the use of water, installation of meters, and all rules and regulations affecting property connected with the sewer system, penalties and fines for violations of rules and regulations shall be printed on each bill and permit so far as in the judgment of the commissioner of environmental protection they are applicable. This section and such printing and the printing of this section on such bills and permits shall be sufficient notice to owners, tenants or occupants of premises to authorize the imposition and recovery of any charges, surcharges and fines imposed under such rules and regulations and of any penalties imposed in pursuance of this chapter in addition to cutting off the supply of water. Where water charges payable in advance or sewer rents or charges payable as provided in subdivision c of section 11-313 of this chapter, are not paid within the period covered by such charges or rents, and a notice of such nonpayment is mailed by the commissioner of finance to the premises addressed to "owner or occupant," the commissioner of environmental protection may shut off the supply of water to such premises. Where water charges not payable in advance or sewer rents, sewer surcharges or charges payable as provided in subdivisions b and d of section 11-313 of this chapter have been made by the department and remain unpaid for more than thirty days or where the commissioner of environmental protection has certified that there is a flagrant and continued violation of a provision or provisions of section 24-523 of the code or of any rule or regulation promulgated pursuant thereto or of any order of the commissioner of environmental protection issued pursuant thereto, after notice thereof mailed to the premises addressed to "owner or occupant," the commissioner of environmental protection may shut off the supply of water to the premises.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 53, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-18.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 102/1950 § 2

(special provisions LL 102/1950 §§ 3-5)

Amended LL 2/1961 § 8

Amended chap 100/1963 § 334

Amended LL 54/1977 § 39

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-315

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-315 Enforcement of collection of sewer rents, sewer surcharges and water rents.

Sewer rents, sewer surcharges, charges, penalties and fines, and interest thereon, and water rents, charges, penalties and fines, and interest thereon, shall after they are payable to the commissioner of finance or his or her designee be enforced in the manner provided in this chapter and chapter four of this title. In addition to collecting sewer rents, sewer surcharges, charges, penalties and fines and interest thereon and water rents, charges, penalties and fines and interest thereon in the manner provided in this chapter and chapter four of this title, the city may maintain an action for their recovery against the person for whose benefit or by whom the water is taken or used or for whose benefit or by whom sewer service is used.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 9, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-19.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

CASE NOTES FROM FORMER SECTION

¶ 1. A condemnation award was applied first to payment of tax arrears on the property and then to payment of water charges, where the award was insufficient to pay both taxes and water charges. This allocation was just, inasmuch as taxes are a lien upon the real property only, whereas a personal liability exists with respect to the water charges.-City of New York v. Idlewild Beach Co., 182 Misc. 205, 43 N.Y.S. 2d 567 [1943], aff'd 182 Misc. 213, 50 N.Y.S. 2d 341 [1944].

¶ 2. The City does not waive the right to maintain a personal action under this section by having previously commenced an in rem proceeding.-City of N.Y. v. Steinfeld, 126 Misc. 2d 934 [1984].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-316

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-316 Bills of arrears of taxes, assessments, sewer rents, sewer surcharges and water rents, any other charges that are made a lien subject to the provisions of this chapter, and interest and penalties thereon to be furnished when requested.

The commissioner of finance or his or her designee, upon the written request of the owner, the proposed vendee under a contract of sale, a mortgagee, any person having a vested or contingent interest in any lot or lots or their duly authorized agent, or any person who has made a filing pursuant to section 11-309 of this chapter shall furnish a bill of all arrears of taxes on any lot or lots due prior to the first of September, then last past, of sewer rents, sewer surcharges and water rents, assessments, any other charges that are made a lien subject to the provisions of this chapter, and interest and penalties thereon, which are due and payable. Upon the payment of such bill which shall be called a bill of arrears the receipt of the commissioner of finance or his or her designee thereon shall be conclusive evidence of such payment. The commissioner of finance or his or her designee shall cause to be kept an account of amounts so collected, and the certificate of the commissioner of finance or his or her designee, that there are no tax liens on such lot or lots, shall forever free such lot or lots from all liens of taxes, sewer rents, sewer surcharges or water rents, assessments, any other charges that are made a lien subject to the provisions of this chapter, and interest and penalties thereon that are due and payable prior to the date of such receipt or certificate, but not from the lien of any tax lien duly sold and not theretofore satisfied.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 10, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-20.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Amended chap 100/1963 § 335

Amended LL 54/1977 § 40

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-317

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-317 Fees for searches to be added to bills.

Fees for such searches shall be included in the bills mentioned in section 11-316 of this chapter, and also charges for certificates, which shall be given by the commissioner of finance or his or her designee respecting lots on which there may be no arrears when searches are required. Such fees shall be regulated by local law.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 11, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-21.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-318

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-318 Fee for certified search and bill of arrears.

A fee of twenty-five dollars shall be paid to and collected by the commissioner of finance or his or her designee on his or her furnishing a certified search and bill of arrears on each lot or piece of property mentioned or referred to in the written request therefor. The commissioner of finance shall be authorized to waive or reduce such fee in connection with any sale of a tax lien or tax liens pursuant to this chapter.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 12, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-22.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 18/1960 § 1

Amended LL 12/1975 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-319

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-319 Sales of tax liens.

a. A tax lien or tax liens on a property or any component of the amount thereof may be sold by the city as authorized by subdivision b of this section, when such tax lien or tax liens shall have remained unpaid in whole or in part for one year, provided, however, that a tax lien or tax liens on any class 1 property or on class 2 property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision 1 of section 1802 of the real property tax law, may be sold by the city only when the real property tax component of such tax lien or tax liens shall have remained unpaid in whole or in part for three years or, in the case of abandoned class 1 property or abandoned class 2 property that is a residential condominium or residential cooperative, for eighteen months, and after such sale, shall be transferred, in the manner provided by this chapter, and provided, further, however, that (i) the real property tax component of such tax lien may not be sold pursuant to this subdivision on any residential real property in class 1 that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or where the owner of such residential real property in class 1 has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date and (ii) the sewer rents component, sewer surcharges component or water rents component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class 1 or on any two or three family residential real property in class 1 that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or where the owner of any two or three family residential real property in class 1 has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. A tax lien or tax liens on any property classified as a class 2 property, except a class 2 property that

is a residential condominium or residential cooperative, or class 3 property, as such classes of property are defined in subdivision 1 of section 1802 of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale. Notwithstanding any provision of this subdivision to the contrary, any such tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component. A tax lien or tax liens on a property classified as a class 4 property, as such class of property is defined in subdivision 1 of section 1802 of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component or sewer rents component or sewer surcharges component or water rents component as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, provided, however, that any tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component, sewer rents component, sewer surcharges component or water rents component. For purposes of this subdivision, the words "real property tax" shall not include an assessment or charge upon property imposed pursuant to section 25-411 of the administrative code. A sale of a tax lien or tax liens shall include, in addition to such lien or liens that have remained unpaid in whole or in part for one year, or, in the case of any class 1 property or class 2 property that is a residential condominium or residential cooperative, when the real property tax component of such lien or liens has remained unpaid in whole or in part for three years, any taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon or such component of the amount thereof as shall be determined by the commissioner of finance. The commissioner of finance may promulgate rules defining "abandoned" property, as such term is used in this subdivision.

a-1. A subsequent tax lien or tax liens on a property or any component of the amount thereof may be sold by the city pursuant to this chapter, provided, however, that notwithstanding any provision in this chapter to the contrary, such tax lien or tax liens may be sold regardless of whether such tax lien or tax liens have remained unpaid in whole or in part for one year and, notwithstanding any provision in this chapter to the contrary, in the case of any class 1 property or class 2 property that is a residential condominium or residential cooperative, such tax lien or tax liens may be sold if the real property tax component of such tax lien or tax liens has remained unpaid in whole or in part for one year, and provided, further, however, that (i) the real property tax component of such tax lien may not be sold pursuant to this subdivision on any residential real property in class 1 that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or where the owner of such residential real property in class 1 has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date and (ii) the sewer rents component, sewer surcharges component or water rents component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class 1 or on any two or three family residential real property in class 1 that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or where the owner of any two or three family residential real property in class 1 has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. For purposes of this subdivision, the term "subsequent tax lien or tax liens" shall mean any tax lien or tax liens on property that become such on or after the date of sale of any tax lien or tax liens on such property that have been sold pursuant to this chapter, provided that the prior tax lien or tax liens remain unpaid as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale of the subsequent tax lien or tax liens. A subsequent tax lien or tax liens on any property classified as a class 2 property, except a class 2 property that is a residential condominium or residential cooperative, or class 3 property, as such classes of property are defined in subdivision 1 of section 1802 of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale. Notwithstanding any provision of this subdivision to the contrary, any such tax lien or tax liens that remain unpaid in whole or in part after

such date may be sold regardless of whether such tax lien or tax liens include a real property tax component. A subsequent tax lien or tax liens on a property classified as a class 4 property, as such class of property is defined in subdivision 1 of section 1802 of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component or sewer rents component or sewer surcharges component or water rents component as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, provided, however, that any tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component, sewer rents component, sewer surcharges component or water rents component. For purposes of this subdivision, the words "real property tax" shall not include an assessment or charge upon property imposed pursuant to section 25-411 of the administrative code. Nothing in this subdivision shall be deemed to limit the rights conferred by section 11-332 of this chapter on the holder of a tax lien certificate with respect to a subsequent tax lien.

a-2. In addition to any sale authorized pursuant to subdivision a or subdivision a-1 of this section and notwithstanding any provision of this chapter to the contrary, beginning on December first, two thousand seven, the water rents, sewer rents and sewer surcharges components of any tax lien on any class of real property, as such real property is classified in subdivision one of section eighteen hundred two of the real property tax law, may be sold by the city pursuant to this chapter, where such water rents, sewer rents or sewer surcharges component of such tax lien, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale: (i) shall have remained unpaid in whole or in part for one year, and (ii) equals or exceeds the sum of one thousand dollars; provided, however, that such water rents, sewer rents or sewer surcharges component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. After such sale, any such water rents, sewer rents or sewer surcharges component of such tax lien may be transferred in the manner provided by this chapter.

a-3. In addition to any sale authorized pursuant to subdivision a or subdivision a-1 of this section and notwithstanding any provision of this chapter to the contrary, beginning on December first, two thousand seven, a subsequent tax lien on any class of real property, as such real property is classified in subdivision one of section eighteen hundred two of the real property tax law, may be sold by the city pursuant to this chapter, regardless of whether such subsequent tax lien, or any component of the amount thereof, shall have remained unpaid in whole or in part for one year, and regardless of whether such subsequent tax lien, or any component of the amount thereof, equals or exceeds the sum of one thousand dollars; provided, however, that such subsequent tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. After such sale, any such subsequent tax lien, or any component of the amount thereof, may be transferred in the manner provided by this chapter. For purposes of this subdivision, the term "subsequent tax lien" shall mean the water rents, sewer rents or sewer surcharges component of any tax lien on property that becomes such on or after the date of sale of any water rents, sewer rents or sewer surcharges component of any tax lien on such property that has been sold pursuant to this chapter, provided that the prior tax lien remains unpaid as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale of the subsequent tax lien. Nothing in this subdivision shall be deemed to limit the rights conferred by section 11-332 of this chapter on the holder of a tax lien certificate with respect to a subsequent tax lien.

b. The commissioner of finance, on behalf of the city, may sell tax liens, either individually, in combinations, or

in the aggregate, pursuant to the procedures provided herein. The commissioner of finance shall establish the terms and conditions of a sale of a tax lien or tax liens. Enactment of the local law that added this sentence shall be deemed to constitute authorization by the council for the commissioner of finance to conduct a sale or sales of tax liens through and including December thirty-first, two thousand ten. Subsequent to December thirty-first, two thousand ten, the city shall not have the authority to sell tax liens.

1. (i) The commissioner of finance may, in his or her discretion, sell a tax lien or tax liens through a competitive sale. In addition to the advertisement and notice required to be provided pursuant to section 11-320 of this chapter, the commissioner of finance or his or her designee shall cause to be published a notice of intention to sell a tax lien or tax liens through a competitive sale, which notice shall include the terms and conditions for such sale, the criteria by which bids shall be evaluated, and a request for any other information or documents that the commissioner of finance may require. Such notice shall be published in one newspaper of general circulation in the city, not less than fifteen days prior to the date designated by the commissioner for the submission of bids.

(ii) The commissioner of finance may, in his or her discretion, establish criteria for the eligibility of bidders pursuant to section 11-321.1 of this chapter.

(iii) The commissioner of finance may reject any or all bids, or may accept any combination of bids in a competitive sale.

2. (i) The commissioner of finance may, in his or her discretion, sell a tax lien or tax liens through a negotiated sale. In addition to the advertisement and notice required to be provided pursuant to section 11-320 of this chapter, the commissioner of finance or his or her designee shall cause to be published a notice of intention to sell a tax lien or tax liens through a negotiated sale, which notice shall advise that a request for statements of interest is available at the office of the department of finance, and which may require the submission of any information or documents that the commissioner deems appropriate, provided, however, that if the negotiated sale is to a trust or other entity created by the city or in which the city has an ownership or residual interest, then the requirement that the notice advise that a request for statements of interest is available at the office of the department of finance shall not apply. Such notice shall be published in one newspaper of general circulation in the city, not less than fifteen days prior to the date designated by the commissioner for the receipt of statements of interest, or if the negotiated sale is to such trust or other entity, then such notice shall be published not less than fifteen days prior to the date of sale. For purposes of this subparagraph, the words "date of sale" shall have the same meaning provided in subdivision e of section 11-320 of this chapter.

(ii) The commissioner of finance may engage in a negotiated sale in accordance with criteria to be established pursuant to section 11-321.1 of this chapter.

(iii) The commissioner of finance may execute a purchase and sale agreement and other necessary agreements with a designated purchaser or purchasers to complete a negotiated sale.

3. The commissioner of finance may establish a minimum price for the sale of tax liens that may be at a discount from or premium to the lien amount. Notwithstanding the preceding sentence, the commissioner of finance may not establish a minimum price for the sale of an individual tax lien that is at a discount from the lien amount. The commissioner of finance shall sell such tax liens at a purchase price that, in the determination of such commissioner, is in the best interests of the city. The commissioner of finance, in his or her discretion, may accept cash or cash equivalent in immediately available funds, or other consideration acceptable to the commissioner, or any combination thereof in payment for a tax lien or tax liens.

4. The amount of a tax lien that is sold pursuant to this chapter shall be the unpaid amount of the lien as of the date of sale, including any interest and penalties thereon, any taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, any surcharge pursuant to section

11-332 of this chapter, and interest and penalties thereon, or such component of the amount thereof as shall be determined by the commissioner of finance, notwithstanding the amount paid for purchase of the tax lien or component of the amount thereof. For purposes of this paragraph, the words, "date of sale" shall have the same meaning provided in section 11-320(e) of this chapter.

5. (i) The commissioner of finance may, subsequent to the offer for sale of any tax lien or tax liens and the failure to complete such sale, offer such tax lien or tax liens for sale again to any other person or persons who satisfied the terms and conditions of the sale without providing any additional advertisements or notices pursuant to this chapter.

(ii) Notwithstanding subparagraph (i) of this paragraph, any tax lien that was noticed for sale pursuant to this chapter, but was not sold on the original date of sale, may be sold without any additional advertisements or notices pursuant to this chapter if the subsequent date of sale is within six months of the second publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of the original date of sale. If the subsequent date of sale is more than six months after the second publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of the original date of sale, then the commissioner of finance, or his or her designee, shall provide notice of the subsequent date of sale pursuant to subdivision b of section 11-320 of this chapter. No other additional advertisements or notices shall be necessary prior to the date of sale.

6. The rate of interest on any tax lien certificate shall be the rate fixed pursuant to section 11-224(g) of the code on the effective date of the local law that added this sentence.

7. It is the intent of the city that a sale of a tax lien or tax liens pursuant to this chapter shall be a sale and not a borrowing.

8. Whenever any tax lien purchased at a tax lien sale is found to be invalid, void or defective in whole or in part, or not to conform to any representation or warranty with respect thereto, made by the commissioner of finance in connection with the sale thereof, by judgment or decree of a court of competent jurisdiction or by determination of the commissioner of finance, the commissioner of finance may, in his or her discretion, substitute for such tax lien or portion thereof another tax lien that has a value equivalent to the value of the tax lien or portion thereof found to be invalid, void, defective, or not to so conform, or may refund such value of the tax lien or portion thereof found to be invalid, void, defective, or not to so conform, or may use a combination of substitution and refund. No other remedy shall be available to a purchaser of a tax lien which is found to be invalid, void, defective, or not to conform to a representation or warranty with respect thereto made by the commissioner of finance in connection with the sale thereof, in whole or in part. Whenever a tax lien of such equivalent value is to be substituted for a tax lien that has been found invalid, void, defective, or not to so conform, in whole or in part, pursuant to this section, the commissioner of finance or his or her designee shall provide mailed notice of the intention to substitute such lien of such equivalent value to any person required to be notified pursuant to section 11-320(b) of this chapter.

9. The commissioner of finance may establish requirements for a purchaser of a tax lien to provide any information and documents that the commissioner of finance deems necessary, including information concerning the collection and enforcement of tax liens.

10. Any tax lien or tax liens on property owned by a company organized pursuant to article XI of the state private housing finance law with the consent and approval of the department of housing preservation and development that are sold pursuant to this chapter shall be deemed defective. For the purposes of this paragraph, property owned by such company shall be limited to property owned for the purpose, as set forth in section five hundred seventy-one of the state private housing finance law, of providing housing for families and persons of low income.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 13, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

Subd. a amended L.L. 68/2007 § 2, eff. Dec. 31, 2007.

Subd. a amended L.L. 36/2001 § 1, eff. June 18, 2001.

Subd. a-1 amended L.L. 68/2007 § 2, eff. Dec. 31, 2007.

Subd. a-1 amended L.L. 36/2001 § 2, eff. June 18, 2001.

Subd. a-1 added L.L. 98/1997 § 1, eff. Dec. 30, 1997.

Subd. a-2 added L.L. 68/2007 § 3, eff. Dec. 31, 2007.

Subd. a-3 added L.L. 68/2007 § 3, eff. Dec. 31, 2007.

Subd. b open par amended L.L. 68/2007 § 4, eff. Dec. 31, 2007.

Subd. b open par amended L.L. 2/2006 § 1, eff. Mar. 14, 2006 and retroactive to Mar. 2, 2006.

Subd. b open par amended L.L. 4/2004 § 1, eff. Apr. 7, 2004 and retroactive to Nov. 1, 2003.

Subd. b open par amended L.L. 36/2001 § 3, eff. June 18, 2001.

Subd. b open par amended L.L. 67/2000 § 1, eff. Nov. 16, 2000 and retroactive to and deemed to have been in full force and effect as of Nov. 1, 2000.

Subd. b open par amended L.L. 50/2000 § 1, eff. Aug. 9, 2000 and retroactive to and deemed to have been in full force and effect as of Aug. 1, 2000.

Subd. b open par amended L.L. 3/2000 § 1, eff. Feb. 4, 2000 and retroactive to Jan. 1, 2000.

Subd. b open par amended L.L. 98/1997 § 2, eff. Dec. 30, 1997.

Subd. b par 2 subpar (i) amended L.L. 98/1997 § 3, eff. Dec. 30, 1997.

Subd. b par 5 amended L.L. 98/1997 § 4, eff. Dec. 30, 1997.

Subd. b par 10 added L.L. 98/1997 § 5, eff. Dec. 30, 1997.

DERIVATION

Formerly § 415(1)-23.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

CASE NOTES FROM FORMER SECTION

¶ 1. That the City of New York had advertised for sale a real property tax against the property of the hotel corporation did not establish that there was pending a proceeding by the City to enforce a lien against the corporation's property for overdue taxes within statute making pendency of such a proceeding ground for a corporate reorganization under the Bankruptcy Act, since under the Charter, and Admin. Code § 415(1)-10.0, and §§ 415(1)-23.0 to 415(1)-42.0, the sale of the tax lien involves no interference with the property itself but is merely a transfer of the obligation, and the City can take no action to enforce the collection until the tax is three years overdue.-Kroell v. N.Y. Ambassador, Inc., 108 Fed. 2d 294 [1939].

¶ 2. Contention that notice of sale was improper because the taxes were subsequently reduced as result of settlement of pending certiorari proceedings and therefore the amount of the unpaid taxes and assessments was not correctly set forth, was rejected. The reduction of the assessed valuation subsequent to the sale of the tax lien merely affected the amount of the unpaid taxes and not the validity of the lien.-City of N.Y. v. 952 Fifth Ave. Corp., 111 (50) N.Y.L.J. (3-2-44) 829, Col. 2 T.

¶ 3. Application for order requiring respondent to transfer to petitioner a certain transfer of tax lien was denied where, although the City advertised the lien for sale, it later withdrew the transfer of tax lien from the sale about a week prior thereto and notified petitioner thereof at the time (43 N.Y.S. 2d 567, aff'd 50 N.Y.S. 2d 341).-In re Holl-Wood Realty Corp. (Young), 115 (97) N.Y.L.J. (4-26-46) 1639, Col. 6 M.

¶ 4. The City, in 1949, purchased a transfer of tax lien on plaintiff's property which became due in 1952, at 12 percent interest per annum. In 1950, the City included plaintiff's property in a published list of properties to be foreclosed in rem although some of the delinquent taxes were covered by the transfer of tax lien. The plaintiff then agreed to pay the City in installments pursuant to Code § D17-5.0. The City not only charged interest at 1 percent a month from the date of the transfer of tax lien to the date of payment, but charged an additional 4 percent representing four months premium interest in purported compliance with Code § 415(1)-36.0. **Held:** delinquent real estate taxes could be collected either by the old method of sale and foreclosure of transfers of tax liens or by the new method of foreclosure proceedings in rem. However, the provisions applicable to one method of proceeding could not be read into the other method of proceeding and hence the additional charge was illegal and could be recovered by the plaintiff on the ground that it was paid under duress of the threatened in rem foreclosure.-Albert Boris Leasing Corp. v. City of New York, 285 App. Div. 126, 136 N.Y.S. 2d 46 [1955], aff'd 309 N.Y. 682, 128 N.E. 2d 324 [1955].

CASE NOTES

¶ 1. A tax lien certificate, by law, provides for interest at the rate of 18 percent until the balance is paid in full. However, where the City condemns the property, the rate of interest is 6 percent from the date of the taking. The rationale is that the condemnor takes full title to the land, free of all encumbrances and inconsistent proprietary rights. Mill Creek Phase 1 Staten Island Bluebelt System, NYCTL 1998-01 Trust v. Vigliarolo, 38 A.D.3d 665, 831 NYS2d 532 (2d Dept. 2007).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-320

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-320 Notice of sale to be advertised and mailed.

a. The tax lien on property in the city shall not be sold pursuant to section 11-319 of this chapter unless notice of such sale as provided herein has been published twice, the first publication to be in a newspaper of general circulation in the city, not less than ninety days preceding the date of the sale, and the second publication to be in a publication designated by the commissioner of finance, not less than ten days preceding the date of the sale. Such publication shall include a description by block and lot or by such other identification as the commissioner of finance may deem appropriate, of the property upon which the tax lien exists that may be included in the sale, and a statement that a list of the tax liens that may be included in the sale is available for inspection in the office of the city register and the office of the county clerk of Richmond county. The commissioner of finance shall file such list in the office of the city register and the office of the county clerk of Richmond county not less than ninety days prior to the date of sale.

b. A tax lien shall not be sold unless the commissioner of finance, or his or her designee, notifies the owner of record at the address of record and any other person who has registered pursuant to section 11-309 of this chapter, or pursuant to section 11-416 or 11-417 of this code, by first class mail, of the intention to sell the tax lien. If no such registrations have been filed then such commissioner, or his or her designee, shall notify the person whose name and address, if any, appears in the latest annual record of assessed valuations, by first class mail, of the intention to sell the tax lien. Such mailed notice shall include a description of the property by block and lot and such other identifying information as the commissioner of finance may deem appropriate, the amount of the tax lien, including all taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable on the date specified in such publication, a surcharge pursuant to section 11-332 of this chapter if the tax

lien is sold, and interest and penalties thereon, and shall be mailed to such owner and such other persons not less than thirty days prior to the date of sale. Such notice shall state that if default continues to be made in payment of the amounts due on such property, the tax lien on such property shall be sold as provided in section 11-319 of this chapter. If, notwithstanding such notice, the owner shall continue to refuse or neglect to pay the amounts due on such property, the commissioner of finance may sell the tax lien on such property as provided in section 11-319 of this chapter.

c. Such notice shall advise the owner of such property of his or her continued obligation to pay the amounts due on such property. No other notice or demand shall be required to be made to the owner of such property to authorize the sale of a tax lien or tax liens on such property pursuant to section 11-319 of this chapter.

d. The commissioner of finance or his or her designee shall, within ninety days after the delivery of the tax lien certificate, notify any person who was required to be notified of such sale pursuant to section 11-320(b) of this chapter, by first class mail, that such sale has occurred. Such notice shall state the date of the sale of the tax lien, the name and address of the purchaser of the tax lien, the amount of such lien, a description of the property by block and lot and such other identifying information as the commissioner of finance or his or her designee shall deem appropriate, and the terms and conditions of the tax lien certificate, including the right to satisfy the lien within the time periods specified in this chapter. Failure to provide notice pursuant to this subdivision shall not affect the validity of any sale of a tax lien or tax liens pursuant to this chapter.

e. The words "date of sale" when used in this section shall mean: (1) for a negotiated sale, the date of signing of the tax lien purchase agreement, and (2) for a competitive sale, the date designated by the commissioner of finance for the submission of bids.

f. The commissioner of finance shall designate an employee of the department to respond to inquiries from owners of property for which a tax lien has been sold or noticed for sale pursuant to subdivision a of this section and shall designate an employee of the department to respond to inquiries from owners sixty-five years of age or older of property for which a tax lien has been sold or noticed for sale pursuant to subdivision a of this section. The commissioner of environmental protection shall designate at least one employee of the department of environmental protection to respond to inquiries from owners of property for which a tax lien containing a water rents, sewer rents or sewer surcharges component has been sold or noticed for sale pursuant to subdivision a of this section.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 14, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

Subd. a amended L.L. 68/2007 § 5, eff. Dec. 31, 2007.

Subd. f amended L.L. 68/2007 § 5, eff. Dec. 31, 2007.

Subd. f amended L.L. 98/1997 § 6, eff. Dec. 30, 1997.

DERIVATION

Formerly § 415(1)-24.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Amended chap 100/1963 § 336

Amended LL 54/1977 § 41

CASE NOTES FROM FORMER SECTION

¶ 1. Contention that the notice of sale was improper on ground the amount of unpaid taxes and assessments was incorrectly set forth inasmuch as the taxes were subsequently reduced as result of a settlement of a pending certiorari proceeding, was rejected, as reduction of the assessed valuation subsequent to the sale of the tax lien merely affects the amount of the unpaid taxes and not the validity of the lien.-City of New York v. 952 Fifth Avenue Corporation, 181 Misc. 705, 47 N.Y.S. 2d 419 [1944].

¶ 2. City's cancellation, pursuant to Admin. Code § 415(1)-24.0, of transfers of tax liens made to itself prior to institution of condemnation proceedings, merely placed the parties in status quo. The sale by the City to itself of the tax liens did not constitute a collection of water charges and an irrevocable election to maintain no personal action for their recovery.-City of N.Y. v. Idlewild Beach Co., 182 Misc. 205, 213, 43 N.Y.S. 2d 567 [1943], aff'd 182 Misc. 213, 50 N.Y.S. 2d 341 [1944].

¶ 3. City's acquisition of the property in condemnation did not in any way discharge the lien of the tax arrears on the theory the transfers of tax liens theretofore acquired by the City were merged in the title acquired in condemnation. Admin. Code § 415(1)-34.0 was without application.-Id.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-321

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-321 Continuation of sale; notice required.

A sale of a tax lien or tax liens may be continued from time to time, if necessary, until all the tax liens on the property so advertised and noticed shall be sold unless such sale is canceled or postponed in accordance with section 11-322 of this chapter. If a sale of a tax lien or tax liens is continued, the commissioner of finance, or his or her designee, shall give such notice as is practicable of such continuation.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 15, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-25.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Amended chap 100/1963 § 337

Amended chap 746/1970 § 2

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-321.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-321.1 Rules governing sales; eligibility of persons to purchase a tax lien or tax liens in a negotiated or competitive sale.

a. The commissioner of finance may promulgate rules governing the eligibility of persons to purchase a tax lien or tax liens in a negotiated or competitive sale. Such rules may provide for precertification of such persons, including a requirement for disclosure of income, assets, and any other financial information that the commissioner of finance deems appropriate, and may prohibit any such person who is delinquent in the payment of any taxes to the city of New York, or who is in default in or on any other obligation to the city, or who has any outstanding violations of the administrative code of the city of New York, from purchasing a tax lien or tax liens.

b. Any person who intends to purchase a tax lien or tax liens in a negotiated or competitive sale shall submit to the commissioner of finance an affidavit establishing compliance with the applicable eligibility criteria and including any other information required by the commissioner of finance. No such person who fails to submit such affidavit shall be permitted to purchase a tax lien or tax liens. Any such person who willfully submits a false or misleading affidavit pursuant to this section shall forfeit any tax lien or tax liens purchased by him or her at a sale for which the affidavit was submitted, shall be liable for payment of the full purchase price of the tax lien or tax liens, shall forfeit any deposit paid, and shall be disqualified from bidding or participating in any tax lien sale in the city for a period of five years.

c. No sale of a tax lien or tax liens shall be made to any person identified pursuant to section 11-309 of this chapter as having an interest in the property which is the subject of the tax lien or tax liens, or to any owner of record as shown on the real property records of the office of the city register in any borough or in the office of the Richmond county clerk. Any such person or owner of record who purchases such tax lien or tax liens shall forfeit such tax lien or tax liens and shall be liable for payment of the full purchase price of the tax lien or tax liens and shall not be entitled to a

refund of any amounts paid by such person or owner of record.

d. No person who purchases a tax lien or tax liens in a negotiated or competitive sale shall assign or transfer a tax lien certificate or tax lien certificates for such tax lien or tax liens to any person identified pursuant to section 11-309 of this chapter as having an interest in the property which is the subject of such tax lien certificate or tax lien certificates, or to any owner of record of property which is the subject of such tax lien certificate or tax lien certificates. Any such person who knowingly or negligently transfers or assigns such tax lien certificate or tax lien certificates to such person or owner of record shall be liable for payment of the full purchase price of the tax lien or tax liens and shall not be entitled to a refund of any amounts paid and such tax lien certificate or tax lien certificates shall be deemed void and the tax lien or tax liens sold under such certificate or such certificates shall revert to the city as if no sale of such tax lien or tax liens had occurred.

HISTORICAL NOTE

Section added L.L. 26/1996 § 16, eff. Mar. 18, 1996

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-322

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-322 Postponement or cancellation of sales.

It shall be lawful for the commissioner of finance, or his or her designee, to postpone or cancel any proposed sale of a tax lien or tax liens on property that shall have been advertised and noticed for sale prior to the date of sale. For purposes of this section, the words, "date of sale" shall have the same meaning provided in section 11-320(e) of this chapter. The city shall not be liable for any damages as a result of cancellation or postponement of a proposed sale of a tax lien or tax liens, nor shall any cause of action arise from such cancellation or postponement.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 17, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-26.0 added chap 929/1937 § 1

Amended chap 100/1963 § 338

Amended LL 54/1977 § 42

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-323

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-323 Commissioner of finance to conduct sale.

The commissioner of finance or his or her designee shall conduct the sales hereinbefore provided to be made, or the commissioner may, in his or her discretion, contract with any other person to conduct competitive sales of tax liens.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 18, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-27.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Even if the tax sale had been conducted by a clerk rather than by a deputy City collector, the sale would not have been invalid, as Admin. Code § 415(1)-27.0 would seem to authorize the deputy City collector to delegate to subordinates ministerial duties, such as making the outcry, using the hammer, accepting deposits, noting bids, and calculating interest.-Anorcel Realty Corp. v. Corporation of Warwick Hills, 109 (26) N.Y.L.J. (2-1-43) 438, Col. 3 T.

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NYC Administrative Code 11-324

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-324 Deposits and forfeits.

The commissioner of finance may require from each purchaser of a tax lien or tax liens, in cash or cash equivalent in immediately available funds in the discretion of such commissioner, a deposit of at least five per cent of the cash portion of the sale price of the tax lien or tax liens purchased by him or her, as liquidated damages, on a date determined by the commissioner of finance. The balance shall be paid to the commissioner of finance in cash or cash equivalent in immediately available funds or such other consideration acceptable to the commissioner of finance or any combination thereof, in his or her discretion. For purposes of this chapter "cash equivalent" shall mean a cashier's check, bank check, certified check, money order, or such other paper instrument as the commissioner of finance shall prescribe. Such deposit and balance may also be paid by electronic funds transfer. For purposes of this chapter, "electronic funds transfer" shall mean any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated using a format prescribed by the commissioner of finance. A tax lien certificate shall be made and delivered to the purchaser upon payment of the sale price. In case any purchaser shall default in any obligation under the terms and conditions of the tax lien sale, then the amount deposited by the purchaser shall be forfeited to the city, and the tax lien or tax liens upon the property affected by such purchase may be sold again at the discretion of the commissioner of finance pursuant to section 11-319 of this chapter. All deposits forfeited as aforesaid shall be paid into the general fund.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 19, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-28.0 added chap 929/1937 § 1

Amended chap 100/1963 § 339

Amended LL 54/1977 § 43

CASE NOTES FROM FORMER SECTION

¶ 1. In action to foreclose a transfer of tax lien, alleged failure of plaintiffs to comply with Admin. Code § 415(1)-28.0 in that payment was not made within 30 days after the sale, was no concern of the defendants but was a matter strictly between plaintiff and the City. The defense was insufficient to overcome the statutory presumption that plaintiff had a valid transfer of tax lien.-Mancinelli v. Ocean & Bay Realty Corp., 127 (86) N.Y.L.J. (5-2-52) 1774, Col. 5 F.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-325

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-325 City may bid in on tax sale. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 20, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-29.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-326

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-326 Procedure when no bid for a tax lien is received. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 21, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-30.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Amended chap 100/1963 § 340

Amended LL 54/1977 § 44

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-327

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-327 Tax lien certificates; operation.

A tax lien certificate shall operate to transfer and assign the tax lien upon the property described therein for the taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any notices and advertisements given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 22, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-31.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-328

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-328 Contents of a tax lien certificate.

A tax lien certificate shall contain a transfer and assignment by the city of the tax lien sold to the purchaser, the date of the sale, the aggregate amount of the tax lien so transferred, and the items of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon comprising the tax lien, the rate of interest which the tax lien certificate will bear, the date when the amounts under such tax lien are due pursuant to section 11-332 of this chapter, and a description of the property affected by the tax lien, which description shall include the designation of such property on the tax map, by its lot number and the number of the block in which it is contained, and such other identifying information as the commissioner of finance or his or her designee may deem proper to add. For purposes of this section, the words "date of sale" shall have the same meaning provided in section 11-320(e) of this chapter. Each tax lien certificate shall be executed by the commissioner of finance or his or her designee by manual or facsimile signature and shall be acknowledged by the manual or facsimile signature of the officer subscribing the same in the manner in which a deed is required to be acknowledged to be recorded in the county in which the property affected is situated. The commissioner of finance may designate an agent for purposes of authenticating any such signature.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 23, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-32.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-329

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-329 Sale of transfers of tax liens by the city; procedure. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 24, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-33.0 added chap 929/1937 § 1

Sub d amended LL 37/1946 § 1

Subs b, c amended chap 100/1963 § 341

Amended LL 54/1977 § 45

CASE NOTES FROM FORMER SECTION

¶ 1. Defendant's contention that transfer of tax lien acquired by it in 1910 was not subordinate to transfer of tax lien for later taxes acquired by City in 1932, **held** contrary to explicit language of statute which gives priority in inverse order of the tax assessment dates.-City of N.Y. v. Zengendal Realty Co., 121 (45) N.Y.L.J. (3-7-49) 826, Col. 2 M.

¶ 2. That notice of the assignment of transfer of tax lien by the City to plaintiff's assignor was not given to defendant did not render the assignment illegal, as the Admin. Code does not require that actual notice be given to anyone, but merely that it be advertised in the City Record for four successive weeks.-Jamestead Realty Corp. v. Cohen, 121 (24) N.Y.L.J. (2-3-49) 433, Col. 2 F.

¶ 3. Contract to transfer a tax lien is for the sale of an interest in property, which must be in writing, and such rule is equally as applicable to auction sales as to any other type of sale. In the instant case, in view of plaintiff's claim that each bid was noted in writing, it would seem incumbent upon defendant city to submit the actual auction sheets or explain why it could not, so that the Court might determine if there were any writings sufficient to satisfy the statute. The auctioneer's statements were deemed merely conclusions of law.-Gleason v. City of N.Y., 126 (4) N.Y.L.J. (7-6-51) 34, Col. 5 F.

¶ 4. The holder of a tax lien stands in the same position as the City with respect to his rights and remedies. If his remedy of foreclosure were subject to the statute of limitations, so too would be the City's as to the liens that it holds. The limitations found in §§ 47-a and 48(2) of the Civil Practice Act are inapplicable.-L.K. Land Corp. v. Gordon, 1 N.Y. 2d 465, 154 N.Y.S. 2d 32, 136 N.E. 2d 500 [1956].

¶ 5. The City Collector could not reinstate a tax lien which had erroneously been surrendered by petitioner for cancellation. Part of the lot involved had been sold prior to the proceeding and the purchaser was not a party to the instant proceeding.-In re Ditta, 221 N.Y.S. 2d 34 [1961].

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NYC Administrative Code 11-330

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-330 Record of tax lien certificates.

The commissioner of finance, or his or her designee, shall keep in his or her office a public record of sales of tax liens, and a copy of each tax lien certificate issued by such commissioner or his or her designee. Assignments of tax lien certificates duly acknowledged may be filed and recorded in the office of the commissioner of finance or his or her designee. A tax lien certificate and any assignment thereof, duly acknowledged, shall be deemed conveyances under article eight of the real property law, and may be recorded in the office of the recording officer of any county in which the real property which it affects is situated. Tax lien certificates and all assignments thereof shall be recorded by recording officers in the same manner as mortgages and assignments thereof, but without payment of tax under article eleven of the tax law. Neither the tax lien nor the rights transferred or created by a tax lien certificate shall be impaired by failure of a recording officer to record a tax lien certificate made by the city through the commissioner of finance or his or her designee.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 25, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-34.0 added chap 929/1937 § 1

Amended chap 100/1963 § 342

CASE NOTES FROM FORMER SECTION

¶ 1. Under Admin. Code § 415(1)-53.1, authorizing appointment of City Treasurer as receiver of the rents and profits of property subject to a transfer of tax lien owned or held by the City, and further authorizing the Treasurer to apply such income in satisfaction of the unpaid taxes, assessments, water rents, penalties and interest, City Treasurer **held** to have properly applied the rents to a particular instance to the satisfaction of unpaid taxes, in preference to the satisfaction of interest.-City of New York v. 952 Fifth Avenue Corporation, 181 Misc. 705, 47 N.Y.S. 2d 419 [1944].

¶ 2. The provisions of this section that a tax lien shall be presumed to be satisfied whenever it shall appear from recorded instruments that it has been transferred to the owner of the land has no application to the acquisition of land by the City in condemnation proceedings.-City of New York v. Idlewild Beach Co., 182 Misc. 205, 43 N.Y.S. 2d 567 [1943], aff'd 182 Misc. 213, 50 N.Y.S. 2d 341 [1944].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-331

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-331 Records to be competent evidence.

The record in the office of the commissioner of finance or his or her designee of sales of tax liens, of a tax lien certificate, and of a copy of a tax lien certificate, and of an assignment of a tax lien certificate, a record of a tax lien certificate in the office of a recording officer, and of an assignment of tax lien certificate, duly acknowledged, in the office of a recording officer, shall each be evidence in any court in the state without further proof. A transcript of any record enumerated in this section, duly certified, shall be evidence in any court in the state with like effect as the original instrument of record.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 26, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-35.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-332

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-332 Rights of purchaser of tax lien.

a. Any purchaser of a tax lien or tax liens shall stand in the same position as the city and shall have all the rights and remedies that the city would have had if the tax lien or tax liens had not been sold.

b. The aggregate amount of each tax lien transferred pursuant to this chapter shall be due and payable one year from the date of the sale. Until such aggregate amount is fully paid and discharged, the holder of the tax lien certificate shall be entitled to receive interest on such aggregate amount from the date of sale, and semi-annually at the rate of interest applicable in accordance with section 11-319 of this chapter. If such aggregate amount is partially paid, the holder of the tax lien certificate shall be entitled to receive interest only on the amount that remains unpaid. Notwithstanding the foregoing sentence, the holder of the tax lien certificate shall be entitled to receive and retain a surcharge equal to five percent of the lien arising pursuant to the provisions of this chapter as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, and interest and penalties thereon. Any amounts due shall be paid directly to the holder of the tax lien certificate. At the option of the holder of any tax lien certificate the aggregate amount thereof shall become subject to foreclosure after default in the payment of interest for thirty days or after default for six months after the date of sale stated in the tax lien certificate in accordance with sections 11-320(d) and 11-328 of this chapter in the payment of any taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, or the interest or penalties thereon which become a lien on or after the date of sale of the tax lien transferred by such tax lien certificate. At his or her option, the holder of the tax lien certificate may satisfy any such subsequent tax lien on the same property, and shall, by virtue of such satisfaction, be deemed to be in the same

position as if he or she were a purchaser of a tax lien certificate for such subsequent tax lien, provided, however, that such holder shall not be entitled to receive a five percent surcharge on such subsequent tax lien pursuant to this section. The rate of interest on such subsequent lien shall be the rate of interest applicable to tax lien certificates pursuant to section 11-319 of this chapter. The commissioner of finance or his or her designee, at the request of the purchaser of such subsequent lien, shall issue a tax lien certificate for such lien pursuant to sections 11-327 and 11-328 of this chapter. Upon issuance of such certificate, the commissioner of finance or his or her designee shall provide such notice as is required pursuant to section 11-320(d) of this chapter. Failure to provide notice pursuant to this subdivision shall not affect the validity of any transfer of a subsequent tax lien or tax liens pursuant to this subdivision. Any person having a legal or beneficial interest in property affected by a tax lien certificate may satisfy the same at any time upon payment of the amounts due with interest at the rate applicable in accordance with section 11-319 of this chapter. Upon satisfaction of the tax lien, the holder thereof shall issue to the person who satisfied such tax lien a certificate of discharge, certifying that the tax lien has been paid or has been otherwise satisfied, in such recordable form as has been approved by the commissioner of finance. For purposes of this section, the words, "date of sale" shall have the same meaning provided in section 11-320(e) of this chapter.

HISTORICAL NOTE

Section amended L.L. 98/1997 § 7, eff. Dec. 30, 1997

Section amended L.L. 26/1996 § 27, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

Subd. b amended L.L. 36/2001 § 4, eff. June 18, 2001.

DERIVATION

Formerly § 415(1)-36.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

CASE NOTES FROM FORMER SECTION

¶ 1. Plaintiff was not entitled to the four months' penalty interest under Admin. Code § 415(1)-36.0, providing for voluntary payment before maturity, where the payment in question was being made in settlement of an action to foreclose the lien and was not a voluntary payment pursuant to the 30 days' notice provided by the statute.-Beaver Realty Corp. v. Mfrs. Trust Co., 109 (58) N.Y.L.J. (3-12-43) 995, Col. 1 T.

¶ 2. City was entitled to charge the 12 percent interest provided for in the transfers of tax liens after vesting date of the property which had been taken in condemnation and up to the date of payment.-In re Idlewild Estates, Inc., 108 (53) N.Y.L.J. (9-1-42) 475, Col. 6 F, at 7 M.

¶ 3. Where the taxed parcels were taken in condemnation, Admin. Code § 415(1)-36.0 did not authorize the City to charge the owner an additional four months advance interest for the privilege of satisfying the transfers of tax liens before maturity, since the statute would seem to cover a voluntary prepayment of a transfer of tax lien and not a forced payment resulting from the City's exercise of its power of eminent domain.-Id.

¶ 4. Plaintiff, having purchased the tax lien from the City after it had bought it at the prior tax sale, obtained all the rights the City had and could foreclose for grounds that the City could use (Admin. Code § 415(1)-36.0; dist'g 161 A.D. 543).-Thomopoulos v. Bliss, 114 (85) N.Y.L.J. (10-10-45) 846, Col. 3 M.

¶ 5. Under Admin. Code § 415(1)-36.0 the City has set forth specific due dates in each calendar year for the payment of interest following acquisition of the transfer of tax lien and has given to the holder of such transfer of tax lien the right to interest at semi-annual periods thereafter on the dates so specified. Accordingly, purchaser of transfer tax lien from City on October 1, 1950, might foreclose for failure of fee owner to pay interest prior to the lapse of the 30-day statutory grace period from January 1, 1951, as against defendant's contention that interest was not due and payable until a full six-month period had elapsed from either January 1 or July 1 following date on which the lien was acquired.-Goldner v. Savenue Realty Corp., 199 Misc. 561, 104 N.Y.S. 2d 298 [1951].

¶ 6. Owner of property who sought to redeem the premises from the purchaser of the tax lien, should have followed the procedure of Admin. Code § 415(1)-36.0, and might not invoke provisions of Real Property Law § 322, in a case where the transfer of tax lien had not been lost or destroyed or mutilated.-In re Orty, 119 (16) N.Y.L.J. (1-23-48) 303, Col. 5 F.

¶ 7. The law does not require the holder of a tax lien to make demand for payment, but provides that a person having a legal or beneficial interest affected by a transfer of tax lien must give notice of intention to pay.-Goldner v. Portnoy, 130 (69) N.Y.L.J. (10-6-53) 660, Col. 4 F.

¶ 8. This section does not provide for "premium interest" and the premium interest permitted by § D17-5.0 is not applicable to an installment agreement under this section. Premium which was paid by the defendant as a condition of entering into the installment agreement and thus releasing his property from in rem foreclosure could be recovered by the plaintiff.-Albert Boris Leasing Corp. v. City of New York, 309 N.Y. 682, 128 N.E. 2d 324 [1955], aff'g 285 App. Div. 126, 136 N.Y.S. 2d 46 [1955].

¶ 9. The City Collector would not reinstate a tax lien which petitioner had erroneously surrendered for cancellation in the belief that he owned the property. Petitioner failed to show that such restoration of rights would not interfere with or affect the rights of others which might have accrued subject to the discharge.-Application of Ditta, 221 N.Y.S. 2d 34 [1961].

CASE NOTES

¶ 1. In Matter of Mill Creek Phase 1 Staten Island Bluebelt System NYCTL 1998-1 Trust v. Vigliarolo, 2008 NY Slip Op. 5304, 2008 NY Lexis 1480, the City acquired title to a parcel of real property by eminent domain. At the time that the City acquired title, NYCTL 1998-1 Trust possessed a tax lien certificate on the property, which provided that the rate of interest on the tax lien would be 18% until the lien was paid in full. (NYC Admin. Code §§ 11-224, 11-319(b)(6)). The court had to decide whether the 18 percent interest figure applied until the lien was paid off, or only until the date that the City acquired the property (after which interest would accrue at 6 percent). The Court of Appeals (reversing the Appellate Division) held that the exercise of eminent domain did not reduce the interest on a tax lien, so that the Trust was entitled to receive interest at the rate of 18 percent even after the property was acquired by the City.

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NYC Administrative Code 11-333

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-333 Discharge of tax lien.

A tax lien sold pursuant to the provisions of this chapter may be discharged by presenting the certificate of discharge issued by the holder of the tax lien pursuant to section 11-332 of this chapter to the recording officer of the county in which the real property that it affects is situated, and any recording officer to whom such certificate of discharge is presented shall record the same.

HISTORICAL NOTE

Section amended (as subds. a, b and without catchline) L.L. 36/2001 § 5,

eff. June 18, 2001.

Section amended L.L. 26/1996 § 28, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-37.0 added chap 929/1937 § 1

Sub a amended LL 50/1942 § 33

CASE NOTES FROM FORMER SECTION

¶ 1. Since the Admin. Code specifically makes applicable to the discharge of transfer of tax liens the procedure of Real Property Law § 322, Court **held** to possess power not only to dispense with production of the original transfer of tax lien but also with the satisfaction piece where it was apparent that the lien had been paid and the transfer of tax lien had been lost.-Reiner v. Boyle, 127 (43) N.Y.L.J. (3-4-52) 877, Col. 6 F.

¶ 2. Since the Admin. Code specifically makes applicable to the discharge of transfer of tax liens the procedure of Real Property Law § 322, Court **held** to possess power not only to dispense with the production of the original transfer of tax lien but also with the satisfaction piece where it was apparent that the lien had been paid and the transfer of tax lien had been lost.-Reiner v. Boyle, 112 N.Y.S. 2d 420 [1952].

¶ 3. Where there existed a transfer tax lien upon defendant's entire parcel, plaintiff was entitled to pay to defendant, the proportionate share of the amount due which plaintiff's portion bore to the entire parcel and obtain a judgment releasing her portion from the tax. Plaintiff was not required, in order to save her parcel from possible foreclosure, to pay the amount due on the entire tax lien.-Hirsch v. Approved Properties, Inc., 145 (112) N.Y.L.J. (6-12-61) 19, Col. 3 T.

¶ 4. The City Collector could not reinstate a tax lien which had erroneously been surrendered by petitioner for cancellation. Part of the lot involved had been sold prior to the proceeding and the purchaser was not a party to the instant proceeding.-In re Ditta, 221 N.Y.S. 2d 34 [1961].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-334

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-334 Exemption from taxation.

Tax liens and tax lien certificates shall be exempt from taxation by the state or any local subdivisions thereof, except from the taxes imposed by article ten of the tax law. The real property affected by any tax lien shall not be exempt from taxation by reason of this section.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 29, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-38.0 added chap 929/1937 § 1

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CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-335 Foreclosure of tax liens.

If the amount of any tax lien which shall have been transferred by a tax lien certificate shall not be paid when under its terms and the provisions of section 11-332 of this chapter such amount shall be due, the holder of such tax lien certificate may maintain an action in the supreme court to foreclose such tax lien. The holder of such tax lien certificate shall notify the commissioner of finance or his or her designee in writing whenever he or she commences such action at the time of filing of such action, and shall notify the commissioner of finance in writing of the resolution of such action, including any settlement of such action, within thirty days of such resolution. In an action to foreclose a tax lien any person shall be a proper party of whom the plaintiff alleges that such person has or may have or that the plaintiff has reason to believe that such person has or may have an interest in or claim upon the property affected by the tax lien. A plaintiff in an action to foreclose a tax lien shall recover reasonable attorney's fees for maintaining such action. Except as otherwise provided in this chapter an action to foreclose a tax lien shall be regulated by the provisions of the civil practice law and rules and by all other provisions of law, and rules of practice applicable to actions to foreclose mortgages on real property. The people of the state of New York or the city of New York may be made party to an action to foreclose a tax lien in the same manner as a natural person. Where the people of the state of New York or the city of New York are made a party defendant the complaint shall set forth, in addition to the other matters required to be set forth by law, detailed facts showing the particular nature of the interest in or the lien on such property of the people of the state of New York or the city of New York, and detailed facts showing the particular nature of the interest in or the lien on such property which plaintiff has reason to believe that the people of the state of New York or the city of New York has or may have in such property, and the reason for making the people of the state of New York or the city of New York a party defendant. Upon failure to state such facts the complaint shall be dismissed as to the people of the state or the city of New York.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 30, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-39.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The City's ownership of a portion of the ocean front tax lot offshore from the 1925 high water line at Edgemere, Queens, so that part of the tax lot was owned by one other than defendants, did not invalidate the City's levy of taxes and their charge upon the entire tax lot, and constituted no defense in City's action to foreclose a transfer of tax lien thereon, particularly where defendants had taken no action for 16 years, during which time they had failed to pay taxes.-City of N.Y. v. Cook, 112 (143) N.Y.L.J. (12-21-44) 1791, Col. 6 T.

¶ 2. In action by City to foreclose tax lien covering waterfront property, defendant's assertion that a certain defendant had no interest in the property but that another had, was no defense, since if one named as a party has no interest, no right can be affected, and if the City failed to name one with an interest the defendant had no cause to complain, as only the City would be prejudiced by the omission.-City of N.Y. v. Rabinowitz, 112 (146) N.Y.L.J. (12-21-44) 1791, Col. 5 T.

¶ 3. In action to foreclose transfer of tax lien for unpaid taxes which was acquired by the City and then sold to plaintiff, an affirmative answer alleging that there was an action in ejectment pending against certain defendants for possession of the premises, was insufficient, as regardless of whether defendants succeeded in establishing ownership in the ejectment action this would not free the property from the lien of the taxes or from rights acquired as a result thereof, as the taxes are levied against the land, and not the owner.-Schatz v. Stevens, 127 (62) N.Y.L.J. (3-31-52) 1275, Col. 5 M.

¶ 4. Two causes of action to foreclose two separate tax liens on two different but contiguous parcels of land owned by two separate owners, which tax liens, bearing consecutive numbers, had been sold by the City at a certain sale and subsequently assigned by the City to the plaintiff, **held** properly joined in one cause of action, pursuant to C.P.A. § 258, although the better practice would have been to bring separate actions, as the title to real property was involved (163 Misc. 880).-Pechenik v. Sunbright Homes, Inc., 114 (110) N.Y.L.J. (11-10-45) 1272, Col. 6 F.

¶ 5. The inclusion of items of taxes into a lien does not affect a merger. The City cannot sell a tax lien rendering subordinate thereto any prior existing liens. Furthermore, where the need for imposing a second lien arises, the court is not obliged to vacate the first lien and restore the tax items therein contained and render the same subject to payment of interest at 7%.-Stein v. City of N.Y., 125 (34) N.Y.L.J. (2-19-51) 613, Col. 2 F.

¶ 6. Where on November 6, 1950, the City Treasurer and the City commenced an action to foreclose tax liens affecting petitioner's property, the delinquent items consisting of real estate taxes for the years 1946-1947 to 1949-1950, and water rents for the years 1948 to 1950, City Treasurer did not act arbitrarily in refusing a tender, made by petitioner on January 25, 1951, of all sums due as arrears in taxes, penalties, costs and disbursements claimed by the City as due by reason of the action brought by the City in rem against the premises.-In re Scott (Young), 125 (34) N.Y.L.J. (2-19-51) 613, Col. 3 M.

¶ 7. Inasmuch as the City of New York, with respect to foreclosure of tax liens, has never availed itself of the elective provisions of Tax Law, Art. 7A, as provided by § 162, subd. 1, and has proceeded in tax lien foreclosures in accordance with Admin. Code §§ 415(1)-22.0 to 52.0, the fee of the referee to sell is not limited to $10 as provided in

Tax Law § 164(1), but is governed by C.P.A. § 1546. Accordingly, referee would be allowed a sum not exceeding $100.-Subin v. Panfilowich, 121 (82) N.Y.L.J. (4-27-49) 1507, Col. 3 F.

¶ 8. Motion by defendants to open default and for leave to answer in proceeding by City to foreclose tax lien, was denied, in absence of any alleged irregularity or non-compliance with the statute.-In re City of N.Y. (Tax Lien, etc., Reed), 127 (66) N.Y.L.J. (4-4-52) 1353, Col. 4 T.

¶ 9. Where the City commenced in rem proceedings for non-payment of tax and while such proceeding was pending an application was made for exemption from taxes because of the religious nature of defendant, but such application was disposed of after entry of judgment and petitioner defaulted in appearance and answer and judgment was taken as provided in the statutes, Court **held** without power presently to disturb that judgment. However, Court urged the City to negotiate with petitioner to effectuate a retransfer of title as it was now apparent petitioner was anxious to continue its duties in providing a place of worship.-In re Section 8, Block 2206, Lot 55, 126 (99) N.Y.L.J. (11-23-51) 1353, Col. 2 T.

¶ 10. An action to foreclose a tax lien in the City of New York is regulated by provisions of the Civil Practice Act and Rules of Civil Practice and all other provisions of law applicable to actions to foreclose mortgages on real property.-Weiss v. Stone, 129 N.Y.S. 2d 525 [1954].

¶ 11. Where sale under the foreclosure judgment had not yet been had, the owner of the equity of redemption had the right to redeem on payment of the amount of the judgment, with interest, taxable costs, disbursements and allowances.-Weiss v. Stone, 129 N.Y.S. 2d 525 [1954].

¶ 12. The provisions of the Admin. Code making taxes a lien until paid take precedence over general statute of limitations in §§ 47a and 48(2) of the Civil Practice Act. Therefore the holder of such a lien could foreclose it after the expiration of six years.-L.K. Land Corp. v. Gordon, 1 N.Y. 2d 465, 154 N.Y.S. 2d 32, 136 N.E. 2d 500 [1956].

¶ 13. In a proceeding to foreclose a tax lien, a junior encumbrancer may make a senior encumbrancer a party and have the amount secured by the senior encumbrancer determined and paid and lien discharged, providing such claim is clearly set up in the complaint. The defense of the statute of limitations does not apply to a proceeding of this nature, since under the Charter and the Admin. Code, a lien of a real estate tax continues until paid.-Solomon v. Abato, 20 Misc. 2d 591, 191 N.Y.S. 2d 867 [1959].

¶ 14. The City Collector could not reinstate a tax lien which had erroneously been surrendered by petitioner for cancellation. Part of the lot involved had been sold prior to the proceeding and the purchaser was not a party to the instant proceeding.-In re Ditta, 221 N.Y.S. 2d 34 [1961].

CASE NOTES

¶ 1. A new notice of pendency may be filed in a tax foreclosure proceeding, despite the cancellation of a previous notice of pendency. NYCTL 1997-1 Trust v. Oneg Shabbos, Inc., 5 A.D.3d 568, 772 N.Y.S.2d 848 (2d Dept. 2004).

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Administrative Code of the City of New York

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NYC Administrative Code 11-336

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-336 Pleading tax lien certificate.

Whenever a cause of action, defense or counterclaim, is for the foreclosure of a tax lien, or is in any manner founded upon a tax lien or a tax lien certificate, the production in evidence of an instrument executed by the commissioner of finance or his or her designee in the form prescribed in section 11-328 of this chapter for a tax lien certificate subscribed by or in behalf of the commissioner of finance or his or her designee shall be presumptive evidence that the lien purported to be transferred by such an instrument was a valid and enforceable lien, and that it has been duly assigned to the purchaser, and it shall not be necessary to plead or prove any act, proceeding, notice or action, preceding the delivery of such tax lien certificate nor to establish the validity of the tax lien transferred by such tax lien certificate. If a party or person in interest in any such action or proceeding claims that a tax lien is irregular or invalid, or that there is any defect therein or that a tax lien certificate is irregular, invalid or defective, such invalidity, irregularity or defect must be specifically pleaded or set forth, and must be established affirmatively by the party or person pleading or setting forth the same.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 31, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-40.0 added chap 929/1937 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. General denial of the allegations of the complaint in an action to foreclose a tax lien presented no issues, in view of provisions of Admin. Code § 415(1)-40.0, and the absence of affirmative proof to overcome the presumptions established by the record.-Hyman v. Fischer, 184 Misc. 90, 52 N.Y.S. 2d 553 [1944].

¶ 2. In action to foreclose transfer of tax lien, defendant owner and first mortgagee complied with requirements of Admin. Code § 415(1)-40.0 in alleging, as affirmative defenses, that the City did not advertise the sale of the transfer tax lien nor sell the same at public auction as required by law, and that the assignment thereof was not made after due advertisement and publication nor at public sale as required by § 415(1)-33.0.-Jackland Realty Co. v. Alesi, 118 (137) N.Y.L.J. (12-24-47) 1873, Col. 3 T.

¶ 3. In action to foreclose a transfer of tax lien, any claimed invalidity in the transfer of the tax lien must be pleaded and proved by defendant.-Jamestead Realty Corp. v. Cohen, 121 (24) N.Y.L.J. (2-3-49) 433, Col. 2 M.

¶ 4. In action to foreclose a transfer of tax lien from the City of New York, a defense that defendant never received notice of sale of the tax lien and that plaintiff never made a demand upon defendant to pay interest on the lien, **held** insufficient, since no notice was required except as provided by Admin. Code § 415(1)-40.0. Defendant not having pleaded that the publication as provided therein had not been made, it was presumed that the requirement of notice had been met. Moreover, the law does not require the holder of a tax lien to make demand for payment.-Goldner v. Portnoy, 130 (69) N.Y.L.J. (10-6-53) 660, Col. 4 F.

¶ 5. Summary judgment may properly be granted in an action to foreclose a transfer of tax lien. Since the answer filed by the defendant contained only a general denial of any knowledge of information concerning the allegations of the complaint and did not affirmatively show that the tax lien or transfer was illegal, it was insufficient to stave off summary judgment.-Welsh v. Wootton, 194 Misc. 921, 88 N.Y.S. 2d 75 [1949].

¶ 6. In a proceeding for foreclosure of a tax lien, a general denial by defendants presents no problem, since the presumption of regularity provided by this section applies. Also, a denial by the defendants of the assignment of the transfer of the tax liens to the plaintiff, could not be sustained, since defendants failed to establish affirmatively that the assignment to the plaintiff was in any way irregular.-Solomon v. Abato, 20 Misc. 2d 591, 191 N.Y.S. 2d 867 [1959].

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NYC Administrative Code 11-337

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-337 Judgment upon tax lien.

In every action for the foreclosure of a tax lien, and in every action or proceeding in which a cause of action, defense or counterclaim is in any manner founded upon a tax lien or a tax lien certificate, such tax lien certificate and the tax lien which it transfers shall be presumed to be regular and valid and effectual to transfer to the purchaser named therein a valid and enforceable tax lien. Unless in such an action or proceeding such tax lien or tax lien certificate be found to be invalid, they shall be adjudged to be enforceable and valid, for the amount thereof and the interest to which the holder may be entitled and a tax lien transferred by a tax lien certificate effectual to transfer such tax lien to the purchaser named therein.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 32, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-41.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-338

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-338 Judgment of foreclosure of tax lien; sale.

In an action to foreclose a tax lien, unless the defendants obtain judgment, the plaintiff shall be entitled to a judgment establishing the validity of the tax lien so far as the same shall not be adjudged invalid and of the tax lien certificate and directing the sale of the real, personal or mixed property affected thereby, or such part thereof as shall be sufficient to discharge the tax lien, or such items thereof as shall not be adjudged invalid together with the expense of the sale, and the costs of the action.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 33, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-42.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-339

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-339 City may purchase at sale.

At a sale pursuant to judgment in an action to foreclose a tax lien or at any sale free of tax liens, the city, without authorization other than hereby given, may purchase any property that is the subject of the sale.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 34, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-43.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Amended chap 100/1963 § 343

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-340

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-340 Effect of judgment foreclosing tax lien.

Every final judgment in an action to foreclose a tax lien shall be binding upon, and every conveyance upon a sale pursuant thereto, shall transfer to and vest in the purchaser all the right, title, interest and estate in and claim upon the real property affected by such judgment, of the plaintiff, each defendant upon whom the summons is served, each person claiming from, through or under such a defendant by title accruing after the filing of notice of pendency of the action or after the entry of judgment and filing of the judgment roll in the proper county clerk's office, and each person not in being when the judgment is rendered, who afterwards may become entitled to a beneficial interest attaching to, or an estate or interest in such real property or any portion thereof, provided that the person presumptively entitled to such beneficial interest, estate or interest is a party to such action or bound by such judgment. So much of section three hundred seventeen of the civil practice law and rules as requires the court to allow a defendant to defend an action after final judgment shall not apply to an action to foreclose a tax lien. Delivery of the possession of real property affected by a judgment to foreclose a tax lien may be compelled in the manner prescribed in section two hundred twenty-one of the real property actions and proceedings law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-44.0 added chap 929/1937 § 1

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NYC Administrative Code 11-341

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-341 Surplus.

Any surplus of the proceeds of the sale, after paying the expenses of the sale, and all taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, any surcharge pursuant to section 11-332 of this chapter and interest and penalties thereon, including such amounts which accrued or became a lien on and after the date of sale of the tax lien or tax liens and up to and including the date of the sale of the property in foreclosure, and satisfying the amount of such tax lien or tax liens and interest and the costs of the action, must be paid into court, for the use of the person or persons entitled thereto. If any part of the surplus remains in court for the period of three months, and no application has been made therefor, the court must, and, if an application therefor is pending, the court may direct such surplus to be invested at interest, for the benefit of the person or persons entitled thereto, to be paid upon the direction of the court.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 35, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-45.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-342

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-342 Foreclosed tax lien not arrears.

Any party to an action to foreclose a tax lien or any purchaser or any party in interest may give notice of such foreclosure to the city collector and after such notice the items which constituted the tax lien thus foreclosed shall not be entered by the city collector in any yearly assessment-roll, so long as the judgment of foreclosure of such lien remains in force.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-46.0 added chap 929/1937 § 1

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NYC Administrative Code 11-343

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-343 Reimbursement for unenforceable tax liens or transfers of tax liens. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 36, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-47.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-344

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-344 Reimbursement when part of the tax lien is unenforceable. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 37, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-48.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-345

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-345 Owners may question transfers of tax liens. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 38, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-49.0 added chap 929/1937 § 1

Amended LL 67/1950 § 4

Amended LL 2/1961 § 9

CASE NOTES FROM FORMER SECTION

¶ 1. Court was without power to permit plaintiff to serve a demand pursuant to Admin. Code § 415(1)-50.0 nunc pro tunc where the demand had not been served within 10 days after service of the pleading.-Messina v. Arose Realty Corp., 115 (31) N.Y.L.J. (2-6-46) 508, Col. 1 F.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-346

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-346 Conditions for claims for defective tax liens. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 39, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-50.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-347

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-347 Corporation counsel to protect city in all proceedings relating to tax liens.

It shall be the duty of the corporation counsel to protect the interest of the city in all matters, actions and proceedings relating to tax liens and tax lien certificates; to intervene on behalf of the city or to make the city a party to any action in which the corporation counsel believes it to be to the interest of the city so to do, by reason of any matter arising under or relating to any tax lien or tax lien certificate, or advertisement of sale of tax liens. The corporation counsel in his or her discretion may represent the purchaser of a tax lien or the holder of a tax lien certificate in any action in which the corporation counsel believes it to be in the interest of the city so to do, by reason of any matter arising under or relating to any tax lien or tax lien certificate, or advertisement of sale of tax liens. All costs recovered in any action or proceeding conducted or defended by the corporation counsel pursuant to this section shall belong to the city and shall be collected, applied and disposed of in the same manner as are other costs recovered by the city.

HISTORICAL NOTE

Section amended L.L. 98/1997 § 8, eff. Dec. 30, 1997

Section amended L.L. 26/1996 § 40, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-51.0 added chap 929/1937 § 1

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NYC Administrative Code 11-348

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-348 Defective or invalid transfer of tax lien; proceeding anew. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 26/1996 § 41, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-52.0 added chap 929/1937 § 1

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NYC Administrative Code 11-349

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-349 Lost tax lien certificate; delivery of duplicate in case of.

Whenever any tax lien certificate given by the commissioner of finance or his or her designee, as in this chapter provided, shall be lost, the commissioner of finance or his or her designee may receive evidence of such loss, and on satisfactory proof of the fact may direct the execution and delivery of a duplicate to such person or persons who shall appear entitled thereto, and may also, in the commissioner's discretion, require a bond of indemnity to the city.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 42, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-53.0 added chap 929/1937 § 1

Amended chap 100/1963 § 344

Amended LL 54/1977 § 46

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-350

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-350 Affidavits of publication and mailing of necessary notices to be preserved.

It shall be the duty of the commissioner of finance or his or her designee to procure, preserve and register at the department of finance, affidavits of the publication and mailing of all the advertisements and notices by this chapter required to be published and mailed, and such affidavits shall be presumptive proof of such publication and mailing in all the courts of this state.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 43, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-54.0 added chap 929/1937 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-353

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-353 Cancellation of taxes, assessments, water rents, sewer rents, sewer surcharges, any charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon.

Whenever the city has heretofore or shall hereafter become vested with title to property acquired by virtue of tax enforcement foreclosure proceedings, or by deed in lieu thereof, the commissioner of finance, or his or her designee, shall cancel all unpaid real estate taxes, tax lien certificates, assessments, water rents, sewer rents, sewer surcharges, any charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon upon which the foreclosure action was predicated. Upon the sale of such property and the conveyance of the title thereof by the city, the commissioner of finance, or his or her designee, shall cancel all unpaid real estate taxes, assessments, water rents, sewer rents, sewer surcharges, any charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon that shall have accrued during the period between the date of the last unpaid item upon which the foreclosure action was predicated and the date of conveyance of title. The commissioner of finance, or his or her designee, shall enter notations of such cancellations in the appropriate records for each such parcel of property.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 44, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 415(1)-57.0 added LL 90/1955 § 1

Amended LL 2/1961 § 10

Amended chap 100/1963 § 348

Amended LL 54/1977 § 48

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NYC Administrative Code 11-354

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-354 Additional method to enforce payment of tax liens held by the city.

(a) Notwithstanding any other provision of law and notwithstanding any omission to hold a tax lien sale, whenever any tax, assessment, sewer rent, sewer surcharge, water rent, any charge that is made a lien subject to the provisions of this chapter or chapter four of this title, or interest and penalties thereon, has been due and unpaid for a period of at least one year from the date on which the tax, assessment or other legal charge represented thereby became a lien, or in the case of any class one property or any class two property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, or in the case of a multiple dwelling owned by a company organized pursuant to article XI of the private housing finance law with the consent and approval of the department of housing preservation and development, for a period of at least three years from the date on which the tax, assessment or other legal charge became a lien, the city, as owner of a tax lien, may maintain an action in the supreme court to foreclose such lien. Such action shall be governed by the procedures set forth in section 11-335 of this chapter; provided, however, that such parcel shall only be sold to the highest responsible bidder. Such purchaser shall be deemed qualified as a responsible bidder pursuant to such criteria as are established in rules promulgated by the commissioner of finance after consultation with the commissioner of housing preservation and development.

(b) At a sale pursuant to a judgment in an action brought pursuant to subdivision (a) of this section to foreclose a tax lien, the city may purchase property subject to such lien in accordance with the provisions of section 11-339 of this chapter.

(c) The provisions of this section shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure of tax

liens shall be in addition to any other remedies or procedures provided by any general, special or local law. Notwithstanding any other provision of this code, the commissioner of finance shall be authorized to agree to forebear to commence an in rem action against property which has an outstanding and unredeemed tax lien certificate previously sold by the city and held by a third party pursuant to this chapter.

HISTORICAL NOTE

Section amended L.L. 26/1996 § 45, eff. Mar. 18, 1996

Section added chap 907/1985 § 1

Subd. (a) amended L.L. 37/1996 § 1, eff. May 14, 1996.

DERIVATION

Formerly § 415(1)-58.0 added LL 39/1984 § 1

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NYC Administrative Code 11-355

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 3 TAX LIENS AND TAX SALES

§ 11-355 Reporting.

The commissioner of finance shall submit an annual report to the council concerning the sale or sales of tax liens during the preceding year pursuant to this chapter. Such report shall include the following information regarding such sale or sales: a list of properties for which a tax lien or tax liens has or have been sold, including identification of the particular tax lien or tax liens sold; the proceeds received from the sale or sales of tax liens; identification of the purchaser of and servicer for the tax lien or tax liens sold; a report of servicer activities during the immediately preceding year; the redemption rate for tax liens that have been sold; the delinquency rate for real property taxes for the immediately preceding year; and any other information pertinent to the sale of tax liens that may be requested by the council and which is not made confidential pursuant to section 11-208.1 of the code. Upon request by the council, information provided in such report shall be arranged by community board. In addition to such report, the commissioner of finance shall from time to time provide any other information pertinent to the sale of tax liens that may be requested by the council and which is not made confidential pursuant to section 11-208.1 of the code, including updated information regarding the sale or sales of tax liens pursuant to this chapter.

HISTORICAL NOTE

Section amended L.L. 98/1997 § 9, eff. Dec. 30, 1997

Section amended L.L. 26/1996 § 46, eff. Mar. 18, 1996

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-401 Definitions.

Whenever used in this chapter, the following terms shall mean:

1. "Tax lien." The lien arising as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter or chapter three of this title, interest and penalties thereon, and the right of the city to receive such amounts.

2. "Court." The supreme court.

3. "Class." Any class of real property defined in subdivision one of section eighteen hundred two of the real property tax law, and any subclassification of class two real property where such subclassification is established by rule of the commissioner of finance promulgated pursuant to this subdivision.

4. "Distressed property." Any parcel of class one or class two real property that is subject to a tax lien or liens with a lien or liens to value ratio, as determined by the commissioner of finance, equal to or greater than fifteen percent and that meets one of the following two criteria:

i. such parcel has an average of five or more hazardous or immediately hazardous violations of record of the housing maintenance code per dwelling unit; or

ii. such parcel is subject to a lien or liens for any expenses incurred by the department of housing preservation and development for the repair or the elimination of any dangerous or unlawful conditions therein, pursuant to section

27-2144 of this code, in an amount equal to or greater than one thousand dollars.

HISTORICAL NOTE

Section amended L.L. 37/1996 § 2, eff. May 14, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-1.0 added chap 411/1948 § 1

Sub 1 amended LL 67/1950 § 5

Sub 1 amended LL 2/1961 § 11

CASE NOTES FROM FORMER SECTION

¶ 1. In rem foreclosure procedure authorized by the Code **held** constitutional.-In re Foreclosure of Tax Liens by the City of N.Y., 138 N.Y.S. 2d 591 [1955].

¶ 2. Water rent charges levied on real property are liens on that property until paid and city is not required to list water rent charges on tax records "the moment" they accrue; listing does not create the lien.-Giacalone v. City of N.Y., 104 Misc. 2d 405, 428 N.Y.S. 2d 792 [1980].

¶ 3. Realty Corp. has an insurable interest in prop. even though city had title pursuant to an in rem foreclosure. The corp. was making payments to the city pursuant to an agreement to pay tax arrears when prop. burned.-474 Realty Corp. v. N.Y. Property Ins. Underwriting Assoc., 191 (45) N.Y.L.J. (3-7-84) 6, Col. 3M.

CASE NOTES

¶ 1. Since statutory scheme relating to in rem tax foreclosures permits a person file an owner registration card with the New York City Commissioner of Finance, so that the owner would receive mail notice if an in rem tax foreclosure proceeding were ever commenced against the property. An owner who lost the property in an in rem tax foreclosure brought a constitutional challenge on the ground that the he had not received personal notice of the proceeding.. However, the court held that the requirements of constutional due process had been met. Even though the owner had not received actual notice of the proceeding, it could have received actual notice by following the simple registration steps outlined in the statute. In the Matter of Tax Foreclosure No. 35, 127 A.D.2d 220, 514 N.Y.S.2d 390 (2d Dept. 1987).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-401.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-401.1 Procedures for distressed property.

a. The commissioner of finance shall, not less than sixty days preceding the date of the sale of a tax lien or tax liens, submit to the commissioner of housing preservation and development a description by block and lot, or by such other identification as the commissioner of finance may deem appropriate, of any parcel of class one or class two real property on which there is a tax lien that may be foreclosed by the city. The commissioner of housing preservation and development shall determine, and direct the commissioner of finance, not less than ten days preceding the date of the sale of a tax lien or tax liens, whether any such parcel is a distressed property as defined in subdivision four of section 11-401 of this chapter. Any tax lien on a parcel so determined to be a distressed property shall not be included in such sale. In connection with a subsequent sale of a tax lien or tax liens, the commissioner of finance may, not less than sixty days preceding the date of the sale, resubmit to the commissioner of housing preservation and development a description by block and lot, or by such other identification as the commissioner of finance may deem appropriate, of any parcel of class one or class two real property that was previously determined to be a distressed property pursuant to this paragraph and on which there is a tax lien that may be included in such sale. The commissioner of housing preservation and development shall determine, and direct the commissioner of finance, not less than ten days preceding the date of the sale, whether such parcel remains a distressed property. If the commissioner of housing preservation and development determines that the parcel is not a distressed property, then the tax lien on the parcel may be included in the sale.

b. The commissioner of housing preservation and development may periodically review whether a parcel of class one or class two real property that is subject to subdivision c of this section or subdivision j of section 11-412.1 of this chapter remains a distressed property. If the commissioner determines that the parcel is not a distressed property as

defined in subdivision four of section 11-401 of this chapter, then the parcel shall not be subject to such subdivisions.

c. Any parcel so determined to be a distressed property shall be subject to an in rem foreclosure action, or in the case where the commissioner of finance does not commence such action the commissioner of housing preservation and development shall evaluate such parcel and take such action as he or she deems appropriate under the programs, existing at the time of such evaluation, that are designed to encourage the rehabilitation and preservation of existing housing, and shall monitor or cause to be monitored the status of the property. The commissioner of housing preservation and development, in his or her discretion, shall cause an inspection to be conducted on any parcel so determined to be a distressed property. In addition, the commissioner of housing preservation and development shall submit to the council a list of all parcels so determined to be a distressed property within thirty days from the date such parcels are identified as a distressed property.

HISTORICAL NOTE

Section added L.L. 37/1996 § 3, eff. May 14, 1996 and subd. c eff. May

14, 1997, and this section does not apply to any sale of tax liens

occurring in fiscal year 1996 per L.L. 37/1996 § 18

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-402

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-402 Applicability of procedure of foreclosure in rem.

a. The provisions of this chapter shall be applicable only to tax liens owned by the city.

b. The provisions of this chapter shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this chapter shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted pursuant to the provisions of this chapter, in respect to any such tax lien.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-2.0 added chap 411/1948 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The State of New York, as defendant in action brought by City of New York under Title 17 of Chapter D of the Admin. Code to foreclose unpaid tax liens affecting certain lots, **held** entitled to judgment on the pleadings, where

the State had appropriated the lots for grade crossing elimination purposes and title thereto had vested in the State. Public Lands Law § 19 expressly repealed, superseded and nullified the operation and effect of Admin. Code, Title D of Chapter 17. Moreover, Public Lands Law § 19 and Admin. Code, Title D of Chapter 17 were in pari materia, though passed at different times, and when read together were repugnant to and in conflict with each other, and hence Public Lands Law § 19, a later statute, prevailed.-In re Foreclosure of Tax Liens, Borough of Queens, 204 Misc. 76, 121 N.Y.S. 2d 283 [1953].

¶ 2. City could not charge premium interest, under transfer tax lien statute, on amount due under settlement agreement to pay back taxes in installments where the City included such property in the list of parcels against which it would proceed in rem, even though the property was already subject to a transfer tax lien.-Albert Boris Leasing Corp. v. City of N.Y., 285 App. Div. 126, 136 N.Y.S. 2d 46 [1954], aff'd 309 N.Y. 682, 128 N.E. 2d 324.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-402.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-402.1 Inapplicability of article eleven of the real property tax law to the enforcement of the collection of delinquent taxes.

In accordance with section six of chapter six hundred two of the laws of nineteen hundred ninety-three and subdivision two of section eleven hundred four of the real property tax law, it is hereby provided that the collection of delinquent taxes shall continue to be enforced pursuant to chapters three and four of title eleven of the administrative code and other related provisions of the charter and administrative code as such chapters three and four and such related provisions may from time to time be amended and that article eleven of the real property tax law shall not be applicable to the city.

HISTORICAL NOTE

Section added L.L. 18/1994 § 1, eff. June 10, 1994

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-403

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-403 Jurisdiction.

The supreme court shall have jurisdiction of actions authorized by this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-3.0 added chap 411/1948 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-404

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-404 Foreclosure by action in rem.

a. Whenever it shall appear that a tax lien or tax liens has or have been due and unpaid for a period of at least one year from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien or tax liens, except as provided in subdivision b of this section or otherwise provided by this chapter, may be summarily foreclosed in the manner provided in this chapter, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a sale of a tax lien or tax liens prior to such foreclosure. A bill of arrears or any other instrument evidencing such tax lien or tax liens shall be evidence of the fact that the tax lien or tax liens represented thereby has not or have not been paid to the city or sold by it.

b. A tax lien on any class one property or any class two property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, and on any multiple dwelling owned by a company organized pursuant to article XI of the private housing finance law with the consent and approval of the department of housing preservation and development, shall not be foreclosed in the manner provided in this chapter until such tax lien has been due and unpaid for a period of at least three years from the date on which the tax, assessment or other legal charge represented thereby became a lien.

HISTORICAL NOTE

Section amended L.L. 37/1996 § 4, eff. May 14, 1996, and further this

amendment does not apply to any sale of tax liens occurring in fiscal

year 1996 per L.L. 37/1996 § 18

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-4.0 added chap 411/1948 § 1

Amended chap 746/1970 § 3

Amended chap 823/1975 § 1

Amended LL 45/1976 § 1

(special provision LL 45/1976 § 3)

Amended LL 6/1977 § 2

(legislative findings, homeowner's relief LL 6/1977 § 1)

Sub b amended LL 3/1979 § 1

Sub b amended LL 32/1979 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The appointment of the City Treasurer as receiver of rents and profits of real property is separate and independent from the remedy of an in rem foreclosure. Thus, the in rem foreclosure proceeding could be commenced after the treasurer had been appointed receiver.-Matter of City of New York, 134 (76) N.Y.L.J. (10-19-55) 6, Col. 7 M.

¶ 2. Amendment to section which reduced period in which in rem action for foreclosure of a tax lien could be commenced from 3 years to one year was within power of the city council and amendment is not unconstitutional because it exempts owner occupied one and two family homes with taxes of not more than $2000.-Sonmax v. City of N.Y., 89 Misc. 2d 945 [1977].

¶ 3. A tenant who was not made a party to an in rem foreclosure proceeding did not have right to remain in possession until the end of its lease term but had a right to remain only month to month subject to new landlord's right to immediate possession, since the in rem proceeding is one against the land and divests the owner and all others of any interest in the land.-Korean Presbyterian South Church v. Rack & Ball Club, 116 Misc. 2d 849 [1982].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-405

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-405 Preparation and filing of lists of delinquent taxes.

a. The commissioner of finance from time to time shall prepare a list, to be known as a "list of delinquent taxes", of all parcels, or all parcels within a particular class or classes, that are within a particular borough or section of a tax map or portion of a section of a tax map of the city and on which there are tax liens subject to foreclosure pursuant to this chapter, provided, however, that no such portion shall be smaller than a block, as defined in subdivision d of section 11-204 of subchapter one of chapter two of this title. Every such list shall bear a caption containing the in rem action number of the city's tax foreclosure proceeding, the borough or the section of a tax map or portion of a section of a tax map, and where the action covers less than all parcels in an entire borough or section of a tax map or portion of a section of a tax map, the particular class or classes, and shall contain a statement of the rate or rates at which interest and penalties will be computed for the various liens it includes.

b. Every such list shall set forth the parcels it includes separately and number them serially. For each parcel it shall contain (1) a brief description sufficient to identify the parcel, including section, block and lot numbers, and the street and street number, if any, or in the absence of such information the parcel or tract identification number shown on a tax map or on a map filed in the county clerk's or register's office and (2) a statement of the amounts and dates of all unpaid tax liens which are subject to foreclosure under this chapter and of those which have accrued thereafter.

c. (1) The commissioner of finance may exclude or thereafter remove from such list any parcels (i) as to which questions the commissioner deems meritorious have been raised regarding the validity of the liens, (ii) as to which all the taxes and other charges which rendered said parcels eligible for inclusion in said list have been paid, or (iii) which are owned by an entity other than a company organized pursuant to article XI of the private housing finance law with the consent and approval of the department of housing preservation and development and which are not owner-occupied

residential buildings of not more than five residential units and as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, interest and penalties in installments. The first installment shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount of not less than fifteen percent of such delinquent taxes, assessments or other legal charges, interest and penalties. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first day of July, October, January and April. For the purposes of calculating the number of such remaining installments unpaid real estate taxes which are, on and after July first, nineteen hundred eighty-two, due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis.

(2) The commissioner of finance may also exclude or thereafter remove from such list any parcels which are owned by a company organized pursuant to article XI of the private housing finance law with the consent and approval of the department of housing preservation and development, and (i) as to which an agreement has been duly made, executed and filed with said commissioner for the payment of the delinquent taxes, assessments or other legal charges incurred prior to the ownership of said parcel by said article XI company, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount of not less than ten percent of such delinquent taxes, assessments or other legal charges and the interest and penalty thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed forty-eight in number shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments unpaid real estate taxes which are, on and after July first, nineteen hundred eighty-two due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis; and (ii) as to which an agreement has been duly made, executed and filed with said commissioner, for the payment of the delinquent taxes, assessments or other legal charges incurred after the ownership of said parcel by said article XI company on the same terms as are provided in paragraph one of this subdivision.

(3) The commissioner of finance may also exclude or thereafter remove from such list any parcels which are owner-occupied residential buildings of not more than five residential units as to which an agreement has been duly made, executed and filed with said commissioner for the payment of the delinquent taxes, assessments, or other legal charges and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount not less than ten percent of such delinquent taxes, assessment or other legal charges and the interest and penalty thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed forty-eight in number, shall be payable quarterly on the first days of July, October, January and April. For purposes of calculating the number of such remaining installments unpaid real estate taxes which are, on and after July first, nineteen hundred eighty-two, due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis.

(4) Notwithstanding paragraph one, two or three of this subdivision, with respect to installment agreements duly made, executed and filed on or after the date on which this paragraph takes effect, the commissioner of finance may also exclude or thereafter remove from such list any parcel that is (i)(A) a residential building containing not more than five residential units, (B) a residential condominium unit, (C) a residential building held in a cooperative form of ownership or (D) owned by a company organized pursuant to article XI of the state private housing finance law with the consent and approval of the department of housing preservation and development, and (ii) as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount equal to not less than ten percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first days

of July, October, January and April. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(5) Notwithstanding paragraph one, two or three of this subdivision, with respect to installment agreements duly made, executed and filed on or after the date on which this paragraph takes effect, the commissioner of finance may also exclude or thereafter remove from such list any parcel of class one or class two real property, other than a parcel described in paragraph four of this subdivision, as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount equal to not less than fifteen percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(6) Notwithstanding paragraph one, two or three of this subdivision, with respect to installment agreements duly made, executed and filed on or after the date on which this paragraph takes effect, the commissioner of finance may also exclude or thereafter remove from such list any parcel of class three or class four real property as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount equal to not less than fifteen percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed twenty in number, shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(7) A parcel for which any such installment agreement or agreements have been filed with the commissioner shall be excluded or removed from the list of delinquent taxes before the commencement of the in rem action based upon such list only if the amounts paid pursuant to such agreement exceed the amount required to pay all taxes and charges which render said parcel eligible for inclusion in the in rem action and there has been no default in such agreement prior to the commencement of said action as to either quarterly installments or current taxes, assessments or other legal charges.

(8) As a condition to entering into any agreement under this section or section 11-409 of this chapter, the commissioner shall have received from the applicant, an affidavit stating that each tenant located on the parcel has been notified by certified mail that an application for an installment agreement will be made and that a copy of a standard agreement form has been included with such notification. Any false statement in such affidavit shall not be grounds to cancel the agreement or affect its validity in any way.

d. Two duplicate originals thereof, verified by the commissioner of finance or a subordinate designated by the commissioner, shall be filed in the office of the clerk of the county in which the parcels listed therein are situated. Such filing shall constitute and have the same force and effect as the filing and recording in such office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city as to each parcel described in said list, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such parcels.

e. Each county clerk with whom such a list of delinquent taxes is filed shall, on the date of said filing, place and

thereafter maintain one duplicate original copy thereof, as separately and permanently bound by the commissioner of finance, adjacent to and together with the block index of notices of pendency of action and each county clerk shall, on the date of said filing or as soon thereafter as with due diligence is practicable, docket the parcels contained in the list of delinquent taxes in said block index of notices of pendency of action, which shall constitute due filing, recording and indexing of the separate notices constituting said list of delinquent taxes in lieu of any other requirement under rule sixty-five hundred eleven of the civil practice law and rules or otherwise.

f. The commissioner of finance shall file a copy of each list of delinquent taxes, certified as such copy by him or her or a subordinate designated by the commissioner, in the borough office of the city collector in the borough in which the parcels listed therein are situated and in the office of the corporation counsel.

g. The validity of any proceeding hereunder shall not be affected by any omission or error of the commissioner of finance in including or excluding parcels from any such list or in the designation of a street or street number or by any other similar omission or error.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 69/1997 § 1, eff. Sept. 11, 1997 and applys to

every list of delinquent taxes prepared on or after this date.

Subd. a amended L.L. 37/1996 § 5, eff. May 14, 1996 and this

amendment does not apply to any sale of tax liens occurring in fiscal

year 1996 per L.L. 37/1996 § 18

Subd. c pars 4, 5, 6 added L.L. 37/1996 § 6, eff. June 13, 1996 and this

amendment does not apply to any sale of tax liens occurring in fiscal

year 1996 per L.L. 37/1996 § 18

Subd. c pars 7, 8 renumbered (formerly pars 4, 5) L.L. 37/1996 § 6, eff.

June 13, 1996 and this amendment does not apply to any sale of tax

liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

DERIVATION

Formerly § D17-5.0 added chap 411/1948 § 1

Amended chap 155/1953 § 1

Sub 2 amended chap 395/1959 § 1

Amended chap 100/1963 § 378

Amended chap 733/1969 § 1

Amended chap 746/1970 § 4

Repealed and added chap 823/1975 § 2

Subs a, c, d, e, f amended LL 3/1979 § 2

Sub a amended LL 15/1982 § 1

Subs d, e, f, g relettered LL 15/1982 § 2

(formerly subs c, d, e, f)

Sub c added LL 15/1982 § 2

Sub c amended LL 29/1982 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Where by virtue of a $12.15 tax default the City had penalized petitioner to extent of vesting title in itself of property valued at more than $17,000, Court would scrutinize closely the procedural steps to be pursued by the City Treasurer to determine whether jurisdiction was acquired in the in rem tax foreclosure.-In re List of Delinquent Taxes, 130 (82) N.Y.L.J. (10-26-53) 881, Col. 3 M.

¶ 2. Despite fact that the City had changed the designation for the property on its tax maps from Ward 4, Block 4067, Lot 43, to Section 58, Block 14197, Lot 43, the listing of the property by the old designation in the list of delinquent taxes, together with the name "T. Lynch", should have brought realization to respondents that it was their property which was thus set forth. Fact that the City Treasurer did not mail notice of foreclosure to respondents was of no avail to them as the statute requires mailing of notice to the last known address of the owner as it appears on the City Treasurer's records, and neither the names nor the address of the respondents appeared on such records. Court was without power to open their default to answer or redeem.-In re List of Delinquent Taxes, Ward 4, Queens, 281 App. Div. 1038, 121 N.Y.S. 2d 392 [1953], aff'd 306 N.Y. 809, 118 N.E. 2d 821 [1954].

¶ 3. Contention of petitioner that intention of Admin. Code § D17-5.0 in prescribing the list is to afford a means of information to an owner that his property is involved, and that this purpose is frustrated or at least the means of acquiring the information is rendered more difficult by the commingling of property of an owner in a particular section with those of other sections when one composite list is compiled for parcels in five sections, possessed some merit.-In re List of Delinquent Taxes, 130 (82) N.Y.L.J. (10-26-53) 881, Col. 3 M; adhered to on reargument, 130 (116) N.Y.L.J. (12-16-53) 1472, Col. 3 F.

¶ 4. Objection that the list of delinquent taxes was not verified by the City Treasurer but by a deputy and acting Treasurer, **held** untenable, as Public Officers Law § 9 and Charter § 412 authorizes a deputy official to exercise the powers and duties of the principal during the latter's absence or inability to act.-In re Foreclosure of Tax Lien, 129 (111) N.Y.L.J. (6-9-53) 1940, Col. 7 F.

¶ 5. So-called "work sheets" prepared by men from the City Treasurer's office by copying from the assessment rolls in the Tax Department preparatory to making the list of delinquent taxpayers, which memoranda were maintained in the Treasurer's office, became records of the City Treasurer, and since there appeared therein the name of petitioner and an address, the failure to send her notice of the proceeding rendered the judgment void insofar as it related to her. Fact that her husband resided with her and the notice was addressed to him at his place of business was ineffectual for jurisdictional purposes.-Id.

¶ 6. Failure of City Treasurer to prepare and publish separate tax list for each section or ward designated on the tax maps and to mail notice of foreclosure proceeding to petitioner at her address as it appeared on file in his office were substantial jurisdictional defects.-In re Foreclosure, etc., 133 N.Y.S. 2d 659 [1953].

¶ 7. Where card record on file in City Treasurer's office at the time of the institution of foreclosure proceeding showed the name and correct address of the last owner, but the notice of foreclosure was sent to another person, there was no substantial compliance with the statute and foreclosure judgment was vacated.-In re List of Delinquent Taxes, etc., 136 N.Y.S. 2d 6 [1954].

¶ 8. That the composition of the list of delinquent taxes upon which the in rem tax foreclosure action was based was allegedly faulty, in that credits against the arrears, which should have been made before the list was posted, were not in fact made until after the action was started, the credits having resulted from condemnation awards made by the City in a series of limited takings, **held** not to warrant vacating of the proceedings in the foreclosure action on theory there had been a jurisdictional defect in the proceedings, which had already resulted in a judgment of foreclosure.-In re Foreclosure of Tax Liens, 131 (98) N.Y.L.J. (5-21-54) 13, Col. 8 F.

¶ 9. Title D of Chapter 17 of the Admin. Code is constitutional. Defendant contended that inasmuch as it did not provide for a judicial sale, it deprived him of his property without due process of law. The rational of cases supporting the constitutionality of the State tax law is applicable to the similar provisions of the Admin. Code.-City of New York v. Feit, 200 Misc. 998, 110 N.Y.S. 2d 425 [1952].

CASE NOTES

¶ 1. The notice provisions of §11-405 requiring notice by publication and actual notice only on request to owners, mortgagees and other interested parties who have filed a card with the City Collector does not afford adequate notice to readily ascertainable interested parties. The city has a constitutional requirement to provide notice to owners whose names appear on deed records.-Campbell v. City of NY, 145 Misc 2d 248 [1989].

¶ 2. Although the statute gives the Department of Finance the discretion to enter into a forbearance agreement with delinquent taxpayers, these agreements do not settle or reduce the tax liability, but set up payment plans that postpone foreclosure so long as the required payments are made. Delafield 246 Corp. v. City of New York, 11 A.D.3d 268, 782 N.Y.S.2d 441 (1st Dept. 2004), leave to appeal denied, 4 N.Y.3d 703, 792 N.Y.S.2d 1, 825 N.E.2d 133 (2005).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-406

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-406 Public notice of foreclosure.

a. Upon the filing of a list of delinquent taxes in the office of the county clerk, the commissioner of finance forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and, subject to section ninety-one of the judiciary law, in two newspapers, one of which may be a law journal, to be designated by the commissioner of finance, which are published in and are circulated throughout the county in which the affected property is located. If there are no newspapers published in such county, the commissioner of finance may designate newspapers published in the city of New York which are circulated throughout the affected county.

b. Such notice shall clearly indicate that it is a notice of foreclosure of tax liens; the borough or the section of a tax map or portion of a section of a tax map in which the properties subject to foreclosure are located and where the area affected by the action includes less than all parcels in an entire borough or section of a tax map or portion of a section of a tax map, the particular class or classes contained therein, and by a general description which need not contain measurements and direction; where and when the list of delinquent taxes was filed; the general nature of the information contained in the list; that the filing of the list constitutes commencement of a foreclosure action by the city in the supreme court for the particular county and a notice of pendency of action against each parcel listed; that such action is against the property only and no personal judgment will be entered; that the list will be available for inspection at the city collector's central office and at the borough office of the city collector in the borough in which said property is located until a specified date at least ten weeks after the date of first publication; that until such date a parcel may be redeemed by paying all taxes and charges contained in said list of delinquent taxes together with interest and penalties thereon; that during said period of redemption and for an additional period of twenty days after said last date for redemption any person having any interest in or lien upon a parcel on the list may file with the appropriate county clerk

and serve upon the corporation counsel a verified answer setting forth in detail the full name of said answering party, the nature and amount of his or her interest or lien and any legal defense against foreclosure; and that in the absence of redemption or answer a judgement of foreclosure may be taken by default.

c. On or before the date of the first publication of such notice, the commissioner of finance shall cause a copy of the notice to be mailed to all owners, mortgagees, lienors or encumbrancers, who may be entitled to receive such notice by virtue of any owner's registration or in rem card filed in the office of the city collector pursuant to section 11-416 or 11-417 of this chapter. If such owner's registration or in rem cards have not been filed in the office of the city collector then said notice shall be mailed to the name and address, if any, appearing in the latest annual record of assessed valuations. The commissioner of finance shall cause to be inserted with such notice a statement substantially in the following form:

"To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the attached notice. Unless the taxes and assessments and all other legal charges are paid, or an answer is interposed; or an arrangement is made for payment of such taxes and assessments and all other legal charges in installments, as provided by statute, the ownership of said property will in due course pass to the city of New York as provided by the administrative code of the city of New York."

The failure of the commissioner of finance to mail such notice shall not affect the validity of any proceeding brought pursuant to this chapter as to any parcel other than the parcel with respect to which notice was not mailed.

d. The commissioner of finance shall cause a copy of such notice to be posted in the office of the commissioner of finance, in the county courthouse of the county in which the property subject to such tax lien is situated and at three other conspicuous places in the borough in which the affected properties are located.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended L.L. 69/1997 § 2, eff. Sept. 11, 1997 and applys to lists

of delinquent taxes prepared on or after such date.

Subd. b amended L.L. 37/1996 § 7, eff. May 14, 1996 and further this

amendment does not apply to any sale of tax liens occurring in fiscal

year 1996 per L.L. 37/1996 § 18

DERIVATION

Formerly § D17-6.0 added chap 411/1948 § 1

Amended chap 396/1959 § 1

Amended chap 100/1963 § 379

Amended chap 733/1969 § 2

Amended chap 746/1970 § 5

Repealed and added chap 823/1975 § 3

Sub c amended LL 7/1978 § 1

Sub b amended LL 15/1982 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. Admin. Code § D17-6.0, is constitutional.-In re City of N.Y. (Foreclose Tax Liens), 129 (59) N.Y.L.J. (3-27-51) 1092, Col. 6 F.

¶ 2. Title D of Chapter 17 of the Admin. Code, **held** constitutional, as against contentions that it did not provide for a judicial sale and that it deprived owners of their property without due process of law.-City of N.Y. v. Feit, 200 Misc. 998, 110 N.Y.S. 2d 425 [1952].

¶ 3. Contention that Chapter D, Title 17 of the Admin. Code is unconstitutional as depriving movant of the equal protection of the laws, **held** without merit. The rationale of cases supporting the constitutionality of the state Tax Law is applicable to the similar provisions of the Admin. Code.-In re Foreclosure of Tax Lien, 129 (111) N.Y.L.J. (6-9-53) 1940, Col. 7 F.

¶ 4. Constitutionality of provisions of the Code dealing with notice in rem foreclosure actions upheld.-In re Foreclosure of Tax Liens (Brooklyn), 131 (107) N.Y.L.J. (6-5-54) 11, Col. 8 F.

¶ 5. The City Treasurer's affidavit, which must be filed in the County Clerk's office, designating the parcels for which the records of his office do not show the owners' names or addresses, is not required by § D17-6.0 to be filed on or before the date of the first publication of the notice of foreclosure. In any event, if the requirement should be read that the affidavit is to be filed prior to that time, such requirement would be directory and not mandatory, and the omission to comply therewith is not a jurisdictional defect and the proceeding is not thereby rendered inval- id.-In re Foreclosure of Tax Liens, 278 App. Div. 1008, 105 N.Y.S. 2d 829 [1951].

¶ 6. Owner of the property **held** entitled to an order directing the City Collector to accept payment of tax arrears on his property and to discontinue the "in rem" foreclosure proceedings, where in 1951 upon the making of a part payment of taxes, a clerk in the office of the City Collector erroneously listed the owner's address, and the notice of in rem foreclosure proceedings never reached the owner and was returned with a notation "no such number". Contention of City Collector that the statute required him only to look up his own records for addresses and that he might rely thereon even though an erroneous address negligently was inserted therein by a City employee, was rejected. Equity would not aid a party whose actions are unconscionable or whose conduct is such that he is estopped from claiming his technical legal rights under a default by his adversary.-In re Foreclosure of Tax Liens (Sections 15-20, Kings), 128 (84) N.Y.L.J. (10-29-52) 990, Col. 7 T.

¶ 6.1. Notice of foreclosure on vacant lot mailed to owners who had no address with respect to the vacant parcel was valid since the Treasurer was not required to assume delivery by the Post Office.-In re Delinquent Taxes (Sec. 1-16; Richmond), 147 (14) N.Y.L.J. (1-19-62) 17, Col. 3 M.

¶ 7. Corporate owner of the property which, exactly twenty days from the last day for redemption, interposed an answer denying that it had ever received notice of the in rem foreclosure proceeding, **held** entitled to trial or other disposition of the issues raised by its answer, even though the statutory period of redemption is in the nature of a Statute of Limitations. The motion of the owner to compel the City Collector to accept payment of delinquent taxes and for discontinuance of the foreclosure proceeding, was denied.-In re City of N.Y. (Section 17, Bronx), 130 (42) N.Y.L.J. (8-27-53) 307, Col. 3 F.

¶ 8. This section requires service of notice of foreclosure by mailing to the last known address of each owner of property as the same appears upon the records of the City Treasurer. The Treasurer mailed notice to the property owner to the address which appeared on his records but prior to this mailing had been informed by the post office that there was no such address as his records indicated. Hence, there was no compliance with the statutory direction which is a prerequisite to jurisdiction and the property owner's time to redeem never started to run. The property owner was

permitted to pay his tax arrears and have the foreclosure action discontinued even though the time of redemption specified in the notice of foreclosure had elapsed.-City of New York v. Stolpensky, 286 App. Div. 1027, 145 N.Y.S. 2d 40 [1955].

¶ 9. After the in rem foreclosure of the tax liens on a piece of real property and after the expiration of the redemption period, the property owner could not compel the City Collector to accept payment of tax arrears and discontinue the action even though the City Collector, through his own clerical error had erroneously recorded the address to which the property owner wanted notices of tax payments mailed, and as a result the taxpayer had not received notice of the foreclosure.-City of New York v. Stolpensky, 1 App. Div. 2d 95, 148 N.Y.S. 2d 173 [1955].

¶ 10. It is sufficient that the affidavit of mailing of the notice of foreclosure complies with Admin. Code § D17-6.0. Contention that it did not comply with R.C.P. 20 was unavailing to petitioner.-In re Foreclosure Tax Liens, etc., 133 (111) N.Y.L.J. (6-8-55) 13, Col. 6 M.

¶ 11. The City Treasurer is obliged only to mail notice of an in rem tax lien foreclosure proceeding to the person whose name and address appears on the records. There is no duty resting on the City Treasurer to look beyond the records in his own office to the assessment roll on which another name appeared as owner of the taxed parcel.-In re Foreclosure of Tax Liens, etc., 133 (111) N.Y.L.J. (6-8-55) 13, Col. 6 M.

¶ 12. The Court would not open the default of appellant to answer or redeem in tax foreclosure, since the fact that the Tax Department knew the name of owner of the property was not the equivalent to knowledge of that information by the City Treasurer.-Hawley v. City of New York, 283 App. Div. 882, 131 N.Y.S. 2d 591 [1954].

¶ 13. Court **held** without power to open default or permit redemption from foreclosure where corporation conveyed a portion of premises to A who made application for apportionment and whose lot was designated but corporation failed to indicate ownership of the remaining designated lot in the City collector's office. The fact that City failed to mail notice of foreclosure was of no avail.-In re Foreclosure of Tax Liens (Brooklyn), 131 (107) N.Y.L.J. (6-5-54) 11, Col. 8 F.

¶ 14. Statutory requirements were complied with by notice mailed to petitioner's husband, whose name appeared on the Treasurer's records, though in fact the property was owned by petitioner and her husband as tenants by the entirety. The filing of the delinquent tax lists omitting the street and number of the premises did not affect the jurisdiction of the Court.-In re Foreclosure of Tax Liens (Richmond), 134 (10) N.Y.L.J. (7-15-55) 5, Col. 7 M.

¶ 15. Where card record on file in City Treasurer's office at the time of the institution of foreclosure proceeding showed the name and correct address of the last owner, but the notice of foreclosure was sent to another person, there was no substantial compliance with the statute and foreclosure judgment was vacated.-In re List of Delinquent Taxes, etc., 136 N.Y.S. 2d 6 [1954].

¶ 16. Failure of City Treasurer to prepare and publish separate tax lists for each section or ward designated on the tax maps and to mail notice of foreclosure proceeding to petitioner at her address as it appeared on file in his office were substantial jurisdictional defects.-In re Foreclosure, etc., 133 N.Y.S. 2d 659 [1953].

¶ 17. The section of the Code dealing with the posting of notices refers to the County Court House at Joreleman and Fulton Streets in Brooklyn.-In re Foreclosure of Tax Liens (Brooklyn), 131 (107) N.Y.L.J. (6-5-54) 11, Col. 8 F.

¶ 18. Where Treasurer mailed notice to person whose name appeared on his records, the fact that he did look on the assessment roll on which another name appeared did not affect the validity of the judgment of foreclosure.-In re Foreclosure of Tax Liens (Queens), 133 (111) N.Y.L.J. (6-8-55) 13, Col. 6 M.

¶ 19. Failure of defendants to have received notice of the in rem foreclosure due to their misplaced confidence in their trusted bookkeeper and agent, who allegedly concealed all notices received from the City to cover up his

defalcations, would not permit the Court to extend their time to answer or redeem, in view of provisions of Admin. Code § D17-6.0.-In re Foreclosure of Tax Liens (Est. of William Nelson), 131 (85) N.Y.L.J. (5-4-54) 12, Col. 1 M.

¶ 20. Despite alleged hardship court was powerless to permit redemption or to open the default where there had been full compliance with the statutes in foreclosing the tax lien.-In re Foreclosure of Tax Lien, 129 (111) N.Y.L.J. (6-9-53) 1940, Col. 7 F.

¶ 21. Payment might not be accepted by the City after the last date for redemption set in the public notice of foreclosure, although court stated it was not in sympathy with the strict interpretation given to the provision for in rem foreclosure of tax liens.-In re Foreclosure of Tax Liens, 129 (111) N.Y.L.J. (6-9-53) 1940, Col. 7 F.

¶ 22. A notice to redeem is not a condition precedent for bringing of an action to foreclose a tax lien under this section.-Fusella v. Kayser, 143 (26) N.Y.L.J. (2-8-60) 13, Col. 3 F.

¶ 23. In action by City in rem to foreclose unpaid tax liens pursuant to Chapter 17 of Title D of the Admin. Code, a counterclaim might not be interposed to recover for the reasonable use and occupancy of defendant's property by the City in storing thereon their vehicles and other equipment, as taxes are not subject to counterclaim or set off on part of the taxpayer.-In re City of N.Y. v. Feit, 200 Misc. 998, 110 N.Y.S. 2d 425 [1952].

¶ 24. Where an answer, duly filed and served in a proceeding to foreclose tax liens, showed that the defendant was the owner of the property and that the amount of the tax liens was but a small fraction of the value of the property an order awarding absolute possession and ownership to the City was not proper. Such an order is proper only if the property owner has defaulted in answering and inasmuch as the defendant did not so default the order should have directed a sale of the property so that surplus monies would be available to the defendant.-City of New York v. Chapman Docks Co., 1 App. Div. 2d 895, 149 N.Y.S. 2d 679 [1956].

¶ 25. Statement in affidavit of president of mortgagee that upon information and belief city failed to mail a proper notice of foreclosure to owner was not sufficient to raise a question of fact where mortgagee move to vacate default judgment of foreclosure where owner did not submit an affidavit as to notice.-In the Matter of Foreclosure of Tax Liens by the City of N.Y., Borough of Manhattan, 102 Misc. 2d 801 [1979].

¶ 26. The in rem foreclosure law which provides for notice by posting and publication upon all parties having an interest in real property except for service by mail upon parties whose names appear on the tax rolls or who register with the city collector for receipt of tax bills or in rem notices is constitutional and hence leasee of premises acquired by city who did not register as an interested party was not entitled to actual notice of foreclosure action.-W.S. 23 Realty Corp. v. City of N.Y., 106 Misc. 2d 271, 431 N.Y.S. 2d 272 [1980].

CASE NOTES

¶ 1. A mortgage foreclosure action was entered when an in rem tax foreclosure proceeding was pending. Notice by mail in in rem tax foreclosure is provided for in NYC Ad Cd §§ 11-406, 11-416 but a governmental body is not required to take extraordinary efforts to discover identity and whereabouts. Notice by publication is not sufficient under certain circumstances. Alliance Prop. Mgt. & Dev. v. Andrews Ave. Equities and NYC, 133 AD2d 30 [1987] 70 NY2d 831 [1987].

¶ 2. Notice provisions in Administrative Code § 11-406(c) as applied to owners of property, satisfy minimum requirements of due process. Hatorah v. NYC, 175 AD2d 795 [1991].

¶ 3. Petitioner cannot claim insufficient notice of foreclosure proceeding after petitioner entered into an in rem installment agreement with city after the institution of the foreclosure action and then defaulted in making tax arrears payments. Diamond L&M Ranch Enterprises v. NYC Fin. Dep't, 209 AD2d 193, 618 N.Y.S.2d 285 [1994].

¶ 4. The court sustained the constitutionality (due process) of the notice procedures of § 11-406(c). ISCA Enterprises v. City of New York, 77 N.Y.2d 688, 569 N.Y.S.2d 927 (1991).

¶ 5. Where the Department of Finance had in its files an owner's registration card and in rem card in the name of individuals other than plaintiffs, the department was obligated to mail notices of the tax foreclosure action only to those individuals and not to plaintiffs. Med Development Corp. v. City of New York, 231 A.D.2d 613, 648 N.Y.S.2d 613 (App. Div. 2nd Dept. 1996).

¶ 6. The City acquired title to the subject premises pursuant to a judgment entered in an in rem tax foreclosure action. The plaintiff, who owned an adjoining lot, brought this action asserting that he was the true owner of the subject premises, having acquired title by adverse possession. The plaintiff contended that he was denied due process because he did not receive personal notice of the foreclosure proceeding. The court, however, held that there was no constitutional requirement of personal notice to a party whose interest in the property was not readily ascertainable from the real property and tax records. Thus, plaintiff's motion for an injunction prohibiting defendants from disposing of the subject property was denied. Napolitano v. Biderman, 171 A.D.2d 654, 567 N.Y.S.2d 134 (2nd Dept. 1991).

¶ 7. An owner seeking to set aside a tax foreclosure on the grounds that the required notices were sent to the wrong address, is less likely to prevail where the owner failed to file either a registration statement or an in rem card, which would have assured delivery of the notice to the correct address. Sons of Israel of the Bronx v. City of New York, 292 A.D.2d 222, 739 N.Y.S.2d 54 (1st Dept. 2002).

¶ 8. The City complies with due process by mailing a notice of in rem foreclosure action to the address listed on the owner's registration card. The City was only required to take reasonable steps to notify interested parties of an in rem tax foreclosure proceeding. The City was not required to undertake a search of its internal records to locate alternate addresses used for various purposes over the years. In Re Tax Foreclosure Action No. 44, 9 A.D.3d 266, 778 N.Y.S.2d 882 (2004), leave to appeal dismissed, 3 N.Y.3d 767, 788 N.Y.S.2d 669, 821 N.E.2d 924 (2004).

¶ 9. In Krumszyn v. NYC Dept. of Housing Preservation and Development 2008 NY Misc. Lexis 2623, 239 NYLJ 83 (Sup. Ct. Bronx Cty. 2008), 21 Misc.3d 1110(A), 873 N.Y.S.2d, a property owner challenged an impending foreclosure sale, claiming that she never received any notice of the foreclosure until she got a Post-Judgment notice in the mail in October 2004. However, New York City Dept. of Finance employees and their bulk mailing service provider attested that they mailed notice of foreclosure, as required under NYC Admin. Code 11-406(c), as early as October 2002. The City was required only to take reasonable steps to notify plaintiff of the foreclosure. Once four months elapsed after the judgment was entered, and plaintiff had not sought to vacate it, defendant's compliance within the statutory notice requirements is conclusively presumed. NYC Admin. Code Sec. 406, 11-412.1(h).

Plaintiff admitted that she owed the defendant at least $207,000 in taxes and interest against the property. The property also had numerous violations placed against it by HPD; as a result, plaintiff was unable to obtain refinancing to pay the judgment within the as-of-right, four-month redemption period provided in Admin. Code 11-412.1. Although plaintiff claimed to have corrected the violations, HPD was legally within its rights in refusing to reinspect the property; under 28 RCNY Sec. 9-06, HPD can reject an application for reinspection of property to remove corrected violations from its records, where there is an uncollected judgment against the property or its owner arising from litigation by the City. In this case, the City had six uncollected judgments against the owner.

The court then said that, even if plaintiff were given a four month redemption period running from October 2004 (the time she admitted she knew of the foreclosure), she still failed to redeem by February 2005, the end of the four-month period. After the four-month period, any redemption defendant might afford is entirely an exercise of the defendant's discretion, which the outstanding violations cited and judgments against her or her property provided the city ample grounds to refuse (NYC Admin. Code Sec. 11-424(g)). Even though the discretionary redemption period extends only another 20 months, plaintiff did not redeem her property by the conclusion of 20 months, i.e. by October 2006. NYC Admin. Code 11-4249a)(l).

Accordingly, the court denied the motion to vacate the judgment of foreclosure.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-407

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-407 Redemption.

a. After the filing of a list of delinquent taxes and until a date at least ten weeks after the first publication of the public notice of foreclosure, as determined by the commissioner of finance and specified in the said notice, a person claiming to have an interest in any parcel in said list may redeem it by paying all taxes and charges contained in said list of delinquent taxes together with interest and penalties thereon.

b. Upon such redemption the commissioner of finance shall deliver to the corporation counsel a certificate of redemption. The corporation counsel shall file such certificate with the clerk of the county in which said list was filed. The filing of such certificate shall constitute and be deemed a discontinuance of the in rem action as to the affected parcel, and the county clerk shall thereupon note such redemption and discontinuance in the copy of the list of delinquent taxes maintained by him or her adjacent to the county clerk's block index of notices of pendency of action and shall cancel and discharge any notations of the filing of said list of delinquent taxes as to said parcel that may appear in any other books, records, indices and dockets maintained in said clerk's office. The commissioner of finance shall also deliver a duplicate original certificate of redemption to the person who has redeemed.

c. When the time to redeem in an in rem tax foreclosure action has expired, any person claiming to have an interest in a parcel included in said action shall have the right to make a late redemption payment to the commissioner of finance. Such late redemption payment shall consist of all taxes and charges owing on said parcel, the lawful interest thereon to the date of payment and a penalty of five percent of said payment of taxes, charges and interest, which penalty may not exceed one thousand dollars as to each parcel on which a late redemption payment is being made. Such late redemption payment shall be made in cash or by certified or bank check and shall be accepted by the commissioner of finance at any time after the last day to redeem up to the date on which the commissioner is advised by the

corporation counsel that the preparation of the judgement of foreclosure in the in rem action has been commenced. Upon receipt of such late redemption payment, the commissioner of finance shall issue a certificate of withdrawal pursuant to the provisions of section 11-413 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended L.L. 38/1987 § 1

DERIVATION

Formerly § D17-7.0 added chap 411/1948 § 1

Amended chap 100/1963 § 380

Repealed and added chap 823/1975 § 4

Sub c amended LL 15/1982 § 4

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NYC Administrative Code 11-408

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-408 Filing of affidavits.

All affidavits of filing, publication, posting, mailing or other acts required by this chapter shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this chapter to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-8.0 added chap 411/1948 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-409

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-409 Severance and trial of issues where answer is interposed; installment agreements authorized after action commenced.

a. If a duly verified answer is served upon the corporation counsel not later than twenty days after the last date for redemption, the answering defendant shall have the right to a severance of the action, as to any parcel in which the defendant has pleaded an interest, upon written demand therefor filed with or made a part of his or her answer.

b. When such answer is interposed, the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner as it hears and determines other actions, except as herein otherwise provided. Proof that the taxes which made said property subject to foreclosure hereunder together with interest and penalties thereon, were paid before filing of the list of delinquent taxes or that the property was not subject to tax shall constitute a complete defense.

c. No counterclaim may be asserted in an answer interposed in an action brought pursuant to this chapter. Where a counterclaim is asserted in an in rem answer the city may disregard that portion of the answer and shall suffer no legal penalty or impediment in the prosecution of its in rem action for its failure to reply or respond thereto. Where an answer contains only a counterclaim and no other defenses the city may proceed to judgment of foreclosure against the property affected without the need for moving against the answer.

d. When a verified answer alleges a substantial equity over the city's lien for taxes, the defendant may demand additional time in which to pay the taxes and interest or to have the property sold with all taxes and interest to be paid out of the proceeds of such sale. Upon such demand a defendant shall have the right to an extension of time for such purpose not in excess of six months from the last day to interpose an answer. Where a mortgagee or lienor who has

interposed such answer commences a proceeding to foreclose his or her mortgage or lien and it appears that with due diligence such proceeding cannot be concluded in time to allow the payment of taxes within the aforesaid six month period, the court may, on application before the end of said six month period, authorize an additional period during which such proceeding may be concluded and the taxes, together with interest and penalties, paid.

e. Where an answer of the type described in subdivision d of this section is interposed and taxes are paid within the period set forth in such subdivision d, the commissioner of finance shall issue a certificate of withdrawal as to the property on which such payment has been made pursuant to the provisions of section 11-413 of this chapter. When taxes are not paid within the period set forth in such subdivision d, it shall be deemed that there was no equity over the city's tax liens and the answer shall be deemed to be without merit. The city in that event may proceed to judgment of foreclosure against such property without moving against the answer.

f. All answers interposed in an action hereunder and all affidavits and other papers pertaining to any litigation involving such answers or to any proceeding brought pursuant to this chapter involving less than an entire action shall bear a caption containing the in rem action number of the city's tax foreclosure proceeding, the borough or the section of a tax map or portion of a section of a tax map affected, and if the action covers less than all parcels in an entire borough or section of a tax map or portion of a section of a tax map, the particular class or classes, and the serial, section, block and lot numbers of the parcel or parcels in issue.

g. The corporation counsel, when submitting an in rem judgment roll pursuant to the provisions of this chapter, may request a severance as to any parcel on which an in rem answer or litigation is pending, or as to which, before the preparation of said in rem judgment roll is commenced, an agreement was duly made, executed and filed with the commissioner of finance for the payment of the delinquent taxes, assessments or other legal charges and interest and penalties in installments as provided in subdivision c of section 11-405 of this chapter and there has been no default in such agreement as to either quarterly installments or current taxes, assessments or other legal charges. Where such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time the aforesaid agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Where a default occurs in such agreement as to either quarterly installments or current taxes, assessments or other legal charges, all payments made under the agreement shall be forfeited and the city shall be entitled to acquire the parcel as to which the default occurred. Where such default occurs before the submission of the judgment roll, the parcels as to which such default occurs shall be included in said judgment roll among the parcels to be acquired by the city. Where such default has occurred as to a parcel severed pursuant to this subdivision, the corporation counsel shall cause to be entered a supplemental judgment of foreclosure as to such parcel immediately on notification by the commissioner of finance of such default. Where such installment agreement is paid in full the commissioner of finance shall discontinue the in rem action from which said parcel was severed by issuing a certificate of withdrawal as to said parcel pursuant to the provisions of section 11-413 of this chapter.

h. A party who has interposed an answer as to any parcel included in an in rem tax foreclosure action, or any other party interested in such parcel, shall have the right, at any time prior to the final disposition of a motion to strike said answer, to pay all taxes, assessments and other legal charges and interest owing on said parcel. An answering party who makes such payment shall not be required to pay any penalty. Where such payment is made by other than an answering party after the expiration of the period of redemption, there shall be paid to the commissioner of finance an additional amount equal to the penalty payable under subdivision c of section 11-407 of this chapter. Where all delinquent taxes, assessments and other legal charges together with lawful interest thereon and penalties, where required, are paid, the commissioner of finance shall issue a certificate of withdrawal as to said parcel pursuant to the provisions of section 11-413 of this chapter. Said parties may also pay such taxes, assessments and other legal charges and interest by an installment agreement. Where such agreement is requested before the preparation of the aforesaid in rem judgment roll is commenced, the terms of said agreement shall be consistent with the provisions of subdivision g or

i of this section, whichever is applicable. Where such agreement is requested after judgment of foreclosure has been entered in the in rem action in which the aforesaid answer was interposed, said agreement shall require a first installment of fifty percent of all taxes, assessments and other legal charges and interest owing on said parcel, a penalty of five percent of all such taxes, assessments and other legal charges and interest, which penalty may not exceed one thousand dollars, and the payment of the balance of such taxes, assessments and other legal charges and interest in four equal quarterly installments together with all current taxes, assessments and other legal charges that accrue during such period. The request of an answering party for an installment agreement shall constitute a withdrawal of such party's answer. An installment agreement requested by an interested party other than the answering party shall require the consent of said answering party which shall also constitute a withdrawal of such party's answer. The severance provided for in this section shall be continued during the term of all installment agreements entered into pursuant to the provisions of this subdivision. Where a default has occurred as to a parcel severed pursuant to this subdivision, the corporation counsel shall cause to be entered a supplemental judgment of foreclosure as to such parcel immediately on notification by the commissioner of finance of such default. Where such installment agreement is paid in full, the commissioner of finance shall discontinue the in rem action from which said parcel was severed by issuing a certificate of withdrawal as to said parcel pursuant to the provisions of section 11-413 of this chapter.

i. (1) Notwithstanding subdivision g of this section, this subdivision shall apply with respect to installment agreements made, executed and filed with the commissioner of finance on or after the date on which this subdivision takes effect. An installment agreement pursuant to this subdivision may be made, executed and filed with such commissioner during the period beginning on the date on which an action is commenced as provided in subdivision d of section 11-405 of this chapter with respect to the parcel that is the subject of such agreement and ending on the date on which such commissioner is advised by the corporation counsel that the preparation of the judgment of foreclosure in such in rem action has been commenced. Notwithstanding anything to the contrary, and except to the extent provided in paragraph two of this subdivision, the provisions of paragraphs one through six of subdivision c of section 11-405 of this chapter shall not apply to any installment agreement requested on or after the date on which this subdivision takes effect and on or after the date on which an action is commenced as provided in subdivision d of such section 11-405 with respect to the parcel that is the subject of such requested agreement.

(2) An agreement entered into pursuant to this subdivision shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. Unless an eligible owner or other interested person requests an agreement pursuant to the provisions of paragraph three of this subdivision, the terms of such agreement with respect to a parcel shall be the same as the terms that would be applicable to such parcel under paragraph four, five or six, as the case may be, of subdivision c of section 11-405 of this chapter, except that, for purposes of the agreement pursuant to this paragraph, the amount of the first installment shall be equal to: (i) fifteen percent of the total amount due in the case of a parcel described in such paragraph four; (ii) twenty percent of the total amount due in the case of a parcel described in such paragraph five; and (iii) twenty-five percent of the total amount due in the case of a parcel described in such paragraph six.

(3) Instead of an agreement pursuant to paragraph two of this subdivision, an eligible owner or other interested party may request an agreement pursuant to the following provisions:

(i) With respect to a parcel that is owned by a company organized pursuant to article XI of the state private housing finance law with the consent and approval of the department of housing preservation and development, such agreement shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner of finance and shall be in an amount at least equal to, at the applicant's election, either thirty-five percent or fifty percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first days of July, October,

January and April, together with interest at the rate or rates determined as provided in subparagraph (iv) of this paragraph. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(ii) With respect to a parcel, other than a parcel described in subparagraph (i) of this paragraph, that is a residential building containing not more than five residential units, a residential condominium unit or a residential building held in a cooperative form of ownership, such agreement shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner of finance and shall be in an amount at least equal to, at the applicant's election, either twenty-five percent or fifty percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed twenty in number, shall be payable quarterly on the first days of July, October, January and April together with interest at the rate or rates determined as provided in subparagraph (iv) of this paragraph. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(iii) With respect to any parcel of class one or class two real property, other than a parcel described in subparagraph (i) or (ii) of this paragraph, such agreement shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner of finance and shall be in an amount at least equal to, at the applicant's election, either thirty-five percent or fifty percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed twenty in number, shall be payable quarterly on the first days of July, October, January and April, together with interest at the rate or rates determined as provided in subparagraph (iv) of this paragraph. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(iv) (A) Notwithstanding any higher rate of interest prescribed pursuant to applicable law, and unless a lower rate of interest is applicable to a delinquent amount owing on a parcel that is the subject of an agreement pursuant to this paragraph, the interest payable together with the remaining installments due under such agreement shall be:

(I) with respect to an agreement for which a twenty-five percent or thirty-five percent down payment was made, calculated at a rate equal to the sum of (a) the rate prescribed for the applicable period pursuant to paragraph (i) of subdivision e of section 11-224.1 of this title and (b) one-half of the difference between such rate and the rate prescribed for such period pursuant to paragraph (ii) of subdivision e of section 11-224.1 of this title; or

(II) with respect to an agreement for which a fifty percent down payment was made, calculated at a rate equal to the rate prescribed for the applicable period pursuant to paragraph (i) of subdivision e of section 11-224.1 of this title.

(B) If a default occurs in any agreement executed pursuant to this paragraph as to either quarterly installments or current taxes, assessments or other legal charges, the rates of interest determined under this subparagraph shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates otherwise prescribed pursuant to law.

(4) The corporation counsel, when submitting an in rem judgment roll pursuant to the provisions of this chapter, may request a severance as to any parcel as to which, before the preparation of said in rem judgment roll is commenced, an agreement was duly made, executed and filed with the commissioner of finance for the payment of all delinquent

taxes, assessments and other legal charges and interest and penalties in installments as provided in this subdivision, and there has been no default in such agreement as to either quarterly installments or current taxes, assessments or other legal charges. Where such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time such agreements are executed an amount equal to the penalty that would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Where a default occurs in such agreement as to either quarterly installments or current taxes, assessments or other legal charges, all payments made under the agreement shall be forfeited and the city shall be entitled to obtain a judgment hereunder as to the parcel as to which the default occurred. Where such default occurred before the submission of the judgment roll, the parcels as to which such default occurs shall be included in said judgment roll amount the parcels to be acquired by the city or by a third party. Where such default has occurred as to a parcel severed pursuant to this subdivision, the corporation counsel shall cause to be entered a supplemental judgment of foreclosure as to such parcel immediately on notification by the commissioner of finance of such default. Where such installment agreement is paid in full, the commissioner of finance shall discontinue the in rem action from which such parcel was severed by issuing a certificate of withdrawal as to such parcel pursuant to the provisions of section 11-413 of this chapter.

HISTORICAL NOTE

Section heading amended L.L. 37/1996 § 8, eff. June 13, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Section added chap 907/1985 § 1

Subd. f amended L.L. 69/1997 § 3, eff. Sept. 11, 1997 and applying to every list of delinquent taxes prepared on or after such date.

Subd. f amended L.L. 37/1996 § 9, eff. May 14, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Subd. h amended L.L. 37/1996 § 10, eff. June 13, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Subd. h amended L.L. 38/1987 § 2

Subd. i added L.L. 37/1996 § 11, eff. June 13, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Subd. i par (3) subpar (iv) amended L.L. 62/2005 § 10, eff. June 6, 2005.

DERIVATION

Formerly § D17-9.0 added chap 411/1948 § 1

Repealed and added chap 823/1975 § 5

Subs c, f amended chap 816/1976 § 1

Sub h added chap 816/1976 § 2

Sub h amended LL 3/1979 § 3

Sub c repealed LL 15/1982 § 5

Subs c, d, e, f relettered LL 15/1982 § 5

(formerly subs d, e, f, g)

Sub g relettered and amended LL 15/1982 § 6

(formerly sub h)

Sub h added LL 15/1982 § 7

CASE NOTES FROM FORMER SECTION

¶ 1. A claim for a setoff may not be raised in an in rem tax foreclosure proceeding brought by the City of N.Y.-Matter of In Rem Tax Foreclosure, 118 Misc. 2d 1081 [1983].

CASE NOTES

¶ 1. A notice received by appellant allowing it until April 10, 1992 to file arrears may be constituted an enlargement of the "last date for redemption" governing its time to answer under Admin. Code §11-409, but there was no further enlargement of "last date for redemption" so as to encompass appellant's unilateral agreement to "pay the taxes due by or before July 3, 1992." A taxpayer who challenges an assessment must nonetheless pay the taxes.-Matter of Tax Foreclosure Action No. 39, 202 AD2d 328 [1994].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-410

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-410 Preference over other actions.

a. Any action brought pursuant to this chapter shall be given preference over all other causes and actions.

b. Actions brought pursuant to this chapter shall take precedence over any proceeding brought to foreclose a mortgage or other lien involving the same property. A parcel included in a list of delinquent taxes which is sold in a mortgage foreclosure sale held after said list is filed may not be sold subject to taxes even if judgment has not yet been entered in the tax foreclosure action. All unpaid taxes and interest and penalties thereon must be paid, in full or by installment agreement pursuant to the provisions of this chapter, out of the proceeds of such sale regardless of whether the mortgage foreclosure lis pendens was filed before or after the filing of the tax foreclosure action, regardless of whether any party to the mortgage foreclosure proceeding has interposed an answer in the tax foreclosure action and regardless of any terms to the contrary in the judgment in the mortgage foreclosure proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-10.0 added chap 411/1948 § 1

Amended chap 823/1975 § 6

Sub b amended LL 3/1979 § 4

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-411

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-411 Presumption of validity.

It shall not be necessary for the city to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the parcels set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in such taxes, assessments or other lawful charges or in the foreclosure thereof must particularly specify in his or her answer such jurisdictional defect or invalidity and must affirmatively establish such defense. A judgment of foreclosure granted in any proceeding brought pursuant to this chapter, which contains recitals that any acts were done or proceedings had which were necessary to give the court jurisdiction or power to grant such judgment of foreclosure, shall be presumptive evidence that such acts were duly performed or proceedings duly had, if such judgment of foreclosure shall have been duly entered or filed in the office of the clerk of the county in which the proceeding was pending and wherein such judgment was granted. The provisions of this chapter shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-11.0 added chap 411/1948 § 1

Amended LL 3/1979 § 5

CASE NOTES FROM FORMER SECTION

¶ 1. In action by City in rem to foreclose unpaid tax liens pursuant to Chapter 17 of Title D of the Admin. Code, mere general denials were ineffective to raise a triable issue but defendant was required affirmatively to allege that the taxes had been paid or that the property was not subject to tax.-In re City of N.Y. v. Feit, 200 Misc. 998, 110 N.Y.S. 2d 425 [1952].

¶ 2. Presumption of regularity as to recitals in judgment of foreclosure that any acts were done or proceedings had which were necessary to give the court jurisdiction or power to grant such judgment of foreclosure can be overcome only by substantial evidence to the contrary and was not overcome by testimony of president of petitioner that petitioner never received notice of foreclosure.-RPL Realty v. Com'r. of Finance, 117 Misc. 2d 321 [1982].

CASE NOTES

¶ 1. Where a judgment in an in rem tax foreclosure is duly entered in the Office of the County Clerk, there is a presumption of regularity of the proceedings taken in the action. That presumption included compliance by the City of New York with all applicable notice, publication and filing requirements, including its mailing of a notice of foreclosure to the property owner, and the owner's mere denial of the receipt of that notice is insufficient to overcome to presumption. In Rem Tax Foreclosure Action No. 47, 29 A.D.3d 955, 817 N.Y.S.2d 69 (2nd Dept. 2006).

NYC Administrative Code 11-412

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-412 Final judgment.

a. The court shall determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this chapter.

b. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed or withdrawn as provided in this chapter and as to which no answer is interposed as provided herein. In addition thereto, such judgment shall contain a direction to the commissioner of finance to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to such lands. Upon the execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption, except as otherwise provided in section 11-424 of this chapter. The appointment and tenure of receivers, trustees or any other persons, including administrators under article seven-A of the real property actions and proceedings law, appointed by an order of a court to manage real property, shall terminate when title to such property vests in the city pursuant to the provisions of this chapter. After such termination, said receivers, trustees or administrators shall be accountable to the courts that appointed them for the faithful performance of their fiduciary obligations during the term of their appointment and to the city for any rents and income received by them for any period subsequent to the date of the vesting of title in the city.

If the city serves a tenant in possession of a dwelling unit with notice of termination of tenancy on grounds other than non-payment of rent, the acceptance of rent for the first forty-five days after termination of tenancy by anyone other than an employee of the department designated by the department to receive such rent shall not be deemed or

construed as a waiver of the city's right to initiate and prosecute a proceeding to terminate the tenancy for good cause.

c. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After two years from the date of the recording of such deed, the presumption shall be conclusive, unless at the time that this subdivision takes effect the two year period since the recording of the deed has expired or less than six months of such period of two years remains unexpired, in which case the presumption shall become conclusive six months after this subdivision takes effect. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive as aforesaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended L.L. 37/1996 § 12, eff. May 14, 1996 and further this

amendment does not apply to any sale of tax liens occurring in fiscal

year 1996 per L.L. 37/1996 § 18

DERIVATION

Formerly § D17-12.0 added chap 411/1948 § 1

Sub e added LL 63/1955 § 1

Subs b, c, d amended chap 100/1963 § 381

Amended chap 823/1975 § 7

Sub b amended chap 816/1976 § 3

Sub b undesignated par added chap 525/1980 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. In enacting Title D, chap 17, of the Admin. Code, it was clearly the intent of the Legislature to provide the City with a method of foreclosing tax liens which is simple in form and procedure, expeditious in operation, inexpensive in cost and summary in nature, and only in limited circumstances could "a proper case to direct a sale" be made out. Such a proper case was not made out by respondent's answer which raised no issue as to validity of the City's liens, but which merely sought to create a surplus sufficient to liquidate respondent's junior lien (273 A.D. 777; Admin. Code § D17-12.0 (a)).-In re City of N.Y., 202 Misc. 911, 108 N.Y.S. 2d 202 [1951].

¶ 2. Where an answer, duly filed and served in a proceeding to foreclose tax liens, showed that the defendant was the owner of the property and that the amount of the tax liens was but a small fraction of the value of the property an order awarding absolute possession and ownership to the City was not proper. Such an order is proper only if the property owner has defaulted in answering and inasmuch as the defendant did not so default the order should have directed a sale of the property so that surplus monies would be available to the defendant.-City of New York v. Chapman Docks Co., 1 App. Div. 2d 895, 149 N.Y.S. 2d 679 [1956].

¶ 3. After property had been foreclosed in an in rem proceeding without a judicial sale, the City Treasurer, as

receiver of the property, paid his receivership balance to the City for delinquent taxes. Although no deficiency was reported in the action, the property owner's objection to the receiver's account was overruled.-Matter of City of New York (Fenton-Young), 281 App. Div. 763, 118 N.Y.S. 2d 280 [1953].

¶ 4. An action to set aside tax deeds on the ground that they are voidable is barred by the two year statute of limitations. However this would not be true if it could be shown that the deeds were absolutely void.-Carolan v. Fieber, 6 Misc. 2d 229, 163 N.Y.S. 2d 830 [1957], aff'd 6 A.D. 2d 1050, 180 N.Y.S. 2d 249 [1958], aff'd 7 N.Y. 2d 916, 197 N.Y.S. 2d 481, 165 N.E. 2d 428 [1959].

¶ 5. Where a tax deed was recorded July 16, 1954 and former owners made application in the tax lien foreclosure proceedings on December 11, 1956 for alleged defects in procedure, their claim was barred.-City of New York v. Carolan, 7 Misc. 2d 17, 163 N.Y.S. 2d 826 [1957], aff'd 6 A.D. 2d 1051, 179 N.Y.S. 2d 517 [1958], aff'd 7 N.Y. 2d 916, 197 N.Y.S. 2d 481, 165 N.E. 2d 428 [1959].

¶ 6. The defendants purchased a house located upon land upon which they paid ground rent to the owner of the land. Thereafter, the City of New York instituted foreclosure proceedings for arrears in taxes against the land and the building thereon erected. As to the City, the house was realty and the deed which the City Treasurer gave to the City of New York conveyed to it an estate in fee simple absolute both to the land and the house thereon erected. Consequently, when the defendants sold the building to the plaintiff, they did not have title thereto and were required to return the purchase price to the plaintiff.-Grossman v. Beck, 19 Misc. 2d 898, 191 N.Y.S. 2d 770 [1959].

¶ 7. The two year conclusive presumption of regularity of tax foreclosure proceedings prevented challenge of the legality of the city's tax title by plaintiff who became the assignee in November 1979 of a mortgage previously assigned to the FDIC in October 1974 where the city recorded a foreclosure deed for the subject premises in January, 1977 without serving notice of foreclosure upon FDIC as the result of an in rem tax foreclosure proceeding begun in October 1975, the mortgage lien of the FDIC having been conclusively foreclosed in January, 1979.-Tobias v. College Towne Homes, Inc., 110 Misc. 2d 287 [1981].

¶ 8. Presumption that all proceedings relevant to a city tax foreclosure deed were regular after two years have passed from the date of the recording of the deed cannot be defeated by the property owner absent a showing that the deed was void when made.-In Rem Tax Foreclosure Action No. 29 Borough of Manhattan, 115 Misc. 2d 663 [1982].

¶ 9. A suit to avoid a tax deed may be instituted by an order to show cause to vacate a default judgment and a plenary action is not the exclusive method available for setting aside a tax deed that has been delivered and recorded.-RPL Realty v. Com'r. of Finance, 117 Misc. 2d 321 [1982].

CASE NOTES

¶ 1. In an action to recover damages for wrongful foreclosure of a tax lien defendant was shown to be vested with title where plaintiff failed to submit written opposition to the motion and the court relied on oral argument. There was no duty owed plaintiff by defendant.-Neiman v. City of New York, 133 AD2d 743 [1987].

¶ 2. City must properly notify owners of in rem foreclosure actions and lack of due process notice to readily ascertainable owners, the city cannot rely on the two-year "finality" provision of § 11-412(c) to bar plaintiffs from action to recover property.-Campbell v. City of NY, 145 Misc. 2d 248 [1989].

¶ 3. Any action to set aside a deed conveying title to the city must be commenced within two years of the date of recording the deed. § 11-412 creates presumption that tax foreclosure actions were regular and this presumption is conclusive after two years.-Lily Pond v. City of New York, 149 AD2d 412 [1989].

¶ 4. Presumption in § 11-412(c) that the prior proceedings in foreclosure action, including the notices issued, were in accordance with the law, becomes conclusive two years from the date the deed was recorded and therefore

operates as a two-year statute of limitations, provided the party has actual notice of the action within this period.-Hatorah v. NYC, 175 AD2d 795 [1991].

¶ 5. Actions to set aside New York City's deed to an in rem foreclosed property must be taken within 2 years as per § 11-412(c). Appellants only "action" during that time was to apply to Board of Estimate for release of City's interest. This was not a true "action" and proves appellant knew of the foreclosure proceeding. Application to vacate foreclosure denied as untimely.-Matter of Foreclosure Action No. 39, 186 AD2d 624 [1992].

¶ 6. Affidavit of mailing and mailing list which appear in record, viewed in context of presumption of regularity with attaches, §11-412(c), amply demonstrate that he was properly and timely served-appellant's remaining contentions are barred by conclusive presumption of regularity, §11-412(c).-Matter of Tax Foreclosure Action No. 34 (Lagna-City of New York), 191 AD2d 679 [1993].

¶ 7. In an in rem tax foreclosure proceeding, all proceedings taken, including all notices required by law, are presumed to be regular and in accordance with the law. This presumption becomes conclusive two years after the recording of the deed by the City and thereby operates as a two year statute of limitations provided the party has actual notice of the foreclosure within the two year period. Where petitioner files an application for the discretionary release of the property before the expiration of the statute of limitations, this constitutes an acknowledgment that petitioner had actual notice of the in rem tax foreclosure action. Therefore, because he did not commence an action to set aside the tax deed within the two year period, he was barred from complaining about any constitutional defect in the tax foreclosure action. Robinson v. City of New York, 638 N.Y.S.2d 157 (App.Div. 2nd Dept. 1996).

¶ 8. A mortgagee who learned of a tax foreclosure deed while there was still time left on the two year statute of limitations pursued an application for with the Board of Estimate. By the time the application was denied, the two year period had expired. The court held that the mortgagee was now precluded from maintaining an action to set aside the foreclosure deed. Thus, an owner who intends to challenge the constitutionality of the City's in rem foreclosure notice procedures need not exhaust administrative remedies but must bring the challenge within the two year period. In effect, the mortgagee should have concurrently pursued the release application and the constitutional challenge within the two year period. ISCA Enterprises v. City of New York, 77 N.Y.2d 688, 569 N.Y.S.2d 927 (1991).

¶ 9. The court refused to apply the doctrine of estoppel against the City, where a city clerk mistakenly accepted a payment check from the owner (and later returned the check upon discovery of the error). Although the owner contended that the clerk's action led it to believe that the property would not be sold, the court found that had the owner acted with reasonable diligence, it would have discovered the true state of affairs. Lily Pond Enterprises, Inc. v. City of New York, 149 A.D.2d 412, 539 N.Y.S.2d 505 (2nd Dept. 1989).

¶ 10. A statement by an owner that "there is no evidence in this case that [owner] had actual notice in time to bring an action" is too equivocal to raise a genuine issue of fact as to notice. Sons of Israel of the Bronx v. City of New York, 292 A.D.2d 222, 739 N.Y.S.2d 54 (1st Dept. 2002).

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NYC Administrative Code 11-412.1

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Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-412.1 Special procedures relating to final judgment and release of class one and class two real property.

Notwithstanding any other provision of law to the contrary:

a. The court shall determine upon proof and shall make a finding upon such proof whether there has been due compliance by the city with the applicable provisions of this chapter.

b. (1) The court shall make a final judgment authorizing the award of possession of any parcel of class one or class two real property described in the list of delinquent taxes not redeemed or withdrawn as provided in this chapter and as to which no answer is interposed as provided herein, and authorizing the commissioner of finance to prepare, execute and cause to be recorded a deed conveying either to the city or to a third party deemed qualified and designated by the commissioner of housing preservation and development full and complete title to such lands. Any such conveyance to a third party shall be for an existing use.

(2) Such third party shall be deemed qualified and shall be designated pursuant to such criteria as are established in rules promulgated by the commissioner of housing preservation and development, provided, however, that such criteria shall include but not be limited to: residential management experience; financial ability; rehabilitation experience; ability to work with government and community organizations; neighborhood ties; and that the commissioner shall consider whether the third party is a responsible legal tenant, not-for-profit organization or neighborhood-based-for-profit individual or organization. The commissioner shall not deem qualified any third party who has been finally adjudicated by a court of competent jurisdiction, within seven years of the date on which such third party would otherwise be deemed qualified, to have violated any section of articles one hundred fifty, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five or two hundred of the penal law or

any similar laws of another jurisdiction, or who has been suspended or debarred from contracting with the city or any agency of the city pursuant to section 335 of the charter during the period of such suspension or debarment. The rules promulgated by the commissioner pursuant to this paragraph may establish other bases for disqualification of a third party.

c. Following the expiration of the four-month period prescribed in subdivision d of this section, but not more than eight months after the date on which, pursuant to subdivision b of this section, the final judgment authorizing the award of possession of a parcel of class one or class two real property was entered, the commissioner of finance may execute a deed, pursuant to subdivision b of this section, with respect to such parcel. The owner of said parcel shall continue to have all of the rights, liabilities, responsibilities, duties and obligations of an owner of such parcel, including, but not limited to, maintaining such parcel in compliance with the housing maintenance, building and fire codes, and all other applicable laws, unless and until the commissioner of finance has prepared and executed a deed conveying to the city or to a third party full and complete title to such parcel. Upon the execution of such deed, the city or the third party shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption, except as otherwise provided in subdivisions e and f of this section. The appointment and tenure of receivers, trustees or any other persons, including administrators under article seven-A of the real property actions and proceedings law, appointed by an order of a court to manage real property, shall terminate when title to such property vests in the city or a third party pursuant to the provisions of this chapter. After such termination, said receivers, trustees or administrators shall be accountable to the courts that appointed them for the faithful performance of their fiduciary obligations during the term of their appointment and to the city or such third party for any rents and income received by them for any period subsequent to the date of the vesting of title in the city or such third party.

If the city serves a tenant in possession of a dwelling unit with notice of termination of tenancy on grounds other than nonpayment of rent, the acceptance of rent for the first forty-five days after termination of tenancy by anyone other than an employee of the department designated by the department to receive such rent shall not be deemed or construed as a waiver of the city's right to initiate and prosecute a proceeding to terminate the tenancy for good cause.

d. Within four months after the date on which, pursuant to subdivision b of this section, the final judgment authorizing the award of possession of a parcel of class one or class two real property was entered, any person claiming to have an interest in such parcel shall have the right to make a payment to the commissioner of finance consisting of all taxes, assessments and other legal charges owing on said parcel, the lawful interest thereon to the date of payment and a penalty of five percent of said payment of taxes, assessments and other legal charges and interest, which penalty may not exceed one thousand dollars. Such payment shall be made in cash or by certified or bank check. Within such four-month period, such interested person may also request an installment agreement from the commissioner of finance. Such agreement shall require, in addition to full payment of the penalty specified in this subdivision at the time such agreement is entered into, the payment at such time of a first installment equal to fifty percent of all taxes, assessments and other legal charges, and the lawful interest thereon, then owing on such parcel, and the payment of the balance of such taxes, assessments and other legal charges and interest in four equal quarterly installments together with all current taxes, assessments and other legal charges that accrue during such period. Upon receipt of payment in full of the amount specified in the first sentence of this subdivision, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order discontinuing the in rem tax foreclosure action as to said property, canceling the notice of pendency of such action as to said property and vacating and setting aside the final judgment. Upon the execution of an installment agreement and payment of the amounts due at the time such agreement is executed as provided in this subdivision, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order vacating and setting aside the final judgment. The entry of either such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before such final judgment was entered. Where the commissioner of finance approves an application requesting an installment agreement pursuant to this subdivision, the order vacating and setting aside the

final judgment shall provide that in the event of any default as to the payment of either quarterly installments or current taxes, assessments or other legal charges during the term of such agreement, all payments under said agreement shall be forfeited and the corporation counsel, immediately upon notification by the commissioner of finance of such default, shall cause to be entered as to such property a supplemental judgment of foreclosure in the in rem action which authorizes the commissioner of finance to prepare, execute and cause to be recorded a deed conveying either to the city or to a third party full and complete title to such lands. Upon the entry of such supplemental judgment, the provisions of subdivisions c through i of this section shall apply in the same manner as such subdivisions would have applied had no payment been made nor installment agreement executed during the four-month period specified in this subdivision.

e. 1. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to the city full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure, the city's interest in such parcel may be released pursuant to this subdivision on the application of any party who has an interest in said parcel as either owner, mortgagee, lienor, or encumbrancer at the time of the city's acquisition thereof where such application is made at any time up to sixteen months from the date on which the deed by which the city acquired title to said parcel was recorded.

2. Any such application shall be made in writing to the commissioner of general services and shall be verified. It shall contain the information required pursuant to paragraph one of subdivision b of section 11-424 of this chapter, the documents required by subdivision c of such section, and shall be accompanied by the fees required by paragraphs three and six of subdivision b of such section. The fee required by paragraph three of subdivision b of section 11-424 of this chapter shall not be refundable.

3. The city's interest in any such parcel shall be released only after payment of the sums of money specified in subdivision d of section 11-424 of this chapter.

4. The provisions contained in subdivision g of section 11-424 of this chapter shall govern such an application, except as follows:

(a) where such provisions are inconsistent with the provisions contained in this subdivision, the provisions contained in this subdivision shall govern such application; and

(b) where the in rem foreclosure release board denies a written request for an installment agreement that was filed in connection with an application for release of the city's interest in a parcel of class one or class two real property and such application was filed within thirty days of the date of the city's acquisition of the property sought to be released, the board may, in its discretion, authorize a release of the city's interest, provided that the applicant thereafter pays all the amounts required to be paid pursuant to subdivision d of section 11-424 of this chapter within thirty days of the date on which a letter requesting such payment is mailed or delivered to such applicant.

5. Upon receipt of all the amounts required to be paid pursuant to this subdivision, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order discontinuing the in rem tax foreclosure action as to said property, canceling the notice of pendency of such action as to said property and vacating and setting aside the final judgment entered pursuant to subdivision b of this section and the deed executed and recorded pursuant to such final judgment as to said property. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before the final judgment was entered, as if the in rem tax foreclosure had never taken place, and shall render said property liable for all taxes, deficiencies, management fees and liens which shall accrue subsequent to those paid in order to obtain the release provided for in this subdivision, or which were, for whatever reason, omitted from the payment made to obtain said release.

f. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to the city full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure and such

parcel is entitled to an exemption under any of the provisions of article four of the real property tax law during all or part of the period covered by the tax items appearing on a list of delinquent taxes, the owner of such parcel may apply for a release of the city's interest in such exempt property under the provisions of subdivision e of this section during the period of time set forth in paragraph one of such subdivision and for an additional period up to ten years from the date on which the deed by which the city acquired title to said property was recorded. The application of such owner shall be accompanied by the nonrefundable fee required by paragraph four of subdivision b of section 11-424 of this chapter and shall contain, in addition to the statements, searches and proofs required by subdivision e of this section, a statement that an exemption under the real property tax law is being claimed. Such application shall also state either that it is accompanied by the written certificate of the comptroller setting forth the precise period during which said property, while owned by such application, and during the period after the city's acquisition up to the date of the certificate if said property was still being used for an exempt purpose after said acquisition, was entitled to an exemption and the exact nature and extent of such exemption or that an application for such written certificate has been filed with the comptroller. On issuing such written certificate, the comptroller shall cancel those tax items which have accrued during the period covered by the certificate to the extent the applicant is entitled to an exemption as set forth in the certificate. A release of the city's interest may be authorized only at the discretion of the in rem foreclosure release board and, except as otherwise provided in paragraph four of subdivision e of this section, subject to all the restrictions set forth in subdivision g of section 11-424 of this chapter. A release to an exempt applicant shall be effected only after said applicant has paid all of the amounts required to be paid by subdivision d of section 11-424 of this chapter, except for those tax items which have been canceled, in whole or in part, pursuant to the comptroller's certificate, within thirty days of the date on which the letter requesting payment is mailed or delivered to the applicant.

g. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to the city or to a third party full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure, the provisions contained in subdivisions f and i of section 11-424 of this chapter for the release of property so acquired shall not be available. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to a third party full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure, the provisions contained in subdivisions e and f of this section for the release of property so acquired shall not be available.

h. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After four months from the date of entry of the final judgment authorizing the award of possession of any parcel of class one or class two real property pursuant to the provisions of this section, the presumption shall be conclusive. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the property county clerk prior to the time that the presumption becomes conclusive as aforesaid. Should any lawsuit or proceeding be commenced to set aside a deed conveying to a third party a parcel of class one or class two real property pursuant to the provisions of this section, such third party shall send to the corporation counsel within ten days of their receipt a copy of any papers served on such third party in such lawsuit or proceeding.

i. If the commissioner of finance does not execute a deed conveying to the city or to a third party a parcel of class one or class two real property within eight months after the entry of final judgment authorizing the award of possession of such parcel pursuant to subdivision b of this section, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order discontinuing the in rem foreclosure action as to said property, canceling the notice of pendency of such action as to said property and vacating and setting aside said final judgment. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before such final judgment was entered.

j. If the commissioner of finance directs the corporation counsel, pursuant to subdivision i of this section, to prepare and cause to be entered an order discontinuing the in rem foreclosure action with respect to a parcel of class one

or class two real property determined to be distressed pursuant to section 11-401.1 of this chapter, the commissioner of housing preservation and development shall evaluate the parcel determined to be distressed and take such action as he or she deems appropriate under the programs, existing at the time of such evaluation, that are designed to encourage the rehabilitation and preservation of existing housing, and shall monitor or cause to be monitored the status of the property. The commissioner of housing preservation and development shall maintain a register of properties determined to be distressed.

HISTORICAL NOTE

Section added L.L. 37/1996 § 13, eff. May 14, 1996 and subd. j eff. May 14, 1997 and further this section does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

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Administrative Code of the City of New York

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NYC Administrative Code 11-412.2

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-412.2 Council review of conveyance to a third party.

The commissioner of finance shall, prior to the execution of a deed conveying full and complete title of any parcel of class one or class two real property to a third party pursuant to subdivision c of section 11-412.1 of this chapter, notify the council of the proposed conveyance. Within forty-five days of such notification, the council may act by local law disapproving the proposed conveyance. In the event the council does not act by local law within such forty-five day period, the council shall be deemed to have approved the proposed conveyance. During such forty-five day period or, if the city council acts by local law pursuant to this section, during the period of time from the notification of the council to the presentation to the mayor of such local law and during any additional period of time prescribed in section 37 of the charter, the eight-month period provided in subdivisions c and i of section 11-412.1 of this chapter shall be tolled.

HISTORICAL NOTE

Section added L.L. 37/1996 § 14, eff. May 14, 1996 and further this

section does not apply to any sale of tax liens occurring in fiscal year

1996 per L.L. 37/1996 § 18

NYC Administrative Code 11-413

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-413 Withdrawal of parcels from foreclosure.

a. The commissioner of finance may, prior to final judgment, withdraw a parcel from a proceeding under this chapter for any of the following reasons, (1) a question which the commissioner deems meritorious has been raised as to the validity of the tax liens affecting the parcel, (2) the city collector has accepted a payment of all taxes and interest which rendered the parcel subject to foreclosure hereunder because the records in the commissioner's office indicated that the principal amount of such taxes was exceeded by the principal amount of subsequent taxes which would not have rendered the parcel subject to foreclosure hereunder and which had been paid prior to the commencement of said proceeding or (3) in cases where the tax foreclosure action cannot be maintained such as, but not limited thereto, where the charges which rendered a parcel subject to foreclosure hereunder have been cancelled or were paid before the commencement of the foreclosure proceeding but such payment was not reported or did not clear for payment until after the commencement of said proceeding, or where a name and address appearing on an owner's registration card or an in rem card filed pursuant to section 11-416 or 11-417 of this chapter and contained in the files of the city collector did not appear in the mailing list used by the commissioner of finance for mailing notices of foreclosure in such proceeding.

b. To effectuate such withdrawal the commissioner of finance shall deliver a certificate of withdrawal to the corporation counsel who shall file it in the office of the county clerk in which the list of delinquent taxes was filed. The filing of such certificate with such county clerk shall effect a discontinuance of the tax foreclosure action as to the affected parcel, and the county clerk shall thereupon note such withdrawal and discontinuance in the copy of the list of delinquent taxes maintained by him or her adjacent to the county clerk's block index of notices of pendency of action and shall cancel and discharge any and all notations of the filing of said list of delinquent taxes as to said parcel that may appear in any other books, records, indices and dockets maintained in said clerk's office.

c. The commissioner of finance shall also deliver a duplicate original certificate of withdrawal to the person entitled to such withdrawal.

d. The commissioner of finance shall recite the parcels so withdrawn and the reasons for withdrawal in an affidavit of regularity to be submitted by the commissioner in each action brought pursuant to this chapter.

e. The commissioner of finance shall issue a certificate of withdrawal whenever taxes and interest are paid, cancelled, liquidated or otherwise lawfully disposed of as to any parcel which was previously severed pursuant to section 11-409 of this chapter because an answer or litigation was pending.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-13.0 added chap 411/1948 § 1

Amended chap 100/1963 § 382

Repealed and added chap 823/1975 § 8

Sub a amended chap 816/1976 § 4

Sub e added chap 816/1976 § 5

Sub a amended LL 45/1976 § 2

(special provision LL 45/1976 § 3)

Amended LL 3/1979 § 6

CASE NOTES FROM FORMER SECTION

¶ 1. Court denied petitioner's application to vacate its default in failing to appear and answer to an in rem tax foreclosure proceeding instituted by the city where right to requested relief was not based on any impropriety in the proceeding or existence of a defense to the tax foreclosure but on fact that petitioner was ignorant of the proceeding and misunderstood certain statements made by the finance administrator and remedy sought by petitioner was not to enforce a right to an equity of redemption but to compel respondent to negotiate an agreement for the installment payment of delinquent taxes which relief is not within the province of the court since only the director of finance may withdraw a parcel from a proceeding at any time prior to final judgment.-In re Madison Street Associates, Inc., 167 (70) N.Y.L.J. (4-11-72) 16, Col. 1 M.

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Administrative Code of the City of New York

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NYC Administrative Code 11-414

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-414 Right of redemption not diminished.

The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-14.0 added chap 411/1948 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-415

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-415 Priority of liens.

Tax liens shall rank in priority as may now, or as may hereafter, be provided by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-15.0 added chap 411/1948 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-416

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-416 Owner's registration cards; mailing tax bills and notices to registered owners or their designees.

a. The commissioner of finance shall maintain a file of owner's registration cards submitted by owners of real property. Each such owner's registration card shall be signed by the owner or a duly authorized representative and shall state the date on which it was filed, the owner's full name and post office address and a description of the premises by reference to the section, block, and lot numbers on the tax map.

b. The commissioner of finance shall mail bills for taxes, charges and assessments to all owners who have filed owner's registration cards as herein provided, but the failure of the commissioner of finance so to mail such bill shall not invalidate or otherwise affect the tax, charge or assessment represented thereby nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this chapter, nor effect the title of the plaintiff or any purchaser under such pro- ceedings.

c. The commissioner of finance shall also mail notice of foreclosure and any other process required by this chapter to all owners who have filed owner's registration cards whenever the parcels as to which such cards were filed are included in a list of delinquent taxes filed pursuant to this chapter. The failure to receive such notice or process as herein provided shall not affect the validity of any action or proceeding brought pursuant to this chapter.

d. An owner who files an owner's registration card may also designate thereon the full name and post office address of a mortgagee, lienor or other person to receive bills and notices. Where such designation is made, the commissioner of finance shall not mail any bills and notices to the owner but shall mail all bills and notices to the owner's designee.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-16.0 added chap 411/1948 § 1

Amended chap 100/1963 § 383

Repealed and added chap 823/1975 § 9

Sub a amended chap 816/1976 § 6

CASE NOTES

¶ 1. Notice provisions in the Administrative Code as applied to owners of property satisfy minimum requirements of due process. Part of the notice provisions are §§ 11-416 and 11-417 providing owner registration card or "in-rem" card filed with finance commissioner. In this case the owner did not file for this card and his challenge on due process grounds is without merit.-Hatorah v. NYC, 175 AD2d 795 [1991].

¶ 2. Where the Commissioner of Finance maintained the file of owner's registration cards, a party (who acquired her interest in a mortgage foreclosure sale) who never filed an owner registration card with the Department of Finance could not set aside a foreclosure on the ground of lack of notice. Moreover, the filing of the lists of property delinquent in taxes with the County Clerk Queens County served as a notice of pendency. Thus, where the list of delinquent properties was on file at the time of plaintiff's acquisition of the subject property, plaintiff had constructive notice of the tax foreclosure proceeding. Solomon v. City of New York, 171 A.D.2d 739, 567 N.Y.S.2d 295 (2nd Dept. 1991).

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Administrative Code of the City of New York

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NYC Administrative Code 11-417

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-417 In rem cards; mailing notices to other interested persons.

a. The commissioner of finance shall, in addition to the file maintained by him or her pursuant to section 11-416 of this chapter, maintain a file of in rem cards submitted by any person having an interest in real property who is not entitled to have tax bills mailed to him or her by the commissioner of finance, including mortgagees, lienors, encumbrancers and owners who have filed owner's registration cards designating someone else to receive bills and notices. Each such in rem card shall be signed by the person filing such card or a duly authorized representative, shall contain a description of the premises by reference to the section, block and lot numbers on the tax map and shall state the date on which said card was filed, the full name and post office address of the person filing said card and the nature of the interest said person has in said premises.

b. The commissioner of finance shall mail a notice of foreclosure and any other process required by this chapter to each person who has filed an in rem card whenever the parcels to which such cards refer are included in a list of delinquent taxes filed pursuant to this chapter. However, failure to receive such notice or process shall not affect the validity of any proceeding brought pursuant to this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-17.0 added chap 411/1948 § 1

Amended chap 100/1963 § 384

Repealed and added chap 823/1975 § 10

Sub a amended chap 816/1976 § 7

CASE NOTES FROM FORMER SECTION

¶ 1. Court **held** without power to open default or permit redemption from foreclosure where corporation conveyed a portion of premises to A who made application for apportionment and whose lot was designated but corporation failed to indicate ownership of the remaining designated lot in the City collector's office. The fact that City failed to mail notice of foreclosure was of no avail.-In re Foreclosure of Tax Liens (Brooklyn), 131 (107) N.Y.L.J. (6-5-54) 11, Col. 8 F.

¶ 2. The in rem foreclosure law which provides for notice by posting and publication upon all parties and publication upon all parties having an interest in real property except for service by mail upon parties whose names appear on the tax rolls or who register with the city collector for receipt of tax bills or in rem notices is constitutional and hence leasee of premises acquired by city who did not register as an interested party was not entitled to actual notice of foreclosure action.-W.S. 23 Realty Corp. v. City of N.Y., 106 Misc. 2d 271, 431 N.Y.S. 2d 272 [1980].

CASE NOTES

¶ 1. A mortgagee who did not file an in rem card was not entitled to personal notice by the City prior to an in rem tax foreclosure. Matter of the City of New York- In Rem Foreclosure Action No. 39, Borough of Queens, 171 A.D.2d 792, 567 N.Y.S.2d 757 (2nd Dept. 1991).

¶ 2. A mortgagee who had not yet filed an in rem registration card was not entitled to a notice of foreclosure. In Rem Tax Foreclosure Action No. 47, 2005 WL 1460315 (App.Div. 2d Dept.).

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NYC Administrative Code 11-418

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-418 Writ of assistance.

The city, after acquiring title to premises under and pursuant to the terms and provisions of this chapter, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-18.0 added chap 411/1948 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-419

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-419 Consolidation of actions.

Actions or proceedings pending in the courts, or otherwise, to cancel a sale of a tax lien on lands a lien upon which is being foreclosed by action under this chapter, shall be terminated upon the institution of a foreclosure action pursuant to this chapter, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-19.0 added chap 411/1948 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-420

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-420 Lands held for public use; right of sale.

Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this chapter, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-20.0 added chap 411/1948 § 1

CASE NOTES

¶ 1. In one case, the court had to decide whether a parcel of land held by the City was subject to claims of adverse possession. The City acquired the property in foreclosure in 1957. Although Admin. Code §11-420 created a presumption that the land was held for public use, that presumption expired in 1960 after a three-year period. Since the City continued to hold the property until 2000, without designating it for public use, municipal ownership did not bar a claimant from establishing its right to title based on proof that it adversely possessed the subject lot for at least ten

years. Eller Media Co. v. Bruckner Outdoor Signs, Inc., 299 A.D.2d 166, 753 N.Y.S.2d 28 (1st Dept. 2002).

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Administrative Code of the City of New York

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NYC Administrative Code 11-421

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-421 Certificate of sale as evidence.

The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this chapter by and against the purchaser and his or her representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the nonpayment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court in a proceeding under this chapter to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-21.0 added chap 411/1948 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-422

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-422 Deed in lieu of foreclosure.

The city may when authorized by resolution of the board of estimate and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this chapter accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-22.0 added chap 411/1948 § 1

Amended chap 823/1975 § 11

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-423

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-423 Sales and foreclosures of tax liens.

Notwithstanding any of the provisions of this chapter the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-24.0 added chap 411/1948 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-424

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-424 Application to the city for release of property acquired by in rem tax foreclosure.

a. (1) The city's interest in property acquired by in rem tax foreclosure may be released pursuant to this section on the application of any party who had an interest in said property as either owner, mortgagee, lienor or encumbrancer at the time of the city's acquisition thereof where such application is made at any time up to two years from the date on which the deed by which the city acquired title to said property was recorded.

(2) Notwithstanding any inconsistent provision of paragraph one of this subdivision to the contrary, the city's interest in property acquired by in rem tax foreclosure may be released pursuant to this section upon application of any party who had an interest in said property as either owner, mortgagee, lienor or encumbrancer at the time of the city's acquisition thereof where such application is made more than two years after the date on which the deed by which the city acquired title to said property was recorded provided such application is authorized by the council as hereinafter provided. An application for such release and the documents required by subdivision c in support thereof shall be filed with the department of citywide administrative services in the manner provided in subdivision b of this section. The department of citywide administrative services shall give the council written notice of the receipt of each such filing. After review and approval of the application by the corporation counsel as to form and eligibility of the applicant, the department of citywide administrative services shall send a copy of such application to the in rem foreclosure release board and to the council. Upon receipt of such application, the in rem foreclosure release board shall take no further action on such application unless the council adopts a resolution within one hundred twenty days following the first stated meeting of the council after receipt of such application authorizing the board to consider such application. If the council fails to adopt a resolution within such one-hundred-twenty-day period, the council shall be deemed to have denied its authorization for the board to consider such application. A resolution of the council pursuant to this paragraph

shall describe the property for which release is sought by borough, tax map, block and lot number and shall specify that release of the city's interest in such property is subject to the approval of the in rem foreclosure release board and to all the conditions and restrictions set forth in this section.

b. 1. Any such application shall be made in writing to the commissioner of citywide administrative services and shall be verified. It shall contain the name and address of the applicant and shall state the date on which and the in rem action by which the city acquired title to the property sought to be released. It shall also contain a statement specifying the nature of the applicant's interest in the property and a full description of the instrument from which the applicant's interest derives including the date of execution, the date and place of the recording or entry of said instrument and the parties thereto. In the event the applicant's interest arises by reason of the death of a prior owner, mortgagee, lienor or encumbrancer, then the application shall also state the applicant's relationship to said decedent and shall include whatever additional information may be necessary to prove the applicant's right to make such application.

2. A fee of two hundred seventy-five dollars shall be paid on the submission of any such application which is subject to the provisions of subdivision f of this section, except that the fee for any such application for the release of property improved by a one or two-family dwelling shall be one hundred dollars.

3. A fee of five hundred fifty dollars shall be paid on the submission of any such application which is subject to the provisions of subdivision g of this section, except that the fee for any such application for the release of property improved by a one or two-family dwelling shall be one hundred dollars.

4. A fee of two hundred seventy-five dollars shall be paid on the submission of any such application which is subject to the provisions of subdivision h of this section within four months from the date on which the deed by which the city acquired title to the subject property was recorded, and a fee of five hundred and fifty dollars shall be paid on the submission of any such application which is subject to the provisions of such subdivision not within four months from such date; except that the fee for any such application which is subject to the provisions of such subdivision for the release of property improved by a one or two-family dwelling shall be one hundred dollars.

5. The fees payable pursuant to paragraphs two, three and four of this subdivision shall not be refundable.

6. In addition to the fees specified in paragraphs two, three and four of this subdivision, there shall be paid on the submission of any application which is subject to this section an amount at least equal to the lesser of nine hundred dollars or the sum specified in paragraph one of subdivision d of this section, which amount shall not be refundable, but shall be applied in reduction of the sum specified in paragraph one of subdivision d of this section; provided, however, that if a release requires the authorization of the in rem foreclosure release board, and such authorization is not given, such additional amount shall be refunded to the applicant.

c. Each application shall be supported by the certified search of the city register or by an official letter, certificate or certified search of any title insurance or abstract company, organized and doing business under the laws of this state. Such supporting instruments shall recite the recording data both as to the deed by which the city acquired title to the parcel sought to be released and the instrument from which the applicant's interest derives. In the event the applicant's interest does not appear of record but is derived by the death of an owner, mortgagee, lienor or encumbrancer of record, then the application shall also be supported by the affidavit of the applicant or other person having information thereof, or by the duly written certificate or certification of the county clerk or the clerk of any surrogate's or other court of record, or by any other instrument or document required by the corporation counsel to substantiate the applicant's right to file such application in compliance with the provisions of this section.

d. The city's interest shall be released only after payment, as to each parcel to be released, of the following sums of money:

1. The principal amount due on all unpaid taxes, assessments, water charges and sewer rents appearing on the list of delinquent taxes and accruing thereafter together with interest at the rate or rates provided by law.

2. Five percent of the amount paid pursuant to the preceding paragraph but not exceeding one thousand dollars for each parcel.

3. Any deficiency which may result to the city after all payments made by it for the repair, maintenance, and operation of the lands, real estate or real property shall have been charged or debited in the appropriate accounts of the city and all rents, license fees and other moneys collected by the city as a result of its operation of the said lands, real estate or real property shall have been credited in such accounts. Any contract for repair, maintenance, management or operation made by the city on which it shall be liable, although payment thereon shall not have been made, shall be deemed a charge or debit to such accounts as though payment had been made. The amounts paid and collected by the city as shown in its accounts and the necessity for making the several payments and contracts to be charged as herein provided shall be conclusive upon the applicant. Where a deficiency under this subdivision shall be created or increased by the failure of the city to collect rents, license fees or other moneys to which the city may have been entitled, the right to collect or to bring action for the same shall be assigned, transferred and set over to the applicant by an instrument in writing.

4. Any and all costs and disbursements which shall have been awarded to the city or to which it may have become entitled by operation of law or which it may have paid or become liable for payment in connection with any litigation between it and the applicant or any person having an estate or interest in the lands, real estate or real property to be released resulting directly or indirectly from the foreclosure by action in rem of the delinquent taxes affecting said lands, real estate or real property.

5. A reasonable monthly fee to be determined by the city, through the department of citywide administrative services, for management services and operations of the lands, real estate or real property by the city prior to the release of said lands, real estate or property.

6. The city, through the department of citywide administrative services, shall also require as additional consideration for such release, the payment of all arrears on mortgages held by the city and all liens accruing to it by operation of law including but not limited to relocation and emergency repair liens.

e. The corporation counsel shall effect the release of the city's interest in property acquired by in rem tax foreclosure, as provided for in this section, by preparing and causing to be entered an order discontinuing the in rem tax forclosure action as to said property, cancelling the notice of pendency of such action as to said property and vacating and setting aside the in rem judgment of foreclosure and the deed executed and recorded pursuant to such judgment of foreclosure as to said property. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held at the time the city acquired title to said property, as if the in rem tax foreclosure had never taken place, and shall render said property liable for all taxes, deficiencies, management fees and liens which shall accrue subsequent to those paid in order to obtain the release provided for in this section, or which were, for whatever reason, omitted from the payment made to obtain said release.

f. If an application pursuant to this section, and the documents required by subdivision c of this section in support thereof, are filed within four months after the date of the city's acquisition of the subject property, said application shall be granted providing the corporation counsel approves the application as to form, timeliness and eligibility of the applicant and providing the applicant has paid all amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting applicant to make such payment is mailed or delivered to the applicant. The city shall not sell or assign any property acquired by in rem tax foreclosure within four months of said acquisition but this provision shall not prevent the city from authorizing condemnation of such property or vesting title thereto in a condemnation proceeding during said four month period. In the event an application pursuant to this section is filed within four months of the city's acquisition by in rem tax foreclosure and title to the subject property vests in condemnation before the city's interest therein has been released by the vacate order provided for herein, the applicant shall be entitled to the condemnation award for such property without the entry of such vacate order, providing the corporation counsel has approved the application as aforesaid and providing that the amounts specified in

subdivision d of this section, if not previously paid, are deducted from said condemnation award, with taxes apportioned to the date of the condemnation title vesting.

g. If an application for a release of the city's interest in property acquired by in rem tax foreclosure, and the documents required by subdivision c of this section in support thereof, have been filed within the time allowed in paragraph one of subdivision a of this section, but more than four months after the date of the city's acquisition or if an application for such release has been authorized by a resolution of the council pursuant to paragraph two of subdivision a of this section and such application and the documents required by subdivision c of this section in support thereof have been filed, the in rem foreclosure release board may, in its discretion, authorize the release of the city's interest in said property pursuant to this section, provided that the application has been approved by the corporation counsel as to form, timeliness and eligibility of the applicant and provided that the city has not sold or otherwise disposed of said property and provided, further, that said property has not been condemned or assigned to any agency of the city and is not the subject of contemplated use for any capital or urban renewal project of the city. The corporation counsel shall effect such discretionary release only where the applicant, after the board's authorization of the release, has paid all the amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting the applicant to make such payment is mailed or delivered to the applicant. The in rem foreclosure release board may also, in its discretion, authorize a release of the city's interest in such property, pursuant to the above provisions, whenever an application for such release, approved as to form, timeliness and eligibility by the corporation counsel, has been filed at any time during the period allowed in subdivision a of this section in which the applicant has requested an installment agreement of the commissioner of citywide administrative services for the payment of the amounts required to be paid by subdivision d of this section, provided that said commissioner has approved such request. The commissioner of citywide administrative services shall not approve any such request unless the applicant shall have given notice by certified mail to each tenant located on the parcel, of the request and shall have given such commissioner an affidavit stating that such notice has been provided, within thirty days after the request. Any false statement in such affidavit shall not in any way affect the validity of the agreement, be grounds for its cancellation or in any way affect the release of the city's interest in the parcel. Such agreement shall require, in addition to full payment of the amounts due under paragraphs two, three, four, five and six of subdivision d of this section, a first installment of fifty percent of the amount due under paragraph one of said subdivision d with the balance of said amount to be paid in four equal quarterly installments together with all current taxes, assessments or other legal charges that accrue during such period; provided, however, that: (i) whenever a request for an installment agreement is made of the commissioner of citywide administrative services by a company organized pursuant to article XI of the private housing finance law with the consent and approval of the department of housing preservation and development or for a parcel which is an owner-occupied residential building of not more than five residential units, the commissioner of citywide administrative services may, as to that portion of the amounts due under paragraph one of subdivision d of this section which became due prior to the acquisition by the article XI company of its interest in the property and as to the amount due under paragraph one of subdivision d of this section in the case of such an owner-occupied building, approve a reduction of such first installment to an amount not less than ten percent of the amount due under paragraph one of subdivision d of this section and an increase in the number of the following equal quarterly installments to a number which shall be equal to three times the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed forty-eight, and (ii) notwithstanding the preceding clause, whenever an installment agreement is requested on or after the date on which this clause takes effect with respect to a parcel that, immediately prior to the city's acquisition thereof by in rem tax foreclosure, was owned by a company organized pursuant to article XI of the state private housing finance law with the consent and approval of the department of housing preservation and development, or with respect to a parcel that is a residential building containing not more than five residential units, a residential condominium unit or a residential building held in a cooperative form of ownership, the commissioner of general services may, as to the amount due under paragraph one of subdivision d of this section, approve an installment agreement containing the terms relating to the required percentage payment for the first installment and the required number of subsequent quarterly installments, that would be applicable to such parcel under paragraph two (but without regard to any reference therein to paragraph three) of subdivision i of section 11-409 of this chapter. For purposes of calculating the number of such following equal quarterly installments, unpaid real estate taxes or the equivalent which

are, on and after July first, nineteen hundred eighty-two, due and payable on an other than quarterly basis, shall be deemed to be payable on a quarterly basis. Where the in rem foreclosure release board denies an application requesting an installment agreement, the board shall authorize a release of the city's interest, provided that the applicant thereafter pays all the amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting such payment is mailed or delivered to the applicant only when said application and the documents required by subdivision c of this section in support thereof were filed within thirty days of the date of the city's acquisition of the property sought to be released. Where the in rem foreclosure release board denies an application requesting an installment agreement which was filed more than thirty days after the date of the city's acquisition, the board may, in its discretion, authorize a release of the city's interest, provided that the applicant thereafter pays all the amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting such payment is mailed or delivered to the applicant. Where the in rem foreclosure release board approves an application requesting an installment agreement, the order releasing the city's interest shall provide that in the event of any default as to the payment of either quarterly installments or current taxes, assessments or other legal charges during the term of such agreement, as set forth in the board's resolution, all payments made under said agreement shall be forfeited and the city shall be entitled to reacquire the property so released. The corporation counsel shall effect such reacquisition by causing to be entered as to such property a supplemental judgment of foreclosure in the in rem action by which said property was originally acquired immediately on notification by the commissioner of finance of such default.

h. An owner of property entitled to an exemption under any of the provisions of article four of the real property tax law during all or part of the period covered by the tax items appearing on a list of delinquent taxes may apply for a release of the city's interest in such exempt property under the provisions of this section during the periods of time set forth herein and for an additional period up to ten years form the date of the city's acquisition of said property by in rem foreclosure. The application of such owner shall contain, in addition to the statements, searches and proofs required by this section, a statement that an exemption under the real property tax law is being claimed. Such application shall also state either that it is accompanied by the written certificate of the comptroller setting forth the precise period during which said property, while owned by such applicant, and during the period after the city's acquisition up to the date of the certificate if said property was still being used for an exempt purpose after said acquisition, was entitled to an exemption and the exact nature and extent of such exemption or that an application for such written certificate has been filed with the comptroller. On issuing such written certificate, the comptroller shall cancel those tax items which have accrued during the period covered by the certificate to the extent the applicant is entitled to an exemption as set forth in the certificate. Where an application by an exempt owner is filed more than four months after the date of the city's acquisition of the subject property, a release of the city's interest may be issued only at the discretion of the in rem foreclosure release board and subject to all the restrictions set forth in the preceding subdivision. A release to an exempt applicant shall be effected only after said applicant has paid all the amounts required to be paid by subdivision d of this section, except for those tax items which have been cancelled, in whole or in part, pursuant to the comptroller's certificate, within thirty days of the date on which a letter requesting payment is mailed or delivered to the applicant.

i. The corporation counsel shall also effect the release of the city's interest in property acquired by in rem foreclosure, as provided for in this action, whenever the commissioner of finance shall accept as to any parcel so acquired, the payment provided for in paragraph two of subdivision a of section 11-413 of this chapter. Said commissioner may accept such payment at any time within four months of the date of the city's acquisition and may further, subject to the approval of the in rem foreclosure release board, accept such payment at any time more than four months after the date of the city's acquisition but less than two years from the date on which the city's deed was recorded providing said property has not been sold or otherwise disposed of nor condemned or assigned to any agency of the city and is not the subject of contemplated use of any capital or urban renewal project of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 16/1991 § 2, eff. Feb. 25, 1991

Subd. a par (2) amended L.L. 59/1996 § 54, eff. Aug. 8, 1996

Subd. b amended L.L. 39/1987 § 1

Subd. b par 1 amended L.L. 59/1996 § 55, eff. Aug. 8, 1996

Subd. b par 6 amended L.L. 37/1996 § 15, eff. May 14, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Subd. b par 6 amended L.L. 16/1991 § 3, eff. Feb. 25, 1991

Subd. d par 2 amended L.L. 38/1987 § 3

Subd. d pars 5, 6 amended L.L. 59/1996 § 56, eff. Aug. 8, 1996

Subd. g amended L.L. 59/1996 § 57, eff. Aug. 8, 1996

Subd. g amended L.L. 37/1996 § 16, eff. June 13, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Subds. g, h, i amended L.L. 16/1991 § 4, eff. Feb. 25, 1991

DERIVATION

Formerly § D17-25.0 added chap 481/1956 § 1

Repealed and added chap 932/1972 § 1

Sub f, g, h amended chap 292/1975 § 1

Sub i added LL 3/1979 § 7

Sub b amended LL 15/1982 § 8

Sub d pars 5, 6 added LL 15/1982 § 9

Sub e amended LL 15/1982 § 10

Subs f, g, h amended LL 15/1982 § 11

Sub g amended LL 29/1982 § 4

CASE NOTES FROM FORMER SECTION

¶ 1. City was directed to accept new application for reconveyance of property acquired by City as timely even though filed after four months where original petition was mailed by petitioner to the Department of Real Estate within four months after the date of acquisition by the City but petitioner was informed by this Department several months later that the petition could not be located.-Matter of Agar v. Bd. of Estimate, 52 Misc. 2d 285, 276 N.Y.S. 2d 334 [1966].

¶ 2. This section does not give City of New York which had a possible lien for building repairs made by its Commissioner of Real Estate as receiver pursuant to Multiple Dwelling Law § 309 in removing a nuisance priority over third mortgagee of subject premises for if so construed it would be unconstitutional.-Chmielewski v. City of N.Y., 29 App. Div. 2d 862, 288 N.Y.S. 2d 396 [1968].

¶ 3. Former owner has a paramount right under this section to reacquire title from City after it has vested therein subject to reinstatement of any liens which may have been placed by or against him affecting the land. Moreover, after the owner fails to exercise his right the lienors have the opportunity to reacquire the title which was vested in the owner.-Astoria Bldg. Corp. v. Old Dutch Lands, Inc., 27 A.D. 2d 905, 280 N.Y.S. 2d 899 [1966], aff'd 20 N.Y. 2d 905, 233 N.E. 2d 122, 286 N.Y.S. 2d 27 [1967].

¶ 4. Section was upheld as constitutional in Old Dutch Lands v. City of N.Y., 55 Misc. 2d 384, 286 N.Y.S. 2d 86 (1967), modified on other grounds, 32 A.D. 2d 649, 301 N.Y.S. 2d 437 [1970]; although court stated that statute should be amended so as to eliminate discrimination in favor of former "lienors" as against former owners of property.

¶ 5. In proceeding to compel Board of Estimate to release its interest in property formerly owned by petitioner which was foreclosed by city on its tax lien, and which was opposed by Board on ground that part of the premises was rented to a saloon and it presence was inimical to the pupils of a public school contiguous to the property, court held that Board had discretion to deny owner of property the right of redemption only if the city had a use for the property and hence had improperly denied petition. In reversing the Court of Appeals held that statutory power of Board of Estimate to grant a release or reconveyance of property acquired by City through in rem foreclosure of a tax lien which is not to be exercised where property has been assigned to any agency of the city does not mean that whenever assignment to a city agency has not been made an application for redemption must be granted. It means that the Board has a discretion only when there has been no assignment and objection by community representatives to the use being made of premises could properly be considered by Board of Estimate in exercising its discretion not to grant a release or reconveyance of property acquired by city through in rem foreclosure of a tax lien.-Matter of Dwyer v. Lindsay, 23 N.Y. 2d 562, 245 N.E. 2d 708, 297 N.Y.S. 2d 942 [1969] reversing, 29 App. Div. 2d 363, 288 N.Y.S. 2d 116 [1968].

¶ 6. Procedure for in rem foreclosure of tax liens in Admin. Code is constitutional and where the city had complied with this procedure the owner of property would not be relieved of his default by permitting him to pay taxes into court some nine months later where the statutory procedure provides for an application to the Board of Estimate within four months after title vests in the City.-In re Foreclosure of Tax Liens (Kahave), 163 (18) N.Y.L.J. (1-27-70) S 13, Col. 6 M.

¶ 7. Method of redemption by discretionary action of Board of Estimate after time to apply to Commissioner of Real Estate has expired is not exclusive and relief compelling a nunc pro tunc consideration of a misplaced or lost application would be granted by the court.-In the Matter of Foreclosure of Tax Liens by the City of N.Y., Borough of Manhattan, 102 Misc. 2d 801 [1979].

¶ 8. Where plaintiff was the owner of a number of delinquent parcels and failed to pay some $227,000 in tax arrears for about nine years the Board of Estimate, which has absolute discretion to grant or deny a release of the city's interest in a parcel of real property acquired by in rem tax foreclosure pursuant to this section, did not arbitrarily or capriciously refuse the release.-Solomon v. City of N.Y. Dept. of General Services, 94 App. Div. 2d 283 [1983].

¶ 9. Charitable and educational organization which qualified for partial tax exemption, owning realty foreclosed upon in rem by city for failure to pay tax bills which did not reflect partial tax exempt status due to organ.'s failure to register prop. with city as partially tax exempt, was entitled to cancellation of tax items accrued to extent of exemption originally granted. City's refusal to cancel same was arbitrary and capricious.-U.O.T.S., Inc. v. Goldin, 120 Misc. 2d 345 [1983].

¶ 10. Board of Estimate, in deciding whether to grant application for redemption of real prop. acquired by N.Y.C.

through in rem foreclosure of tax lien (subd. g) need not make specific findings nor explain the reasons for its decision since the relief sought is discretionary. However, review of bd.'s action is permitted where it exercises it in an illegal or unconstitutional matter, which is not the case here.-Anthony Benigno v. N.Y.C., 123 Misc. 2d 375 [1983].

¶ 11. Placing burden on property owner to recoup "excess value" after an in rem foreclosure for nonpayment of taxes is constitutional.-Matter of In Rem Tax Foreclosure Action No. 37, 189 (72) N.Y.L.J. (4-14-83) 14, Col. 5 M.

CASE NOTES

¶ 1. The Board of Estimate has "absolute discretion to grant or deny release" and "is not required to give any reasons for its actions".-Cecil Wilson v. City of New York, 135 AD2d 441 [1987].

¶ 2. Delinquent taxpayer may not commence a proceeding challenging the accuracy of the city's figures or demanding production of the city's records regarding the "deficiency" charges without paying such charges first.-Meadows v. Real Prop. Div. Commissioner, 139 AD2d 46 [1988].

¶ 3. Dissolved corporation is ineligible to apply for release of its formerly owned property which city has acquired.-Matter of Lewis v. Schwartz, 119 AD2d 116 [1988].

¶ 4. Statute of limitations began to run on the date of the city's letter (July 27, 1984) proposing to release its interest in property upon the plaintiffs payment of penalties and deficiency charges. Plaintiffs did not challenge the accuracy of the figures, which allows a 4-month statute of limitations, but that the city wrongfully refused their timely tender of cash previously (January 14, 1983). Statute of limitations applicable to the instant action is 2 years from recording tax foreclosure deed, § 11-412(c). The instant action was commenced within that period and city's motion for summary judgement denied.-Rosa v. City of NY, 142 AD2d 564 [1988].

¶ 5. Where a corporation owned real property and subsequently was dissolved by reason of failure to pay franchise taxes, the corporation still may apply for release of the property under this section. Matter of 172 East 122 Street Tenants Association v. Schwarz, 73 N.Y.2d 340, 540 N.Y.S.2d 420 (1989).

¶ 6. A court appointed referee in a mortgage foreclosure action does not qualify as an "owner" under this section and cannot apply for release of the City's interest in the property. Hartsfield v. City of New York, Division of Real Property, 146 A.D.2d 141, 539 N.Y.S.2d 896 (1st Dept. 1989).

¶ 7. Petitioner applied to the Board of Estimate for release of properties, acquired by the City of New York pursuant to a judgment entered in an in rem tax foreclosure action, pursuant to the Admin. Code of the City of New York § 11-424. The city's motion to dismiss on the ground that it was barred by the statute of limitations was proper because under Admin. Code § 11-412(c) upon execution of the deeds to the city, the prior proceedings in the foreclosure action including the notices issued, were presumptively regular and in accordance with the law. Thus, since there was adequate notice provided the presumption of regularity became conclusive two years from the date the deeds were recorded.-ISCA Enters v. City of New York, 160 AD2d 698.

¶ 8. Pursuant to Admin. Code § 11-424, 502 West 135th Street Corporation (corporation) filed in application with the Department of General Services' Division of Real Property (DRP) seeking release of the City's interest in the subject property which had been previously acquired in an in rem proceeding. Although this court was required to reverse respondent corporation counsel's approval of corporation's release application and void the transfer of the building to tenant's association, who had made vast improvements to the property, it calls for legislation to relieve this type of inequity and injustice.-502 W. 135th Street Tenants Assoc. v. Zimroth, 160 AD2d 453.

¶ 9. Where the taxpayer failed to avail itself of the four month mandatory release period, delayed its request for relief until the 20 month discretionary release period had nearly expired and failed to appear at a hearing, the City reasonably exercised its discretion in denying the application for release. Matter of 195 South 4th Street Realty Corp. v.

City of New York, 160 A.D.2d 875, 554 N.Y.S.2d 309 (2nd Dept. 1990).

¶ 10. Discretionary denials of applications for release of properties made pursuant to Admin. Code § 11-424 (g) will be overturned by courts only upon showing of fraud or illegality.-Alleyne v. Board of Estimate, 176 AD2d 607 [1991].

¶ 11. Application for discretionary release denied pursuant to § 11-424(g) after petitioner failed to pay required assessment pursuant to mandatory application granted under § 11-424(f). Petitioner's application for an installment agreement was more than 30 days after respondent acquired title giving city absolute discretion under § 11-424(g) to grant or deny the release. Finally, actual notice of pendency of the foreclosure proceeding suffices to meet the requirements of due process.-Upper East Side v. City of NY, 186 AD2d 383 [1992].

¶ 12. Once four months have passed since the acquisition of the property by the City and the petitioner failed to pay the outstanding taxes due within 30 days of the date of a letter requesting her to do so, the release of the property become discretionary rather than mandatory. That discretion will not be disturbed absent a showing of fraud or illegality. Matter of Grant v. In Rem Release Board, 640 N.Y.S.2d 227 (App.Div. 2d Dept. 1996).

¶ 13. The City was authorized, under § 11-424(e), to create a lien on the subject premises for all taxes, deficiencies, management fees which accrued subsequent to those paid by the owner for the procurement of a release of the City's interest in the property acquired by in rem tax foreclosure, or which were, for whatever reason, omitted from the payment made to obtain the release. Alexis v. City of New York, 211 A.D.2d 738, 622 N.Y.S.2d 106 (2nd Dept. 1995).

¶ 14. The City took over the property under a tax deed where the owner failed to pay for sidewalk repairs which the City had made. However, the court set aside the tax deed as unconscionable, where the property owner was never notified when the City foreclosed and took over the property, where the City continued to bill the owner for real estate, water and sewer taxes, which the owner continued to pay, and where the property owner did not learn of the foreclosure until the four month redemption period specified in the statute had expired. In Re Application of 317 West 145th Street Corp. v. City of New York Department of Finance, 630 N.Y.S.2d 316, 218 A.D.2d 508, leave to appeal granted, 87 N.Y.2d 809, 642 N.Y.S.2d 195 (App.Div. 1st Dept. 1995).

¶ 15. After a judgment of foreclosure was entered and the deed transferring title to the City was recorded, the application of petitioners to release the City's property interest was approved upon the condition that they pay the arrears and charges within 30 days of billing. Where they failed to make the required payments within the deadline, petitioners could not be heard to complain of any procedural defects in the underlying foreclosure action. In Rem Tax Foreclosure Action No. 34, Borough of the Bronx, 189 A.D.2d 681, 592 N.Y.S.2d 374 (1st Dept. 1993).

¶ 16. The only permissible method for reviewing the City's denial of an application for release of the City's interest in property acquired through in rem foreclosure, is an Article 78 proceeding. Seagate Sisterhood v. Department of Housing Preservation and Development of the City of New York, 184 A.D.2d 503, 584 N.Y.S.2d 602 (2nd Dept. 1992).

¶ 17. The four month redemption period began when the City sent the owner notice of the in rem foreclosure, not the later time at which petitioner allegedly received actual notice. Moreover, absent a showing that fraud or illegality was involved, the court will not interfere with the City's exercise of discretion as to whether to allow the redemption of property (acquired by in rem tax foreclosure) after the four month mandatory release period as expired. Swift v. Board of Estimate of the City of New York, 178 A.D.2d 534, 577 N.Y.S.2d 636 (2nd Dept. 1991); see also Matter of the Application of Upper East Side Community Development Corp., 183 A.D.2d 383, 588 N.Y.S.2d 176 (1st Dept. 1992).

¶ 18. Once the four month mandatory release period has expired, the City has discretion as to whether to release the property upon tender of taxes due. Thus, even in a sympathetic case where the owner was 80 years old when she purchased the property and had delegated the management of the property to tenants, who had neglected to pay the

taxes, the court did not have the power to compel the City to redeem the property. Izquierdo v. Board of Estimate, 141 A.D.2d 337, 529 N.Y.S.2d 91 (1st Dept. 1988).

¶ 19. Where an applicant has applied for a discretionary release of property (application made beyond the four month period for redeeming property as of right) and the application has been rejected by the City, the court will not grant the applicant discovery of the policies of the Division of Real Property, absent an initial showing of fraud or illegality. Levine v. Board of Estimate, 143 A.D.2d 598, 533 N.Y.S.2d 280 (1st Dept. 1988).

¶ 20. Where tax delinquencies were frequent, chronic and substantial, the City reasonably exercised discretion in refusing to return the property to the petitioner. Vanech v. City of New York, N.Y.L.J., Nov. 15, 2000, page 26, col. 2 (Sup.Ct. New York Co.).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-424.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-424.1 In rem foreclosure release board.

There shall be an in rem foreclosure release board consisting of the mayor, the speaker of the city council, the affected borough president, the corporation counsel and the commissioner of finance. For the purposes of this section, the affected borough president shall be the president of the borough in which a property proposed for release pursuant to this section is located. Members of the board may, by written authority filed with the board and with the city clerk, appoint delegates to act on their behalf as members of the board. The board shall have the power, acting by resolution, to authorize the release of the city's interest in property acquired by in rem tax foreclosure in accordance with sections 11-412.1 and 11-424 of the code based upon a determination, in its discretion, that such release would be in the best interests of the city. The board shall act after a meeting at which the public has been provided an opportunity to comment on the proposed action. A resolution of the board authorizing a release of the city's interest in any property shall be adopted only upon the affirmative vote of not less than a majority of all the members of the board. The board may consider any information it deems relevant to a determination. The board shall not be required to state the reasons for its determination.

HISTORICAL NOTE

Section amended L.L. 37/1996 § 17, eff. May 14, 1996 and further this amendment does not apply to any sale of tax liens occurring in fiscal year 1996 per L.L. 37/1996 § 18

Section added L.L. 16/1991 § 1, eff. Feb. 25, 1991. [See Note 1]

NOTE

1. Provisions of L.L. 16/1991:

§ 5. The in rem foreclosure release board established in section 1 of this act shall succeed to the powers of the board of estimate of the City of New York relating to the discretionary release of property acquired by the city by in rem tax foreclosure and shall exercise such powers in continuation of their exercise by such board of estimate. The in rem foreclosure release board shall determine any applications or other matters relating to such powers which were timely filed under the provisions of section 11-424 of the administrative code of the City of New York in effect prior to the effective date of this local law and which were pending on such effective date.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-425

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-425 Agreements for payment of delinquent taxes and charges in installments.

a. During the period beginning on May ninth, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred seventy-seven, the commissioner of finance or, when so specified hereinafter, the commissioner of general services, shall be authorized and empowered to make and execute agreements in the circumstances and subject to the terms, conditions and limitations set forth in the following subdivisions of this section; provided, however, that if the commissioner of finance or, where applicable, the commissioner of general services determines in his or her sole discretion that good cause exists, he or she may make and execute such agreements during an additional period ending not later than July thirty-first, nineteen hundred seventy-seven.

b. (1) Whenever it shall appear that a tax lien on a parcel has been due and unpaid for a period of at least six months from the date on which the tax, assessment or other legal charge represented thereby became a lien, the commissioner of finance may enter into an agreement with the owner of such parcel or other person claiming to have an interest therein providing for the payment of such delinquent taxes, assessments or other legal charges and interest and penalties in installments, the first of which shall be equal to at least fifteen percent of such arrears and shall be payable upon the execution of such agreement. Each remaining installment shall be equal to at least an amount produced by dividing the balance of such arrears by a factor determined by multiplying the number of quarters of such arrears by two hundred per cent. In no event, however, shall the factor referred to in the preceding sentence be in excess of thirty-two. Each such remaining installment shall be payable quarterly on the first days of July, October, January and April.

(2) If an agreement authorized by the preceding paragraph is executed prior to the time the commissioner of finance files in the office of the appropriate county clerk a list of delinquent taxes covering the borough or portion of the borough in which the subject parcel is located, such parcel shall be excluded from such list of delinquent taxes,

provided, at the time such list is filed, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid as they became due or within the period of grace provided by law. In the event of any default in the agreement or any failure to make timely payment of any current item, the parcel shall, if then delinquent for the applicable period specified in section 11-404 of this chapter, be eligible for inclusion in any list of delinquent taxes thereafter filed.

(3) If an in rem foreclosure action has been commenced against any parcel prior to May ninth, nineteen hundred seventy-seven, the commissioner of finance may, notwithstanding the provisions of paragraph three of subdivision a of section 11-413 of this chapter, enter into an agreement authorized and described in the foregoing provisions of this section with respect to such parcel. However, if such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time said agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Any parcel which is the subject of an agreement made pursuant to this paragraph may, prior to final judgment, be withdrawn from the action, provided there has been no default in the agreement, and provided further that all current taxes, assessments or other legal charges are paid when they become due or within the period of grace provided by law. Such withdrawal shall be effected by the commissioner of finance in the manner provided in section 11-413 of this chapter.

(4) Any person who, prior to May ninth, nineteen hundred seventy-seven, has made, executed and filed with the commissioner of finance an agreement pursuant to the provisions of paragraph three of subdivision a of section 11-413 of this chapter, shall be permitted to make application to the commissioner of finance for the purpose of having such agreement cancelled and a new agreement executed as hereinabove provided.

If an agreement executed prior to May ninth, nineteen hundred seventy-seven is not cancelled as herein provided, any installments due and payable under such agreement on or after July first, nineteen hundred seventy-seven shall be subject to interest at the rate specified in paragraph five of this subdivision, but only if, as of July first, nineteen hundred seventy-seven, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in said paragraph five.

(5) When an agreement has been entered into pursuant to any of the preceding paragraphs of this subdivision, the commissioner of finance shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, charge, collect and receive interest on the arrears due and payable under such agreement, to be calculated at the rate of seven percent per annum from July first, nineteen hundred seventy-seven to the date of payment of each installment. Any interest accrued or accruing prior to July first, nineteen hundred seventy-seven shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this section, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. In the event of any default or failure to make timely payment of any current item, the seven percent rate of interest specified in this paragraph shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates otherwise specified in this title.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized by this section, the commissioner of finance may in his or her discretion include in such agreements such additional terms and conditions, not inconsistent with this section, as he or she determines to be necessary in order to properly carry out the provisions of this section. The commissioner may also adopt such rules and regulations as may be necessary to carry out the provisions of this section.

c. (1) If, pursuant to the provisions of section 11-424 of this chapter, an application for the release of property acquired by the city through in rem tax foreclosure is made within the four-month period specified in subdivision f of section 11-424 of this chapter, and provided such application is made during the period specified in subdivision a of this section, the following paragraphs of this subdivision shall, at the election of the applicant, apply with respect to such application and the release sought thereby.

(2) At the time of filing the application for release, an applicant who elects to have the provisions of this subdivision apply to him or her, shall pay to the city the amounts specified in paragraphs two, three and four of subdivision d of section 11-424 of this chapter, for this purpose, the amount specified in paragraph two thereof shall be deemed to be the amount which would have been required to be paid thereunder had this section not been in effect. Concurrent with the making of such payment, the applicant shall enter into an agreement with the commissioner of general services providing for the payment of all current taxes, assessments or other legal charges on the property as they become due or within the grace period provided by law, and, in addition, providing for the payment of the amount specified in paragraph one of subdivision d of section 11-424 of this chapter in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement. The balance of such amount shall be payable in twelve equal quarterly installments, each of which shall be paid quarterly on the first days of July, October, January and April.

(3) Pending approval by the corporation counsel of an application for release as to form, timeliness and eligibility of the applicant, all payments made pursuant to the preceding paragraph shall be held in escrow; in the event the corporation counsel disapproves the application, such payments shall be returned to the applicant, and the agreement executed by the applicant shall thereupon be cancelled.

(4) In the case of any agreement made and executed pursuant to paragraph two hereof, interest on any installment due and payable thereunder shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, be charged, collected and received at the rate of seven percent per annum from July first, nineteen hundred seventy-seven to the date of payment of each installment. Any interest accrued or accruing prior to July first, nineteen hundred seventy-seven shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this subdivision, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law.

(5) No release for which application has been made pursuant to this subdivision shall be granted until the final payment under the agreement herein provided is received by the city. Upon receipt of such final payment by the city the corporation counsel shall effect the release in the manner provided in section 11-424 of this chapter. In the event of any default in an agreement executed as provided in this subdivision or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement shall thereupon become void, the release process shall be terminated, and all payments theretofore made shall be forfeited to the city.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized thereby, the commissioner of general services may in his or her discretion include in such agreements such additional terms and conditions, not inconsistent with this subdivision, as the commissioner determines to be necessary in order to properly carry out the provisions hereof. The commissioner of general services may also adopt such rules and regulations as may be necessary to carry out the provisions of this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-26.0 added LL 36/1977 § 2

(legislative findings, temporary financial hardship LL 36/1977 § 1)

Sub c par 2 amended LL 29/1982 § 5

Sub b par 1 amended LL 29/1982 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-426

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-426 Agreements for payment of delinquent taxes and charges in installments.

a. During the period beginning on December second, nineteen hundred seventy-seven and ending on March thirty-first, nineteen hundred seventy-eight, the commissioner of finance, or, when so specified hereinafter, the commissioner of general services, shall be authorized and empowered to make and execute agreements in the circumstances and subject to the terms, conditions and limitations set forth in the following subdivisions of this section.

b. (1) Whenever it shall appear that a tax lien on a parcel has been due and unpaid for a period of at least six months from the date on which the tax, assessment or other legal charge represented thereby became a lien, the commissioner of finance may enter into an agreement with the owner of such parcel or other person claiming to have an interest therein providing for the payment of such delinquent taxes, assessments or other legal charges and interest and penalties in installments, the first of which shall be equal to at least fifteen percent of such arrears and shall be payable upon the execution of such agreement. Each remaining installment shall be equal to at least an amount produced by dividing the balance of such arrears by a factor determined by multiplying the number of quarters of such arrears by two hundred percent. In no event, however, shall the factor referred to in the preceding sentence be in excess of thirty-two. Each such remaining installment shall be payable quarterly on the first days of July, October, January and April.

(2) If an agreement authorized by the preceding paragraph is executed prior to the time the commissioner of finance files in the office of the appropriate county clerk a list of delinquent taxes covering the borough or portion of the borough in which the subject parcel is located, such parcel shall be excluded from such list of delinquent taxes, provided, at the time such list is filed, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid as they became due or within the period of grace provided by law. In the event of any default in the agreement or any failure to make timely payment of any current item, the parcel shall, if then delinquent

for the applicable period specified in section 11-404 of this chapter, be eligible for inclusion in any list of delinquent taxes thereafter filed.

(3) If an in rem foreclosure action has been commenced against any parcel prior to December second, nineteen hundred seventy-seven, the commissioner of finance may, notwithstanding the provisions of paragraph three of subdivision a of section 11-413 of this chapter, enter into an agreement authorized and described in the foregoing provisions of this section with respect to such parcel. However, if such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time said agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Any parcel which is the subject of an agreement made pursuant to this paragraph may, prior to final judgment, be withdrawn from the action, provided there has been no default in the agreement, and provided further that all current taxes, assessments or other legal charges are paid when they become due or within the period of grace provided by law. Such withdrawal shall be effected by the commissioner of finance in the manner provided in section 11-413 of this chapter.

(4) Any person who, prior to December second, nineteen hundred seventy-seven, has made, executed and filed with the commissioner of finance an agreement pursuant to the provisions of paragraph three of subdivision a of section 11-413 of this chapter, shall be permitted to make application to the commissioner of finance for the purpose of having such agreement cancelled and a new agreement executed as hereinabove provided.

If an agreement executed prior to December second, nineteen hundred seventy-seven is not cancelled as herein provided, any installments due and payable under such agreement on or after April first, nineteen hundred seventy-eight shall be subject to interest at the rate specified in paragraph five of this subdivision, but only if, as of April first, nineteen hundred seventy-eight, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in said paragraph five.

(5) When an agreement has been entered into pursuant to any of the preceding paragraphs of this subdivision, the commissioner of finance shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, charge, collect and receive interest on the arrears due and payable under such agreement to be calculated at the rate of seven percent per annum from April first, nineteen hundred seventy-eight to the date of payment of each installment. Any interest accrued or accruing prior to April first, nineteen hundred seventy-eight shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this section, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. In the event of any default or failure to make timely payment of any current item, the seven percent rate of interest specified in this paragraph shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates otherwise specified in this title.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized by this section, the commissioner of finance may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this section, as such commissioner determines to be necessary in order to properly carry out the provisions of this section. The commissioner of finance may also adopt such rules and regulations as may be necessary to carry out the provisions of this section.

c. (1) If, pursuant to the provisions of section 11-424 of this chapter, an application for the release of property acquired by the city through in rem tax foreclosure is made within the four-month period specified in subdivision f of section 11-424 of this chapter, and provided such application is made during the period specified in subdivision a of this

section, the following paragraphs of this subdivision shall, at the election of the applicant, apply with respect to such application and the release sought thereby.

(2) At the time of filing the application for release, an applicant who elects to have the provisions of this subdivision apply to him or her, shall pay to the city the amounts specified in paragraphs two, three and four of subdivision d of section 11-424 of this chapter, for this purpose, the amount specified in paragraph two thereof shall be deemed to be the amount which would have been required to be paid thereunder had this section not been in effect. Concurrent with the making of such payment, the applicant shall enter into an agreement with the commissioner of general services providing for the payment of all current taxes, assessments or other legal charges on the property as they become due or within the grace period provided by law, and, in addition, providing for the payment of the amount specified in paragraph one of subdivision d of section 11-424 of this chapter in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement. The balance of such amount shall be payable in twelve equal quarterly installments, each of which shall be paid quarterly on the first days of July, October, January and April.

(3) Pending approval by the corporation counsel of an application for release as to form, timeliness and eligibility of the applicant, all payments made pursuant to the preceding paragraph shall be held in escrow; in the event the corporation counsel disapproves the application, such payments shall be returned to the applicant, and the agreement executed by him or her shall thereupon be cancelled.

(4) In the case of any agreement made and executed pursuant to paragraph two thereof, interest on any installment due and payable thereunder shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, be charged, collected and received at the rate of seven percent per annum from April first, nineteen hundred seventy-eight to the date of payment of each installment. Any interest accrued or accruing prior to April first, nineteen hundred seventy-eight shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this subdivision, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law.

(5) No release for which application has been made pursuant to this subdivision shall be granted until the final payment under the agreement herein provided is received by the city. Upon receipt of such final payment by the city the corporation counsel shall effect the release in the manner provided in section 11-424 of this chapter. In the event of any default in an agreement executed as provided in this subdivision or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement shall thereupon become void, the release process shall be terminated, and all payments theretofore made shall be forfeited to the city.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized thereby, the commissioner of general services may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this subdivision, as the commissioner determines to be necessary in order to properly carry out the provisions hereof. The commissioner of general services may also adopt such rules and regulations as may be necessary to carry out the provisions of this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-27.0 added LL 86/1977 § 1

Sub b par 1 amended LL 29/1982 § 6

Sub c par 2 amended LL 29/1982 § 6

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-427

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-427 Agreements for payment of delinquent taxes and charges in installments.

a. During the period beginning September first, nineteen hundred seventy-eight and ending December thirty-first, nineteen hundred seventy-eight, the commissioner of finance, or, when so specified hereinafter, the commissioner of general services, shall be authorized and empowered to make and execute agreements in the circumstances and subject to the terms, conditions and limitations set forth in the following subdivisions of this section; provided, however, that if the commissioner of finance or, where applicable, the commissioner of general services, determines in his or her sole discretion that good cause exists, he or she may make and execute such agreements during an additional period ending not later than January thirty-first, nineteen hundred seventy-nine.

b. (1) Whenever it shall appear that a tax lien on a parcel has been due and unpaid for a period of at least six months from the date on which the tax, assessment or other legal charge represented thereby became a lien, the commissioner of finance may enter into an agreement with the owner of such parcel or other person claiming to have an interest therein providing for the payment of such delinquent taxes, assessments or other legal charges and interest and penalties in installments, the first of which shall be equal to at least fifteen percent of such arrears and shall be payable upon the execution of such agreement. Each remaining installment shall be equal to at least an amount produced by dividing the balance of such arrears by a factor determined by multiplying the number of quarters of such arrears by two.

In no event, however, shall the factor referred to in the preceding sentence be in excess of thirty-two. Each such remaining installment shall be payable quarterly on the first days of July, October, January and April.

(2) If an agreement authorized by the preceding paragraph is executed prior to the time the commissioner of

finance files in the office of the appropriate county clerk a list of delinquent taxes covering the borough or portion of the borough in which the subject parcel is located, such parcel shall be excluded from such list of delinquent taxes, provided, at the time such list is filed, there is no default in the agreement and all current taxes, assessments or other legal charges were paid as they became due or within the period of grace provided by law. In the event of any default in the agreement or any failure to make timely payment of any current item, the parcel shall, if then delinquent for the applicable period specified in section 11-404 of this chapter, be eligible for inclusion in any list of delinquent taxes thereafter filed.

(3) If an in rem foreclosure action has been commenced against any parcel prior to September first, nineteen hundred seventy-eight, the commissioner of finance may, notwithstanding the provisions of paragraph three of subdivision a of section 11-413 of this chapter, enter into an agreement authorized and described in the foregoing provisions of this section with respect to such parcel. However, if such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time said agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Any parcel which is the subject of an agreement made pursuant to this paragraph may, prior to final judgment, be withdrawn from the action, provided there has been no default in the agreement, and provided further that all current taxes, assessments or other legal charges are paid when they become due or within the period of grace provided by law. Such withdrawal shall be effected by the commissioner of finance in the manner provided in section 11-413 of this chapter.

(4) Any person who, prior to September first, nineteen hundred seventy-eight, has made, executed and filed with the commissioner of finance an agreement pursuant to the provisions of paragraph three of subdivision a of section 11-413 of this chapter, shall be permitted to make application to the commissioner of finance for the purpose of having such agreement cancelled and a new agreement executed as hereinabove provided.

If an agreement executed prior to September first, nineteen hundred seventy-eight is not cancelled as herein provided, any installments due and payable under such agreement on or after February first, nineteen hundred seventy-nine shall be subject to interest at the rate specified in paragraph six of this subdivision, but only if, as of February first, nineteen hundred seventy-nine, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in said paragraph six.

(5) Notwithstanding the preceding paragraphs of this subdivision, no owner of, or other person claiming to have an interest in, any parcel shall be eligible to enter into an agreement authorized by such paragraphs where such parcel was included in an in rem foreclosure action but was severed therefrom pursuant to the judgment of foreclosure in such action because an answer was still pending as to such parcel. The commissioner of finance may, however, on notice to the corporation counsel, enter into an agreement with such owner or other interested person providing for the payment of all current taxes, assessments or other legal charges on the parcel as they become due or within the grace period provided by law, and, in addition, providing for payment of the amount of all delinquent taxes, assessments or other legal charges and interest due as of the date the agreement is executed in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement, and the balance of which shall be payable in twelve equal quarterly installments, each of which shall be paid on the first days of July, October, January and April. In addition, there shall be paid to the commissioner of finance at the time such agreement is executed a penalty equal to five percent of the amount of the delinquent taxes, assessments or other legal charges and interest due as of the date of the agreement, which penalty shall not exceed five hundred dollars. Any installments due and payable on or after February first, nineteen hundred seventy-nine under an agreement described in this paragraph shall be subject to interest at the rate specified in paragraph six of this subdivision, but only if, as of February first, nineteen hundred seventy-nine, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the

manner and shall be subject to all the conditions provided in said paragraph six.

Upon receipt of the final payment due under an agreement executed pursuant to this paragraph, the commissioner of finance shall discontinue the in rem action pending with respect to the parcel which is the subject of such agreement, and shall cancel the lis pendens pertaining thereto by issuing a certificate of withdrawal pursuant to section 11-413 of this chapter. In the event of any default in such agreement or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement and the answer which was the basis for the severance of the subject parcel from the in rem action shall both be deemed null and void and the city shall be entitled to acquire title to such parcel by entry of an appropriate supplemental judgment of foreclosure in such in rem action without further notice to the answering party.

(6) When an agreement has been entered into pursuant to any of the preceding paragraphs of this subdivision, the commissioner of finance shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, charge, collect and receive interest on the arrears due and payable under such agreement, to be calculated at the rate of seven percent per annum from February first, nineteen hundred seventy-nine to the date of payment of each installment. Any interest accrued or accruing prior to February first, nineteen hundred seventy-nine shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this section, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. In the event of any default or failure to make timely payment of any current item, the seven percent rate of interest specified in this paragraph shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates otherwise specified in this chapter.

(7) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized by this section, the commissioner of finance may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this section, as the commissioner determines to be necessary in order to properly carry out the provisions of this section. The commissioner may also adopt such rules and regulations as may be necessary to carry out the provisions of this section.

c. (1) If, pursuant to the provisions of section 11-424 of this chapter, an application for the release of property acquired by the city through in rem tax foreclosure has been filed within the four-month period specified in subdivision f of that section, and the sixty-day period for payment referred to in that subdivision has not expired prior to the commencement of the period specified in subdivision a of this section, the following paragraphs of this subdivision shall, at the election of the applicant, apply with respect to such application and the release sought thereby, provided notice of such election is given to the commissioner of general services during the period specified in subdivision a of this section, but in no event later than the last day of the sixty-day period referred to in subdivision f of section 11-424 of this chapter.

(2) An applicant who elects to have the provisions of this subdivision apply to him or her, shall, at the time such applicant notifies the commissioner of general services of his or her election, pay to the city the amounts specified in paragraphs two, three and four of subdivision d of section 11-424 of this chapter; for this purpose, the amount specified in paragraph two thereof shall be deemed to be the amount which would have been required to be paid thereunder had this section not been in effect. Concurrent with the making of such payment, the applicant shall enter into an agreement with the commissioner of general services providing for the payment of all current taxes, assessments or other legal charges on the property as they become due or within the grace period provided by law, and, in addition, providing for the payment of the amount specified in paragraph one of subdivision d of section 11-424 of this chapter in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement. The balance of such amount shall be payable in twelve equal quarterly installments, each of which shall be paid quarterly on the first days of July, October, January and April.

(3) Pending approval by the corporation counsel of an application for release as to form, timeliness and eligibility of the applicant, all payments made pursuant to the preceding paragraph shall be held in escrow; in the event the corporation counsel disapproves the application, such payments shall be returned to the applicant, and the agreement executed by him or her shall thereupon be cancelled.

(4) In the case of any agreement made and executed pursuant to paragraph two of this subdivision, interest on any installment due and payable thereunder shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, be charged, collected and received at the rate of seven percent per annum from February first, nineteen hundred seventy-nine to the date of payment of each installment. Any interest accrued or accruing prior to February first, nineteen hundred seventy-nine shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this subdivision, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law.

(5) No release for which application has been made pursuant to subdivision f of section 11-424 of this chapter shall be granted until the final payment under the agreement herein provided is received by the city. Upon receipt of such final payment by the city the corporation counsel shall effect the release in the manner provided in section 11-424 of this chapter. In the event of any default in an agreement executed as provided in this subdivision or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement shall thereupon become void, the release process shall be terminated and all payments theretofore made shall be forfeited to the city.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized thereby, the commissioner of general services may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this subdivision, as the commissioner determines to be necessary in order to properly carry out the provisions hereof. The commissioner of general services may also adopt such rules and regulations as may be necessary to carry out the provisions of this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D17-28.0 added LL 34/1978 § 1

Sub b pars 1, 5 amended LL 29/1982 § 7

Sub c par 2 amended LL 29/1982 § 7

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-428

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 4 TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-428 Disposition of proceeds of sales of properties acquired by city through tax enforcement foreclosure proceedings.

The proceeds of the sale of real property acquired through tax enforcement foreclosure proceedings, or by deed in lieu thereof, including subsequent receipts in diminution of purchase money mortgages accepted at the time of sale, shall be applied as follows: a. The amount of the unpaid real estate taxes accrued against such property from the first day of January or the first day of July, whichever first immediately precedes the date on which title vested in the city to the date of conveyance of title by the city, without interest or penalties thereon, shall be credited to the tax deficiency account.

b. The balance, if any, remaining after deduction of the amount specified in paragraph a hereof, shall be paid into the funds hereinafter specified in the following order:

1. A sum equal to the amount of the unpaid assessments for local improvements accrued against such property at the date of commencement of the foreclosure proceeding and up to the date of conveyance of title by the city, without interest or penalties thereon, shall be paid into the appropriate assessment funds.

2. A sum equal to the amount of unpaid sewer rents, including interest and penalties thereon, accrued against such property at the date of commencement of the foreclosure proceedings and up to the date of conveyance of title by the city shall be paid into the sewer fund.

3. The amount of the brokerage fee and other expenses expended by the city in connection with such sale shall be paid into the fund or code to which such fee was charged.

4. The balance of such proceeds, if any, and the interest on any purchase money mortgage accepted by the city at the time of such sale shall be paid into the general fund. In the event that any part of such balance is represented by bonds and mortgages, such bonds and mortgages may be deposited in the tax appropriation and general fund stabilization reserve fund and a sum equal to the amount of the cash represented by such bonds and mortgages shall in such event be transferred from the tax appropriation and general fund stabilization reserve fund to the general fund.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93e-2.0 added LL 80/1960 § 3

Renumbered chap 100/1963 § 146

(formerly § 93f-3.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-501

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-501 Meaning of terms.

(a) General. Unless a different meaning is clearly required, any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference in this chapter to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in this chapter as an appendix or as included by reference to an appendix of another chapter enacted by the same law as enacts this chapter. (The quotation of the aforesaid laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this chapter.)

(b) "State", "this state" or "the state" when used in this chapter shall mean the state of New York.

(c) "Local income taxes", when used in this chapter shall mean an income tax imposed by a political subdivision of a state.

(d) "Commissioner of finance" when used in this chapter shall mean the commissioner of finance of the city.

(e) "Department of finance" when used in this chapter shall mean the department of finance of the city.

(f) "Tax appeals tribunal" when used in this chapter shall mean the tax appeals tribunal established by section one hundred sixty-eight of the charter.

(g) "Unincorporated business entire net income" when used in this chapter shall mean the excess of the unincorporated business gross income of an unincorporated business over its unincorporated business deductions.

(h) "Investment capital" when used in this chapter shall mean investments of the unincorporated business in stocks, bonds and other securities, corporate and governmental (excluding governmental stocks, bonds and other securities the interest or dividends from which are fully exempt from tax under this chapter, other than any such governmental stock, bond or other security which is sold or otherwise disposed of during the taxable year in a transaction which results in a gain or loss which is included in computing unincorporated business entire net income for the taxable year), not held for sale to customers in the regular course of business, provided, however, that in the discretion of the commissioner of finance, there shall be deducted from investment capital any liabilities of the unincorporated business which are directly or indirectly attributable to investment capital.

(i) "Investment income" when used in this chapter shall mean income, gains and losses from investment capital, to the extent included in computing unincorporated business entire net income, less, in the discretion of the commissioner of finance, any deductions allowable in computing unincorporated business entire net income which are directly or indirectly attributable to investment capital or investment income, provided, however, that in no case shall investment income exceed unincorporated business entire net income.

(j) "Business capital" when used in this chapter shall mean all assets of the unincorporated business other than investment capital, less liabilities of the unincorporated business not deducted from investment capital, except that cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect.

(k) "Business income" when used in this chapter shall mean unincorporated business entire net income minus investment income.

(l) "Dealer" when used in this chapter shall mean an individual or unincorporated entity that (A) holds or disposes of property that is stock in trade of the taxpayer, inventory or is otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business, or (B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in property with customers in the ordinary course of the taxpayer's trade or business, provided, however, an individual or unincorporated entity shall not be treated as a dealer based solely on such individual's or entity's ownership of an interest in an entity that is a dealer, and provided, further, that an unincorporated entity shall not be treated as a dealer based solely on the ownership by a dealer of an interest in that unincorporated entity.

(m) "Unincorporated entity" when used in this chapter shall include an entity classified as a partnership for federal income tax purposes regardless of whether the entity is formed as a corporation, joint-stock company, joint-stock association, body corporate or body politic or whether the entity is organized under a federal or state statute, or under a statute of a federally recognized Indian tribe, or under a statute of a country other than the United States that describes or refers to the entity as incorporated.

(n) Repealed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (f) added chap 808/1992 § 16, eff. Oct. 1, 1992

Subds. (g)-(k) added chap 485/1994 § 1, eff. July 1, 1994

Subd. (l) added chap 128/1996 § 4, eff. June 11, 1996 applying to taxable

years beginning on and after Jan. 1, 1996

Subd. (m) added chap 513/2002 § 42, eff. Sept. 17, 2002 and applying

to taxable years beginning after Dec. 31, 2001.

Subd. (n) separately repealed L.L. 53/2003 § 1, eff. May 19, 2003 and

chap 686/2003 § M16, eff. Oct. 21, 2003 and applying to taxable years

beginning on or after Jan. 1, 2003.

Subd (n) added chap 63/2003 § N3, eff. May 19, 2003.

DERIVATION

Formerly § S46-1.0 added LL 22/1966 § 1

Sub d amended LL 10/1985 § 14

CASE NOTES FROM FORMER SECTION

¶ 1. Local Law No. 36, 1971 which repealed the exemption of self-employed doctors, lawyers, architects and practitioners "of any other profession" from the unincorporated business income tax is constitutional and does not constitute a denial of equal protection of the law and a taking of property without due process of law.-Shapiro v. City of N.Y., 67 Misc. 2d 1021 [1971].

NYC Administrative Code 11-502

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-502 Unincorporated business defined.

(a) General. An unincorporated business means any trade, business, profession or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership, a fiduciary, a corporation in liquidation or an unincorporated entity that has made the election permitted under paragraph (b) of subdivision one of section 11-602 of this title (but only for the period during which such election is in effect), but not including any entity subject to tax under chapter six of this title and not including any entity doing an insurance business as a member of the New York insurance exchange described in paragraph one of subsection (b) of section six thousand two hundred one of the insurance law. Unincorporated businesses subject to tax under a local law of the city imposing a tax on utilities shall not be subject to tax under this chapter; provided, however, that unincorporated businesses, other than (1) utility businesses subject to the supervision of the state department of public service and (2) for taxable years beginning on or after August first, two thousand two, utilities as defined in subdivision six of section 11-1101 of this title, which are subject to tax under a local law of the city imposing a tax on vendors of utility services shall be subject to tax under this chapter on that percentage of their entire net income allocable to the city under section 11-508 of this chapter which their receipts other than those taxable under such local law taxing vendors of utility services is of their total receipts. If an individual or an unincorporated entity carries on wholly or partly in the city two or more unincorporated businesses, all such businesses shall be treated as one unincorporated business for the purposes of this chapter. For purposes of this chapter, an unincorporated entity shall be treated as carrying on any trade, business, profession or occupation carried on in whole or in part in the city by any other unincorporated entity in which the first unincorporated entity owns an interest, and the ownership by an unincorporated entity of an interest in another unincorporated entity that is not carrying on any trade, business, profession, or occupation in whole or in part in the city shall not be deemed the conduct of an unincorporated business by the first unincorporated entity. Notwithstanding anything to the contrary in the

preceding sentence, for taxable years beginning on or after August first, two thousand two, an unincorporated business that is a partner in a partnership subject to tax under a local law of the city imposing a tax on utilities, as defined in subdivision six of section 11-1101 of this title, shall not be considered to be carrying on the trade, business, profession or occupation carried on by such partnership.

(b) Services as employee. The performance of services by an individual as an employee or as an officer or director of a corporation, society, association, or political entity, or as a fiduciary, shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual.

(c) Purchase and sale for own account. (1) Definitions. (A) Property. For purposes of this subdivision, property shall mean real and personal property, including but not limited to, property qualifying as investment capital within the meaning of subdivision (h) of section 11-501 of this chapter, other stocks, notes, bonds, debentures, or other evidences of indebtedness, interest rate, currency, or equity notional principal contracts, foreign currencies, interests in, or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any property described above, and any commodity traded on or subject to the rules of a board of trade or commodity exchange, provided, however, property shall not include: (i) debt instruments issued by the taxpayer; (ii) accounts receivable held by a factor; (iii) property held as stock in trade, inventory or otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business; (iv) debt instruments acquired in the ordinary course of the taxpayer's trade or business for funds loaned, services rendered or for the sale, rental or other transfer of property by the taxpayer; (v) interests in unincorporated entities; or (vi) positions in property described above entered into, assumed, offset, assigned or terminated by a dealer with respect to such positions in property.

(B) Investor. For purposes of this subdivision, a taxpayer shall be treated as acquiring, holding or disposing of an interest in an unincorporated entity as an investor if: (i) the unincorporated entity meets the requirements of subparagraph (B) of paragraph four of this subdivision and the taxpayer does not receive a distributive share of such entity's income, gain, loss, deduction, credit and basis from a business carried on in whole or in part in the city that is materially greater than its distributive share of any other item of income, gain, loss*19 deduction, credit or basis of such entity; or (ii) with respect to any other unincorporated entity, the taxpayer is neither a general partner nor authorized under the entity's governing instrument to manage or participate in, nor managing, nor participating in, the day-to-day business of the unincorporated entity.

(2) An individual or other unincorporated entity, except a dealer as defined in subdivision (1) of section 11-501 of this chapter, shall not be deemed engaged in an unincorporated business solely by reason of (A) the purchase, holding and sale for his, her or its own account of property, as defined in paragraph one of this subdivision, or the entry into, assumption, offset, assignment, or other termination of a position in any property so defined, or both, (B) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests in unincorporated entities engaged solely in activities described in subparagraph (A), (B) or (C) of this paragraph, or (C) any combination of the activities described in subparagraphs (A) and (B) of this paragraph and any other activity not otherwise constituting the conduct of an unincorporated business subject to the tax imposed by this chapter, but this paragraph shall not apply if the unincorporated entity is taxable as a corporation for federal income tax purposes.

(3) Notwithstanding anything to the contrary, the receipt by an individual or other unincorporated entity of twenty-five thousand dollars or less of gross receipts during the taxable year (determined without regard to any deductions) from an unincorporated business wholly or partly carried on within the city by such individual or unincorporated entity shall not cause such individual or other unincorporated entity to be treated as not engaged solely in the activities described in subparagraph (A), (B) or (C) of paragraph two of this subdivision.

(4) (A) If a taxpayer that is an unincorporated entity is primarily engaged in (i) activities described in subparagraph (A), (B) or (C) of paragraph two of this subdivision, or (ii) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests as an investor in unincorporated entities carrying on any unincorporated business in whole or in part in the city, or both, the activities described in subparagraph (A), (B), or (C)

of paragraph two of this subdivision carried on by the taxpayer or by any unincorporated entity primarily engaged in the activities described in clause (i) or (ii) of this subparagraph in which the taxpayer owns an interest shall not be deemed an unincorporated business carried on by the taxpayer.

(B) For purposes of subparagraph (A) of this paragraph, an unincorporated entity will be treated as primarily engaged in activities described in clause (i) or (ii) of subparagraph (A) of this paragraph, or both, if at least ninety percent of the value of its total assets is represented by assets described in subparagraph (C) of this paragraph.

(C) For purposes of subparagraph (B) of this paragraph, assets described in this subparagraph include:

(i) property as defined in paragraph one of this subdivision;

(ii) interests in unincorporated entities not carrying on any unincorporated business in whole or in part in the city; and

(iii) interests in unincorporated entities carrying on an unincorporated business in whole or in part in the city held by the taxpayer as an investor, as defined in paragraph one of this subdivision.

(D) For purposes of determining whether a taxpayer meets the requirements of subparagraph (B) of this paragraph, the value of assets described in subparagraph (C) of this paragraph shall be the average monthly gross value of the assets of the taxpayer. For purposes of this paragraph, the value of assets of the taxpayer that consist of real property or marketable securities shall be the fair market value thereof and the value of assets other than real property or marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles. In case it shall appear to the commissioner of finance that the use of gross value in determining whether the requirements of subparagraph (B) of this paragraph are met, improperly or inaccurately reflects the taxpayer's primary activities, the commissioner of finance is authorized in his or her discretion and in such manner as he or she may determine, to reduce the gross value of the taxpayer's assets by liabilities attributable thereto or to eliminate assets, so as to properly and accurately reflect the taxpayer's primary activities.

(d) Holding, leasing or managing real property. An owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing real property. If an owner of real property or lessee or fiduciary (except a dealer holding real property primarily for sale to customers in the ordinary course of his or her trade or business) who is holding, leasing or managing real property is also carrying on an unincorporated business in whole or in part in the city, whether or not such unincorporated business is carried on at or is connected with such real property, such holding, leasing or managing of real property shall not be deemed an unincorporated business if, and only to the extent that, such real property is held, leased or managed for the purpose of producing rental income from such real property or gain upon the sale or other disposition of such real property. For purposes of this subdivision, the conduct by such owner, lessee or fiduciary, at such real property, of a trade, business, profession or occupation, including, but not limited to, a garage, restaurant, laundry or health club, shall be deemed to be an incident to the holding, leasing or managing of such real property, and shall not be deemed the conduct of an unincorporated business, if such trade, business, profession or occupation is conducted solely for the benefit of tenants at such real property, as an incidental service to such tenants, and is not open or available to the general public, provided, however, if any such owner, lessee or fiduciary operates a garage, parking lot or other similar facility at such real property that is open or available to the general public, the provision by any such owner, lessee or fiduciary of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis shall be deemed to be an incident to the holding, leasing or managing of such real property, and shall not be deemed the conduct of an unincorporated business if, and only to the extent that, such monthly or longer term parking, garaging or storing service is provided to tenants at such real property as an incidental service to such tenants. If an owner, lessee or fiduciary holding, leasing or managing real property operates at such real property a garage, parking lot or other similar facility that is open or available to the public, each such owner, lessee or fiduciary shall file, together with and as a party of the returns required under section 11-514 of this chapter, a report or schedule for each such garage, parking lot or other

similar facility, or in the discretion of the commissioner, make a separate entry on such returns, identifying the specific location and address, license number and licensed capacity of each such garage, parking lot or other similar facility, and shall include such additional information, data and other matters relating to the provision of such monthly or longer term parking, garaging or storing service to tenants as shall be prescribed by the commissioner of finance. If the separate information required to be reported by any owner, lessee or fiduciary holding, leasing or managing real property for any garage, parking lot or other similar facility at such real property that is open or available to the public is not contained in the returns required under section 11-514 of this chapter, or in any amended returns, in any material respect, the provision of parking, garaging or storing service to tenants at such real property shall be deemed the conduct of an unincorporated business and not incident to the holding, leasing or managing of such real property.

(e) Sales representative. An individual, other than one who maintains an office or who employs one or more assistants or who otherwise regularly carries on a business, shall not be deemed engaged in an unincorporated business solely by reason of selling goods, wares, merchandise or insurance for more than one enterprise. For purposes of this subdivision, space utilized solely for the display of merchandise and/or for the maintenance and storage of records normally used in the course of business shall not be deemed an office, and the employment of clerical and secretarial assistance shall not be deemed the employment of assistants.

(f) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall not be deemed an unincorporated business (regardless of whether subject to federal income tax on unrelated business taxable income).

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) separately amended chap 93/2002 § C1, eff. June 24, 2002.

[See Notes after § 11-1119] and chap 513/2002 § 43, eff. Sept. 17,

2002 and applying to taxable years beginning after Dec. 31, 2001.

Subd. (a) amended chap 625/1996 § 11, eff. Sept. 4, 1996 applying to

taxable years beginning on or after Jan. 1, 1996

Subd. (a) amended chap 128/1996 § 5, eff. June 11, 1996 applying to

taxable years beginning on or after Jan. 1, 1996

Subd. (a) amended L.L. 46/1990 § 1 eff. July 1, 1990

Subd. (a) amended L.L. 49/1987 § 1. [See Note after § 22-611.]

Subd. (c) amended chap 128/1996 § 6, eff. June 11, 1996 applying to

taxable years beginning on or after Jan. 1, 1996

Subd. (c) amended chap 485/1994 § 2, eff. July 1, 1994

Subd. (d) amended chap 128/1996 § 7, eff. June 11, 1996 applying to

taxable years beginning on or after Jan. 1, 1996

Subd. (d) amended chap 485/1994 § 10, eff. July 1, 1994

DERIVATION

Formerly § S46-2.0 added LL 22/1966 § 1

Sub a amended LL 36/1971 § 1

Sub c repealed LL 36/1971 § 2

Sub d amended LL 31/1977 § 1

Sub a amended chap 480/1978 § 21

CASE NOTES FROM FORMER SECTION

¶ 1. Repeal of exemption of self-employed doctors, lawyers, architects and practitioners "of any other profession" from city unincorporated business tax and which makes them subject to a tax which a salaried lawyer or other professional does not have to pay is not an arbitrary distinction.-Flieger v. City of N.Y., 167 (37) N.Y.L.J. (2-24-72) 2, Col. 3 F.

¶ 2. Inclusion of self-employed professional in the tax on unincorporated businesses was not unconstitutional and legislature could exclude salaried attorneys.-Shapiro v. City of N.Y., 32 N.Y. 2d 96 [1973].

¶ 3. A journalist is not a "professional" within the meaning of subdivision c of this section and therefore does not qualify for a tax exemption as granted to professionals.-Frye v. Comm'r of Finance of the City of N.Y., 62 N.Y. 2d 841 [1984].

CASE NOTES

¶ 1. In order to qualify for the exemption from unincorporated business tax provided by § 11-502(c), a commodities trader must be in business solely for its own account. Where a commodities trader was in business for its own account and for retail customers, it did not qualify for the exemption. Matter of Lakeview Futures, Inc. v. Dept. of Finance of the City of New York, 210 A.D.2d 31, 618 N.Y.S.2d 818 (1st Dept. 1994).

FOOTNOTES

19

[Footnote 19]: * So in original ("," inadvertently omitted)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-503

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-503 Imposition of tax.

(a) General. A tax at the rate of four percent is hereby imposed for each taxable year, beginning with taxable years ending after January first, nineteen hundred sixty-six, on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within the city. This tax shall be in addition to any other taxes imposed.

(b) Credit against tax. (1) For each taxable year beginning after nineteen hundred eighty-six but before nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is six hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds six hundred dollars but is less than eight hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is eight hundred dollars minus the amount of such tax and the denominator of which is two hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is eight hundred dollars or more, no credit shall be allowed.

(2) For each taxable year beginning in nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is eight hundred dollars or less, a credit shall be

allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds eight hundred dollars but is less than one thousand dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is one thousand dollars minus the amount of such tax and the denominator of which is two hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is one thousand dollars or more, no credit shall be allowed.

(3) For each taxable year beginning after nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is one thousand eight hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds one thousand eight hundred dollars but is less than three thousand two hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is three thousand two hundred dollars minus the amount of such tax and the denominator of which is one thousand four hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is three thousand two hundred dollars or more, no credit shall be allowed.

(4) If separate partnerships, joint ventures or other unincorporated entities have substantially the same partners or members, each of such partners or members has substantially the same interest in each of such partnerships, joint ventures or other unincorporated entities, and such partnerships, joint ventures or other unincorporated entities are engaged in substantially the same business or businesses or in substantially related businesses, all of such partnerships, joint ventures or other unincorporated entities shall be treated as one unincorporated business for purposes of this subdivision. The preceding sentence shall not be construed to limit or affect the meaning or application of any other provision of this chapter.

(5) Notwithstanding anything to the contrary, the credit allowable under this subdivision shall be taken prior to any other credit allowed by this section.

(c) Credit relating to stock transfer tax. (1) In addition to any other credit permitted under this section, a taxpayer shall be allowed a credit, to be credited or refunded in the manner hereinafter provided in this subdivision, against the tax imposed by this chapter after the allowance of any other credit under this section. The amount of such credit shall be fifty percent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six and paid by such taxpayer (except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of the tax law).

(2) For purposes of this subdivision:

(a) the term "taxpayer" shall mean any unincorporated business subject to tax under this chapter registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in subparagraph (b) of this paragraph, and

(b) the term "market making transaction" shall mean any transaction involving a sale (including a short sale) by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or

business (including transfers which are part of an underwriting),

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error.

Provided, however, that, except as to subclause (c) of clause (ii) of subparagraph (b) of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, except as otherwise provided in subdivision (g) of sections 11-512 and 11-514 of this chapter; provided, however, that the provisions of this chapter notwithstanding, the amount to be refunded pursuant to this subdivision shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision (c) of section 11-528 of this chapter notwithstanding, interest shall be allowed and paid on the overpayment of the credit under this subdivision from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this subdivision has been filed, whichever is later.

(4) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

(d) Credit relating to certain sales and compensating use taxes. (1) In addition to the credits allowed by subdivisions (b) and (c) of this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credit or refund of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by subchapter two of chapter eleven of this title, for any periods embraced within the taxable year of the taxpayer under this chapter.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the

amount of such tax refund or credit shall be added to the tax imposed by this section, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(e) Credit relating to the annual increase in certain payments to a landlord by a taxpayer relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded, without interest, in the manner hereinafter provided in this section.

(A) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities, and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided shall be entitled to a credit against the tax imposed by this chapter. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this chapter.

The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive the tax credit provided for herein shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest." In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city.

The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation, whichever period is shorter.

(B) Definitions: When used in this section, "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given week.

"Industrial and commercial incentive board" means the board created pursuant to subchapter two of chapter two of this title.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this

chapter.

(f) Credit relating to certain expenses involved in the cost of relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be:

(A) A maximum of three hundred dollars for each commercial employment and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event; provided, however, that no credit shall be allowed under this subdivision to a taxpayer for industrial employment opportunities relocated to premises (i) that are within an industrial business zone established pursuant to section 22-626 of this code and (ii) for which a binding contract to purchase or lease was first entered into by the taxpayer on or after July first, two thousand five.

The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used.

(B) Definitions: When used in this section, "Employment Opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial Employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial Employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

"Full Time Position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment Opportunity Relocation Costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(g) Repealed.

(h) Repealed.

(i) Relocation and employment assistance credit. (1) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-622 of the code to take such credit against a gross receipts tax imposed under chapter eleven of this title; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this paragraph for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code. For purposes of this subdivision, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(3) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(4) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code dated on or after July first, two thousand for a relocation to eligible premises located within the

revitalization area defined in subdivision (n) of section 22-621 of the code, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph one of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year ; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

(j) (1) If a partner in an unincorporated business is taxable under this chapter and is required to include in unincorporated business taxable income his, her or its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such partner shall be allowed a credit against the tax imposed by this chapter equal to the lesser of the amounts determined in subparagraphs (A) and (B) of this paragraph:

(A) The amount determined in this subparagraph is the product of (i) the sum of (I) the tax imposed by this chapter on the unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under this section (except the credit allowed by subdivision (b) or this section) for its taxable year ending within or with the taxable year of the partner, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (ii) a fraction, the numerator of which is the net total of the partner's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than zero.

(B) The amount determined in this subparagraph is the difference between (i) the tax computed pursuant to this chapter on the unincorporated business taxable income of the partner, without allowance of any credits allowed by this section, and (ii) the tax so computed, determined as if the partner had no such distributive share or guaranteed payments with respect to the unincorporated business, provided, however, that the amounts computed in clauses (i) and (ii) of this subparagraph shall be computed with the following modifications:

(I) such amounts shall be computed without taking into account any carryforward or carryback by the partner of a net operating loss;

(II) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business or any net operating loss carryforward or carryback, the unincorporated business taxable income of the partner is less than zero, such unincorporated business taxable income shall be treated as zero; and

(III) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business is less than zero, such net total shall be treated as zero. The amount determined in this subparagraph shall not be less than zero.

(2) (A) Notwithstanding anything to the contrary in paragraph one of this subdivision, the credit or the sum of the credits that may be taken by a partner for a taxable year under this subdivision with respect to an unincorporated business or unincorporated businesses in which he, she or it is a partner shall not exceed the tax imposed on the unincorporated business taxable income of such partner under this chapter for such taxable year reduced by the credit allowed under subdivision (b) of this section. If the credit allowed under paragraph one of this subdivision or the sum of such credits exceeds such tax as so reduced, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying the provisions of the preceding sentence, the credit determined for the taxable year under

paragraph one of this subdivision shall be taken before taking any credit carryforward pursuant to this paragraph and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, in the case of a partner which is a partnership, no credit carryforward to any taxable year shall be allowed unless one or more of the partners therein during such taxable year where persons having a proportionate interest or interests, amounting to at least eighty percent of all such interests, in the unincorporated business gross income and unincorporated business deductions of the partnership which was allowed the credit for which a carryforward is claimed. In such event, the carryforward allowable on account of such credit shall not exceed the percentage of the amount otherwise allowable, determined by dividing (i) the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership, for the year to which the credit is carried forward, attributable to such partners, by (ii) the sum of such proportionate interests owned by all partners for such taxable year. The amount by which the carryforward otherwise allowable exceeds the amount allowable pursuant to the preceding sentence shall not be a carryforward to any other taxable year.

(3) The credit allowed under this subdivision shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under this chapter for any taxable year beginning before July first, nineteen hundred ninety-four.

(4) Notwithstanding anything to the contrary, the credit allowable under this subdivision shall be taken after the credit allowed by subdivision (b) of this section is taken, but before any other credit allowed by this section is taken.

(5) The commissioner of finance of the city of New York shall convene a working group, consisting of representatives of the department of finance of the city of New York and representatives of affected industries, and other persons the commissioner deems appropriate, to study the treatment under the unincorporated business tax of income from investment and real estate activities and the impact of the credit permitted by this subdivision, including but not limited to cases where interests in a taxpayer are held by another taxpayer subject to tax on unincorporated business taxable income and the first taxpayer is entitled to claim a deduction for a net operating loss carryover and the second is not entitled to a corresponding deduction with the result, in certain cases, that the net income allocated to the second taxpayer may be subject to an effective rate of tax in excess of the rate imposed by this chapter. In addition, the working group shall also study the tax treatment of parking garages which are open or available to the general public and which also provide available space to tenants. In conducting such study, such working group shall take into account such factors as economic development, tax administration and other goals of tax policy and shall consider alternatives that would reduce disincentives for investing in corporations and other entities engaged in business in the city of New York, such as exempting income from investment activities from the tax on unincorporated business taxable income. The commissioner shall prepare a report based on the deliberations of the working group on or before April fifteenth, nineteen hundred ninety-five.

(k) Credit relating to certain sales and compensating use taxes on certain services. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year (and the amount of any interest imposed in connection therewith) which was paid after January first, nineteen hundred ninety-five, less any credit or refund of such taxes (or such interest), with respect to the purchase or use by the taxpayer of the services described in subdivision (b) of section eleven hundred five-b of the tax law.

(2) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law (or of any interest imposed in connection therewith) for which the taxpayer had claimed a credit under this subdivision in a prior taxable year, the amount of such tax (or such interest) refund or credit shall be added to the tax imposed by this chapter, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(l) Lower Manhattan relocation and employment assistance credit. (1) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code to take such credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(3) Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b), (i) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(m) Film production credit.*26 (1) allowance of credit. A taxpayer which is a qualified film production company as defined in this subdivision and which is subject to tax under this chapter, shall be allowed a credit against the unincorporated business income tax imposed pursuant to this chapter, in accordance with the provisions in paragraph (5) of this subdivision, to be computed as hereinafter provided.

(2) The amount of the credit shall be the product of five percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production

costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the city of New York in the production of such qualified film. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film are less than three million dollars, then the portion of the qualified productions costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in the city of New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without the city of New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this subdivision or used in the calculation of the credit provided for under this subdivision shall be used by such taxpayer to claim any other credit allowed pursuant to this title.

(4) Definitions. As used in this subdivision, the following terms shall have the following meanings:

(A) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the city of New York directly and predominantly in the production (including pre-production and post production) of a qualified film.

(B) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(C) "Qualified film" means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. "Qualified film" shall not include (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program, or (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

(D) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage.

(E) "Qualified film production facility" shall mean a film production facility in the city of New York, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

(F) "Qualified film production company" is an unincorporated business which is principally engaged in the production of a qualified film and controls the qualified film during production.

(5) Application of credit. (A) If the amount of the credit allowable under this subdivision for any taxable year exceeds the taxpayer's tax for such year, fifty percent of the excess shall be treated as an overpayment of tax to be

credited or refunded as provided in section 11-526 of this chapter, provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer`s tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon.

(B) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

(n) Industrial business zone tax credit. (1) For taxable years beginning on or after January first, two thousand six, in addition to any other credit allowed by this section, an eligible business that first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which it relocates shall be allowed a one-time credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be one thousand dollars per full-time employee; provided, however, that the amount of such credit shall not exceed the lesser of actual relocation costs or one hundred thousand dollars.

(2) When used in this subdivision, the following terms shall have the following meanings:

"Eligible business" means any business subject to tax under this chapter that (A) has been conducting substantial business operations and engaging primarily in industrial and manufacturing activities at one or more locations within the city of New York or outside the state of New York continuously during the twenty-four consecutive full months immediately preceding relocation, (B) has leased the premises from which it relocates continuously during the twenty-four consecutive full months immediately preceding relocation, (C) first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which such business will relocate, and (D) will be engaged primarily in industrial and manufacturing activities at such eligible premises.

"Eligible premises" means premises located entirely within an industrial business zone. For any eligible business, an industrial business zone tax credit shall not be granted with respect to more than one eligible premises.

"Full-time employee" means (A) one person gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by such person is not less than thirty-five hours per week; or (B) two persons gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by each such person is more than fifteen hours per week but less than thirty-five hours per week.

"Industrial business zone" means an area within the city of New York established pursuant to section 22-626 of this code.

"Industrial business zone tax credit" means a credit, as provided for in this subdivision, against a tax imposed under this chapter.

"Industrial and manufacturing activities" means activities involving the assembly of goods to create a different article, or the processing, fabrication, or packaging of goods. Industrial and manufacturing activities shall not include waste management or utility services.

"Relocation" means the physical relocation of furniture, fixtures, equipment, machinery and supplies directly to an eligible premises, from one or more locations of an eligible business, including at least one location at which such business conducts substantial business operations and engages primarily in industrial and manufacturing activities. For purposes of this subdivision, the date of relocation shall be (A) the date of the completion of the relocation to the eligible premises or (B) ninety days from the commencement of the relocation to the eligible premises, whichever is

earlier.

"Relocation costs" means costs incurred in the relocation of such furniture, fixtures, equipment, machinery and supplies, including, but not limited to, the cost of dismantling and reassembling equipment and the cost of floor preparation necessary for the reassembly of the equipment. Relocation costs shall include only such costs that are incurred during the ninety-day period immediately following the commencement of the relocation to an eligible premises. Relocation costs shall not include any costs for structural or capital improvements or items purchased in connection with the relocation.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(4) The number of full-time employees for the purposes of calculating an industrial business zone tax credit shall be the average number of full-time employees, calculated on a weekly basis, employed in the eligible premises by the eligible business in the fifty-two week period immediately following relocation.

(5) The credit allowed under this subdivision must be taken by the taxpayer in the taxable year in which such fifty-two week period ends.

(6) For the purposes of calculating entire net income in the taxable year that an industrial business zone tax credit is allowed, a taxpayer must add back the amount of the credit allowed under this subdivision, to the extent of any relocation costs deducted in the current taxable year or a prior taxable year in calculating federal taxable income.

(7) The credit allowed under this subdivision shall not be granted for an eligible business for more than one relocation. Notwithstanding the foregoing, an industrial business zone tax credit allowed under this subdivision shall not be granted if the eligible business receives benefits pursuant to chapter six-B or six-C of title twenty-two of this code, through a grant program administered by the business relocation assistance corporation, or through the New York city printers relocation fund grant.

(8) The commissioner of finance is authorized to promulgate rules and regulations and to prescribe forms necessary to effectuate the purposes of this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (b) amended chap 128/1996 § 1, eff. June 11, 1996

Subd. (b) amended L.L. 51/1987 § 1

Subd. (b) par (3) amended chap. 481/1997 § 2, approved Aug. 26, 1997

and deemed in effect on and after Jan. 1, 1997.

Subd. (f) par (1) subpar (A) amended chap 635/2005 § 1, eff. Aug. 30,

2005.

Subd. (g) repealed chap 472/2000 § 41, eff. Nov. 1, 2000 with

special provisions. [See Note]

Subd. (g) par (1) amended L.L. 49/1987 § 2

Subd. (g) par (1) subpar (A) amended L.L. 46/1990 § 2, eff. July 1, 1990

Subd. (g) par (1) subpars (B), (C) repealed L.L. 46/1990 § 3, eff. July 1, 1990

Subd. (g) par (1) repealed and added L.L. 42/1988 § 1

Subd. (h) repealed chap 472/2000 § 41, eff. Nov. 1, 2000 with special provisions. [See Note]

Subd. (h) pars (1), (2), (3) amended L.L. 20/1986 § 16

Subd. (h) par (5) added L.L. 20/1986 § 17

Subd. (i) amended ch 425/1990 § 10 eff. July 10, 1990, retroactive to July 29, 1987

Subd. (i) added L.L. 50/1987 § 1

Subd. (i) par (1) amended chap 143/2004 § 19, eff. July 6, 2004 and deemed to be in full force and effect on and after July 1, 2003.

Subd. (i) par (1) amended chap 261/2000 § 7, eff. Aug. 16, 2000.

Subd. (i) par (1) amended chap 149/1999 § 9, eff. July 1, 1999.

Subd. (i) par (1) amended chap 4/1995 § 6, eff. Oct. 29, 1995

Subd. (i) par (2) amended chap 261/2000 § 7, eff. Aug. 16, 2000.

Subd. (i) par (2) amended chap 709/1993 § 4, eff. Aug. 6, 1993

Subd. (i) par (3) amended chap 261/2000 § 7, eff. Aug. 16, 2000.

Subd. (i) par (4) amended chap 143/2004 § 20, eff. July 6, 2004 and deemed to be in full force and effect on and after July 1, 2003.

Subd. (i) par (4) added chap 261/2000 § 8, eff. Aug. 16, 2000.

Subd. (j) amended chap 128/1996 § 14, eff. June 11, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. (j) added chap 485/1994 § 14, eff. July 26, 1994

Subd. (k) added chap 489/1995 § 4, eff. Aug. 2, 1995.

Subd. (l) added chap 143/2004 § 21, eff. July 6, 2004 and deemed to be in full force and effect on and after July 1, 2003.

Subd. (l) par (2) amended chap 2/2005 § E5, eff. Aug. 30, 2005.

Subd. (m) added L.L. 2/2005 § 2, eff. Jan. 3, 2005 and expiring Dec. 31, 2011 with special provisions. [See §11-604 Note 1]

Subd. (n) added chap 635/2005 § 2, eff. Aug. 30, 2005.

DERIVATION

Formerly § S46-3.0 added LL 22/1966 § 1

Sub c added chap 842/1976 § 35

Sub c par 4 added chap 878/1977 § 14

Sub d added LL 64/1977 § 6

Sub f added LL 65/1977 § 4

Sub e added LL 66/1977 § 4

Sub c par 3 amended chap 65/1978 § 18

Sub c par 2 subpar b amended chap 724/1979 § 13

Sub g added LL 3/1985 § 4

Sub h added LL 54/1985 § 5

Sub h pars 1, 2, 3 amended LL 20/1986 § 10

Sub h par 5 added LL 20/1986 § 11

NOTE

Provisions of Chap 472/2000:

§ 64. This act shall take effect November 1, 2000 except that section thirty-four-a of this act shall take effect on the same date as section 10 of Part GG of chapter 63 of the laws of 2000 takes effect, and shall apply to persons entitled to special rebates or discounts under existing provisions of law as well as applicants that are certified after such effective date, provided that persons that have been certified as eligible for such special rebates or discounts under provisions of law repealed by this act shall not be required to reapply for such benefits under provisions added by this act, provided, further, that rules implementing the provisions of this act may be promulgated before such date, and provided, further, that where bills for sales of electricity, gas or energy services are made on a monthly basis, the calculation of special rebates and discounts shall, for each eligible energy user and qualified eligible energy user, be based on the applicable percentages and eligible charges under the provisions of this act beginning with the first billing cycle beginning after the effective date of this act.

CASE NOTES FROM FORMER SECTION

¶ 1. The New York City Unincorporated Business Income Tax is not unconstitutional as violative of equal protection or due process.-Matter of Andrew Catapano Co. v. Grow Const. Co., 40 N.Y. 2d 1074 [1976].

FOOTNOTES

26

[Footnote 26]: * Expires Dec. 31, 2011, see Historical Note.

NYC Administrative Code 11-504

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-504 Taxable years to which tax applies; tax for taxable years beginning prior to and ending after January first, nineteen hundred sixty-six.

(a) General. The tax imposed by section 11-503 of this chapter, with any modification permitted by subdivision (b) of this section, is imposed for each taxable year beginning with taxable years ending on or after January first, nineteen hundred sixty-six.

(b) Alternate methods for determining tax for taxable years ending on or after January first, nineteen hundred sixty-six. (1) The tax for any taxable year ending on or after January first, nineteen hundred sixty-six and before December thirty-first, nineteen hundred sixty-six, shall be an amount equal to the tax which would have been imposed had section 11-503 of this chapter been in effect for the entire taxable year, multiplied by the number of months (or major portions thereof) in such taxable year which occur after December thirty-first, nineteen hundred sixty-five and divided by the number of months (or major portions thereof) in such taxable year.

(2) In lieu of the method of computation of tax prescribed in paragraph one of this subdivision, if the taxpayer maintained adequate records for the portion of any taxable year ending on or after January first, nineteen hundred sixty-six, and before December thirty-first, nineteen hundred sixty-six, which falls within the calendar year nineteen hundred sixty-six, the tax for such taxable year at the election of the taxpayer may be computed on the basis of the unincorporated business taxable income which the taxpayer would have reported had he or she filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of such taxable year ending before December thirty-first, nineteen hundred sixty-six. Such taxable year beginning January first, nineteen hundred sixty-six and ending before December thirty-first, nineteen hundred sixty-six shall be deemed (unless clearly indicated otherwise) to be the taxable year of the taxpayer. For purposes of this paragraph, the unincorporated

business exemptions allowable under section 11-510 of this chapter, the credit allowable under subdivision (b) of section 11-503 of this chapter and any net operating loss deduction as modified pursuant to subdivision two of section 11-507 of this chapter shall each be reduced by the same part of such exemptions, credit, or net operating loss deduction (as the case may be) as the number of months (or major portions thereof) in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in such taxable year. Except as provided in paragraph two, the tax for such period ending before December thirty-first, nineteen hundred sixty-six, shall be computed in accordance with the other provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-3.1 added LL 22/1966 § 1

Sub b amended LL 36/1967 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-505

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-505 Unincorporated business taxable income.

The unincorporated business taxable income of an unincorporated business shall be the excess of its unincorporated business gross income over its unincorporated business deductions, allocated to the city, less the amount of:

(1) Its deductions under section 11-509 of this chapter not subject to allocation; and

(2) Its unincorporated business exemptions under section 11-510 of this chapter.

HISTORICAL NOTE

Section amended chap 485/1994 § 3, eff. July 1, 1994

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-4.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-506

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-506 Unincorporated business gross income.

(a) (1) General. Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, or from the sale or other disposition by an unincorporated entity of an interest in another unincorporated entity if and to the extent such income or gain is attributable to a trade, business, profession or occupation carried on in whole or in part in the city by such other unincorporated entity, with the modifications specified in this section.

(2) The character of a partner's distributive share of gross income, gains, losses and deductions of an unincorporated entity shall be determined as if such gross income, gains, losses and deductions were realized directly by such partner regardless of how the interest in the unincorporated entity was acquired and regardless of whether the distributive share is proportionate to the partner's capital interest in the unincorporated entity, provided, however, this paragraph shall not apply to payments to a partner treated as occurring between the unincorporated entity and one who is not a partner under section seven hundred seven of the internal revenue code, and provided, further, this paragraph shall not affect the determination of whether gross income, gains, losses or deductions of an unincorporated entity are subject to the tax imposed by this chapter as realized from an unincorporated business.

(b) Modifications increasing federal gross income. There shall be added to federal gross income of the business the following items attributable to the business:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other

state unless created by compact or agreement to which this state is a party.

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state or local income taxes.

(3) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section 11-509 of this chapter, if the property to which such election relates was sold or otherwise disposed of during the taxable year, the amount required by said subdivision to be added to federal gross income.

(4) The entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining federal gross income but only to the extent that such taxes are incurred and paid in market making transactions.

(5) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (d) of section 11-503 of this chapter.

(6) The amount allowed as an exclusion or deduction as rent in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (e) of section 11-503 of this chapter.

(7) The amount allowed as an exclusion or deduction in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (f) of section 11-503 of this chapter.

(8) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which would properly be includible for federal income tax purposes had the taxpayer not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(9) Upon the disposition of property to which subdivision fifteen of section 11-507 of this chapter applies, the amount, if any, by which the aggregate of the amounts described in such subdivision fifteen attributable to such property exceeds the aggregate of the amounts described in subdivision fourteen of section 11-507 of this chapter attributable to such property.

(10) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (g) of section 11-503 of this chapter.

(10-a) Repealed.

(10-b) Repealed.

(11) Repealed.

(12) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law (or for any interest imposed in connection therewith) in determining federal gross income, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (k) of section 11-503 of this chapter.

(13) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss, including but not limited to, losses from notional principal contracts, losses, other than as a dealer, from the holding, sale, disposition, assumption, offset or termination of a position in, property, as defined in paragraph one of subdivision (c) of section 11-502 of this chapter, or other substantially similar losses from ordinary and routine trading or investment activity to the extent determined by the commissioner of finance, realized in connection with activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(14) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such loss is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(15) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(16) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(c) Modifications reducing federal gross income. There shall be subtracted from federal gross income of the business the following items attributable to the business:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state or local income taxes under the laws of the United States;

(3) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of the city or this state authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes;

(3-a) Fifty percent of dividends to the extent includible in gross income for federal income tax purposes and not subtracted under paragraph two or three of this subdivision, provided, however, that there shall be no subtraction pursuant to this paragraph for any portion of a dividend from stock with respect to which a dividend deduction would be disallowed by subsection (c) of section two hundred forty-six of the internal revenue code if the unincorporated business were a corporation;

(4) The amount of any refund or credit for overpayment of income taxes imposed by the city, this state or any other taxing jurisdiction, or the tax imposed by article thirteen-A of the tax law, to the extent properly included in gross income for federal tax purposes;

(5) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the difference between:

(a) the amount of gain included in federal gross income with respect to each such property, and

(b) the amount of gain (if smaller than the amount described in subparagraph (a) of this paragraph) that would be included in federal gross income with respect to each such property if the federal adjusted basis of such property on the date of the sale or other disposition had been equal to its fair market value on January first, nineteen hundred sixty-six, or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six; provided, however, that the total modification provided by this subparagraph shall not exceed the taxpayer's net gain from the sale or other disposition of all such property.

(6) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount properly includible in federal gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(7) Upon the disposition of property to which subdivision fifteen of section 11-507 of this chapter applies, the amount, if any, by which the aggregate of the amounts described in subdivision fourteen of section 11-507 of this chapter attributable to such property exceeds the aggregate of the amounts described in subdivision fifteen of section 11-507 of this chapter attributable to such property.

(8) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(9) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes), including but not limited to, dividends, interest, payments with respect to securities loans, income from notional principal contracts, or income and gains, other than as a dealer, from the holding, sale, disposition, assumption, offset or termination of a position in, property, as defined in paragraph one of subdivision (c) of section 11-502 of this chapter, or other substantially similar income from ordinary and routine trading or investment activity to the extent determined by the commissioner of finance, realized in connection with activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(10) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such income or gain is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(11) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain (to the extent includible in gross income for federal income tax purposes) realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles

on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(d) Upon the disposition of property to which subdivisions twenty and twenty-one of section 11-507 apply, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

(e) Related members expense add back and income exclusion.

(1) Definitions. (A) Related member or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title.

(B) Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and includes amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing unincorporated business entire net income, a taxpayer must add back royalty payments to a related member during the taxable year to the extent deductible in calculating federal taxable income.

(B) The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing unin- corporated business entire net income, a

taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this chapter.

(f) Upon the disposition of property to which subdivisions twenty-three and twenty-four of section 11-507 of this chapter apply, the amount of any gain or loss includible in unincorporated business gross income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 128/1996 § 8, eff. June 11, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. (b) par (9) amended chap 525/1988 § 3

Subd. (b) pars (10-a), (10-b) repealed chap 472/2000 § 42, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. (b) pars (10-a), (10-b) added L.L. 20/1986 § 18

Subd. (b) par (11) repealed chap 633/2005 § 1, eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2000.

Subd. (b) par (11) added chap 241/1989 § 66

Subd. (b) par (12) added chap 489/1995 § 5, eff. Aug. 2, 1995

Subd. (b) pars (13), (14) added chap 128/1996 § 9, eff. June 11, 1996 apply to taxable years beginning on or after Jan. 1, 1996

Subd. (b) par (15) added chap 128/1996 § 9, retroactive to and deemed in effect July 1, 1994 applying to taxable years beginning on or after such date

Subd. (b) par (16) added chap 128/1996 § 9, eff. June 11, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. (c) par (3-a) amended chap 633/2005 § 2, eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2000.

Subd. (c) par (3-a) added chap 485/1994 § 4, eff. July 1, 1994

Subd. (c) par (4) amended chap 525/1988 § 52

Subd. (c) par (7) amended chap 525/1988 § 4

Subd. (c) par (8) amended chap 128/1996 § 10, retroactive to and deemed in effect July 1, 1994 applying to taxable years beginning on or after such date

Subd. (c) par (8) added chap 485/1994 § 11, eff. July 1, 1994

Subd. (c) pars (9), (10), (11) added chap 128/1996 § 11, eff. June 11, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. (d) relettered (former subd. (e)) chap 633/2005 § 3, eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2000.

Subd. (d) added chap 241/1989 § 67

Subd. (d) added (as subd (e)) L.L. 17/2002 § 1, eff. July 10, 2002. [See Note after § 11-507]

Subd. (d) repealed (added chap 241/1989 § 67) chap 633/2005 § 3, eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2000.

Subd. (e) added (as subd (f)) chap 686/2003 § M17, eff. Oct. 21, 2003 and applying to taxable years beginning on and after Jan. 1, 2003.

Subd. (f) relettered (former subd. (g)) chap 633/2005 § 3, eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2000.

Subd. (f) repealed (added L.L. 53/2003 § 2) chap 633/2005 § 3 eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2000.

Subd. (f) added (as subd (g)) chap 60/2004 § S1, eff. Aug. 20, 2004 and applying to taxable years beginning on or after Jan. 1, 2004.

DERIVATION

Formerly § S46-5.0 added LL 22/1966 § 1

Sub c par 5 amended LL 36/1967 § 2

Sub b pars 4, 5 added chap 842/1976 § 36

Sub c par 4 amended chap 842/1976 § 37

Sub b par 6 added LL 64/1977 § 7

Sub b par 8 added LL 65/1977 § 5

Sub b par 7 added LL 66/1977 § 5

Sub b par 4 amended chap 65/1978 § 19

Sub b par 5 repealed chap 65/1978 § 20

Sub b pars 5, 6, 7 renumbered chap 65/1978 § 20

(formerly pars 6, 7, 8)

Sub c par 4 amended chap 65/1978 § 21

Sub b par 8 added LL 37/1982 § 16

Sub c par 6 added LL 37/1982 § 17

Sub b par 8 amended LL 43/1983 § 21

Sub b par 9 added LL 43/1983 § 22

Sub c par 6 amended LL 43/1983 § 23

Sub c par 7 added LL 43/1983 § 24

Sub b par 8 amended chap 43/1985 § 17

Sub c par 6 amended chap 43/1985 § 18

Sub b par 10 added LL 3/1985 § 5

Sub b pars 10-a, 10-b added LL 20/1986 § 12

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Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-507 Unincorporated business deductions.

The unincorporated business deductions of an unincorporated business means the items of loss and deduction directly connected with or incurred in the conduct of the business, which are allowable for federal income tax purposes for the taxable year (including losses and deductions connected with any property employed in the business), with the following modifications:

(1) A deduction shall be allowed for charitable contributions of the unincorporated business, to the extent that such contributions would be deductible for federal income tax purposes if made by a corporation, but not in excess of five per centum of the amount by which the unincorporated business gross income exceeds the sum of (A) the unincorporated business deductions computed without the benefit of any deduction for charitable contributions and (B) the deduction allowed under subdivision (b) of section 11-509 of this chapter, where the election permitted by such subsection has been exercised.

(2) (a) A deduction shall be allowed for net operating losses incurred by the unincorporated business, except as otherwise provided by paragraph (b) of this subdivision, in an amount computed in the same manner as the net operating loss deduction which would be allowed for the taxable year for federal income tax purposes if the unincorporated business were an individual taxpayer (but determined solely by reference to the unincorporated business gross income and unincorporated business deductions, allocated to the city, of the unincorporated business); provided, however, that such net operating loss deduction which would be allowed for the taxable year for federal income tax purposes shall for purposes of this paragraph be determined as if the unincorporated business had elected under section one hundred seventy-two of the internal revenue code to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses, sustained during taxable

years ending after June thirtieth, nineteen hundred eighty-nine. Such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred sixty-six and for the purposes of this paragraph a net operating loss shall be determined without regard to any deductions allowed pursuant to subdivision (b) of section 11-509 of this chapter and any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such internal revenue code as such section was in full force and effect on December thirty-first, nineteen hundred eighty.

(b) In the case of a partnership, no net operating loss carryback or carryover to any taxable year shall be allowed unless one or more of the partners during such taxable year were persons having a proportionate interest or interests, amounting to at least eighty percent of all such interests, in the unincorporated business gross income and unincorporated business deductions of the partnership which sustained the loss for which a carryback or carryover is claimed. In such event, the carryback or carryover allowable on account of such loss shall not exceed the percentage of the amount otherwise allowable, determined by dividing (A) the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership, for the year to which the loss is carried back or carried over, attributable to such partners, by (B) the sum of such proportionate interests owned by all partners for such taxable year. The amount by which the carryback or carryover otherwise allowable exceeds the amount allowable pursuant to the preceding sentence shall not be a carryback or carryover to any other taxable year.

(3) No deduction shall be allowed (except as provided in section 11509 of this chapter) for amounts paid or incurred to a proprietor or partner for services or for use of capital.

(4) No deduction shall be allowed for income taxes imposed by the city, this state or any other taxing jurisdiction, or the tax imposed by article thirteen-A of the tax law.

(5) No deduction shall be allowed for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter; (B) expenses paid or incurred for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; or (C) the amortizable bond premium on any bond the interest income from which is so exempt.

(6) No deduction shall be allowed in respect of the excess of net long-term capital gain over net short-term capital loss, but capital losses incurred in the unincorporated business shall be treated as ordinary losses and shall be allowed in full.

(7) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section 11-509 of this chapter, no deduction shall be allowed for expenditures with reference to the property to which such election relates, or for depreciation of such property, except as permitted by said subdivision.

(8) A deduction shall be allowed (to the extent not allowable for federal income tax purposes) for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax; (B) ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; and (C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax.

(9) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(A) (i) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste (as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(ii) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(B) However, such deduction shall be allowed only (i) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(ii) on condition that such facilities have been certified by the state commissioner of environmental conservation or his or her designated representative, in the same manner as provided in either section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with the provision of the environmental conservation law, the sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(iii) on condition that for the taxable year and all succeeding taxable years, no deduction for such expenditures or for depreciation of the same property allowed for federal income tax purposes shall be allowed under this chapter, except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subdivision, for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing unincorporated business deductions for the taxable year and all succeeding taxable years, and

(iv) where the election provided for in subdivision (b) of section 11-509 of this chapter has not been exercised in respect to the same property.

(C) (i) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-523 of this chapter.

(ii) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the public health law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation

within the time fixed by paragraph eight of subdivision (c) of section 11-523 of this chapter.

(D) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss allowable for federal income tax purposes for such taxable year.

(10) In the case of mines, oil and gas wells and other natural deposits, no deduction of any allowance for percentage depletion pursuant to section six hundred thirteen or section six hundred thirteen A of the internal revenue code of nineteen hundred fifty-four, as amended, shall be allowed. However, an allowance for depletion with respect to such property shall be deductible in the amount which would be allowable under section six hundred eleven of such internal revenue code if such deduction were computed without reference to such section six hundred thirteen or section six hundred thirteen A of such code. With respect to the computation of depletion pursuant to this section, the basis for such computation for taxable years beginning in nineteen hundred seventy-two shall be the federal basis. For subsequent taxable years, the basis of such computation shall be reduced only by the deduction for the allowance for depletion deductible pursuant to this section. In any taxable year when any such property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing unincorporated business taxable income and there shall be added to or subtracted from federal gross income, so modified, the gain or loss upon such sale or other disposition. In computing such gain or loss, the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to this subdivision.

(11) A deduction shall be allowed for that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty C of the internal revenue code.

(12) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), a deduction shall be allowed for any amount which the taxpayer could have excluded for purposes of this chapter had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(13) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), no deduction shall be allowed for any amount deductible for federal income tax purposes solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(14) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, no deduction shall be allowed for the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code.

(15) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years

beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been disallowed pursuant to subdivision thirteen of this section, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(16) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the holding, leasing or managing of real property or to income or gain therefrom if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(17) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for any expenses directly or indirectly attributable to activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(18) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, no deduction shall be allowed for any losses or expenses directly or indirectly attributable to the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such losses or expenses are attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(19) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(20) For taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in subdivision twenty-two of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), no deduction shall be allowed for the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code.

(21) For taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code other than qualified resurgence zone property described in subdivision twenty-two of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), a deduction shall be allowed with respect to such property equal to the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of subdivision twenty-four of this section, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(22) For purposes of subdivisions twenty and twenty-one of this section, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(23) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, no deduction shall be allowed for the amounts allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code.

(24) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, a deduction shall be allowed with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code equal to the amounts allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (2) par (a) amended chap 241/1989 § 46

Subd. (4) amended chap 525/1988 § 53

Subds. (5), (8) amended chap 485/1994 § 5, eff. July 26, 1994

Subds. (14), (15) amended chap 170/1994 § 37, eff. June 9, 1994

Subds. (14), (15) amended chap 525/1988 § 5

Subd. (16) amended chap 128/1996 § 12, retroactive to and deemed in

effect July 1, 1994 applying to taxable years beginning on or after

such date

Subd. (16) added chap 485/1994 § 12, eff. July 1, 1994

Subds. (17), (18), (19) added chap 128/1996 § 13, eff. June 11, 1996

applying to taxable years beginning on or after Jan. 1, 1996

Subd. (20) added L.L. 17/2002 § 2, eff. July 10, 2002. [See Note]

Subd. (21) amended chap 60/2004 § S2, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. (21) added L.L. 17/2002 § 2, eff. July 10, 2002. [See Note]

Subd. (22) added L.L. 17/2002 § 2, eff. July 10, 2002. [See Note]

Subd. (23) added chap 60/2004 § S3, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. (24) added chap 60/2004 § S3, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

DERIVATION

Formerly § S46-6.0 added LL 22/1966 § 1

Sub 9 amended LL 52/1966 § 2

Sub 2 amended LL 36/1967 § 3

Sub 1 amended LL 42/1968 § 1

Sub 2 amended LL 42/1968 § 2

Sub 10 added LL 55/1972 § 1

Sub 10 amended LL 68/1977 § 1

Sub 11 added LL 31/1978 § 3

Sub 2 par a amended LL 37/1982 § 18

Subs 12, 13, 14, 15 added LL 37/1982 § 19

Subs 12, 13, 14, 15 amended LL 43/1983 § 25

Subs 12, 13, 14, 15 amended chap 43/1985 § 19

NOTE

Provisions of L.L. 17/2002:

§ 10, If any provisions of sections one through nine of this local law is adjudged by any court of competent jurisdiction to be invalid or unconstitutional, for taxable years ending after September 10, 2001, for purposes of the general corporation tax, banking corporation tax and unincorporated business tax, the depreciation deduction allowable for qualified property described in paragraph 2 of subsection k of section 168 of the internal revenue code, for qualified New York Liberty Zone property described in paragraph 2 of subsection b of section 1400L of the internal revenue code

and for qualified New York Liberty Zone leasehold improvement property described in subsection c of such section, shall be limited to the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September 10, 2001, and the expense deduction allowable under section 179 of the internal revenue code with respect to such property shall be limited to the deduction allowable under such section as it would have applied to such property had it been acquired by the taxpayer on September 10, 2001, and, for purposes of such taxes, any gain or loss upon the disposition of such property shall be adjusted to reflect such modifications to the allowable depreciation and expense deductions with respect thereto.

§ 11. This local law shall take effect immediately and shall apply to taxable years ending after September 10, 2001.

§ 12. Notwithstanding the provisions of section eleven of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section eleven of this local law.

CASE NOTES

¶ 1. Payments made in liquidation of partnership interests and representing the outgoing partners' share in the amortization of player contracts are not payment "for services or use of capital" within the meaning of the statute and therefore could be deducted from the partnership's unincorporated business gross income. New York Yankee Partnership v. O'Cleireacain, 83 N.Y.2d 550, 611 N.Y.S.2d 805 (1994).

¶ 2. This section prohibits tax deductions for payments made to partners for services. However, where retired partners are being paid not for their own services, but the payments represented the partners' pro rata share of the partnership's unrealized receivables for services rendered by the partnership, such payments are deductible. Buchbinder Tunick & Co. v. Tax Appeals Tribunal of the City of New York, 292 A.D.2d 217, 739 N.Y.S.2d 57 (1st Dept. 2002).

¶ 3. Although solo practitioner attorney's payments for self-employed health insurance premiums, one-half of the federal self-employment tax and contributions to a defined benefit plan may be deductible for federal income tax purposes, they are not deductible for purposes of the New York City Unincorporated Business Tax.Horowitz v. NYC Tax App. Trib., 41 A.D.3d 101, 837 N.Y.S.2d 89 (1st Dept. 2007).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-508

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-508 Allocation to the city.

(a) General; allocation of business income. If an unincorporated business is carried on both within and without the city, as determined under regulations of the commissioner of finance, there shall be allocated to the city, in the manner provided in subdivision (b), (c) or (d) of this section, a fair and equitable portion of its business income. For taxable years beginning before July first, nineteen hundred ninety-six, if the unincorporated business has no regular place of business outside the city, all of such business income shall be allocated to the city.

(b) (1) Allocation by taxpayer's books. For taxable years beginning before January first, two thousand five, the portion allocable to the city may be determined from the books of the business if the methods used in keeping such books are approved by the commissioner of finance as fairly and equitably reflecting the income from the city.

(2)(i) If a taxpayer determines the portion of business income to be allocated to the city using the method prescribed in paragraph one of this subdivision on a timely filed original return with respect to each of the two taxable years, each of which must consist of twelve months, immediately preceding the taxpayer's first taxable year beginning on or after January first, two thousand five, the taxpayer may make a one-time election to continue to use that method for taxable years beginning on or after January first, two thousand five and before January first, two thousand twelve. Such election shall be made by using the method prescribed in paragraph one of this subdivision on an original timely filed return with respect to the first taxable year beginning on or after January first, two thousand five and before January first, two thousand six. Such election may not be made, or if made, shall be deemed revoked as of the beginning of the taxable year if, for either of the two taxable years immediately preceding the year in which the election is made, the commissioner of finance has determined the methods used in keeping such books do not fairly and equitably reflect the income from the city.

(ii) (A) A taxpayer that has made the election provided for in subparagraph (i) of this paragraph may revoke it by filing an original or amended return using an allocation method permitted by this section other than the method prescribed in paragraph one of this subdivision unless the commissioner of finance has determined that such method does not fairly and equitably reflect the income from the city.

(B) The election provided for in subparagraph (i) of this paragraph shall be deemed to have been revoked as of the beginning of the taxable year if, for any taxable year during which the election is intended to be in effect, the commissioner of finance has determined that the methods used in keeping the taxpayer's books do not fairly and equitably reflect the income from the city.

(C) In the case of a taxpayer that is a partnership or other unincorporated entity, the election provided for in subparagraph (i) of this paragraph shall be deemed to have been revoked as of the beginning of the taxable year unless one or more of the persons having a proportionate interest or interests, amounting to more than fifty percent of all such interests, in the taxpayer's unincorporated business gross income and unincorporated business deductions for such taxable year were persons having a proportionate interest or interests, amounting to more than fifty percent of all such interests, in the taxpayer's unincorporated business gross income and unincorporated business deductions at the end of the taxpayer's last taxable year beginning before January first, two thousand five. For purposes of this clause, a transfer of an ownership interest in unincorporated business gross income or unincorporated business deductions upon the death of a partner or owner to such deceased partner's or owner's estate shall be disregarded but transfers by such decedent's estate shall not be disregarded.

(D) Once the election provided for in subparagraph (i) of this paragraph has been revoked by the taxpayer pursuant to clause (A) or deemed revoked pursuant to clauses (B) or (C) of this subparagraph, the taxpayer shall be barred from using the method prescribed in paragraph one of this subdivision for the taxable year in which the election has been revoked or deemed revoked and any subsequent taxable year.

(c) Allocation by formula. If subdivision (b) does not apply to the taxpayer, the portion allocable to the city shall be determined by multiplying (A) the business income by (B) a business allocation percentage to be determined by adding together the percentages computed under paragraphs one, two and three of this subdivision, and dividing the result by the number of percentages; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, a taxpayer that is a "manufacturing business," as defined in subdivision (g) of this section, may determine its business allocation percentage as provided in such subdivision (g):

(1) Property percentage. The percentage computed by dividing (A) the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the unincorporated business and located within the city, by (B) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the unincorporated business and located both within and without the city. For this purpose, for taxable years beginning before January first, two thousand five, real property shall include real property rented to the unincorporated business and, for this purpose, for taxable years beginning on and after January first, two thousand five, real and tangible personal property shall include real and tangible personal property rented to the unincorporated business and the value of such real and tangible personal property rented to the unincorporated business shall mean the product of (i) eight and (ii) the gross rents payable for the rental of such property during the taxable year.

(2) Payroll percentage. The percentage computed by dividing (A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on within the city, by (B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on both within and without the city.

(3) Gross income percentage. The percentage computed by dividing (A) the gross sales or charges for services

performed by or through an agency located within the city, by (B) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices of the unincorporated business, or other agencies, situated within the city; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, sales of tangible personal property shall not be allocated to the city as hereinabove in this paragraph provided, but shall be allocated to the city only where shipments are made to points within the city, and provided, further, that:

(A) for taxable years beginning on or after July first, two thousand five, for taxpayers having gross receipts for the taxable year (determined without regard to any deductions) of less than one hundred thousand dollars, charges for services performed shall be allocated to the city to the extent that the services are performed within the city;

(B) for taxable years beginning on or after July first, two thousand six, for taxpayers having gross receipts for the taxable year (determined without regard to any deductions) of less than three hundred thousand dollars, charges for services performed shall be allocated to the city to the extent that the services are performed within the city; and

(C) for taxable years beginning on or after July first, two thousand seven, for all other taxpayers, charges for services performed shall be allocated to the city to the extent that the services are performed within the city.

(d) Other allocation methods. The portion allocable to the city shall be determined in accordance with rules and regulations of the commissioner of finance if it shall appear to the commissioner of finance that the income from the city is not fairly and equitably reflected under the provisions of either subdivision (b) or subdivision (c) of this section.

(e) Special rules for real estate. Income and deductions from the rental of real property, and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subdivision (b), (c), or (d) of this section, but shall be considered as entirely derived from or connected with the state, other than this state, in which such property is located or, if such property is located in this state, the political subdivision thereof. To the extent that anything in the preceding sentence is inconsistent with any provision of subdivision (d) of section 11-502, subdivision (c) of section 11-506 or subdivision sixteen of section 11-507 of this chapter, the provisions of such subdivisions shall take precedence over the provisions of the preceding sentence.

(e-1) Special rules for publishers and broadcasters. (1) Notwithstanding anything in paragraph three of subdivision (c) of this section to the contrary and except as provided in paragraph four of this subdivision, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, there shall be allocated to the city, for purposes of such paragraph three, the gross sales or charges for services arising from sales of subscriptions to, and advertising contained in, such newspapers or periodicals, to the extent that such newspapers or periodicals are delivered to points within the city.

(2) Notwithstanding anything in paragraph three of subdivision (c) of this section to the contrary and except as provided in paragraph four of this subdivision, in the case of a taxpayer engaged in the business of broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of such paragraph three, a portion of the gross sales or charges for services arising from the sale of subscriptions to such programs or from the broadcasting of such programs and of commercial messages in connection therewith, such portion to be determined according to the number of listeners or viewers within and without the city.

(3) Notwithstanding anything in this section (other than subdivision (e) of this section) to the contrary, in the case of a taxpayer that is substantially engaged, in the aggregate, in any combination of the businesses referred to in paragraphs one, two and four of this subdivision, the portion of business income allocable to the city shall be determined in accordance with the provisions of subdivision (c) of this section (as modified by paragraphs one, two and

four of this subdivision), unless the commissioner of finance determines that the business income from the city is not fairly and equitably reflected under the provisions of such subdivision (c), in which event the provisions of subdivision (d) of this section shall apply in determining the portion of business income allocable to the city and the provisions of subdivision (b) of this section shall not apply. For purposes of this subdivision, a taxpayer shall be deemed to be substantially engaged in a business or businesses referred to in such paragraphs one and two if more than ten percent of the taxpayer's gross receipts for the taxable year are attributable to such business or businesses.

(4) Notwithstanding anything in paragraph one or two of this subdivision to the contrary, for taxable years beginning on or after January first, two thousand two, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of paragraph three of subdivision (c) of this section, the gross sales or charges to subscribers located in the city for subscriptions to such newspapers, periodicals, or program services. For purposes of this paragraph, a subscriber shall be deemed located in the city if, in the case of newspapers and periodicals, the mailing address for the subscription is within the city and, in the case of program services, the billing address for the subscription is within the city. For purposes of this clause, "subscriber" shall mean a member of the general public who receives such newspapers, periodicals or program services and does not further distribute them.

(e-2) Rules for receipts from certain services to investment companies. (1) For taxable years beginning on or after January first, two thousand one, for purposes of paragraph three of subdivision (c) of this section, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with paragraph two of this subdivision shall be deemed to arise from services performed within the city (such portion referred to herein as the New York city portion).

(2) The New York city portion shall be the product of the total of such receipts from the sale of such services and a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined hereinafter) determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing the number of shares in the investment company which are owned on the last day of the month by shareholders that are domiciled in the city by the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(3)(A) For purposes of this subdivision the term "domicile", in the case of an individual shall have the meaning ascribed to it under chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of this code; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(B) For purposes of this subdivision, the term "investment company" means a regulated investment company, as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(C) For purposes of this subdivision, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company in their capacity as such.

(D) For purposes of this subdivision, the term "management services" means the rendering of investment advice

to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

(E) For purposes of this subdivision, the term "distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was, in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

(F) For purposes of this subdivision, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined hereinabove, to such investment company.

(f) Allocation of investment income. (1) The investment income of an unincorporated business shall be allocated to the city by multiplying such investment income by an investment allocation percentage to be determined as follows:

(A) multiply the amount of its investment capital invested in each stock, bond or other security (other than governmental securities) during the period covered by its return by the issuer's allocation percentage (determined as provided in paragraph two of this subdivision) of the issuer or obligor thereof:

(B) add together the products so obtained; and

(C) divide the sum so obtained by the total of its investment capital invested during such period in stocks, bonds and other securities; provided, however, that in case any investment capital is invested in any stock, bond or other security during only a portion of the period covered by the return, only such portion of such capital shall be taken into account; and provided, further, that if a taxpayer's investment allocation percentage is zero, interest received on bank accounts shall be allocated in the manner provided in subdivision (b), (c) or (d) of this section.

(2) (A) In the case of an issuer or obligor subject to tax under subchapter two of chapter six of this title, or subject to tax as a utility corporation under chapter eleven of this title, the issuer's allocation percentage shall be the percentage of the appropriate measure (as defined hereinafter) which is required to be allocated within the city on the report or reports, if any, required of the issuer or obligor under chapter six or eleven of this title for the preceding year. The appropriate measure referred to in the preceding sentence shall be: in the case of an issuer or obligor subject to subchapter two of chapter six of this title, entire capital; and in the case of an issuer or obligor subject to chapter eleven of this title as a utility corporation, gross income.

(B) In the case of an issuer or obligor subject to tax under part four of subchapter three of chapter six of this title, the issuer's allocation percentage shall be determined as follows:

(i) In the case of a banking corporation described in paragraphs one through eight of subdivision (a) of section 11-640 of this title which is organized under the laws of the United States, this state or any other state of the United States, the issuer's allocation percentage shall be its alternative entire net income allocation percentage, as defined in subdivision (c) of section 11-642 of this title, for the preceding year. In the case of such a banking corporation whose alternative entire net income for the preceding year is derived exclusively from business carried on within the city, its issuer's allocation percentage shall be one hundred percent.

(ii) In the case of a banking corporation described in paragraph two of subdivision (a) of section 11-640 of this

title which is organized under the laws of a country other than the United States, the issuer's allocation percentage shall be determined by dividing (I) the amount described in clause (i) of subparagraph (A) of paragraph two of subdivision (a) of section 11-642 of this title with respect to such issuer or obligor for the preceding year, by (II) the gross income of such issuer or obligor from all sources within and without the United States, for such preceding year, whether or not included in alternative entire net income for such year.

(iii) In the case of an issuer or obligor described in paragraph nine of subdivision (a) or in paragraph two of subdivision (d) of section 11-640 of this title, the issuer's allocation percentage shall be determined by dividing the portion of the entire capital of the issuer or obligor allocable to the city for the preceding year by the entire capital, wherever located, of the issuer or obligor for the preceding year.

(C) Provided, however, that if a report or reports for the preceding year are not filed, or if filed do not contain information which would permit the determination of such issuer's allocation percentage, then the issuer's allocation percentage to be used shall, at the discretion of the commissioner of finance, be either (i) the issuer's allocation percentage derived from the most recently filed report or reports of the issuer or obligor or (ii) a percentage calculated, by the commissioner of finance, reasonably to indicate the degree of economic presence in the city of the issuer or obligor during the preceding year.

(3) For purposes of this subdivision, investment capital shall be determined by taking the average value of the gross assets included therein (less liabilities deductible therefrom pursuant to the provisions of subdivision (h) of section 11-501 of this chapter). The value of investment capital which consists of marketable securities shall be the fair market value thereof and the value of investment capital other than marketable securities shall be the value thereof shown on the books and records of the unincorporated business in accordance with generally accepted accounting principles.

(4) Repealed.

(g) Special rules for manufacturing businesses. (1) For taxable years beginning on or after July first, nineteen hundred ninety-six, a manufacturing business may elect to determine its business allocation percentage by adding together the percentages determined under paragraphs one, two and three of subdivision (c) of this section and an additional percentage equal to the percentage determined under paragraph three of subdivision (c) of this section, and dividing the result by the number of percentages so added together.

(2) An election under this subdivision must be made on a timely filed (determined with regard to extensions granted) original return for the taxable year. Once made for a taxable year, such election shall be irrevocable for that taxable year. A separate election must be made for each taxable year. A manufacturing business that has failed to make an election as provided in this paragraph shall be required to determine its business allocation percentage without regard to the provisions of this subdivision. Notwithstanding anything in this paragraph to the contrary, the commissioner of finance may permit a manufacturing business to make or revoke an election under this subdivision, upon such terms and conditions as the commissioner may prescribe, where the commissioner determines that such permission should be granted in the interests of fairness and equity due to a change in circumstances resulting from an audit adjustment.

(3) As used in this subdivision, the term "manufacturing business" means an unincorporated business primarily engaged in the manufacturing and sale thereof of tangible personal property; and the term "manufacturing" includes the process (including the assembly process) (i) of working raw materials into wares suitable for use or (ii) which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process, by the use of machinery, tools, appliances and other similar equipment. An unincorporated business shall be deemed to be primarily engaged in the activities described in the preceding sentence if more than fifty percent of its gross receipts for the taxable year are attributable to such activities.

(h) Notwithstanding subdivision (d) of this section, if it shall appear to the commissioner of finance that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity,

business, or income of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion, in the case of a business allocation percentage, to adjust it by (1) excluding one or more of the factors therein; (2) including one or more factors, such as expenses, purchases, contract values (minus subcontract values); (3) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining unincorporated business entire net income, or (4) any other similar or different method calculated to effect a fair and proper allocation of the income reasonably attributable to the city, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage; provided the income therefrom is also excluded in determining unincorporated business entire net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 625/1996 § 6, eff. Sept. 4, 1996 and applying to taxable years beginning on or after Jan. 1, 1996

Subd. (a) amended chap 485/1994 § 6, eff. July 1, 1994

Subd. (b) amended chap 633/2005 § 4, eff. Aug. 30, 2005.

Subd. (c) open par amended chap 625/1996 § 7, eff. Sept. 4, 1996 and applying to taxable years beginning on or after Jan. 1, 1996

Subd. (c) open par amended chap 485/1994 § 7, eff. July 1, 1994

Subd. (c) par (1) amended chap 633/2005 § 5, eff. Aug. 30, 2005.

Subd. (c) par (3) amended chap 633/2005 § 6, eff. Aug. 30, 2005.

Subd. (c) par (3) amended chap 625/1996 § 8, eff. Sept. 4, 1996 and applying to taxable years beginning on or after Jan. 1, 1996

Subd. (e) amended chap 485/1994 § 13, eff. July 1, 1994

Subd. (e-1) amended chap 513/2002 § 49, eff. Sept. 17, 2002.

Subd. (e-1) added chap 128/1996 § 17, eff. June 11, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. (e-2) added chap 63/2000 § AA4, eff. May 15, 2000 and applying to taxable years beginning on or after Jan. 1, 2001.

Subd. (f) added chap 485/1994 § 8, eff. July 1, 1994

Subd. (f) par (4) repealed chap 633/2005 § 7, eff. Aug. 30, 2005 and applying to taxable years beginning on or after Jan. 1, 2005.

Subd. (g) added chap 625/1996 § 9, eff. Sept. 4, 1996 and applying to

taxable years beginning on or after Jan. 1, 1996

Sub. (h) added chap 633/2005 § 8, eff. Aug. 30, 2005 and applying to

taxable years beginning on or after Jan. 1, 2005.

DERIVATION

Formerly § S46-7.0 added LL 22/1966 § 1

CASE NOTES

¶ 1. Commissioner of Finance determination assessing unincorporated business tax deficiency confirmed. Petitioner is not entitled to income allocation on ground its three "offices", located outside the city of New York and in homes of partners, do not constitute regular places of business within §11-508. Petitioner did not hold itself out to public as doing business at claimed locations and failed to provide documentation such as business sign, bills for telephone, utilities, real estate taxes, rental agreements, etc. or business cards listing these addresses.-Kremer, Rosen & Co. v. O'Cleireacain, 191 AD2d 231 [1993].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-509

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-509 Deductions not subject to allocation.

(a) In computing unincorporated business taxable income, there shall be allowed (without allocation under section 11-508 of this chapter) deductions for reasonable compensation for taxable years beginning before January first, two thousand seven, not in excess of five thousand dollars, and for taxable years beginning on or after January first, two thousand seven, not in excess of ten thousand dollars, for personal services of the proprietor and each partner actively engaged in the unincorporated business, but the aggregate of such deductions shall not exceed twenty per centum of the unincorporated business taxable income computed without the benefit of any deductions under this subdivision or the unincorporated business exemptions under section 11-510 of this chapter.

(b) Subject to the conditions provided in paragraphs three and four of this subdivision at the election of the taxpayer there shall also be allowed (without allocation under section 11-508 of this chapter) either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of the items shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in paragraphs three or four of this subdivision, and subject to the conditions provided therein, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that no deduction shall be allowed pursuant to section 11-507 of this chapter for depreciation of the same property, and the total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property shall not exceed its cost or other basis and, in the case of an unincorporated business carried on both within and without this city, with respect to property described in paragraph four of this subdivision, such total shall not exceed its cost or other basis multiplied by (A) the percentage of the excess of the taxpayer's unincorporated business gross income over its

unincorporated business deductions allocated to this city, or (B) the percentage of the taxpayer's business income allocated to this city, whichever is applicable, which percentage shall be determined under section 11-508 of this chapter for the first year such depreciation is deducted.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, which is used or to be used for purposes of research or development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that, in the case of an unincorporated business carried on both within and without this city, with respect to property described in paragraph four of this subdivision, such deduction does not exceed the expenditures multiplied by (A) the percentage of the excess of the taxpayer's unincorporated business gross income over its unincorporated business deductions allocated to this city, or (B) the percentage of the taxpayer's business income allocated to this city, whichever is applicable, which percentage shall be determined under section 11-508 of this chapter for the first year such depreciation is deducted, and that, for the taxable year and all succeeding taxable years, no deduction shall be allowed pursuant to section 11-507 of this chapter on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowable for federal income tax purposes on account of such expenditures or on account of depreciation of the same property shall be proportionately reduced in determining the deductions allowable pursuant to section 11-507 of this chapter for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, the deduction allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a deduction shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in the taxpayer's return for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section 11-523 of this chapter.

(3) For purposes of this paragraph, such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditure relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after December thirty-first, nineteen hundred sixty-five or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred

sixty-seven. A taxpayer shall be allowed a deduction under subparagraph (A), (B) or (C) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a deduction under paragraph one may be taken in proportion to the part of the year such property is used by the taxpayer.

(4) For purposes of this paragraph, such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's trade or business, (A) the construction, reconstruction, or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five. Provided, however, a deduction under paragraph one of this subdivision shall be allowed with respect to property described in this paragraph only on condition that such property shall be principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing. For purposes of the preceding sentence, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under subdivision nine of section 11-507 of this chapter may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture ; viticulture or commercial fishing, in which event, a deduction shall not be allowed under subdivision nine of section 11-507 of this chapter. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a deduction under paragraph one shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(5) If the deductions allowable for any taxable year pursuant to this subdivision exceed the taxpayer's unincorporated business taxable income, determined without the allowance of such deductions, the excess may be carried over to the following taxable year or years and may be deducted (without allocation under section 11-508 of this chapter) in computing unincorporated business taxable income for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the deductions so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for

federal income tax purposes, there shall be added to federal gross income the amount of the difference between such adjusted bases.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 491/2007 § 1, eff. Aug. 1, 2007.

Subd. (b) pars (1), (2) amended chap 485/1994 § 9, eff. July 1, 1994

DERIVATION

Formerly § S46-8.0 added LL 22/1966 § 1

Sub a amended LL 42/1968 § 3

Sub b amended LL 93/1968 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-510

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-510 Unincorporated business exemptions.

In computing unincorporated business taxable income, there shall be allowed (without allocation under section 11-508 of this chapter):

(1) an unincorporated business exemption of five thousand dollars, prorated for taxable years of less than twelve months under regulations of the commissioner of finance;

(2) if a partner in an unincorporated business is taxable under this chapter or under any local law imposed pursuant to section one of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, an exemption for the amount of the partner's proportionate interest in the excess of the unincorporated business gross income over the deductions allowed under sections 11-507 and 11-509 of this chapter, but this exemption shall be limited to the amount which is included in the partner's unincorporated business taxable income allocable to the city, or included in a corporate partner's net income allocable to the city, provided, however, no such exemption shall be allowed to an unincorporated business for any taxable year of the unincorporated business beginning after June thirtieth, nineteen hundred ninety-four.

HISTORICAL NOTE

Section amended chap 485/1994 § 15, eff. July 26, 1994

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-9.0 added LL 22/1966 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Even where the corporate partner's net taxable income after losses and other deductions is less than the distributive share received from the unincorporated business, the exemption in subdivision 2 of this section from city unincorporated business taxable income for the amount "included in" a corporate partner's net income allocable to the city is not limited to the amount of a corporate partner's net taxable income allocable to the city.-Matter of Richmond Construction v. Tishelman, 90 App. Div. 2d 414 [1982].

¶ 2. Exemption under subd. 2 is limited to aggregate of each corporate partner's distributive share of net income which does not exceed the partner's "net income allocable to the city" under N.Y.C. Gen. Corp. Tax Law, and a corporate partner's "net income allocable to the city" is the amount calculated under the N.Y.C. Gen. Corp. Tax Law on which it must pay such tax. The statute does not permit an exemption for all amounts considered in computing the corp. partner's allocated net income; such a construction would render the limitation on the exemption a nullity since unincorp. business would thus always be able to exempt the full amount of its distributions to corporate partners.-Matter of Richmond Construction v. Tishelman, 90 App. Div. 2d 414 [1982], reversed 61 N.Y. 2d 1 [1983].

CASE NOTES

¶ 1. The provisions of Admin. Code §11-510(2) which intend to avoid double taxation of income, are properly interpreted as taking into account the amounts "added back" to the corporate partners' income for the purpose of computing an alternative corporate tax base.-Matter of LeBoeuf, Lamb, Leiby & MacRae v. O'Cleireacain, 193 AD2d 438 [1993].

¶ 2. Law partnerships were entitled to exemption from unincorporated business tax (UBT) for income paid to partners who were organized as professional corporations (PCs). The City did not lose the tax income because the PCs were subject to the City General Corporation Tax. The double taxation sought here by the City would have rendered the exemption meaningless. Weil, Gotschal & Manges v. O'Cleireacain, 83 N.Y.2d 591, 611 N.Y.S.2d 823 (1994).

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-511 Declaration of estimated tax.

(a) Requirement of declaration. Except as provided in subdivision (j) of this section, every unincorporated business shall make a declaration of its estimated tax for the taxable year, containing such information as the commissioner of finance may prescribe by regulations or instruction, if: (1) for taxable years beginning after nineteen hundred eighty-six but before nineteen hundred ninety-six, its unincorporated business taxable income can reasonably be expected to exceed fifteen thousand dollars; (2) for taxable years beginning in nineteen hundred ninety-six, its unincorporated business taxable income can reasonably be expected to exceed twenty thousand dollars; and (3) for taxable years beginning after nineteen hundred ninety-six, its estimated tax can reasonably be expected to exceed one thousand eight hundred dollars.

(b) Definition of estimated tax. The term "estimated tax" means the amount which an unincorporated business estimates to be its tax under this chapter for the taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax other than the credit allowable under subdivision (c) of section 11-503 of this chapter.

(c) Time for filing declaration. Except as hereinafter provided, a declaration of estimated tax required under this section shall be filed on or before April fifteenth of the taxable year provided, however, that if the requirements of subdivision (a) of this section are first met:

(1) after April first and before June second of the taxable year, the declaration shall be filed on or before June fifteenth, or

(2) after June first and before September second of the taxable year, the declaration shall be filed on or before

September fifteenth, or

(3) after September first of the taxable year, the declaration shall be filed on or before January fifteenth of the succeeding year.

(d) Filing of declarations on or before January fifteenth.

(1) A declaration of estimated tax by an unincorporated business having an estimated unincorporated business taxable income from farming (including oyster farming) for the taxable year which is at least two-thirds of its total estimated unincorporated business taxable income for the taxable year may be filed at any time on or before January fifteenth of the succeeding year.

(2) For taxable years beginning before nineteen hundred ninety-seven, a declaration of estimated tax under this section of forty dollars or less for the taxable year may be filed at any time on or before January fifteenth of the succeeding year under regulations of the commissioner of finance.

(e) Amendments of declaration. An unincorporated business may amend a declaration under regulations of the commissioner of finance.

(f) Return as declaration or amendment. If on or before February fifteenth of the succeeding taxable year an unincorporated business subject to the estimated tax requirements of this section files its return for the taxable year for which the declaration is required, and pays on or before such date the full amount of the tax shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January fifteenth of the succeeding year, and

(2) such return shall be considered as the amendment permitted by subdivision (e) to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

(g) Fiscal year. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(h) Short taxable year. An unincorporated business subject to the estimated tax requirements of this section and having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the commissioner of finance.

(i) Declaration of unincorporated business under a disability. The declaration of estimated tax for an unincorporated business which is unable to make a declaration for any reason shall be made and filed by the committee, fiduciary or other person charged with the care of the property of such unincorporated business (other than a receiver in possession of only a part of such property), or by his or her duly authorized agent.

(j) Declaration of estimated tax for taxable years beginning prior to July thirteenth, nineteen hundred sixty-six. Notwithstanding subdivision (c) of this section, no declaration of estimated tax required by subdivision (a) of this section need be filed until September twelfth, nineteen hundred sixty-six.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap. 481/1997 § 3, approved Aug. 26, 1997

and deemed in effect on and after Jan. 1, 1997.

Subd. (a) amended chap 128/1996 § 2, eff. June 11, 1996

Subd. (a) amended L.L. 51/1987 § 2

Subd. (d) amended chap 128/1996 § 2, eff. June 11, 1996

DERIVATION

Formerly § S46-15.0 added LL 22/1966 § 1

Sub b amended chap 842/1976 § 38

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-512

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-512 Payments of estimated tax.

(a) General. The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following June fifteenth, September fifteenth, and January fifteenth, respectively.

(2) If the declaration is filed after April fifteenth and not after June fifteenth of the taxable year, and is not required to be filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following September fifteenth and January fifteenth, respectively.

(3) If the declaration is filed after June fifteenth and not after September fifteenth of the taxable year, and is not required to be filed on or before June fifteenth of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following January fifteenth.

(4) If the declaration is filed after September fifteenth of the taxable year, and is not required to be filed on or before September fifteenth of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs two, three and four of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Amendments of declaration. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) Application to short taxable year. This section shall apply to a taxable year of less than twelve months in accordance with regulations of the commissioner of finance.

(d) Fiscal year. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(e) Installments paid in advance. An unincorporated business may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

(f) Cross reference. For unincorporated businesses with taxable years beginning prior to July thirteenth, nineteen hundred sixty-six, see subdivision (j) of section 11-511 of this chapter.

(g) Taxpayers with credit relating to stock transfer tax. The portion of an overpayment attributable to a credit allowable pursuant to subdivision (c) of section 11-503 of this chapter may not be credited against any payment due under this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-16.0 added LL 22/1966 § 1

Sub g added chap 842/1976 § 39

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-513

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-513 Accounting periods and methods.

(a) Accounting periods. A taxpayer's taxable year under this chapter shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Accounting methods. A taxpayer's method of accounting under this chapter shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, unincorporated business taxable income shall be computed under such method as in the opinion of the commissioner of finance clearly reflects income.

(c) Change of accounting period or method. (1) If a taxpayer's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this chapter shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, beginning after January first, nineteen hundred sixty-six, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year, which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable

to the accrual of such installment payments, in accordance with regulations of the commissioner of finance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-17.0 added LL 22/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-514

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-514 Returns, payment of tax.

(a) General. On or before the fifteenth day of the fourth month following the close of a taxable year, an unincorporated business income tax return shall be made and filed, and the balance of any tax shown on the face of such return, not previously paid as installments of estimated tax, shall be paid: (1) by or for every unincorporated business, for taxable years beginning after nineteen hundred eighty-six but before nineteen hundred ninety-seven, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than ten thousand dollars, or having any amount of unincorporated business taxable income; (2) by or for every partnership, for taxable years beginning after nineteen hundred ninety-six, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than twenty-five thousand dollars, or having unincorporated business taxable income of more than fifteen thousand dollars; and (3) by or for every unincorporated business other than a partnership, for taxable years beginning after nineteen hundred ninety-six, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than seventy-five thousand dollars, or having unincorporated business taxable income of more than thirty-five thousand dollars.

(b) Decedents. The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(c) Individuals under a disability. The return for an individual who is unable to make a return by reason of

minority or other disability shall be made and filed by such individual's guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), or by such individual's duly authorized agent.

(d) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) Returns for taxable years ending prior to December thirty-first nineteen hundred sixty-six. With respect to taxable years ending prior to December thirty-first, nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth day of the fourth month following the close of such taxable year or September twelfth, nineteen hundred sixty-six, whichever is later.

(g) Taxpayers with credit relating to stock transfer tax. Subdivisions one and two of this section shall apply to a taxpayer which has a right to a credit pursuant to subdivision (c) of section 11-503 of this chapter, except that the tax, or balance thereof, payable to the commissioner of finance in full pursuant to subdivision (a) of this section, at the time the report is required to be filed, shall be calculated and paid at such time as if the credit provided for in subdivision (c) of section 11-503 of this chapter were not allowed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 481/1997 § 4, approved Aug. 26, 1997

and deemed in effect on and after Jan. 1, 1997.

Subd. (a) amended chap 128/1996 § 3, eff. June 11, 1996

Subd. (a) amended L.L. 51/1987 § 3

DERIVATION

Formerly § S46-18.0 added LL 22/1966 § 1

Sub g added chap 842/1976 § 40

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-515

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-515 Time and place for filing returns and paying tax.

A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner of finance on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The commissioner of finance shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for payment of any tax.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-19.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-516

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-516 Signing of returns and other documents.

(a) General. Any return, declaration, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the commissioner of finance. The fact that an individual's name is signed to a return, declaration, statement, or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-20.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-517

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-517 Extensions of time.

(a) General. The commissioner of finance may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the commissioner of finance may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the commissioner of finance may require.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-21.0 added LL 22/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-518

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-518 Requirements concerning returns, notices, records and statements.

(a) General. The commissioner of finance may prescribe regulations as to the keeping of records, the content and forms of returns and statements, and the filing of copies of federal income tax returns and determinations. The commissioner of finance may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the commissioner of finance may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualification as such to the commissioner of finance, as may be required by regulation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-22.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-519

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-519 Report of change in federal or New York state taxable income.

If the amount of a taxpayer's federal or New York state taxable income reported on his or her federal or New York state income tax for any taxable year is changed or corrected by the United States internal revenue service or the New York state tax commission or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or the state of New York, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, pursuant to subsection (f) of section six hundred eighty-one of the tax law, executes a notice or waiver of the restrictions provided in subsection (c) of such section of the tax law, the taxpayer shall report such change or correction in federal or New York state taxable income or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver, or as otherwise required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal or New York state income tax return shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner of finance may require. The commissioner of finance may by regulation prescribe such exceptions to the requirements of this section as the commissioner deems appropriate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-23.0 added LL 22/1966 § 1

Amended LL 63/1969 § 13

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-519.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-519.1 Report of change of state sales and compensating use tax liability.

Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

HISTORICAL NOTE

Section renumbered chap 839/1986 § 46 (formerly § 11-519.01)

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-23.1 added LL 10/1985 § 15

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-520

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-520 Change of election.

Any election expressly authorized by this chapter, other than the election authorized by section 11-506 of this chapter, may be changed on such terms and conditions as the commissioner of finance may prescribe by regulation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-24.0 added LL 22/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-521

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-521 Notice of deficiency.

(a) General. If upon examination of a taxpayer's return under this chapter the commissioner of finance determines that there is a deficiency of income tax, the commissioner may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a return required under this chapter, the commissioner of finance is authorized to estimate the taxpayer's city unincorporated business taxable income and tax thereon, from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his or her last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last known address in or out of the city, unless the commissioner of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment. After ninety days from the mailing of a notice of deficiency or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, after ninety-days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, such notice shall be an assessment of the amount of tax specified therein, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax appeals tribunal a petition under section 11-529 of this chapter. If the notice of deficiency or conciliation decision is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-534 of this chapter,

until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition with the tax appeals tribunal contesting such notice, nor, if a petition with respect to the taxable year has been both served upon the commissioner of finance and filed with the tax appeals tribunal, until the decision of the tax appeals tribunal has become final. For exception in the case of judicial review of the decision of the tax appeals tribunal, see subdivision (c) of section 11-530 of this chapter.

(d) Exceptions for mathematical errors. If a mathematical error appears on a return (including an overstatement of the amount paid as estimated tax), the commissioner of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed.

Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision (b) of section 11-529 of this chapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency) nor shall such assessment or collection be prohibited by the provisions of subdivision (c) of this section.

(e) Exception where change in federal or New York state taxable income is not reported.

(1) If the taxpayer fails to comply with section 11-519 of this chapter in not reporting a change or correction increasing or decreasing the taxpayer's federal or New York state taxable income as reported on the taxpayer's federal or New York state return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver described in such section, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected federal or New York state taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-519 of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision (b) of section 11-529 of this chapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, unless the commissioner of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions. The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the commissioner of finance.

(g) Deficiency defined. For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (i) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by the taxpayer or by the commissioner of finance), and less, (ii) the amounts previously assessed (or collected without assessment) as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in

favor of the taxpayer.

(h) Exception where change or correction of sales and compensating use tax liability is not reported. (1) If a taxpayer fails to comply with section 11-519.1 of this chapter in not reporting a change or correction of his or her sales and compensating use tax liability or in not filing a copy of an amended return or report relating to his or her sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under this chapter by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by section 11-519.1 of this chapter, is filed accompanied by a statement showing where such state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision (b) of section 11-529 of this chapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, and such notice shall be sufficient for purposes of this chapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. (b), (c), (d) amended chap 808/1992 § 17, eff. Oct. 1, 1992

Subd. (e) par (2) amended chap 808/1992 § 17, eff. Oct. 1, 1992

Subd. (h) par (1) amended chap 839/1986 § 47

Subd. (h) par (2) amended chap 808/1992 § 17, eff. Oct. 1, 1992

DERIVATION

Formerly § S46-25.0 added LL 22/1966 § 1

Sub e par 1 amended LL 63/1969 § 14

Sub e par 1 amended LL 37/1982 § 20

Sub h added LL 10/1985 § 16

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***** Current through December 2009 ****

NYC Administrative Code 11-522

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-522 Assessment.

(a) Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the commissioner of finance shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section 11-521 of this chapter if no petition is both served on the commissioner of finance and filed with the tax appeals tribunal, or if a petition is filed, then upon the date when a decision of the tax appeals tribunal establishing the amount of the deficiency becomes final. If an amended return or report filed pursuant to section 11-519 of this chapter concedes the accuracy of a federal or New York state adjustment, change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-523 of this chapter.

If a report or amended return or report filed pursuant to section 11-519.1 of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under this chapter resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section 11-523 of this chapter.

If a notice of additional tax due, as prescribed in subdivision (e) of section 11-521 of this chapter has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-519 of this chapter is filed accompanied by a statement

showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

If a notice of additional tax due, as prescribed in subdivision (h) of section 11-521 of this chapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by section 11-519.1 of this chapter, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers. If the mode or time for the assessment of any tax under this chapter (including interest, additions to tax and assessable penalties) is not otherwise provided for, the commissioner of finance may establish the same by regulations.

(c) Estimated income tax. No unpaid amount of estimated tax under section one hundred sixteen shall be assessed.

(d) Supplemental assessment. The commissioner of finance may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 11-521 of this chapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference. For assessment in case of jeopardy, see section 11-534 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 839/1986 § 48

Subd. (a) first unnumbered par amended chap 808/1992 § 18, eff. Oct.

1, 1992

DERIVATION

Formerly § S46-26.0 added LL 22/1966 § 1

Sub a amended LL 63/1969 § 15

Sub a amended LL 10/1985 § 17

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-523

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-523 Limitations on assessment.

(a) General. Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

(b) Time return deemed filed. For purposes of this section a return of tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(c) Exceptions. (1) Assessment at any time. The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax,

(C) the taxpayer fails to comply with section 11-519 of this chapter in not reporting a change or correction increasing or decreasing the taxpayer's federal or New York state taxable income as reported on the taxpayer's federal or New York state income tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, or in not filing an amended return, or

(D) the taxpayer fails to file a report or amended return or report required under section 11-519.1 of this chapter, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed.

(2) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal or New York state income. If the taxpayer shall, pursuant to section 11-519 of this chapter, report a change or correction or file an amended return increasing or decreasing federal or New York state taxable income or report the execution of a notice of waiver and the changes and corrections on which it is based, or a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal or New York state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to net operating loss carryback. If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment. If a return is required for a decedent or for his or her estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d) of this section.

(7) Report on use of certain property. Under the circumstances described in paragraph two of subdivision (b) of section 11-509 of this chapter, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility. Under the circumstances described in paragraph nine of section 11-507 of this chapter, the tax may be assessed within three years after the filing of the return containing the information required by such paragraph.

(9) Report of changed or corrected sales and compensating use tax liability. If the taxpayer files a report or amended return or report required under section 11-519.1 of this chapter, in respect of a change or correction of sales and compensating use tax liability, the assessment (if not deemed to have been made upon the filing of the report) may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(d) Omission of income on return. The tax may be assessed at any time within six years after the return was filed if (1) a taxpayer omits from his or her city unincorporated business gross income an amount properly includible therein which is in excess of twenty-five per centum of the amount of city unincorporated business gross income stated in the return, or (2) an estate or trust omits income from its return in an amount in excess of twenty-five percent of its income determined as if it were an individual.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of finance of the nature and amount of such item.

(e) Suspension of running of period of limitation. The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision (c) of section 11-521 of this chapter from making the assessment or from collecting by levy.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (c) pars (1), (9) amended chap 839/1986 § 49

DERIVATION

Formerly § S46-27.0 added LL 22/1966 § 1

Sub c par 1 subpar c amended LL 63/1969 § 16

Sub c par 3 amended LL 63/1969 § 17

Sub c par 1 amended LL 37/1982 § 21

Sub c par 3 amended LL 37/1982 § 22

Sub c par 1 amended LL 10/1985 § 18

Sub c par 9 added LL 10/1985 § 19

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NYC Administrative Code 11-524

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-524 Interest on underpayment.

(a) General. If any amount of tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of six percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax under section 11-512 of this chapter.

(c) Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner of finance for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(e) Tax reduced by carryback. If the the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period

ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax. Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section 11-532 of this chapter, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment within ten days after notice and demand. If notice and demand is made for payment of any amount under subdivision (b) of section 11-532 of this chapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(i) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(j) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of six percent per annum from the date of the payment of the refund, but only it if appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(k) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 241/1989 § 1

Subds. (h), (i) repealed chap 241/1989 § 26

Subds. (h), (i) relettered chap 241/1989 § 26

(formerly subds (j), (k))

Subd. (j) relettered chap 241/1989 § 26

(formerly subd. (l) amended chap 241/1989 § 1)

Subd. (k) relettered chap 241/1989 § 26

(formerly subd. (m))

DERIVATION

Formerly § S46-28.0 added LL 22/1966 § 1

Subs a, m amended LL 94/1977 § 9

Sub d repealed LL 43/1983 § 26

Sub f amended LL 43/1983 § 27

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-525

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-525 Additions to tax and civil penalties.

(a) (1) Failure to file tax return. (A) In case of failure to file a tax return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a tax return within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amounts shown as tax on any return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during

which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by he amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including an assessment made pursuant to subdivision (a) of section 11-522 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions. (A) With respect to any return the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph one) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence. (1) If any part of a deficiency is due to negligence or intentional disregard of this chapter or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of section 11-524 with respect to the portion of the deficiency described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such deficiency (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in unincorporated business gross income, as that term is defined in section 11-506, any portion of a deficiency attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any addition to tax is imposed under this subdivision by reason of the preceding sentence, the amount of the addition to tax imposed by paragraph one of this subdivision shall be five percent of the portion of the deficiency which is attributable to the failure described in the preceding sentence.

(c) Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment

rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of six percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year (or if no return was filed, ninety percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death. In any case in which there would be no underpayment if this subdivision were applied by substituting "eighty percent" for "ninety percent" where it appears in the second preceding sentence, the addition to tax under this subdivision shall be equal to seventy-five percent of the amount otherwise determined under this subdivision.

(d) Exception to addition for underpayment of estimated tax. The addition to tax under subdivision (c) of this section with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(A) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the unincorporated business taxable income shall be placed on an annualized basis by:

(i) multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid, and

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or

(D) (i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner:

(I) take the unincorporated business taxable income for all months during the taxable year preceding the filing month,

(II) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(III) determine the tax on the amounts determined under subclause (II), and

(IV) multiply the tax determined under subclause (III) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of clause (i) of this subparagraph:

(I) the base period percentage for any period of months shall be the average percent which the unincorporated business taxable income for the corresponding months in each of the three preceding years bears to the unincorporated business taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of new unincorporated businesses and other similar circumstances, and

(II) the term "filing month" means the month in which the installment is required to be paid;

(2) An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) (1) Except as provided in paragraph two hereof, subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall not apply in the case of any taxpayer which had unincorporated business taxable income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(2) The amount treated as the estimated tax under subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

(f) Deficiency due to fraud. (1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of section 11-524 with respect to the portion of the deficiency described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such deficiency (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The addition to tax under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (a) or (b).

(g) Additional penalty. Any taxpayer who with fradulent intent shall fail to pay any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this chapter shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(h) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this chapter to tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-521, this subdivision shall not apply to-

(1) any addition to tax under subdivision (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c); and

(3) any additional penalties under subdivisions (g) and (k).

(i) Determination of deficiency. For purposes of subdivisions (b) and (c) of this section, the amounts shown as

the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(j) Substantial understatement of liability. If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of subdivision (g) of section 11-521). The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(k) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph (1) of this subdivision, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a member, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph (1) of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 839/1986 § 1

Subd. (b) amended chap 765/1985 § 68

Subd. (c) amended chap 241/1989 § 2

Subds. (f), (h), (j) amended chap 765/1985 § 68

Subd. (k) added chap 765/1985 § 68

DERIVATION

Formerly § S46-29.0 added LL 22/1966 § 1

Sub c amended LL 94/1977 § 10

Sub c amended LL 1/1983 § 3

Sub d par 1 subpar C amended LL 1/1983 § 4

Sub a amended LL 2/1983 § 20

Sub c amended LL 43/1983 § 28

Sub d amended LL 43/1983 § 29

Subs f, g, h, i relettered LL 43/1983 § 30

(formerly subs e, f, g, h)

Sub e added LL 43/1983 § 30

Subs h, i amended LL 43/1983 § 31

Sub j added LL 43/1983 § 32

Sub a pars 1, 4 amended chap 765/1985 § 68

Subs b, f, h, j amended chap 765/1985 § 68

Sub k added chap 765/1985 § 68

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-526 Overpayment.

(a) General. The commissioner of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter or by chapters six, seventeen and nineteen of this title, on the person who made overpayment, and the balance shall be refunded.

(b) Credits against estimated tax. The commissioner of finance may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(c) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

(d) Assessment and collection after limitation period. If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(e) Notwithstanding any provision of law in article fifty-two of the civil practice law and rules to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of the department of finance, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-30.0 added LL 22/1966 § 1

Sub e added LL 76/1973 § 1

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Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-527 Limitation on credit or refund.

(a) General. Claim for credit or refund of an overpayment of tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement. If an agreement under the provisions of paragraph two of subdivision (c) of section 11-523 of this chapter (extending the period for assessment of income tax) is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund the period for filing a claim for credit or refund, or for making credit or refund if no claims filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) of this section if a claim had been filed on the date the agreement was executed.

(c) Notice of change or correction of federal or New York state taxable income. If a taxpayer is required by

section 11-519 of this chapter to report a change or correction in federal or New York state taxable income reported on the taxpayer's federal or New York state income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, or to file an amended return with the commissioner of finance, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of finance. If the report or amended return required by section 11-519 of this chapter is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal or New York state change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal or New York state change, correction or items amended on the taxpayer's amended federal or New York state income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Overpayment attributable to net operating loss carryback. A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss, or within the period prescribed in subdivision (b) of this section in respect of such taxable year, or within the period prescribed in subdivision (c) of this section, where applicable in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section 11-530 of this chapter after the expiration of the applicable period of limitation specified in this chapter unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(f) Effect of petition to tax appeals tribunal. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-521 of this chapter and if the taxpayer files a timely petition with the tax appeals tribunal under section 11-529 of this chapter, the tax appeals tribunal may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(1) as to overpayments determined by a decision of the tax appeals tribunal which has become final;

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax appeals tribunal which has become final;

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(g) Limit on amount of credit or refund. The amount of overpayment determined under subdivision (f) of this section shall, when the decision of the tax appeals tribunal has become final, be credited or refunded in accordance with subdivision (a) of section 11-526 of this chapter and shall not exceed the amount of tax which the tax appeals tribunal determines as part of its decision was paid: (1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim has been filed (whether or not filed) stating the grounds upon which the tax appeals tribunal finds that there is an overpayment.

(h) Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof

shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment and any amount paid by the taxpayer as estimated tax for a taxable year shall be deemed to have been paid by the taxpayer on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(j) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section 11-526 of this chapter.

(k) Notice of change or correction of sales and compensating use tax liability. If a taxpayer is required by section 11-519.1 of this chapter to file a report or amended return or report in respect of a change or correction of his or her sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return or report was required to be filed with the commissioner of finance. The amount of such credit or refund shall be computed without change of the allocation of income upon which the taxpayer's return (or any additional assessment) was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability.

This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (c) amended chap 241/1989 § 28

Subds. (f), (g) amended chap 808/1992 § 19, eff. Oct. 1, 1992

Subd. (k) amended chap 839/1986 § 50

DERIVATION

Formerly § S46-31.0 added LL 22/1966 § 1

Sub c amended LL 63/1969 § 18

Sub k added LL 10/1985 § 20

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NYC Administrative Code 11-528

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-528 Interest on overpayment.

(a) General. Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date (to be determined by the commissioner of finance) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) Late and amended returns and claims for credit or refund. Notwithstanding paragraph one or two of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim, for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(4) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or

period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provisions of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund of an overpayment.

(5) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax and payment of estimated tax. The provisions of subdivisions (h) and (i) of section 11-527 of this chapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Refund within three months of claim for overpayment. If any overpayment of tax imposed by this chapter is credited or refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, or within three months after an amended return was filed claiming such overpayment or within three months after a claim for credit or refund was filed on which such overpayment was claimed, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

(d) Refund of tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision (c) of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) No interest until return in processible form. (1) For purposes of subdivisions (a) and (c) of this section, a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph one of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

(f) Cross-reference. For provision with respect to interest after failure to file notice of federal or New York state change under section 11-519 of this chapter, see subdivision (c) of section 11-527 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 241/1989 § 3

Subd. (a) par (3) amended chap 241/1989 § 29

Subd. (a) par (4) added chap 241/1989 § 30

Subd. (a) par (5) so designated and amended chap 241/1989 § 30

(formerly closing par of subd. (a))

Subd. (c) amended chap 241/1989 § 31

Subd. (f) amended chap 241/1989 § 32

DERIVATION

Formerly § S46-32.0 added LL 22/1966 § 1

Sub e amended LL 63/1969 § 19

Sub a amended LL 94/1977 § 11

Sub a amended LL 43/1983 § 33

Sub d amended LL 43/1983 § 34

Sub f relettered LL 43/1983 § 35

(formerly sub e)

Sub e added LL 43/1983 § 35

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-529 Petition to tax appeals tribunal.

(a) General. The form of a petition to the tax appeals tribunal, and further proceedings before the tax appeals tribunal in any case initiated by the filing of a petition, shall be governed by such rules as the tax appeals tribunal shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. A decision of the tax appeals tribunal shall be rendered, and notice thereof shall be given, in the manner provided by section one hundred seventy-one of the charter.

(b) Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-521 of this chapter, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, the taxpayer may file a petition with the tax appeals tribunal for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (g) of section 11-527 of this chapter.

(c) Petition for refund. A taxpayer may file a petition with the tax appeals tribunal for the amounts asserted in a claim for refund if:

(1) the taxpayer has filed a timely claim for refund with the commissioner of finance,

(2) the taxpayer has not previously filed with the tax appeals tribunal a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section 11-527 of this chapter, and

(3) either: (A) six months have expired since the claim was filed, or (B) the commissioner of finance has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the commissioner of finance. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(4) If the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code, a taxpayer who is eligible to file a petition for refund with the tax appeals tribunal pursuant to this subdivision may request a conciliation conference prior to filing such petition, provided the request is made within the time prescribed for filing the petition. Notwithstanding anything in this subdivision to the contrary, if the taxpayer has requested a conciliation conference in accordance with the procedure established pursuant to section 11-124 of the code, a petition for refund may be filed no later than ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding.

(d) Assertion of deficiency after filing petition. (1) Petition for redetermination of deficiency. If a taxpayer files with the tax appeals tribunal a petition for redetermination of a deficiency, the tax appeals tribunal shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section 11-525 of this chapter, if claim therefor is asserted at or before the hearing under the rules of the tax appeals tribunal.

(2) Petition for refund. If the taxpayer files with the tax appeals tribunal a petition for credit or refund for a taxable year, the tax appeals tribunal may:

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax appeals tribunal, and within the period in which an assessment would be timely under section 11-523 of this chapter, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax appeals tribunal.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner of finance under this subdivision.

(4) Restriction on further notices of deficiency. If the taxpayer files a petition with the tax appeals tribunal under this section, no notice of deficiency under section 11-521 of this chapter may thereafter be issued by the commissioner of finance for the same taxable year, except in case of fraud or with respect to a change or correction in federal or New York state taxable income required to be reported under section 11-519 of this chapter or with respect to a state change or correction of sales and compensating use tax liability to be reported under section 11-519.1 of this chapter.

(e) Burden of proof. In any case before the tax appeals tribunal under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner of finance:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer

was liable for the tax;

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction of federal or New York state taxable income required to be reported under section 11-519 of this chapter, and of which change or correction the commissioner of finance had no notice at the time he or she mailed the notice of deficiency or unless such increase in deficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under section 11-519.1 of this chapter, and of which change or correction the commissioner of finance had no notice at the time he or she mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subdivision (k) of section 11-525.

(f) Evidence of related federal or state determination. Evidence of a federal or state determination relating to issues raised in a case before the tax appeals tribunal under this section shall be admissible, under rules established by the tax appeals tribunal.

(g) Jurisdiction over other years. The tax appeals tribunal shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

HISTORICAL NOTE

Section amended chap 808/1992 § 20, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

Subd. (d) par (4) amended chap 839/1986 § 51

DERIVATION

Formerly § S46-33.0 added LL 22/1966 § 1

Sub d par 4 amended LL 63/1969 § 20

Sub e par 3 amended LL 63/1969 § 21

Sub e amended chap 765/1985 § 69

Sub d par 4 amended LL 10/1985 § 21

Subs e, f amended LL 10/1985 § 22

CASE NOTES

¶ 1. A registered futures commodities merchant engaged in futures commodities transactions on a retail basis and for their own account are not exempt by Ad Cd §11-502(c) because they were not trading solely for their own account. Petitioners failed to carry their burden of proof to establish otherwise, Ad Cd §11-529(e). Matter of Lakeview Futures v. NYC Fin. Dep't, 210 AD2d 31, 618 N.Y.S.2d 818 [1994].

¶ 2. Although solo practitioner attorney's payments for self-employed health insurance premiums, one-half of the federal self-employment tax and contributions to a defined benefit plan may be deductible for federal income tax purposes, they are not deductible for purposes of the New York City Unincorporated Business Tax. Horowitz v. NYC Tax App. Trib., 41 A.D.3d 101, 837 N.Y.S.2d 89 (1st Dept. 2007).

¶ 3. Exemption and deduction provisions are to be construed in favor of the taxing authority, and the extent to which a deduction shall be allowed is a matter of legislative grace. Where payments by the taxpayer to retired partners were denominated as "past service compensation," and the partners had agreed to recognize the payments as ordinary income for federal tax purposes, the court upheld the City's finding that the payments were non-deductible for purposes of City unincorporate business tax.

In re: Citrin Cooperman and Company, LLP v. Tax Appeals Tribunal of the City of NY 2008 NY Lip Op. 4934, 2008 NY App. Div. Lexis 4780 (App. Div. 1st Dept.).

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-530 Review of tax appeals tribunal's decision.

(a) General. A decision of the tax appeals tribunal sitting en banc shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified mail, return receipt requested, to the taxpayer and the commissioner of finance.

(b) Judicial review exclusive remedy. The review of a decision of the tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner of finance may assess a deficiency determined by the tax appeals tribunal in a decision rendered pursuant to section one hundred seventy-one of the charter after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the deficiency, has deposited with the commissioner of finance the amount of the deficiency, or has filed with the commissioner of finance a bond (which may be a jeopardy bond under subdivision (h) of section 11-534 of this chapter) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against such taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency (including interests and other amounts) as finally determined and such costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of

a deficiency, any part of the amount determined by the tax appeals tribunal is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review. If the amount of a deficiency determined by the tax appeals tribunal is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited, or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of tax appeals tribunal's decision. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of decision is sent by certified mail to the taxpayer and the commissioner of finance.

HISTORICAL NOTE

Section amended chap 808/1992 § 21, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-34.0 added LL 22/1966 § 1

CASE NOTES

¶ 1. Application by taxpayer to review an unincorporated business income tax determination must be made within four months after notice of the decision is sent by certified, or registered mail to taxpayer, Ad Code §11-530(a). Notice was sent Jan. 30, 1991 and the proceeding was commenced on June 3, 1991. The proceeding is untimely.-Matter of Neiman v. O'Cleireacain, 193 AD2d 351 [1993], 598 NYS2d 703.

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***** Current through December 2009 ****

NYC Administrative Code 11-531

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-531 Mailing rules; holidays; miscellaneous.

(a) Timely mailing. (1) If any return, declaration of estimated tax, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by the United States mail to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner of finance or, where relevant, the tax appeals tribunal shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. Except as provided in paragraph two of this subdivision, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulations of the commissioner of finance or, where relevant, the tax appeals tribunal.

(2) (A) Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section

seventy-five hundred two of the internal revenue code and any reference in paragraph one of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner may withdraw such designation for purposes of this title. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in paragraph one of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subdivision. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(b) Last known address. For purposes of this chapter, a taxpayer's last known address shall be given in the last return filed by the taxpayer, unless subsequently to the filing of such return the taxpayer shall have notified the commissioner of finance of a change of address.

(c) Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

(d) Certificate: unfiled return. For purposes of this chapter and sections one hundred sixty-eight through one hundred seventy-two of the charter, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this title, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 513/2002 § 2, eff. Sept. 17, 2002 and applying

to any document required to be filed and any payment required to be

made on or after Oct. 17, 2002.

Subds. (a), (d) amended chap 808/1992 § 22, eff. Oct. 1, 1992

DERIVATION

Formerly § S46-35.0 added LL 22/1966 § 1

Sub a amended LL 41/1984 § 11

Section heading amended chap 765/1985 § 70

Sub d added chap 765/1985 § 71

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-532 Collection, levy and liens.

(a) Collection procedures. The taxes imposed by this chapter shall be collected by the commissioner of finance, and the commissioner may establish the mode or time for the collection of any amount due it under this chapter if not otherwise specified. The commissioner of finance shall, upon request, give a receipt for any sum collected under this chapter. The commissioner of finance may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

(b) Notice and demand for tax. The commissioner of finance shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the commissioner of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand. If any person liable under this chapter for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within the ten days after notice and demand herefor is given to such person under subdivision (b) of this section, the commissioner of finance may within six years after the date of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance, commanding such person to levy upon and sell such person's real and personal

property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner of finance and pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner of finance finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner of finance and upon failure or refusal to pay such tax or other amount the commissioner of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision (c) of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) Judgment. When a warrant has been filed with the county clerk the commissioner of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution. The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not a resident of this state. Where a notice and demand under subdivision (b) of this section shall have been given to a taxpayer who is not then a resident of this state, and it appears to the commissioner of finance that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the commissioner of finance may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at the taxpayer's last known address, subject to the rules for mailing provided in subdivision (a) of section 11-521 of this chapter. Such warrant shall command the officer or employee to proceed in New York county, and such officer or employee shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner of finance may also, in the commissioner's discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the commissioner of finance shall deem proper and sufficient.

(h) Action by city for recovery of taxes. Action may be brought by the corporation counsel of the city at the instance of the commissioner of finance as agent and trustee for the city to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced.

(i) Release of lien or vacating warrant. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision (d) or (g) of this section, and such release or vacating of the warrant may be recorded in the

office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (i) amended chap 513/2002 § 25, eff. Sept. 17, 2002.

DERIVATION

Formerly § S46-36.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-533

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-533 Transferees.

(a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the commissioner of finance under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee.

(b) Exceptions. (1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner of finance in any court against the original taxpayer or the last preceeding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) of this section or the immediately preceding paragraph of this subdivision for the assessment of the liability, the commissioner of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-527 of this chapter. If

the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-527 of this chapter on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-527 of this chapter shall be increased by the period from the date of such expiration to the date of agreement.

(c) Deceased transferor. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if such person had lived.

(d) Evidence. Notwithstanding the provisions of subdivision (e) of section 11-537 of this chapter the commissioner of finance shall use his or her powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-529 of this chapter for rules as to burden of proof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-37.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-534

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-534 Jeopardy assessment.

(a) Authority for making. If the commissioner of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, the commissioner shall, notwithstanding the provision of sections 11-521 and 11-536 of this chapter, and immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the commissioner of finance for the payment thereof.

(b) Notice of deficiency. If the jeopardy assessment is made before any notice in respect to the tax to which the jeopardy assessment relates has been mailed under section 11-521 of this chapter, then the commissioner of finance shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of tax appeals tribunal. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has heretofore filed a petition with the tax appeals tribunal. The commissioner of finance may, at any time before the tax appeals tribunal renders its decision, abate such assessment, or any unpaid portion thereof, to the extent that the commissioner believes the assessment to be excessive in amount. The tax appeals tribunal may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of tax appeals tribunal. If the jeopardy assessment is made after the decision of the tax appeals tribunal is rendered, such assessment may be made only in respect of the deficiency determined by the tax appeals tribunal in its decision.

(e) Expiration of right to assess. A jeopardy assessment may not be made after the decision of the tax appeals

tribunal has become final or after the taxpayer has made an application for review of the decision of the tax appeals tribunal.

(f) Collection of unpaid amounts. When a petition has been filed with the tax appeals tribunal and when the amount which should have been assessed has been determined by a decision of the tax appeals tribunal which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-526 of this chapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the commissioner of finance.

(g) Abatement if jeopardy does not exist. The commissioner of finance may abate the jeopardy assessment if the commissioner finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax appeals tribunal in respect of the deficiency has been rendered or, if no petition is filed with the tax appeals tribunal, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection. The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the commissioner of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice or deficiency under section 11-521 of this chapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to tax appeals tribunal. If the bond is given before the taxpayer has filed his or her petition under section 11-529 of this chapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the tax appeals tribunal which has become final. If the tax appeals tribunal determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax appeals tribunal is rendered.

(j) Stay of sale of seized property pending tax appeals tribunal decision. Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-529 of this chapter for filing a petition with the tax appeals tribunal, and

(2) if a petition is filed with the tax appeals tribunal (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if

subdivision (a) of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the commissioner of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest. For the purpose of subdivision (a) of section 11-524 of this chapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year. If the commissioner of finance finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given to the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the commissioner of finance made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the commissioner of finance as provided in subdivision (l) of this section, the commissioner of finance may reopen such taxable period each time the taxpayer is found by the commissioner of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner of finance may be reopened by the taxpayer if the taxpayer files with the commissioner of finance a true and accurate return of taxable income and credits allowed under this chapter for taxable period, together with such other information as the commissioner of finance may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the commissioner of finance. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes under this chapter for prior years.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. (c)-(g), (i), (j) amended chap 808/1992 § 23, eff. Oct. 1, 1992

DERIVATION

Formerly § S46-38.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-535

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-535 Criminal penalties; cross-reference.

For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section repealed and added chap 765/1985 § 2

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-39.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-536

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-536 Armed forces relief provisions.

(a) Time to be disregarded. In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter, in respect of the tax liability (including any interest, penalty, or addition to the tax) of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of tax;

(B) payment of any tax or any installment thereof or of any other liability to the commissioner of finance, in respect thereof;

(C) filing a petition with the tax appeals tribunal for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the tax appeals tribunal;

(D) allowance of a credit or refund of tax;

(E) filing a claim for credit or refund of tax;

(F) assessment of tax;

(G) giving or making any notice or demand for the payment of any tax, or with respect to any liability to the commissioner of finance in respect of tax;

(H) collection, by the commissioner of finance, by levy or otherwise of the amount of any liability in respect of tax;

(I) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of tax; and

(J) any other act required or permitted under this chapter or specified in regulations prescribed under this section by the commissioner of finance.

(2) The amount of any credit or refund (including interest).

(b) Action taken before ascertainment of right to benefits. The assessment or collection of the tax imposed by this chapter or of any liability to the commissioner of finance in respect of such tax, or any action or proceeding by or on behalf of the commissioner of finance in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit of subdivision (a) of this section.

(c) Members of armed forces dying in action. In the case of any person who dies during an induction period while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of such person's death, or with respect to any prior taxable year ending on or after the first day he or she so served in a combat zone, and no returns shall be required in behalf of such person or such person's estate for such year; and the tax for any such taxable year which is unpaid at the date of his or her death, including interest, additions to tax and penalties, if any, shall not be assessed and if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such person's estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to such person's surviving spouse.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) par (1) subpar (C) amended chap 808/1992 § 24, eff. Oct.

1, 1992

DERIVATION

Formerly § S46-40.0 added LL 22/1966 § 1

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-537 General powers of commissioner of finance.

(a) General. The commissioner of finance shall administer and enforce the tax imposed by this chapter and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provision of this chapter; and the commissioner may delegate his or her powers and functions under all parts of this chapter to one of the commissioner's deputies or to any employee or employees of the commissioner's department.

(b) Examination of books and witnesses. The commissioner of finance for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons.

(c) Abatement authority. The commissioner of finance, of his or her own motion, may abate any small unpaid balance of an assessment of tax under this part, or any liability in respect thereof, if the commissioner of finance determines under uniform rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority. Where no questions of fact or law are involved and it appears from the records of the commissioner of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the commissioner of finance at any time, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) Cooperation with the United States, this state and other states. Notwithstanding the provisions of section 11-538 of this chapter, the commissioner of finance may permit the secretary of the treasury of the United States or the secretary's delegates, or the proper officer of this or any other state imposing an income tax upon the incomes of individuals, or the authorized representative of any such officer, to inspect any return filed under this chapter or may furnish to such officer or his or her authorized representative an abstract of any such return or supply such officer with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or such officer's representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner of finance and such information is to be used for tax purposes only; and provided further the commissioner of finance may furnish to the secretary of the treasury of the United States or the secretary's delegates or to the tax commission of the state of New York or its delegates such returns filed under this chapter and other tax information, as he or she may consider proper for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the commissioner of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury of the United States or the secretary's delegates or to such tax commission or its delegates. Where the commissioner of finance has so authorized use of returns or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns or other information.

(f) (1) Authority to set interest rates. The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-524, 11-525 and 11-528 of this chapter, but if no such rate or rates of interest are set, such rate or rates shall be deemed to be set at six percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph two of this subdivision, but the underpayment rate shall not be less than six percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) General rule. (A) Overpayment rate. The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the overpayment and underpayment rates for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rates. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(5) Cross-reference. For provisions relating to the power of the commissioner of finance to abate small amounts of interest, see subdivision (c) of this section.

(g) In computing the amount of any interest required to be paid under this chapter by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision (c) of section 11-525 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (f) amended chap 241/1989 § 4

Subd. (f) par (1) amended chap 60/2004 § U1, eff. Aug. 20, 2004. [See Note 2]

Subd. (f) par (2) subpar (B) amended chap 63/2003 § E1, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See Note 1]

DERIVATION

Formerly § S46-41.0 added LL 22/1966 § 1

Sub e amended LL 52/1966 § 1

Sub f added LL 94/1977 § 12

Sub f amended LL 2/1983 § 21

Sub g added LL 43/1983 § 36

NOTE

1. chap 63/2003: Provisions of § 14. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after May 1, 2003, and shall apply to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, which remain or become due on or after such date. The interest rates set prior

to amendment by this act shall apply up to and including April 30, 2003, to the interest chargeable or due on taxes or on other amounts for which interest rates are set under this act.

2. Provisions of chap 60/2004 § U3:

§ 3. This act shall take effect immediately and shall apply to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, which remain or become due on or after such date. The interest rates set prior to amendment by this act shall apply up to and including the day before the effective date of this act, to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, for which interest rates are set under this act.

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Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-538 Secrecy requirement and the penalties for violation.

1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, any depository to which any return may be delivered as provided in subdivision four of this section, any officer or employee of such depository, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or to the taxpayer's duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been

recommended by the commissioner of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns required under this chapter by the duly designated officers or employees of the city for purposes of an audit under this chapter or an audit authorized by the enacting of this chapter. Reports and returns shall be preserved for three years and thereafter until the commissioner of finance orders them to be destroyed.

2. Any officer or employee of the city or the state who willfully violates the provisions of subdivision one of this section shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

3. Cross-reference: For criminal penalties, see chapter forty of this title.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax and reports and returns with such banks, banking houses or trust companies as agents of the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of the city.

5. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

6. Notwithstanding anything in subdivision one of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

7. Notwithstanding anything in subdivision one of this section, the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in subdivision (e) of section 11-506 of this chapter, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner of finance under this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 808/1992 § 25, eff. Oct. 1, 1992

Subd. 5 added chap 714/1989 § 2

Subd. 6 added chap 808/1992 § 26, eff. Oct. 1, 1992

Subd. 7 amended chap 633/2005 § 9, eff. Aug. 30, 2005.

Subd. 7 added chap 686/2003 § M18, eff. Oct. 21, 2003 and applying to

taxable years beginning on or after Jan. 1, 2003.

DERIVATION

Formerly § S46-42.0 added LL 22/1966 § 1

Amended LL 22/1973 § 3

Sub 1 amended chap 765/1985 § 73

Sub 4 renumbered chap 765/1985 § 73

(formerly sub 2)

Sub 3 added chap 765/1985 § 73

Sub 2 designated chap 765/1985 § 73

(formerly part of sub 1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-539

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-539 Inconsistencies with other laws.

If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-44.0 added LL 22/1966 § 1

74 of 160 DOCUMENTS

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-540

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 5 CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-540 Disposition of revenues.

All revenues resulting from the imposition of the taxes under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § S46-45.0 added LL 22/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-601

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 1 GENERAL PROVISIONS

§ 11-601 Definitions.

When used in subchapters one through five:

1. "Taxpayer" means any corporation, association or other entity or individual subject to tax under this chapter;

2. "State," "the state" or "this state" means the state of New York;

3. "Tax law," "insurance law," "private housing finance law," "environmental conservation law," "public housing law," "state finance law," "general municipal law," "public service law," "workers' compensation law," "business corporation law," "civil practice law and rules," "criminal procedure law," and "banking law" refer to laws of the state;

4. "Superintendent of insurance," and "commissioner of health" refer to officials of the state;

5. "Commissioner of finance" means the commissioner of finance of the city;

6. "Department of finance" means the department of finance of the city;

7. "Domestic corporation" means a corporation organized under the laws of the state; and

8. "Tax appeals tribunal" means the tax appeals tribunal established by section one hundred sixty-eight of the charter.

9. Unless a different meaning is clearly required, any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in the appendix to this chapter. (The quotation of the aforesaid laws of the United States is intended to make them a part of any appropriate chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to any of the chapters.)

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 8 added chap 808/1992 § 27, eff. Oct. 1, 1992

Subd. 9 renumbered chap 808/1992 § 27, eff. Oct. 1, 1992

(formerly subd. 8)

DERIVATION

Formerly § R46-1.0 added LL 21/1966 § 1

Sub 5 amended LL 83/1972 § 3

Sub 5 amended LL 10/1985 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-602

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-602 Definitions.

When used in this subchapter:

1. (a) "Corporation" includes (1) an association within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), (2) a joint-stock company or association, (3) a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and (4) any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument;

(b) (1) Notwithstanding paragraph (a) of this subdivision, an unincorporated organization that (i) is described in subparagraph one or three of such paragraph (a) and (ii) was subject to the provisions of chapter five of this title for its taxable year beginning in nineteen hundred ninety-five, may make a one-time election not to be treated as a corporation and, instead, to continue to be subject to the provisions of chapter five of this title for its taxable years beginning in nineteen hundred ninety-six and thereafter. Such election shall be made on the return prescribed pursuant to such chapter five for such electing organization's taxable year beginning in nineteen hundred ninety-six, which shall be filed on or before the due date (determined with regard to extensions) for filing such return.

(2) An election under this paragraph shall continue to be in effect until revoked by the unincorporated organization. An election under this paragraph shall be revoked by the filing of a return under this subchapter for the

first taxable year with respect to which such revocation is to be effective, which return shall be filed on or before the due date (determined with regard to extensions) for filing such return. In no event shall such election or revocation be for a part of a taxable year.

(c) Notwithstanding paragraph (a) of this subdivision, a corporation shall not include an entity classified as a partnership for federal income tax purposes.

2. "Subsidiary" means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer;

3. "Subsidiary capital" means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under this subchapter or subchapter three of this chapter, provided, however, that, in the discretion of the commissioner of finance, there shall be deducted from subsidiary capital any liabilities which are directly or indirectly attributable to subsidiary capital;

4. "Investment capital" means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business, exclusive of subsidiary capital and stock issued by the taxpayer, provided, however, that, in the discretion of the commissioner of finance, there shall be deducted from investment capital any liabilities which are directly or indirectly attributable to investment capital; and provided, further, that investment capital shall not include any such investments the income from which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of this section, and that investment capital shall be computed without regard to any liabilities directly or indirectly attributable to such investments, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof; 5. "Investment income" means income, including capital gains in excess of capital losses, from investment capital to the extent included in computing entire net income, less, (a) in the discretion of the commissioner of finance, any deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, and (b) such portion of any net operating loss deduction allowable in computing entire net income, as the investment income, before such deduction, bears to entire net income, before such deduction, provided, however, that in no case shall investment income exceed entire net income;

6. (a) "Business capital" means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities not deducted from subsidiary or investment capital except that cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect;

(b) Provided, however, "business capital" shall not include assets to the extent employed for the purpose of generating income which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of this section and shall be computed without regard to liabilities directly or indirectly attributable to such assets, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

7. "Business income" means entire net income minus investment income;

8. "Entire net income" means total net income from all sources, which shall be presumably the same as the entire taxable income (but not alternative minimum taxable income),

(i) which the taxpayer is required to report to the United States treasury department, or

(ii) which the taxpayer would have been required to report to the United States treasury department if it had not made an election under subchapter s of chapter one of the internal revenue code, or

(iii) which the taxpayer, in the case of a corporation which is exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section five hundred eleven of the internal revenue code) but which is subject to tax under this subchapter, would have been required to report to the United States treasury department but for such exemption, or

(iv) which the taxpayer would have been required to report to the United States treasury department if no election had been made to treat the taxpayer as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, except as hereinafter provided, and subject to any modification required by paragraphs (d) and (e) of subdivision three of section 11-604 of this subchapter.

(a) Entire net income shall not include:

(1) income, gains and losses from subsidiary capital which do not include the amount of a recovery in respect of any war loss;

(2) fifty percent of dividends other than from subsidiaries, except that entire net income shall include one hundred percent of dividends on shares of stock with respect to which a dividend deduction is disallowed by subsection (c) of section two hundred forty-six of the internal revenue code;

(2-a) any amounts treated as dividends pursuant to section seventy-eight of the internal revenue code and not otherwise deductible under subparagraphs one and two of this paragraph;

(3) bona fide gifts;

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses;

(5) any refund or credit of a tax imposed under this chapter, or imposed by article nine, nine-A, twenty-three, or thirty-two of the tax law, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter or subchapter three of this chapter for any prior year;

(6) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the taxpayer's distributive or pro rata share for federal income tax purposes or which the taxpayer is required to take into account separately for federal income tax purposes;

(7) that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty C of the internal revenue code;

(8) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection

(f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) the amount deductible pursuant to paragraph (j) of this subdivision;

(11) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in subparagraph eleven of paragraph (b) of this subdivision attributable to such property exceeds the aggregate of the amounts described in paragraph (j) of this subdivision attributable to such property; and

(12) for taxable years ending after September tenth, two thousand one, the amount deductible pursuant to paragraph (k) of this subdivision; and

(13) the amount deductible pursuant to paragraph (o) of this subdivision.

(a-1) Notwithstanding any other provision of this subchapter, for taxable years beginning on or after August first, two thousand two, in the case of a taxpayer that is a partner in a partnership subject to the tax imposed by chapter eleven of this title as a utility, as defined in subdivision six of section 11-1101 of such chapter, entire net income shall not include the taxpayer's distributive or pro rata share for federal income tax purposes of any item of income, gain, loss or deduction of such partnership, or any item of income, gain, loss or deduction of such partnership that the taxpayer is required to take into account separately for federal income tax purposes.

(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) the amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of any corporation,

(2) any part of any income from dividends or interest on any kind of stock, securities, or indebtedness, except as provided in clauses one and two of paragraph (a) hereof,

(3) taxes on or measured by profits or income paid or accrued to the United States, any of its possessions or to any foreign country, including taxes in lieu of any of the foregoing taxes otherwise generally imposed by any foreign country or by any possession of the United States, or taxes paid or accrued to the state under article nine, nine-A, thirteen-A or thirty-two of the tax law,

(3-a) taxes on or measured by profits or income, or which include profits or income as a measure, paid or accrued to any other state of the United States, or any political subdivision thereof, or to the District of Columbia, including taxes expressly in lieu of any of the foregoing taxes otherwise generally imposed by any other state of the United States, or any political subdivision thereof, or the District of Columbia;

(4) taxes imposed under this chapter,

(4-a) (A) the entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only to the extent that such taxes are incurred and paid in market making transactions, and

(B) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision twelve of section 11-604 of this subchapter,

(4-b) the amount allowed as an exclusion or a deduction imposed by the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision thirteen of section 11-604 of this subchapter,

(4-c) the amount allowed as an exclusion or a deduction imposed by the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision fourteen of section 11-604 of this subchapter,

(4-d) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States Treasury Department, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision fifteen of section 11-604 of this chapter,

(4-e) Repealed.

(4-f) Repealed.

(4-g) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law (or for any interest imposed in connection therewith) in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision seventeen-a of section 11-604 of this subchapter.

(5) Repealed.

(6) in the discretion of the commissioner of finance, any amount of interest directly or indirectly and any other amount directly or indirectly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital,

(6-a) Repealed.

(7)* any amount by21 reason of the granting, issuing or assuming of a restricted stock option, as defined in the internal revenue code of nineteen hundred fifty-four, or by reason of the transfer of the share of stock upon the exercise of the option, unless such share is disposed of by the grantee of the option within two years from the date of the granting of the option or within six months after the transfer of such share to the grantee,

(8) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law,

such taxpayer's distributive or pro rata share of the allocated entire net income of such business as determined under sections fifteen hundred three and fifteen hundred four of the tax law, provided however, in the event such allocated entire net income is a loss, such taxpayer's distributive or pro rata share of such loss shall not be subtracted from federal taxable income in computing entire net income under this sub- division,

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(10) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(11) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code, property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code,

(12) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph (j) attributable to such property exceeds the aggregate of the amounts described in subparagraph eleven of this paragraph attributable to such property.

(13) Repealed.

(14) Repealed.

(15) Repealed.

(16) for taxable years ending after September tenth, two thousand one in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code.

(17) for taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the amount allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal

revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code.

(18) The amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code.

(19) The amount of any federal deduction for taxes imposed under article twenty-three of the tax law.

(c) Entire net income shall include income within and without the United States;

(c-1) (1) Notwithstanding any other provision of this subchapter, in the case of a taxpayer which is a foreign air carrier holding a foreign air carrier permit issued by the United States department of transportation pursuant to section four hundred two of the federal aviation act of nineteen hundred fifty-eight, as amended, and which is qualified under subparagraph two of this paragraph, entire net income shall not include, and shall be computed without the deduction of, amounts directly or indirectly attributable to, (i) any income derived from the international operation of aircraft as described in and subject to the provisions of section eight hundred eighty-three of the internal revenue code, (ii) income without the United States which is derived from the operation of aircraft, and (iii) income without the United States which is of a type described in subdivision (a) of section eight hundred eighty-one of the internal revenue code except that it is derived from sources without the United States. Entire net income shall include income described in clauses (i), (ii) and (iii) of this subparagraph in the case of taxpayers not described in the previous sentence.

(2) A taxpayer is qualified under this subparagraph if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any income tax or other tax based on or measured by income or receipts imposed by such foreign country or countries or any political subdivision thereof, or if so subject to such tax, are provided an exemption from such tax equivalent to that provided for herein.

(d) The commissioner of finance may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer;

(e) The entire net income of any bridge commission created by act of congress to construct a bridge across an international boundary means its gross income less the expense of maintaining and operating its properties, the annual interest upon its bonds and other obligations, and the annual charge for the retirement of such bonds or obligations at maturity;

(f) A net operating loss deduction shall be allowed which shall be the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code or which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code, except that in every instance where such deduction is allowed under this subchapter:

(1) any net operating loss included in determining such deduction shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to paragraphs (a), (b), (g) and (h) hereof,

(2) such deductions shall not include any net operating loss sustained during any taxable year in which the taxpayer was not subject to the tax imposed by this subchapter,

(2-a) Repealed.

(2-b) Repealed.

(2-c) Repealed.

(3) such deduction shall not exceed the deduction for the taxable year allowed under section one hundred seventy-two of the internal revenue code, or the deduction for the taxable year which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code,

(4) any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such code as such section was in full force and effect on December thirty-first, nineteen hundred eighty, and

(5) the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code shall for purposes of this paragraph be determined as if the taxpayer had elected under such section to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses, sustained during taxable years ending after June thirtieth, nineteen hundred eighty-nine;

(g) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1) (A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste (as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) However, such deduction shall be allowed only (A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the state commissioner of environmental conservation or the state commissioner's designated representative, in the same manner as provided for in section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with applicable pro- visions of the environmental conservation law, the state sanitary code and regulations, permits or orders issued pursuant thereto, and

(C) on condition that entire net income for the taxable year and all succeeding taxable years be computed without any deductions for such expenditures or for depreciation of the same property other than the deductions allowed by this paragraph (g) except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the

same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years, and

(D) where the election provided for in paragraph (d) of subdivision three of section 11-604 of this subchapter has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten (10) years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section 11-674 of this chapter.

(B) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section 11-674 of this chapter.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of entire taxable income which the taxpayer is required to report to the United States treasury for such taxable year;

(h) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six; which had a federal adjusted basis on such date (or on the date of its sale or other disposition prior to January first, nineteen hundred sixty-six) lower than its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior thereto, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, there shall be deducted from entire net income, the difference between (1) the amount of the taxpayer's federal taxable income, and (2) the amount of the taxpayer's federal taxable income (if smaller than the amount described in subparagraph one of this paragraph computed as if the federal adjusted basis of each such property (on the sale or other disposition of which gain was derived) on the date of the sale or other disposition had been equal to either (A) its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six or (B) the amount realized from its sale or disposition, whichever is lower; provided, however, that the total modification provided by this paragraph (h) shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property.

(i) If the period covered by a report under this subchapter is other than the period covered by the report of the United States treasury department, entire net income shall be determined by multiplying the federal taxable income (as adjusted pursuant to the provisions of this subchapter) by the number of calendar months or major parts thereof covered by the report under this subchapter and dividing by the number of calendar months or major parts thereof covered by the report to such department. If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period covered by the report under this subchapter, the commissioner of finance shall be authorized in his or her discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this subchapter.

(j) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

(k) for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), the depreciation deduction allowable under section one hundred sixty-seven as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of paragraph (o) of this subdivision, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(l) for taxable years ending after September tenth, two thousand one, upon the disposition of property to which paragraph (k) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph twelve of paragraph (a) and subparagraph sixteen of paragraph (b) of this subdivision attributable to such property.

(m) for purposes of paragraphs (l) and (m) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(n) Related members expense add back and income exclusion.

(1) Definitions. (A) Related member or members. For purposes of this paragraph, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other

pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title.

(B) Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and includes amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments to a related member during the taxable year to the extent deductible in calculating federal taxable income.

(B) The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business purpose and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing entire net income or other taxable basis, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under subparagraph two of this paragraph or other similar provision in this chapter.

(o) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the deductions allowable under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five. For purposes of paragraph (k) and subparagraph sixteen of paragraph (b) of subdivision eight of this section, the terms qualified resurgence zone property and qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code shall not

include any sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code.

(p) Upon the disposition of property to which paragraph (o) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph thirteen of paragraph (a) and subparagraph seventeen of paragraph (b) of this subdivision attributable to such property.

9. (a) The term "calendar year" means a period of twelve calendar months (or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this subchapter) ending on the thirty-first day of December, provided the taxpayer keeps its books on the basis of such period or on the basis of any period ending on any day other than the last day of a calendar month, or provided the taxpayer does not keep books, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a fiscal year to a calendar year, the period from the close of its last old fiscal year up to and including the following December thirty-first.

(b) The term "fiscal year" means a period of twelve calendar months (or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this subchapter) ending on the last day of any month other than December, provided the taxpayer keeps its books on the basis of such period, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a calendar year to a fiscal year or from one fiscal year to another fiscal year, the period from the close of its last old calendar or fiscal year up to the date designated as the close of its new fiscal year.

10. The term "tangible personal property" means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest property and evidences of debt.

11. Repealed.

12. Repealed.

13. Repealed.

14. Repealed.

15. Repealed.

16. Repealed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 625/1996 § 12, eff. Sept. 4, 1996 applying to

taxable years beginning on and after Jan. 1, 1996

Subd. 1 par (c) added chap 513/2002 § 44, eff. Sept. 17, 2002 and

applying to taxable years beginning after Dec. 31, 2001.

Subd. 3 amended L.L. 57/2001 § 1, eff. Oct. 10, 2001 and effective for

taxable years beginning on or after Jan. 1, 2000.

Subd. 3 amended chap 241/1989 § 60

Subd. 3 amended chap 525/1988 § 6 [See Note 1]

Subd. 4 amended chap 170/1994 § 72, eff. June 9, 1994 and shall apply to taxable years beginning on or after Jan. 1, 1994

Subd. 4 amended chap 525/1988 § 6 [See Note 1]

Subd. 5 amended L.L. 57/2001 § 2, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 5 amended chap 241/1989 § 63

Subd. 5 amended chap 525/1988 § 6 [See Note 1]

Subd. 6 amended chap 170/1994 § 71, eff. June 9, 1994 and shall apply to taxable years beginning on or after Jan. 1, 1994

Subd. 6 amended chap 241/1989 § 48

Subd. 6 amended chap 525/1988 § 6 [See Note 1]

Subd. 8 open par amended chap 513/2002 § 45, and applying to taxable years beginning after Dec. 31, 1996.

Subd. 8 open par amended chap 525/1988 § 7

Subd. 8 par (a) subpar (2) amended L.L. 57/2001 § 3, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 8 par (a) subpar (2) amended chap 241/1989 § 62 [See Note 2]

Subd. 8 par (a) subpar (5) amended chap 25/2009 § C16, eff. May 7, 2009. [See § 11-1718 Note 1]

Subd. 8 par (a) subpar (5) amended chap 241/1989 § 68 [See Note 2]

Subd. 8 par (a) subpar (5) amended chap 525/1988 § 27 [See Note 1]

Subd. 8 par (a) subpars (8), (9) amended chap 241/1989 § 69 [See Note 2]

Subd. 8 par (a) subpar (10) amended L.L. 17/2002 § 3, eff. July 10, 2002.

Subd. 8 par (a) subpar (11) amended L.L. 17/2002 § 4, eff. July 10, 2002.

Subd. 8 par (a) subpar (11) amended chap 525/1988 § 8 [See Note 1]

Subd. 8 par (a) subpar (12) amended chap 60/2004 § S4, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. 8 par (a) subpar (12) added L.L. 17/2002 § 5, eff. July 10, 2002. [See Note after § 11-507]

Subd. 8 par (a) subpar (13) added chap 60/2004 § S5, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. 8 par (a-1) added chap 93/2002 § C2, eff. June 24, 2002. [See Note after § 11-1119]

Subd. 8 par (b) subpar (3) amended chap 525/1988 § 28 [See Note 1]

Subd. 8 par (b) subpar (3-a) added chap 525/1988 § 9 [See Note 1]

Subd. 8 par (b) subpar (4) amended chap 241/1989 § 70 [See Note 2]

Subd. 8 par (b) subpar (4) amended chap 525/1988 § 28 [See Note 1]

Subd. 8 par (b) subpar (4-e) repealed chap 472/2000 § 43, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. 8 par (b) subpar (4-e) amended L.L. 20/1986 § 19

Subd. 8 par (b) subpar (4-f) repealed chap 472/2000 § 43, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. 8 par (b) subpar (4-f) added L.L. 20/1986 § 20

Subd. 8 par (b) subpar (4-g) added chap 489/1995 § 1, eff. Aug. 2, 1995

Subd. 8 par (b) subpar (5) repealed chap 525/1988 § 10 [See Note 1]

Subd. 8 par (b) subpar (6) amended chap 525/1988 § 11 [See Note 1]

Subd. 8 par (b) subpar (6-a) repealed L.L. 57/2001 § 4, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 8 par (b) subpar (6-a) added chap 241/1989 § 65 [See Note 2]

Subd. 8 par (b) subpars (9), (10) amended chap 241/1989 § 69 [See Note 2]

Subd. 8 par (b) subpar (11) amended chap 170/1994 § 38, eff. June 9, 1994

Subd. 8 par (b) subpar (11) amended chap 241/1989 § 71 [See Note 2]

Subd. 8 par (b) subpar (11) amended chap 525/1988 § 11 [See Note 1]

Subd. 8 par (b) subpar (12) amended chap 525/1988 § 11 [See Note 1]

Subd. 8 par (b) subpar (13) repealed L.L. 57/2001 §5, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 8 par (b) subpar (13) added chap 241/1989 § 61 [See Note 2]

Subd. 8 par (b) subpar (14) repealed L.L. 57/2001 §5, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 8 par (b) subpar (14) added chap 241/1989 § 16

Subd. 8 par (b) subpar (15) repealed L.L. 57/2001 §5, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 8 par (b) subpar (15) added chap 241/1989 § 64 [See Note 2]

Subd. 8 par (b) subpar (16) added L.L. 17/2002 § 6, eff. July 10, 2002. [See Note after § 11-507]

Subd. 8 par (b) subpar (17) added chap 60/2004 § S6, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. 8 par (b) subpar (18) added chap 57/2008 Part HH-1 § 8 eff. Apr. 23, 2008 and apply to taxable years beginning on or after Jan. 1, 2008.

Subd. 8 par (b) subpar (19) added chap 25/2009 § C17, eff. May 7, 2009. [See § 11-1718 Note 1]

Subd. 8 par (c-1) added chap 170/1994 § 73, eff. June 9, 1994 and shall apply to taxable years beginning on or after Jan. 1, 1989

Subd. 8 par (f) amended chap 241/1989 § 59 [See Note 2]

Subd. 8 par (f) subpars (2-a), (2-b), (2-c) repealed L.L. 57/2001 §6, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subd. 8 par (j) amended chap 170/1994 § 38, eff. June 9, 1994

Subd. 8 par (j) amended chap 241/1989 § 71 [See Note 2]

Subd. 8 par (j) amended chap 525/1988 § 12 [See Note 1]

Subd. 8 par (k) amended chap 60/2004 § S7, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. 8 pars (k), (l), (m) added L.L. 17/2002 § 7, eff. July 10, 2002. [See Note after § 11-507]

Subd. 8 par (n) amended chap 686/2003 § M19, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. 8 par (n) added chap 63/2003 § N2, eff. May 19, 2003.

Subd. 8 pars (o), (p) added chap 60/2004 § S8, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subds. 11-16 repealed L.L. 57/2001 § 7, eff. Oct. 10, 2001 and effective for taxable years beginning on or after Jan. 1, 2000.

Subds. 11-16 added chap 241/1989 § 58 [See Note 2]

DERIVATION

Formerly § R46-2.0 added LL 21/1966 § 1

Sub 8 par g amended LL 54/1966 § 1

Sub 8 par b subpar 3 amended LL 37/1967 § 1

Sub 8 par h amended LL 37/1967 § 2

Sub 3 amended LL 91/1968 § 1

Sub 8 open par amended LL 91/1968 § 2

Sub 8 par a subpar 5 amended chap 842/1976 § 32

Sub 8 par b subpar 4-a added chap 842/1976 § 33

Sub 8 par b subpar 4-a amended LL 64/1977 § 1

Sub 8 par b subpar 4-c added LL 65/1977 § 1

Sub 8 par b subpar 4-b added LL 66/1977 § 1

Sub 8 par a subpar 5 amended chap 65/1978 § 16

Sub 8 par b subpar 4-a amended chap 65/1978 § 17

Sub 8 par a subpar 6 added chap 480/1978 § 19

Sub 8 par b subpar 8 added chap 480/1978 § 20

Sub 8 par a amended LL 31/1978 § 1

Sub 8 par a subpar 7 renumbered LL 37/1982 § 1

(formerly subpar 6)

Sub 8 par a subpars 8, 9 added LL 37/1982 § 1

Sub 8 par b subpars 9, 10, 11 added LL 37/1982 § 2

Sub 8 par f amended LL 37/1982 § 3

Sub 8 par j added LL 37/1982 § 4

Sub 8 par a subpars 8, 9 amended LL 43/1983 § 1

Sub 8 par a subpars 10, 11 added LL 43/1983 § 2

Sub 8 par b subpars 9, 10, 11 amended LL 43/1983 § 3

Sub 8 par b subpar 12 added LL 43/1983 § 4

Sub 8 par j amended LL 43/1983 § 5

Sub 8 par a subpars 8, 9 amended chap 43/1985 § 12

Sub 8 par b subpars 9, 10, 11 amended chap 43/1985 § 13

Sub 8 par j amended chap 43/1985 § 14

Sub 8 par b subpar 4-d added LL 3/1985 § 1

Sub 8 par a subpar 5 amended LL 11/1985 § 1

Sub 8 par b subpar 4-e added LL 54/1985 § 2

Sub 8 par a subpar 2-a added LL 87/1985 § 1

Sub 8 par b subpar 3 amended LL 87/1985 § 2

Sub 8 par b subpar 3 amended LL 3/1986 § 1

Sub 8 par b subpar 4-e amended LL 20/1986 § 3

Sub 8 par b subpar 4-f added LL 20/1986 § 4

NOTE

1. Provisions of chap 525/1988 § 54

§ 54. Optional phase-in of leased personal property. Under conditions set forth by the commissioner of finance of the city of New York, a corporation subject to the tax imposed by subchapter two of chapter six of title eleven of the administrative code of the city of New York for its taxable year commencing during nineteen hundred eighty-seven may

make a one-time election on or before the due date for filing its return for such taxable year (determined with regard to extensions) to phase-in over a five year period the provisions of section sixteen of this act to the extent such provisions require the value of leased tangible personal property to be included in the value of the taxpayer's tangible personal property. If such an election is made, the taxpayer shall include the following percentage of the value of its leased tangible personal property for the taxable year in the value of its tangible personal property computed for the taxable year:

For taxable years commencing in:					The percentage shall be:				
1988	1989	1990	1991	1992 and thereafter	20	40	60	80	100

2. Provisions of chap 241/1989

§ 77. (a) Notwithstanding any provision of law to the contrary, a taxpayer which is principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, shall be allowed a net operating loss deduction under paragraph (f) of subdivision 8 of section 11-602 of the administrative code of the city of New York (subject to limitations contained in such paragraph) for a net operating loss or proportionate part of a net operating loss sustained during the federal taxable period or periods covering the years 1985 through and including 1988, provided that such taxpayer was subject to taxation (whether or not all types of its gross earnings were taxable) under subchapter 4 of chapter 6 of title 11 of such code for the entire calendar years 1985 through and including 1988, with such loss being computed (i) as if such taxpayer had been subject to taxation under subchapter 2 of chapter 6 of title 11 of such code rather than under subchapter 4 of chapter 6 of title 11 of such code during the period or periods such loss was sustained, (ii) as if such loss was sustained in 1988, and (iii) as if such taxpayer had elected under section 172 of the internal revenue code to relinquish the entire carryback period with respect to such loss.

(b) Notwithstanding subdivision (a) of this section, for taxable years covering the whole or any part of the twelve calendar months of 1989, no net operating loss deduction of a corporation principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, shall be allowed under subchapter 2 of chapter 6 of title 11 of such code, either directly or indirectly, for taxable periods containing the whole or any part of the year 1989 (i) if such corporation is acquired by or acquires another corporation subject to tax under such subchapter 2 of chapter 6 of title 11 during the period covered by 1989 or (ii) if such corporation is merged or consolidated during the period covered by 1989.

§ 78. Notwithstanding the provisions of subdivision (c) of section 11-525 or subdivision 3 of section 11-676 of the administrative code of the city of New York, no addition to tax shall be made with respect to the portion of any underpayment of an installment of estimated tax due prior to the date this act shall have become a law, which was created or increased by any provision of this act.

CASE NOTES

¶ 1. The City corporate tax scheme, in conformity with state tax law, had disallowed deductions of petroleum taxes from corporate taxpayers' income for purposes of calculating corporate taxes. However, once the New York State tax law was changed to permit this deduction, the City law had to be changed to conform to state law and allow the deduction. Castle Oil Corp v. City of New York, 216 A.D.2d 60, 627 N.Y.S.2d 650 (1st Dept. 1995).

¶ 2. Short term commercial notes issued by parent company to subsidiary did not constitute "other securities" check statute re: tax treatment. In re RCA International Corp., 253 A.D.2d 392, 677 N.Y.S.2d 127 (1st Dept. 1998).

FOOTNOTES

21

[Footnote 21]: * This subparagraph (7) of paragraph b of subdivision 8 was inadvertently omitted in main volume.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-603

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-603 Imposition of tax; exemptions.

1. For the privilege of doing business, or of employing capital, or of owning or leasing property in the city in a corporate or organized capacity, or of maintaining an office in the city, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a tax, upon the basis of its entire net income, or upon such other basis as may be applicable as hereinafter provided, for such fiscal or calendar year or part thereof, on a report which shall be filed, except as hereinafter provided, on or before the fifteenth day of March next succeeding the close of each such year, or, in the case of a taxpayer which reports on the basis of a fiscal year, within two and one-half months after the close of such fiscal year, and shall be paid as hereinafter provided.

2. A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in the city, for the purposes of this subchapter, by reason of (a) the maintenance of cash balances with banks or trust companies in the city, or (b) the ownership of shares of stock or securities kept in the city, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in the city by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in the city, and does not employ capital or own or lease property in the city,

or (e) the keeping of books or records of a corporation in the city if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in the city, or (f) any combination of the foregoing activities.

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in the city, for the purposes of this subchapter, if its activities in the city are limited solely to (a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (c) any combination of activities described in paragraphs (a) and (b) of this subdivision. For purposes of this subdivision, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States.

3. Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any corporation, shall be subject to the tax imposed by this subchapter in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation. A dissolved corporation which continues to conduct business shall also be subject to the tax imposed by this subchapter.

4. (a) Corporations subject to tax under subchapter three of this chapter or under chapter eleven of this title, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, bank holding companies filing a combined return in accordance with subdivision (f) of section 11-646 of this chapter, housing companies organized and operating pursuant to the provisions of article two of the private housing finance law, housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law, corporations described in section three of the tax law, a corporation principally engaged in the operation of marine vessels whose activities in the city are limited exclusively to the use of property in interstate or foreign commerce, provided, however, such a corporation will not be subject to tax under this subchapter solely because it maintains an office in the city, or employs capital in the city, in connection with such use of property, a corporation principally engaged in the conduct of a ferry business and operating between any of the boroughs of the city under a lease granted by the city and a corporation principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, all of the capital stock of which is owned by a municipal corporation of this state, shall not be subject to tax under this subchapter; provided, however, that any corporation, other than (1) a utility corporation subject to the supervision of the state department of public service, and (2) for taxable years beginning on or after August first, two thousand two, a utility as defined in subdivision six of section 11-1101 of this title, which is subject to tax under chapter eleven of this title as a vendor of utility services shall be subject to tax under this subchapter, but in computing the tax imposed by this section pursuant to the provisions of clause one of subparagraph (a) of paragraph A of subdivision one of section 11-604, business income allocated to the city pursuant to paragraph (a) of subdivision three of such section shall be reduced by the percentage which such corporation's gross operating income subject to tax under chapter eleven of this title is of its gross operating income.

(b) The term "gross operating income", when used in paragraph (a) of this subdivision, means receipts received in or by reason of any transaction had and consummated in the city, including cash, credits and property of any kind or nature (whether or not such transaction is made for profit), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or other services, delivery costs or any other costs whatsoever, interest or discount paid or any other expenses whatsoever.

(c) If it shall appear to the commissioner of finance that the application of the proviso of paragraph (a) of this subdivision, does not fairly and equitably reflect the portion of the taxpayer's business income allocable to the city which is attributable to its city activities which are not taxable under subchapter two of chapter eleven of this title, the commissioner may prescribe other means or methods of determining such portion, including the use of the books and records of the taxpayer, if the commissioner finds that such means or methods used in keeping them fairly and equitably

reflect such portion.

5. The tax imposed by subdivision one of this section, with the modifications provided by subdivision six of this section, is imposed for each calendar or fiscal year beginning with calendar or fiscal years ending in or with the calendar year nineteen hundred sixty-six.

6. (a) The tax for any taxable year ending prior to December thirty-first, nineteen hundred sixty-six shall be an amount equal to the tax imposed by subdivision one of this section for such taxable year, multiplied by the number of months (or major portions thereof) in such taxable year which occur after December thirty-first, nineteen hundred sixty-five and divided by the number of months (or major portions thereof) in such taxable year.

(b) In lieu of the method of computation of tax prescribed in paragraph (a) of this subdivision, if the taxpayer maintained adequate records for the portion of any taxable year ending prior to December thirty-first, nineteen hundred sixty-six, which portion falls within the calendar year nineteen hundred sixty-six, it may elect to compute the tax for such taxable year by determining entire net income on the basis of the entire taxable income which it would have reported for federal income tax purposes had it filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of its actual taxable year and such taxable year beginning January first, nineteen hundred sixty-six, shall be deemed to be the period covered by its report, except that in computing such tax any portion of a capital loss which results from a capital loss carryover and any net operating loss deduction, as modified pursuant to paragraph (f) of subdivision eight of section 11-602 of this subchapter, shall be reduced by the same part of such portion of such capital loss or of such net operating loss deduction (as the case may be) as the number of months (or major portions thereof) in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in such taxable year.

7. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either clause one of paragraph (a) of subdivision one of section 11-604 of this subchapter with respect to its entire net income, or clause four, whichever is greater, and shall not be subject to any tax under subchapter three of this chapter. In the case of such a trust the term "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of such code, subject to the modification required by subdivision eight of section 11-602 of this subchapter (other than the modification required by clause two of paragraph (a) and by paragraph (f) thereof) including the modifications required by paragraphs (d) and (e) of subdivision three of section 11-604 of this subchapter.

8. For any taxable year beginning on or after January first, nineteen hundred eighty-one of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under clause one or four of subparagraph (a) of paragraph E of subdivision one of section 11-604 of this subchapter, whichever is greater, and such company shall not be subject to any tax under subchapter three of this chapter. The term "entire net income" used in subdivision one of this section means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code subject to the modifications required by subdivision eight of section 11-602 of this subchapter, other than the modification required by clause two of paragraph (a) and by paragraph (f) thereof, including the modification required by paragraphs (d) and (e) of subdivision three of section 11-604 of this subchapter.

9. For any taxable year beginning on or after January first, nineteen hundred eighty-seven, an organization described in paragraph two or twenty-five of subdivision (c) of section five hundred one of the Internal Revenue Code

of nineteen hundred eighty-six shall be exempt from all taxes imposed by this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 2-a added chap 340/1998 § 3, eff. July 17, 1998.

Subd. 4 par (a) amended chap 93/2002 § C3, eff. June 24, 2002. [See Notes after § 11-1119]

Subd. 4 par (a) amended chap 515/1991 § 1, eff. July 19, 1991 applying on Jan. 1, 1989

Subd. 4 par (a) amended L.L. 46/1990 § 4 eff. July 1, 1990

Subs. 4 par (a) amended chap 241/1989 § 72

Subd. (a) par (4) amended L.L. 49/1987 § 3. [See Note after § 22-611.]

Subd. 4 par (a) amended L.L. 27/1987 § 1

Subds. 7, 8 amended chap 525/1988 § 13

Subd. 9 added chap 246/1987 § 1

DERIVATION

Formerly § R46-3.0 added LL 21/1966 § 1

Subd. 4 par a amended chap 298/1985 § 30 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2008 (as per amendment by chap 62/2006 § I1)

Sub 4 amended LL 37/1967 § 3

Sub 6 amended LL 37/1967 § 4

Sub 4 par a amended LL 17/1968 § 1

Subs 1, 2 amended LL 40/1970 § 1

Sub 7 added LL 16/1972 § 1

Sub 4 par a amended LL 83/1972 § 4

Sub 4 par a amended LL 41/1975 § 1

Sub 8 added LL 56/1981 § 1

Sub 4 par a amended chap 298/1985 § 30

CASE NOTES FROM FORMER SECTION

¶ 1. Social club incorporated for nonprofit purposes but which was not operated exclusively for nonprofit purposes in that it operated a store for profit was subject to general corporation tax.-Matter of Pan American Athletic & Social Club v. Com'r of Finance of City of N.Y., 94 App. Div. 2d 606 [1983].

CASE NOTES

¶ 1. New York City may constitutionally tax any portion of the dividend and capital gain income that a nondomiciliary corporation receives by reason if its investment in another corporation doing business in the city in the absence of a unitary business relationship between the two corporations.-Allied-Signal v. Comm. of Finance, 167 AD2d 327 aff'd 79 NY2d 73 [1991].

¶ 2. Rule of the City Commissioner of Finance, which made the general city corporation tax applicable to foreign corporate limited partners, could lawfully be applied retroactively, even though the taxpayer had previously received a refund of taxes in reliance upon a prior ruling (involving another taxpayer) that such limited partners were not subject to the tax. Retroactive tax legislation is valid unless it reaches so far into the past or so unfairly as to constitute a deprivation of property without due process. Thus, the City was permitted to recover a corporation tax deficiency going back three years. Varrington Corp. v. New York City Department of Finance, 85 N.Y.2d 28, 623 N.Y.S.2d 534 (1995).

¶ 3. The court held that plaintiff's regular and systematic activities in New York City, involving the solicitation and sales of imported wine and attendant services, such as suggesting store arrangements and providing promotional displays, constituted "doing business" in the City so as to subject plaintiff to the City's General Corporation Tax. Banfi Products Corp. v. O'Cleireacain, 208 A.D.2d 479, 617 N.Y.S.2d 729 (1st Dept. 1994).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-604

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-604 Computation of tax.

1. *A. For24 taxable years beginning on or after January first, nineteen hundred seventy-one and ending on or before December thirty-first, nineteen hundred seventy-four, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of six and seven-tenths per centum of its entire net income, or the portion of such entire net income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one mill for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, or in the case of a housing company organized and operating pursuant to the provisions of article four of the private housing finance law, the applicable rates shall be one-quarter of one mill, or (3) computed at the rate of six and seven-tenths per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, or on the portion of any such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of one-half mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of paragraph (a) shall be prorated according to

the period such taxpayer was subject to tax.

**A. For25 taxable years beginning on or after January first, nineteen hundred seventy-one and ending on or before December thirty-first, nineteen hundred seventy-four, and for taxable years beginning on or after January first, nineteen hundred seventy-six, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of six and seven-tenths per centum of its entire net income, or the portion of such entire net income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one mill for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, or in the case of a housing company organized and operating pursuant to the provisions of article four of the private housing finance law, the applicable rates shall be one-quarter of one mill, or (3) computed at the rate of six and seven-tenths per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, or on the portion of any such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of one-half mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of paragraph (a) shall be prorated according to the period such taxpayer was subject to tax.

B. For taxable years beginning on or after January first, nineteen hundred seventy-five and before January first nineteen hundred seventy-seven, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of ten and five one-hundredths per centum of its entire net income, or the portion of such entire net income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one and one-half mills for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, or in the case of a housing company organized and operating pursuant to the provisions of article four of the private housing finance law, the applicable rate shall be four-tenths of one mill, or (3) computed at the rate of ten and five one-hundredths per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, or on the portion of any such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) one hundred twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of paragraph (a) shall be prorated according to the period such taxpayer was subject to tax.

C. For each taxable year beginning in nineteen hundred seventy-four and ending in nineteen hundred seventy-five, two tentative taxes shall be computed, the first as provided in paragraph A and the second as provided in paragraph B, and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred seventy-four and the number of days in nineteen hundred seventy-five, respectively, bears to the number of days in the entire taxable year.

D. For taxable years beginning on or after January first, nineteen hundred seventy-seven and before January first, nineteen hundred seventy-eight, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of nine and one-half per centum of its entire net income, or the portion of such entire net income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one and one-half mills for

each dollar of its total business and investment capital, or the portion thereof allocated within the city, as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be four-tenths of one mill, or (3) computed at the rate of nine and one-half per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (except as hereinafter provided) and any net loss for the reported year, or on the portion of any such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) one hundred twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of paragraph (a) shall be prorated according to the period such taxpayer was subject to tax.

E. For taxable years beginning on or after January first, nineteen hundred seventy-eight but before January first, two thousand twelve, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer:

(a) whichever of the following amounts is the greatest:

(1) an amount computed, for taxable years beginning before nineteen hundred eighty-seven, at the rate of nine per centum, and for taxable years beginning after nineteen hundred eighty-six, at the rate of eight and eighty-five one-hundredths per centum, of its entire net income or the portion of such entire net income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section,

(2) an amount computed at one and one-half mills for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as hereinafter provided, except that in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be four-tenths of one mill,

(3) an amount computed, for taxable years beginning before nineteen hundred eighty-seven, at the rate of nine per centum, and for taxable years beginning after nineteen hundred eighty-six, at the rate of eight and eighty-five one-hundredths per centum, on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars (subject to proration as hereinafter provided) and any net loss for the reported year, or on the portion of any such sum allocated within the city as hereinafter provided for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, the provisions of paragraph H of this subdivision shall apply for purposes of the computation under this clause, or

(4) for taxable years ending on or before June thirtieth, nineteen hundred eighty-nine, one hundred twenty-five dollars and for taxable years ending after June thirtieth, nineteen hundred eighty-nine, three hundred dollars, plus;

(b) an amount computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as hereinafter provided.

In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of subparagraph (a) of this paragraph shall be prorated according to the period such taxpayer was subject to tax. Provided, however, that this paragraph shall not apply to taxable years beginning after December thirty-first, two thousand eleven. For the taxable years specified in the preceding sentence, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer, determined as specified in paragraph A of this subdivision, provided, however, that the provisions of paragraphs G and H of this subdivision shall apply for purposes of the computation under clause three of subparagraph (a) of such paragraph A.

F. Notwithstanding any other provision of this subdivision to the contrary, for taxable years beginning after nineteen hundred eighty-seven the amount of tax computed on the basis of the taxpayer's total business and investment capital, or the portion thereof allocated within the city, shall in no event exceed three hundred fifty thousand dollars.

G. In the case of a foreign air carrier described in the first sentence of subparagraph one of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter, there shall be excluded from the computation of the tax under clause three of subparagraph (a) of paragraph E of this subdivision salaries and other compensation described therein which are directly attributable to the generation of income excluded from entire net income for the taxable year pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter.

H. For taxable years beginning on or after July first, nineteen hundred ninety-six, the computation under clause three of subparagraph (a) of paragraph E of this subdivision shall be subject to the following modifications:

(a) (1) For taxable years beginning on or after July first, nineteen hundred ninety-six but before July first, nineteen hundred ninety-eight, only seventy-five percent of the total salaries and other compensation paid to the taxpayer's elected or appointed officers shall be added to the entire net income entering into such computation; for taxable years beginning on or after July first, nineteen hundred ninety-eight but before July first, nineteen hundred ninety-nine, only fifty percent of such salaries and other compensation shall be added to such entire net income; and for taxable years beginning on or after July first, nineteen hundred ninety-nine, no part of such salaries and other compensation shall be added to such entire net income.

(2) Notwithstanding anything in clause one of this subparagraph to the contrary, the full amount of the salary or other compensation paid to any such elected or appointed officer shall be added to entire net income as provided in clause three of subparagraph (a) of paragraph E of this subdivision if such officer was, at any time during the taxable year, a stockholder owning more than five percent of taxpayer's issued capital stock.

(b) For taxable years beginning on or after July first, nineteen hundred ninety-seven but before July first, nineteen hundred ninety-eight, the fixed dollar amount entering into the computation under clause three of subparagraph (a) of paragraph E of this subdivision shall be thirty thousand dollars instead of fifteen thousand dollars; and for taxable years beginning on or after July first, nineteen hundred ninety-eight, such fixed dollar amount shall be forty thousand dollars.

(c) For taxable years beginning on or after January first, two thousand seven and before January first, two thousand eight the per centum entering into the computation under clause three of subparagraph (a) of paragraph E of this subdivision shall be twenty-six and one-fourth per centum instead of thirty per centum, for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine such per centum shall be twenty-two and one-half per centum, for taxable years beginning on or after January first, two thousand nine and before January first, two thousand ten such per centum shall be eighteen and three-fourths per centum and for taxable years beginning on or after January first, two thousand ten such per centum shall be fifteen per centum.

I. Notwithstanding any provision of this subdivision to the contrary, for taxable years beginning on or after January first, two thousand seven for any corporation that:

(a) has a business allocation percentage for the taxable year, as determined under paragraph (a) of subdivision three of this section, of one hundred percent;

(b) has no investment capital or income at any time during the taxable year;

(c) has no subsidiary capital or income at any time during the taxable year; and

(d) has gross income, as defined in section sixty-one of the internal revenue code, less than two hundred fifty thousand dollars for the taxable year:

the tax imposed by subdivision one of section 11-603 of this subchapter shall be the greater of the tax on entire net income computed under clause one of subparagraph (a) of paragraph E of this subdivision and the fixed dollar minimum tax specified in clause four of subparagraph (a) of paragraph E of this subdivision.

For purposes of this paragraph, any corporation for which an election under subsection (a) of section six hundred sixty of the tax law is not in effect for the taxable year may elect to treat as entire net income the sum of:

(i) entire net income as determined under section two hundred eight of the tax law; and

(ii) any deductions taken for the taxable year in computing federal taxable income for New York city taxes paid or accrued under this chapter.

2. The amount of subsidiary capital, investment capital and business capital shall each be determined by taking the average value of the gross assets included therein (less liabilities deductible therefrom pursuant to the provisions of subdivisions three, four and six of section 11-602 of this subchapter), and, if the period covered by the report is other than a period of twelve calendar months, by multiplying such value by the number of calendar months or major parts thereof included in such period, and dividing the product thus obtained by twelve. For purposes of this subdivision, real property and marketable securities shall be valued at fair market value and the value of personal property other than marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles.

3. The portion of the entire net income of a taxpayer to be allocated within the city shall be determined as follows:

(a) multiply its business income by a business allocation percentage to be determined by:

(1) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property, whether owned or rented to it, within the city during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property, whether owned or rented to it, wherever situated during such period. For the purpose of this subparagraph, the term "value of the taxpayer's real and tangible personal property" shall mean the adjusted bases of such properties for federal income tax purposes (except that in the case of rented property such value shall mean the product of (A) eight and (B) the gross rents payable for the rental of such property during the taxable year); provided, however, that the taxpayer may make a one-time, revocable election, pursuant to regulations promulgated by the commissioner of finance to use fair market value as the value of all of its real and tangible personal property, provided that such election is made on or before the due date for filing a report under section 11-605 of this subchapter for the taxpayer's first taxable year commencing on or after January first, nineteen hundred eighty-eight and provided that such election shall not apply to any taxable year with respect to which the taxpayer is included on a combined report unless each of the taxpayers included on such report has made such an election which remains in effect for such year;

(2) ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from:

(A) except as otherwise provided in subparagraph nine of this paragraph, sales of its tangible personal property where shipments are made to points within the city,

(B) services performed within the city, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the city to the extent that such newspapers and periodicals are delivered to points within the city, (ii) receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the city to the extent set forth in subparagraph five of this paragraph,

(iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage, receipts arising from such activity shall be deemed to arise from services performed within the city as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the city and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in the city, and (iv) for taxable years beginning on or after January first, two thousand two, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, receipts arising from sales of subscriptions, advertising or broadcasting shall be deemed to arise from services performed within the city to the extent provided in subparagraph nine of this paragraph,

(C) rentals from property situated and royalties from the use of patents or copyrights, within the city, and

(D) all other business receipts earned within the city, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business transactions, whether within or without the city;

(3) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees within the city, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's employees within and without the city, except general executive officers, and

(4) adding together the percentages so determined and dividing the result by the number of percentages; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, a taxpayer that is a "manufacturing corporation," as defined in subparagraph eight of this paragraph, may determine its business allocation percentage as provided in such subparagraph eight; and provided, further, however, that for taxable years beginning before July first, nineteen hundred ninety-six, if the taxpayer does not have a regular place of business outside the city other than a statutory office, the business allocation percentage shall be one hundred per centum.

(5) Rules for receipts from certain services to investment companies. (A) For purposes of subclause (ii) of clause (B) of subparagraph two of this paragraph, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with clause (B) of this subparagraph shall be deemed to arise from services performed within the city (such portion referred to herein as the New York city portion).

(B) The New York city portion shall be the product of (a) the total of such receipts from the sale of such services and (b) a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined hereinafter) determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing (a) the number of shares in the investment company which are owned on the last day of the month by shareholders which are domiciled in the city by (b) the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(C) (i) For purposes of this subparagraph, the term "domicile", in the case of an individual, shall have the meaning ascribed to it under chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of this code; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(ii) For purposes of this subparagraph, the term "investment company" means a regulated investment company,

as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(iii) For purposes of this subparagraph, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company in their capacity as such.

(iv) For purposes of this subparagraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

(v) For purposes of this subparagraph, the term "distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was, in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

(vi) For purposes of this subparagraph, the term "administration services" includes (1) clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only (2) if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined hereinabove, to such investment company.

(6) (A) Provided, further, however, that a taxpayer principally engaged in the conduct of aviation (other than as provided in clause (C) of this subparagraph) shall, notwithstanding the foregoing provisions of this paragraph, determine the portion of entire net income to be allocated within the city by multiplying its business income by a business allocation percentage which is equal to the arithmetic average of the following three percentages:

(i) the percentage determined by dividing aircraft arrivals and departures within the city by the taxpayer during the period covered by its report by the total aircraft arrivals and departures within and without the city during such period; provided, however, arrivals and departures solely for maintenance or repair, refueling (where no debarkation or embarkation of traffic occurs), arrivals and departures of ferry and personnel training flights or arrivals and departures in the event of emergency situations shall not be included in computing such arrival and departure percentage; provided, further, the commissioner of finance may also exempt from such percentage aircraft arrivals and departures of all non-revenue flights including flights involving the transportation of officers or employees receiving air transportation to perform maintenance or repair services or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster (other than on a scheduled flight); provided, however, that arrivals and departures of flights transporting officers and employees receiving air transportation for purposes other than specified above (without regard to remuneration) shall be included in computing such arrival and departure percentage;

(ii) the percentage determined by dividing the revenue tons handled by the taxpayer at airports within the city during such period by the total revenue tons handled by it at airports within and without the city during such period; and

(iii) the percentage determined by dividing the taxpayer's originating revenue within the city for such period by its total originating revenue within and without the city for such period.

(B) As used herein, the term "aircraft arrivals and departures" means the number of landings and takeoffs of the aircraft of the taxpayer and the number of air pickups and deliveries by the aircraft of such taxpayer; the term "originating revenue" means revenue to the taxpayer from the transportation of revenue passengers and revenue property first received by the taxpayer either as originating or connecting traffic at airports; and the term "revenue tons handled" by the taxpayer at airports means the weight in tons of revenue passengers (at two hundred pounds per passenger) and revenue cargo first received either as originating or connecting traffic or finally discharged by the taxpayer at airports;

(C) A foreign air carrier described in the first sentence of subparagraph one of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter shall determine its business allocation percentage pursuant to the provisions of subparagraphs one through four of this paragraph, except that the numerators and denominators involved in such computation shall exclude property to the extent employed in generating income excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter, exclude such receipts as are excluded from entire net income for the taxable year pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter, and exclude wages, salaries or other personal service compensation which are directly attributable to the generation of income excluded from entire net income for the taxable year pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter.

(7) Provided, further, however, that a taxpayer principally engaged in the operation of vessels shall, notwithstanding the foregoing provisions of this paragraph, determine the portion of entire net income to be allocated within the city by multiplying its business income by a business allocation percentage determined by dividing the aggregate number of working days of the vessels it owns or leases in territorial waters of the city during the period covered by its report by the aggregate number of working days of all the vessels it owns or leases during such period.

(8) (A) For taxable years beginning on or after July first, nineteen hundred ninety-six, a manufacturing corporation may elect to determine its business allocation percentage by adding together the percentages determined under subparagraphs one, two and three of this paragraph and an additional percentage equal to the percentage determined under subparagraph two of this paragraph, and dividing the result by the number of percentages so added together.

(B) An election under this subparagraph must be made on a timely filed (determined with regard to extensions granted) original report for the taxable year. Once made for a taxable year, such election shall be irrevocable for that taxable year. A separate election must be made for each taxable year. A manufacturing corporation that has failed to make an election as provided in this clause shall be required to determine its business allocation percentage without regard to the provisions of this subparagraph. Notwithstanding anything in this clause to the contrary, the commissioner of finance may permit a manufacturing corporation to make or revoke an election under this subparagraph, upon such terms and conditions as the commissioner may prescribe, where the commissioner determines that such permission should be granted in the interests of fairness and equity due to a change in circumstances resulting from an audit adjustment.

(C) As used in this subparagraph, the term "manufacturing corporation" means a corporation primarily engaged in the manufacturing and sale thereof of tangible personal property: and the term "manufacturing" includes the process (including the assembly process) (i) of working raw materials into wares suitable for use or (ii) which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process, by the use of machinery, tools, appliances and other similar equipment. A corporation shall be deemed to be primarily engaged in the activities described in the preceding sentence if more than fifty percent of its gross receipts for the taxable year are attributable to such activities.

(D) Notwithstanding anything to the contrary, if a taxpayer that is otherwise eligible to make the election authorized by this subparagraph is required or permitted to make a report on a combined basis with one or more other corporations pursuant to subdivision four of section 11-605 of this chapter, the taxpayer shall be permitted to make an

election under this subparagraph only if such taxpayer and such other corporation or corporations would be a manufacturing corporation if they were treated as a single corporation. In making such determination, intercorporate transactions shall be eliminated. Where such election has been made by the taxpayer for a taxable year, each of the other corporations included in the combined report shall also be deemed to have made a proper election under this subparagraph for such taxable year.

(9) Special rules for publishers and broadcasters. (A) Notwithstanding anything in subparagraph two of this paragraph to the contrary and except as provided in clause (C) of this subparagraph, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, there shall be allocated to the city, for purposes of subparagraph two of this paragraph, the gross sales or charges for services arising from sales of advertising contained in such newspapers or periodicals, to the extent that such newspapers or periodicals are delivered to points within the city.

(B) Notwithstanding anything in subparagraph two of this paragraph to the contrary and except as provided in clause (C) of this subparagraph, in the case of a taxpayer engaged in the business of broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of subparagraph two of this paragraph, a portion of the gross sales or charges for services arising from the broadcasting of such programs and of commercial messages in connection therewith, such portion to be determined according to the number of listeners or viewers within and without the city.

(C) Notwithstanding anything in clause (A) or (B) of this subparagraph to the contrary, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of subparagraph two of this paragraph, the gross sales or charges to subscribers located in the city for subscriptions to such newspapers, periodicals, or program services. For purposes of this clause, a subscriber shall be deemed located in the city if, in the case of newspapers and periodicals, the mailing address for the subscription is within the city and, in the case of program services, the billing address for the subscription is within the city. For purposes of this clause, "subscriber" shall mean a member of the general public who receives such newspapers, periodicals or program services and does not further distribute them.

(b) multipy its investment income by an investment allocation percentage to be determined by:

(1) multiplying the amount of its investment capital invested in each stock, bond or other security (other than governmental securities) during the period covered by its report by the issuer's allocation percentage of the issuer or obligor thereof.

(i) In the case of an issuer or obligor subject to tax under this subchapter or subchapter four of this chapter, or subject to tax as a utility corporation under chapter eleven of this title, the issuer's allocation percentage shall be the percentage of the appropriate measure (as defined hereinafter) which is required to be allocated within the city on the report or reports, if any, required of the issuer or obligor under this title for the preceding year. The appropriate measure referred to in the preceding sentence shall be: in the case of an issuer or obligor subject to this subchapter, entire capital; in the case of an issuer or obligor subject to subchapter four of this chapter, issued capital stock; in the case of an issuer or obligor subject to chapter eleven of this title as a utility corporation, gross income.

(ii) In the case of an issuer or obligor subject to tax under part four of subchapter three of this chapter, the issuer's allocation percentage shall be determined as follows:

(A) In the case of a banking corporation described in paragraphs one through eight of subdivision (a) of section 11-640 of this chapter which is organized under the laws of the United States, this state or any other state of the United States, the issuer's allocation percentage shall be its alternative entire net income allocation percentage, as defined in subdivision (c) of section 11-642 of this chapter, for the preceding year. In the case of such a banking corporation

whose alternative entire net income for the preceding year is derived exclusively from business carried on within the city, its issuer's allocation percentage shall be one hundred percent.

(B) In the case of a banking corporation described in paragraph two of subdivision (a) of section 11-640 of this chapter which is organized under the laws of a country other than the United States, the issuer's allocation percentage shall be determined by dividing (I) the amount described in clause (i) of subparagraph (A) of paragraph two of subdivision (a) of section 11-642 of this chapter with respect to such issuer or obligor for the preceding year, by (II) the gross income of such issuer or obligor from all sources within and without the United States, for such preceding year, whether or not included in alternative entire net income for such year.

(C) In the case of an issuer or obligor described in paragraph nine of subdivision (a) or in paragraph two of subdivision (d) of section 11-640 of this chapter, the issuer's allocation percentage shall be determined by dividing the portion of the entire capital of the issuer or obligor allocable to the city for the preceding year by the entire capital, wherever located, of the issuer or obligor for the preceding year.

(iii) Provided, however, that if a report or reports for the preceding year are not filed, or if filed do not contain information which would permit the determination of such issuer's allocation percentage, then the issuer's allocation percentage to be used shall, at the discretion of the commissioner of finance, be either (A) the issuer's allocation percentage derived from the most recently filed report or reports of the issuer or obligor or (B) a percentage calculated, by the commissioner of finance, reasonably to indicate the degree of economic presence in the city of the issuer or obligor during the preceding year.

(2) adding together the sum so obtained, and

(3) dividing the result so obtained by the total of its investment capital invested during such period in stocks, bonds and other securities; provided, however, that in case any investment capital is invested in any stock, bond or other security during only a portion of the period covered by the report, only such portion of such capital shall be taken into account; and provided further, that if a taxpayer's investment allocation percentage is zero, interest received on bank accounts shall be multiplied by its business allocation percentage; and

(c) add the products so obtained.

(d) Except as provided in subparagraph three of this paragraph or in paragraph (e) of this subdivision, at the election of the taxpayer there shall be deducted from the portion of its entire net income allocated within the city either or both of the items set forth in subparagraphs one and two of this paragraph, except that only one of such deductions shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in subparagraph three of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for the depreciation of the same property, and the total of all deductions allowed in any taxable year or years with respect to the depreciation of any such property shall not exceed its cost or other basis.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in subparagraph three of this paragraph which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that entire net income for the taxable year and all succeeding taxable years be computed without the deduction of any such expenditures and without any deduction for depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subparagraph for only a part of such expenditures, on condition that any

deduction allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, a proportionate part of such expenditures shall be deductible. If all or part of such expenditures with respect to any property shall have been deducted as provided herein, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation regardless of the time limitations set forth in section 11-674 of this chapter.

(3) Such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after December thirty-first, nineteen hundred sixty-five, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraphs four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clauses (A), (B) or (C) of this subparagraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph (d) hereof with respect to tangible personal property leased by it to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph (d) in proportion to the part of the year it uses such property.

(4) If the deductions allowable for any taxable year, pursuant to this subdivision, exceed the portion of the taxpayer's entire net income allocated to the city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to the city for such year or years.

(5) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of this paragraph, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to

or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of this paragraph. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

(e) At the election of the taxpayer there shall be deducted from the portion of its entire net income allocated within the city either or both of the items set forth in subparagraphs one and two of this paragraph, except that only one of such deductions shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in subparagraphs three and four of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for the depreciation of the same property, and the total of all deductions allowed in any taxable year or years with respect to the depreciation of any such property shall not exceed its cost or other basis multiplied by the taxpayer's business allocation percentage determined under this subdivision for the first year it deducts such depreciation under this paragraph.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in subparagraph three of this paragraph which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deductions shall be allowed only on condition that it does not exceed the amount of the expenditures multiplied by the taxpayer's business allocation percentage determined under this subdivision for the year the expenditures are paid or incurred and that entire net income for the taxable year and all succeeding taxable years be computed without the deduction of any such expenditures and without any deduction for depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subparagraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, a proportionate part of such expenditures shall be deductible. If all or part of such expenditures with respect to any property shall have been deducted as provided herein, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation regardless of the time limitations set forth in section 11-674 of this chapter.

(3) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business (A) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-seven by purchase or defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first nineteen hundred sixty-five. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph (e) hereof with respect to tangible personal property leased by it to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license

to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph (e) in proportion to the part of the year it uses such property.

(4) A deduction under subparagraph one of this paragraph shall be allowed with respect to tangible property described in subparagraph three only if such property is principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing. For purposes of this subparagraph, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under paragraph (g) of subdivision eight of section 11-602 of this subchapter may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing, in which event, a deduction shall not be allowed under such paragraph (g).

(5) Subject to the limitation imposed by subparagraphs one and two hereof, if the deductions allowable for any taxable year, pursuant to this subdivision, exceed the portion of the taxpayer's entire net income allocated to the city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to the city for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of this paragraph, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of this paragraph. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

4. The portion of the business capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the business allocation percentage determined as hereinabove provided. Provided, however, such business allocation percentage, for purposes of allocating business capital, shall (a) for taxable years beginning before nineteen hundred ninety-four, be determined without regard to clause (C) of subparagraph six of paragraph (a) of subdivision three of this section and (b) for taxable years beginning after nineteen hundred ninety-three, be determined with regard to such clause (C) but only in the case of a taxpayer subject to the provisions of paragraph (b) of subdivision six of section 11-602 of this subchapter.

5. The portion of the investment capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the investment allocation percentage determined as hereinabove provided.

6. Repealed.

7. The portion of the subsidiary capital of a taxpayer to be allocated within the city shall be determined by (a) multiplying the amount of its subsidiary capital invested in each subsidiary during the period covered by its report (or, in the case of any such capital so invested during only a portion of such period, such portion of such capital) by the

issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of this section, of each such subsidiary and (b) adding together the sums so obtained.

8. If it shall appear to the commissioner of finance that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city, and in the case of an investment allocation percentage to adjust it by excluding one or more assets in computing such percentage provided the income therefrom is also excluded in determining entire net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

9. If it shall appear to the commissioner of finance that any business allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom, is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage provided the income therefrom is also excluded in determining entire net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

10. Repealed.

11. (a) A taxpayer shall be allowed a credit, to be refunded in the manner hereinafter provided in this subdivision, against the tax imposed by this chapter. The amount of such credit shall be fifty percent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six and paid by such taxpayer (except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of such tax law).

(b) For purposes of this subdivision:

(1) the term "taxpayer" shall mean any corporation subject to tax under this chapter registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in subparagraph two of this paragraph, and

(2) the term "market making transaction" shall mean any transaction involving a sale (including a short sale) by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or business (including transfers which are part of an underwriting),

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error.

Provided, however, that, except as to subclause (c) of clause (ii) of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(c) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-677 of this chapter, except as otherwise provided in subdivision three of section 11-606 and subdivision eleven of section 11-608; provided, however, that the provisions of this title notwithstanding, the amount to be refunded pursuant to this subdivision shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision three of section 11-679 of this chapter notwithstanding interest shall be allowed and paid on the overpayment of the credit under this subdivision from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this subdivision has been filed, whichever is later.

(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

12. (a) In addition to the credit allowed by subdivision eleven of this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credits or refunds of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by subchapter two of chapter eleven of this title for any periods embraced within the taxable year of the taxpayer under this subchapter.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

(c) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this subdivision in a prior taxable year, the amount of such tax refund shall be added to the tax imposed by subdivision one of section 11-603 of this subchapter, and such amount shall be subtracted in computing entire net income for the taxable year.

13. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded without interest, in the manner hereinafter provided in this section.

(1) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation

shall have created a minimum of one hundred industrial or commercial employment opportunities; and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided shall be entitled to a credit against the tax imposed by this subchapter. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this subchapter.

The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive the tax credit provided for herein shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest". In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city.

The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation whichever period is shorter.

(2) Definitions: When used in this section, "employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employees is not less than thirty hours during any given work week.

"Industrial and commercial incentive board" means the board created pursuant to part three of subchapter two of chapter two of this title.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

14. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded without interest, in the manner hereinafter provided in this section. The amount of such credit shall be:

(1) A maximum of three hundred dollars for each commercial employment opportunity and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such

credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event, provided, however, no credit shall be allowed under this subdivision to a taxpayer for industrial employment opportunities relocated to premises (A) that are within an industrial business zone established pursuant to section 22-626 of this code and (B) for which a binding contract to purchase or lease was first entered into by the taxpayer on or after July first, two thousand five.

The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used by a taxpayer seeking the credit provided hereunder.

(2) Definitions: When used in this section, "employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment opportunity relocation costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving and installation of machinery and equipment into the city from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(b) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest in accordance with the provisions of section 11-677 of this chapter.

15. Repealed.

16. Repealed.

17. (a) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code shall be allowed a credit against the tax imposed by this subchapter. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section

22-621 of the code, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-622 of the code to take such credit against a gross receipts tax imposed by chapter eleven of this title; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code. For purposes of this subdivision, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph (d) of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(c) The credit allowable under this subdivision shall be deducted after the credit allowed by subdivision eighteen of this section, but prior to the deduction of any other credit allowed by this section.

(d) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph (a) of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of

such relocation is on or after July first, two thousand.

17-a. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year (and the amount of any interest imposed in connection therewith) which was paid after January first, nineteen hundred ninety-five, less any credit or refund of such taxes (or such interest), with respect to the purchase or use by the taxpayer of the services described in subdivision (b) of section eleven hundred five-b of the tax law.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

(c) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law (or of any interest imposed in connection therewith) for which the taxpayer had claimed a credit under the provisions of this subdivision in a prior taxable year, the amount of such tax (or such interest) refund or credit shall be added to the tax imposed by subdivision one of section 11-603 of this subchapter, and such amount shall be subtracted in computing entire net income for the taxable year.

17-b. (a) For taxable years beginning on or after January first, two thousand six, in addition to any other credit allowed by this section, an eligible business that first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which it relocates shall be allowed a one-time credit against the tax imposed by this subchapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be one thousand dollars per full-time employee; provided, however, that the amount of such credit shall not exceed the lesser of actual relocation costs or one hundred thousand dollars.

(b) When used in this subdivision, the following terms shall have the following meanings:

"Eligible business" means any business subject to tax under this subchapter that (1) has been conducting substantial business operations and engaging primarily in industrial and manufacturing activities at one or more locations within the city of New York or outside the state of New York continuously during the twenty-four consecutive full months immediately preceding relocation, (2) has leased the premises from which it relocates continuously during the twenty-four consecutive full months immediately preceding relocation, (3) first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which such business will relocate, and (4) will be engaged primarily in industrial and manufacturing activities at such eligible premises.

"Eligible premises" means premises located entirely within an industrial business zone. For any eligible business, an industrial business zone tax credit shall not be granted with respect to more than one eligible premises.

"Full-time employee" means (1) one person gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by such person is not less than thirty-five hours per week; or (2) two persons gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by each such person is more than fifteen hours per week but less than thirty-five hours per week.

"Industrial business zone" means an area within the city of New York established pursuant to section 22-626 of this code.

"Industrial business zone tax credit" means a credit, as provided for in this subdivision, against a tax imposed under this subchapter.

"Industrial and manufacturing activities" means activities involving the assembly of goods to create a different

article, or the processing, fabrication, or packaging of goods. Industrial and manufacturing activities shall not include waste management or utility services.

"Relocation" means the physical relocation of furniture, fixtures, equipment, machinery and supplies directly to an eligible premises, from one or more locations of an eligible business, including at least one location at which such business conducts substantial business operations and engages primarily in industrial and manufacturing activities. For purposes of this subdivision, the date of relocation shall be (1) the date of the completion of the relocation to the eligible premises or (2) ninety days from the commencement of the relocation to the eligible premises, whichever is earlier.

"Relocation costs" means costs incurred in the relocation of such furniture, fixtures, equipment, machinery and supplies, including, but not limited to, the cost of dismantling and reassembling equipment and the cost of floor preparation necessary for the reassembly of the equipment. Relocation costs shall include only such costs that are incurred during the ninety-day period immediately following the commencement of the relocation to an eligible premises. Relocation costs shall not include costs for structural or capital improvements or items purchased in connection with the relocation.

(c) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-677 of this chapter.

(d) The number of full-time employees for the purposes of calculating an industrial business tax credit shall be the average number of full-time employees, calculated on a weekly basis, employed in the eligible premises by the eligible business in the fifty-two week period immediately following the earlier of (1) the date of the completion of the relocation to eligible premises or (2) ninety days from the commencement of the relocation to the eligible premises.

(e) The credit allowed under this subdivision must be taken by the taxpayer in the taxable year in which such twelve month period selected by the taxpayer ends.

(f) For the purposes of calculating entire net income in the taxable year that an industrial business tax credit is allowed, a taxpayer must add back the amount of the credit allowed under this subdivision, to the extent of any relocation costs deducted in the current taxable year or a prior taxable year in calculating federal taxable income.

(g) The credit allowed under this subdivision shall not be granted for an eligible business for more than one relocation. Notwithstanding the foregoing, an industrial business tax credit shall not be granted if the eligible business receives benefits pursuant to chapter six-B or six-C of title twenty-two of this code, through a grant program administered by the business relocation assistance corporation, or through the New York city printers relocation fund grant.

(h) The commissioner of finance is authorized to promulgate rules and regulations and to prescribe forms necessary to effectuate the purposes of this subdivision.

18. (a) If a corporation is a partner in an unincorporated business taxable under chapter five of this title, and is required to include in entire net income its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such corporation shall be allowed a credit against the tax imposed by this subchapter equal to the lesser of the amounts determined in subparagraphs one and two of this paragraph:

(1) The amount determined in this subparagraph is the product of (A) the sum of (i) the tax imposed by chapter five of this title on the unincorporated business for its taxable year ending within or with the taxable year of the corporation and paid by the unincorporated business and (ii) the amount of any credit or credits taken by the unincorporated business under section 11-503 of this title (except the credit allowed by subdivision (b) of such section) for its taxable year ending within or with the taxable year of the corporation, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (B) a fraction, the numerator of which is the net total of the

corporation's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than zero.

(2) The amount determined in this subparagraph is the product of (A) the excess of (i) the tax computed under clause one of subparagraph (a) of paragraph E of subdivision one of this section, without allowance of any credits allowed by this section, over (ii) the tax so computed, determined as if the corporation had no such distributive share or guaranteed payments with respect to the unincorporated business, and (B) a fraction, the numerator of which is four and the denominator of which is eight and eighty-five one hundredths, provided, however, that the amounts computed in clauses (i) and (ii) of this subparagraph shall be computed with the following modifications:

(I) such amounts shall be computed without taking into account any carryforward or carryback by the partner of a net operating loss;

(II) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business or any net operating loss carryforward or carryback, the entire net income of the partner is less than zero, such entire net income shall be treated as zero; and

(III) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business is less than zero, such net total shall be treated as zero.

The amount determined in this subparagraph shall not be less than zero.

(b)(1) Notwithstanding anything to the contrary in paragraph (a) of this subdivision, in the case of a corporation that, before the application of this subdivision or any other credit allowed by this section, is liable for the tax on entire net income under clause one of subparagraph (a) of paragraph E of subdivision one of this section, the credit or the sum of the credits that may be taken by such corporation for a taxable year under this subdivision with respect to an unincorporated business or unincorporated businesses in which it is a partner shall not exceed the tax so computed, without allowance of any credits allowed by this section, multiplied by a fraction the numerator of which is four and the denominator of which is eight and eighty-five one hundredths. If the credit allowed under this subdivision or the sum of such credits exceeds the product of such tax and such fraction, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying the provisions of the preceding sentence, the credit determined for the taxable year under paragraph (a) of this subdivision shall be taken before taking any credit carryforward pursuant to this paragraph and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(2) Notwithstanding anything to the contrary in paragraph (a) of this subdivision, in the case of a corporation that, before the application of this subdivision or any other credit allowed by this section, is liable for the tax on entire net income plus certain salaries and other compensation under clause three of subparagraph (a) of paragraph E of subdivision one of this section, the maximum credit that may be taken in any taxable year is the amount that will reduce the tax so computed, without allowance of any credits allowed by this section, to zero. For purposes of this paragraph each dollar of credit shall be applied so as to reduce such tax for taxable years beginning before January first, two thousand seven by sixty-six and thirty-eight one hundredths cents; for taxable years beginning on or after January first, two thousand seven and before January first, two thousand eight by fifty-eight and eight one-hundredths cents; for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine by forty-nine and seventy-eight one-hundredths cents; for taxable years beginning on or after January first, two thousand nine and before January first, two thousand ten by forty-one and forty-eight one-hundredths cents; and for taxable years beginning on or after January first, two thousand ten by thirty-three and nineteen one-hundredths cents. If the amount of

credit allowed under this subdivision or the sum of such credits exceeds the amount that may be taken against such tax, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying the provisions of the preceding sentence, the credit determined for the taxable year under paragraph (a) of this subdivision shall be taken before taking any credit carryforward pursuant to this paragraph and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(3) No credit allowed under this subdivision may be taken in a taxable year by a taxpayer that, in the absence of such credit, would be liable for the tax computed on the basis of business and investment capital under clause two of subparagraph (a) of paragraph E of subdivision one of this section or the fixed-dollar minimum tax under clause four of subparagraph (a) of paragraph E of subdivision one of this section. No credit allowed under this subdivision may be taken against the tax computed on the basis of subsidiary capital under subparagraph (b) of paragraph E of subdivision one of this section.

(c) For corporations that file a report on a combined basis pursuant to subdivision four of section 11-605 of this chapter, the credit allowed by this subdivision shall be computed as if the combined group were the partner in each unincorporated business from which any of the members of such group had a distributive share or guaranteed payments, provided, however, if more than one member of the combined group is a partner in the same unincorporated business, for purposes of the calculation required in subparagraph one of paragraph (a) of this subdivision, the numerator of the fraction described in clause (B) of such subparagraph one shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all of the partners of the unincorporated business within the combined group for which such net total (as separately determined for each partner) is greater than zero, and the denominator of such fraction shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all partners in the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than zero.

(d) The credit allowed by this subdivision shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under chapter five of this title for any taxable year beginning before July first, nineteen hundred ninety-four.

(e) Notwithstanding any other provision of this subchapter, the credit allowable under this subdivision shall be taken prior to the taking of any other credit allowed by this section. Notwithstanding any other provision of this subchapter, the application of this subdivision shall not change the basis on which the taxpayer's tax is computed under paragraph E of subdivision one of this section.

19. Lower Manhattan relocation and employment assistance credit. (a) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code to take such credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this subdivision, the terms "eligible aggregate employment shares," "eligible premises," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year

shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(c) Except as provided in paragraph (d) of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(d) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(e) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions seventeen and eighteen of this section, but prior to the deduction of any other credit allowed by this section.

20. Film production credit.*27 (a)(1) allowance of credit. A taxpayer which is a qualified film production company, and which is subject to tax under this subchapter, shall be allowed a credit against such tax, pursuant to the provisions in subdivision (c) of this section, to be computed as hereinafter provided.

(2) The amount of the credit shall be the product of five percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs (excluding post production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the city of New York in the production of such qualified film. However, if the qualified production costs (excluding post production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film are less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in the city of New York outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without the city of New York outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this subdivision or used in the calculation of the credit provided for under this subdivision shall be used by such taxpayer to claim any other credit allowed pursuant to this title.

(b) Definitions. As used in this subdivision, the following terms shall have the following meanings:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the city of New York directly and predominantly in the production (including pre-production and post production) of a qualified film.

(2) "Production costs" means any costs for tangible property used and services performed directly and

predominantly in the production (including pre-production and post production) of a qualified film. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers (other than background actors with no scripted lines). "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(3) "Qualified film" means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. "Qualified film" shall not include (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program, or (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

(4) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage.

(5) "Qualified film production facility" shall mean a film production facility in the city of New York, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

(6) "Qualified film production company" shall mean a corporation which is principally engaged in the production of a qualified film and controls the qualified film during production.

(c) Application of credit. (1) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in clause (4) of subparagraph (a) of paragraph E of subdivision one of this section. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, the provisions of section 11-679 of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be credited against the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter. Provided, however, the provisions of section 11-679 of this chapter notwithstanding, no interest shall be paid thereon.

(2) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 par E amended chap 525/2008 § 9, eff. Sept. 4, 2008.

Subd. 1 par E amended chap 636/2005 § 9, eff. Aug. 30, 2005.

Subd. 1 par E amended chap 63/2003 § A6, eff. May 19, 2003.

Subd. 1 par E amended chap 118/2001 § LL 10, eff. Aug. 3, 2001.

Subd. 1 par E amended chap 406/1999 § V11, eff. Aug. 9, 1999.

Subd. 1 par E amended chap 496/1997 § 10, eff. Aug. 26, 1997.

Subd. 1 par E amended chap 625/1996 § 1, eff. Sept. 4, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. 1 par E amended chap 180/1995 § 17, eff. July 19, 1995

Subd. 1 par E amended chap 265/1993 § 11, eff. July 15, 1993

Subd. 1 par E amended chap 273/1991 § 12, eff. July 15, 1991

Subd. 1 par E amended chap 271/1991 § 24, eff. July 15, 1991

Subd. 1 par E amended chap 345/1990 § 12, eff. June 30, 1990

Subd. 1 par E separately amended chap 241/1989 §§ 51, 103

Subd. 1 par E amended chap 525/1988 § 66

Subd. 1 par E amended L.L. 51/1987 § 4

Subd. 1 par F added chap 525/1988 § 14

Subd. 1 par G added chap 170/1994 § 74, eff. June 9, 1994 and shall apply to taxable years beginning on or after Jan. 1, 1989

Subd. 1 par H added chap 625/1996 § 2, eff. Sept. 4, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. 2 amended chap 525/1988 § 15

Subd. 1 par H subpar (c) added chap 491/2007 § 2, eff. Aug. 1, 2007.

Subd. 1 par I added chap 491/2007 § 3, eff. Aug. 1, 2007.

Subd. 3 par (a) subpar (1) amended chap 625/1996 § 3, eff. Sept. 4, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. 3 par (a) subpar (1) amended chap 525/1988 § 16

Subd. 3 par (a) subpar (2) clause (A) amended chap 513/2002 § 50, eff. Sept. 17, 2002.

Subd. 3 par (a) subpar (2) clause (B) amended chap 513/2002 § 50, eff. Sept. 17, 2002.

Subd. 3 par (a) subpar (2) clause (B) amended chap 63/2000 § AA5, eff. May 15, 2000.

Subd. 3 par (a) subpar (2) clause (B) amended chap 241/1989 § 73

Subd. 3 par (a) subpar (2) clause (B) amended chap 345/1988 § 5

Subd. 3 par (a) subpar (4) amended chap 625/1996 § 4, eff. Sept. 4, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. 3 par (a) subpar (4) amended chap 345/1988 § 6

Subd. 3 par (a) subpar (5) amended chap 63/2000 § AA6, eff. May 15, 2000.

Subd. 3 par (a) subpar (5) added chap 345/1988 § 7

Subd. 3 par (a) subpar (6) added chap 241/1989 § 74

Subd. 3 par (a) subpar (6) clause (A) amended chap 170/1994 § 75, eff. June 9, 1994 and shall apply to taxable years beginning on or after Jan. 1, 1989

Subd. 3 par (a) subpar (6) clause (C) added chap 170/1994 § 76, eff. June 9, 1994 and shall apply to taxable years beginning on or after Jan. 1, 1989

Subd. 3 par (a) subpar (7) added chap 241/1989 § 74

Subd. 3 par (a) subpar (8) added chap 625/1996 § 5, eff. Sept. 4, 1996 applying to taxable years beginning on or after Jan. 1, 1996.

Subd. 3 par (a) subpar (9) added chap 513/2002 § 51, eff. Sept. 17, 2002 and applying to taxable years beginning after Dec. 31, 2001.

Subd. 3 par (b) subpar 1 amended chap 241/1989 § 52

Subd. 3 par (b) subpar 1 amended chap 525/1988 § 29

Subd. 3 par (b) subpar 1 amended L.L. 37/1986 § 2

Subd. 3 par (b) subpar 3 amended chap 525/1988 § 17

Subd. 4 amended chap 170/1994 § 77, eff. June 9, 1994

Subd. 6 repealed chap 241/1989 § 49

Subd. 7 amended chap 241/1989 § 53

Subd. 7 amended chap 525/1988 § 30

Subd. 10 repealed chap 525/1988 § 18

Subd. 14 par (a) subpar (1) amended chap 635/2005 § 3, eff. Aug. 30, 2005.

Subd. 15 repealed chap 472/2000 § 44, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. 15 par (a) amended L.L. 49/1987 § 4

Subd. 15 par (a) subpar (1) amended L.L. 46/1990 § 5 eff. July 1, 1990

Subd. 15 par (a) subpars (2), (3) repealed L.L. 46/1990 § 6 eff. July 1, 1990

Subd. 15 par (a) repealed and added L.L. 42/1988 § 2

Subd. 16 repealed chap 472/2000 § 44, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. 16 pars (a), (b), (c) amended L.L. 20/1986 § 21

Subd. 16 par (e) added L.L. 20/1986 § 22

Subd. 17 amended chap 425/1990 § 11 eff. July 10, 1990, retroactive to July 29, 1987

Subd. 17 added L.L. 50/1987 § 2

Subd. 17 par (a) amended chap 143/2004 § 22, eff. July 6, 2004 and deemed to have been in full force and effect on and after July 1, 2003.

Subd. 17 par (a) amended chap 261/2000 § 9, eff. Aug. 16, 2000.

Subd. 17 par (a) amended chap 149/1999 § 10, eff. July 1, 1999.

Subd. 17 par (a) amended chap 4/1995 § 7, eff. Oct. 29, 1995

Subd. 17 par (b) amended chap 143/2004 § 22, eff. July 6, 2004 and deemed to have been in full force and effect on and after July 1, 2003.

Subd. 17 par (b) amended chap 261/2000 § 9, eff. Aug. 16, 2000.

Subd. 17 par (b) amended chap 709/1993 § 5, eff. Aug. 6, 1993

Subd. 17 par (c) amended chap 261/2000 § 9, eff. Aug. 16, 2000.

Subd. 17 par (d) amended chap 143/2004 § 23, eff. July 6, 2004 and deemed to have been in full force and effect on and after July 1, 2003.

Subd. 17 par (d) added chap 261/2000 § 10, eff. Aug. 16, 2000.

Subd. 17-a added chap 489/1995 § 2, eff. Aug. 2, 1995

Subd. 17-b added chap 635/2005 § 4, eff. Aug. 30, 2005.

Subd. 18 amended chap 128/1996 § 15, eff. June 11, 1996 applying to taxable years beginning on or after Jan. 1, 1996

Subd. 18 added chap 485/1994 § 16, eff. July 26, 1994

Subd. 18 par (b) subpar (2) amended chap 491/2007 § 4, eff. Aug. 1, 2007.

Subd. 19 added chap 143/2004 § 24, eff. July 6, 2004 and deemed to have been in full force and effect on and after July 1, 2003.

Subd. 19 par (b) amended chap 2/2005 § E6, eff. Aug. 30, 2005.

Subd. 20 added L.L. 2/2005 § 1, eff. Jan. 3, 2005 and expiring Dec. 31, 2011 with special provisions. [See Note 1]

DERIVATION

Formerly § R46-4.0 added LL 21/1966 § 1

Sub 1 amended LL 37/1967 § 5

Sub 3 par b subpar 1 amended LL 37/1967 § 6

Sub 1 amended LL 17/1968 § 2

Sub 1 amended LL 91/1968 § 3

Sub 3 par a amended LL 91/1968 § 4

Sub 3 par d open par amended LL 91/1968 § 5

Sub 3 par d subpars 1, 3 amended LL 91/1968 § 6

Sub 3 par e added LL 91/1968 § 7

Sub 1 amended LL 45/1971 § 1

Sub 1 amended LL 41/1975 § 2

Sub 1 par A amended chap 884/1975 § 3

Sub 1 par B amended chap 884/1975 § 4

Sub 1 par D repealed chap 884/1975 § 5

(see expiration for chap 884/1975 § 6)

(legislative findings, grave financial emergency chap 884/1975 § 1)

Sub 11 added chap 842/1976 § 28

Sub 11 par d added chap 878/1977 § 13

Sub 1 par B amended LL 64/1977 § 2

Sub 1 pars D, E added LL 64/1977 § 3

Sub 12 added LL 64/1977 § 4

Sub 14 added LL 65/1977 § 2

Sub 13 added LL 66/1977 § 2

Sub 11 par c amended chap 65/1978 § 15

Sub 11 par b subpar 2 amended chap 724/1979 § 12

Sub 3 par a subpar 2 clause B amended chap 92/1985 § 1

Sub 15 added LL 3/1985 § 2

Sub 16 added LL 54/1985 § 3

Sub 6 amended LL 74/1985 § 1

Sub 7 amended LL 74/1985 § 2

Sub 16 pars a, b, c amended LL 20/1986 § 5

Sub 16 par e added LL 20/1986 § 6

Sub 1 par E amended chap 222/1986 §§ 10, 11

Subd. 1 par A amended chap 884/1975 § 3 and expires 12/31/2011 and

reverts to par A amended L.L. 41/1975 § 2 per chap 884/1975 § 6,

as amended chap 525/2008 § 21.

NOTE

1. Provisions of L.L. 2/2005 (as am'd L.L. 24/2006):

§4. Maximum amount of credits. (a) The aggregate amount of tax credits allowed pursuant to subdivision (m) of § 11-503 of the administrative code of the city of New York and subdivision twenty of § 11-604 of the administrative code of the city of New York in any calendar year shall be $12.5 million in 2004 and 2005 and $30 million in 2006 through 2011. Such aggregate amount of credits shall be allocated by the mayor's office of film, theatre and broadcasting among taxpayers in order of priority based upon the date of filing an application for allocation of film production credit with such office. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent year.

§5. The mayor's office of film, theatre and broadcasting shall, in accordance with sections two and three of part Y of a chapter of the laws of 2006, as set forth in legislative bill number S.6460-C, which was delivered to the secretary of state on April 28, 2006, amend, as soon as practicable, rules to establish procedures for the allocation of tax credits as required by section four of this local law. Such rules shall include provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided by taxpayers to substantiate the amount of tax credits allocated to such taxpayers, and such other provisions as deemed necessary and appropriate.

§6. This local law shall take effect immediately, except that sections two and three of this local law shall take effect as of the effective date of a chapter of the laws of New York that authorizes the enactment of an empire state film production credit against the unincorporated business income tax of the city of New York. This local law shall apply to taxable years beginning on or after January 1, 2005 with respect to "qualified production costs" paid or incurred on or after August 20, 2004, in connection with qualified films completed on or after January 1, 2005 regardless of whether the initial application relating to such qualified film was first submitted before August 20, 2004; provided, however, that this local law shall expire and shall be deemed to have no force and effect as of December 31, 2011, and provided further, that the expiration of this local law shall not affect the carry over of any credit allowed pursuant to this local law and, subsequent to the expiration of this local law, such carry over credits shall be allowed as provided by and pursuant to the provisions of this local law.

CASE NOTES FROM FORMER SECTION

¶ 1. Motion of respondent to dismiss declaratory judgment action of plaintiff, a professional corporation, which claimed that defendant had improperly measured the tax due from it by including officers' salaries as part of its taxable income was granted since the Department of Finance and not the city has primary jurisdiction to determine this question of statutory construction and there is no need for a declaratory judgment action.-Bayridge Orthopedic Associates v. City of N.Y., 184 (22) N.Y.L.J. (7-31-81) 6, Col. 2 T.

¶ 2. Authority given to the Commissioner of Finance to adjust a percentage by excluding one or more assets where the investment allocation percentage "does not properly reflect the activity, business, income or capital of a taxpayer within the city" is not an unconstitutional delegation of legislative power nor unconstitutionally vague.-Matter of Barneys v. Dept. of Finance v. City of N.Y., 93 App. Div. 2d 642 [1983].

CASE NOTES

¶ 1. The Finance Commissioner's rules relating to the NYC General Corporation Tax §1-5, 19 RCNY 11-06, adopted in 1990 make the general corporation tax applicable to foreign corporate limited partners in limited partnerships doing business in the city, and were properly applied retroactively to petitioner foreign corporation and limited partner where petitioner paid general corporation taxes for the tax years 1984, 1985 and 1986, Ad Cd §11-604(1)(E). Varrington v. NYC Dept. of Fin., 85 NY2d 28 [1995], 201 AD2d 282 affirmed.

¶ 2. In National Bulk Carriers, Inc. et al. v. New York City Tax Appeals Tribunal, 61 A.D.3d 522, 817 N.Y.S.2d 279 (1st Dept. 2009), leave to appeal denied, 2009 WL 1852004 (NY 2009), the Tribunal held that Petitioner's General

Corporate Tax (GCT) returns should be based on the fair market value of Petitioner's partnership assets rather than the book value of its partnership interests as related to capital assets pursuant to Admin. Code of NYC Sec. 11-604(2). The court upheld the decision, stating that it was rationally based.

FOOTNOTES

24

[Footnote 24]: ** NB Effective until December 31, 2011. [See Derivation]

25

[Footnote 25]: ** NB Effective until December 31, 2011. [See Derivation]

27

[Footnote 27]: * Expires Dec. 31, 2011, see Historical Note.

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NYC Administrative Code 11-605

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Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-605 Reports.

1. Every corporation having an officer, agent or representative within the city, shall annually on or before March fifteenth, transmit to the commissioner of finance a report in a form prescribed by the commissioner (except that a corporation which reports on the basis of a fiscal year shall transmit its report within two and one-half months after the close of its fiscal year), setting forth such information as the commissioner of finance may prescribe and every taxpayer which ceases to do business in the city or to be subject to the tax imposed by this subchapter shall transmit to the commissioner of finance a report on the date of such cessation or at such other time as the commissioner may require covering each year or period for which no report was theretofore filed. Every taxpayer shall also transmit such other reports and such facts and information as the commissioner of finance may require in the administration of this subchapter. The commissioner of finance may grant a reasonable extension of time for filing reports whenever good cause exists.

With respect to taxable years ending prior to December thirty-first, nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth day of the third month following the close of such taxable year or September eleventh, nineteen hundred sixty-six, whichever is later.

An automatic extension of six months for the filing of its annual report shall be allowed any taxpayer if, within the time prescribed by either of the preceding paragraphs, whichever is applicable, such taxpayer files with the commissioner of finance an application for extension in such form as the commissioner may prescribe by regulation and

pays on or before the date of such filing the amount properly estimated as its tax.

2. Every report shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or another officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. In the case of an association, within the meaning of paragraph three of section (a) of section seventy-seven hundred one of the internal revenue code, a publicly-traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments, such certification shall be made by any person duly authorized so to act on behalf of such association, publicly-traded partnership or business. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. Blank forms of reports shall be furnished by the commissioner of finance, on application, but failure to secure such a blank shall not release any corporation from the obligation of making any report required by this subchapter.

2-a. The commissioner of finance may prescribe regulations and instructions requiring returns of information to be made and filed in conjunction with the reports required to be filed pursuant to this section, relating to payments made to shareholders owning, directly or indirectly, individually or in the aggregate, more than fifty percent of the issued capital stock of the taxpayer, where such payments are treated as payments of interest in the computation of entire net income reported on such reports.

3. If the amount of taxable income, alternative minimum taxable income or other basis of tax for any year of any taxpayer, or of any shareholder of any taxpayer which has elected to be taxed under subchapter s of chapter one of the internal revenue code or of any shareholder of any taxpayer with respect to which an election has been made to be treated as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, as returned to the United States treasury department or the New York state commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state commissioner of taxation and finance or other competent authority, or where a renegotiation of a contract or subcontract with the United States or the state of New York results in a change in taxable income, alternative minimum taxable income or other basis of tax, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States or the state of New York, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, or such shareholder of a taxpayer, pursuant to subsection (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subsection (c) of said section, such taxpayer shall report such changed or corrected taxable income, alternative minimum taxable income or other basis of tax, or the results of such renegotiation, or such computation, or recomputation, or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income, alternative minimum taxable income or other basis of tax on which it is based, within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined report under this subchapter for such year) after such execution or the final determination of such change or correction or renegotiation, or such computation, or recomputation, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended report with the commissioner of finance.

4. In the discretion of the commissioner of finance, any taxpayer which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such

information as the commissioner of finance may require; provided, however, that no taxpayer may be permitted to make a report on a combined basis covering any such other corporations where (a) such taxpayer or any such other corporation allocates in accordance with clause (A) of subparagraph six of paragraph (a) of subdivision three of section 11-604 of this subchapter and such taxpayer or any such other corporation does not so allocate, or (b) such taxpayer or any such other corporation allocates in accordance with subparagraph seven of paragraph (a) of subdivision three of section 11-604 of this subchapter and such taxpayer or any such other corporation does not so allocate; provided, further that no combined report covering any corporation not a taxpayer shall be required unless the commissioner of finance deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this subchapter and provided, further, that a corporation which elects the application of section nine hundred thirty-six of the internal revenue code with respect to a particular federal taxable year shall not, in the case of a taxpayer, be required or permitted to make a report on a combined basis with respect to a taxable year under this subchapter which is the same as such federal taxable year (or a portion thereof), and, in the case of a corporation which is not a taxpayer, no combined report covering such corporation with respect to such taxable year under this subchapter shall be required or permitted. In the case of a combined report the tax shall be measured by the combined entire net income or combined capital, of all the corporations included in the report; provided, however, in no event shall the tax measured by combined capital exceed the limitation provided for in paragraph F of subdivision one of section 11-604 of this subchapter. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stock holdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated.

5. In case it shall appear to the commissioner of finance that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or capital of the taxpayer within the city is improperly or inaccurately reflected, the commissioner of finance is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income, deductions and capital, and to eliminate assets in computing any allocation percentage provided only that any income directly traceable thereto be also excluded from entire net income, so as equitably to determine the tax. Where (a) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (b) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the commissioner of finance may include in the entire net income of the taxpayer the fair profits, which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

6. An action may be brought at any time by the corporation counsel at the instance of the commissioner of finance to compel the filing of reports due under this subchapter.

7. Reports shall be preserved for five years, and thereafter until the commissioner of finance orders them to be destroyed.

8. Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 2 amended L.L. 57/2001 § 8, eff. Oct. 10, 2001.

Subd. 2-a added chap 525/1988 § 19

Subd. 3 amended chap 513/2002 § 46, eff. Sept. 17, 2002.

Subd. 3 amended L.L. 57/2001 § 9, eff. Oct. 10, 2001.

Subd. 3 amended chap 525/1988 § 20

Subd. 4 amended chap 170/1994 § 36, eff. June 9, 1994 and applying to

taxable years beginning on and after Jan. 1, 1994

Subd. 4 amended chap 241/1989 § 75

Subd. 4 amended chap 525/1988 § 21

DERIVATION

Formerly § R46-5.0 added LL 21/1966 § 1

Sub 1 amended LL 37/1967 § 7

Sub 3 amended LL 63/1969 § 1

Sub 3 amended LL 40/1970 § 2

Sub 8 added LL 10/1985 § 6

Sub 1 third undesignated par amended LL 64/1985 § 1

CASE NOTES

¶ 1. The Activities Reports (Form NYC-425) filed annually by a New Jersey Corporation, used for corporations disclaiming liability for General Corporation Tax, are "returns for the purposes of three-year statute of limitations in Ad Cd §11-674(1). Since a "return" is defined as "a report or return of tax, Ad Cd §11-671(2)(b), and pursuant to Ad Cd §11-605 the filing deadlines made by corporations paying and disclaiming tax liability are described as "returns". Apex Air Freight v. O'Cleireacain, 210 AD2d 7, 619 N.Y.S.2d 38, leave to appeal denied, 86 N.Y.2d 712, 635 N.Y.S.2d 949 [1994].

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Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-606 Payment and lien of tax.

1. To the extent the tax imposed by section 11-603 of this subchapter shall not have been previously paid pursuant to section 11-608 of this subchapter,

(a) such tax, or the balance thereof, shall be payable to the commissioner of finance in full at the time the report is required to be filed, and

(b) such tax, or the balance thereof, imposed on any taxpayer which ceases to do business in the city or to be subject to the tax imposed by this subchapter shall be payable to the commissioner of finance at the time the report is required to be filed; all other taxes of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time.

If the taxpayer, within the time prescribed by section 11-605 of this subchapter, shall have applied for an automatic extension of time to file its annual report and shall have paid to the commissioner of finance on or before the date such application is filed an amount properly estimated as provided by said section, the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of six percent per annum upon the amount by which the tax, or the portion thereof payable on or before the date the report was required to be filed, exceeds the amount so paid. For

purposes of the preceding sentence:

(1) an amount so paid shall be deemed properly estimated if it is either: (A) not less than ninety percent of the tax as finally determined (computed without regard to any credit allowable under subdivision eleven of section 11-604 of this subchapter), or (B) not less than the tax shown (computed without regard to any credit allowable under subdivision eleven of section 11-604 of this subchapter) on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a report is required to be filed shall be determined without regard to any extension of time for filing such report.

2. The commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this subchapter under such conditions as it deems just and proper.

3. Subdivision one of this section shall apply to a taxpayer which has a right to a credit pursuant to subdivision eleven of section 11-604 of this subchapter, except that the tax, or balance thereof, payable to the commissioner of finance in full pursuant to subdivision one of this section, at the time the report is required to be filed, shall be calculated and paid at such time as if the credit provided for in subdivision eleven of section 11-604 of this subchapter were not allowed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 241/1989 § 5

DERIVATION

Formerly § R46-6.0 added LL 21/1966 § 1

Sub 3 added chap 842/1976 § 29

Sub 1 second unnumbered par subpar 1 amended chap 842/1976 § 34

Sub 1 amended LL 94/1977 § 1

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Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-607 Declaration of estimated tax.

1. Every taxpayer subject to the tax imposed by section 11-603 of this subchapter shall make a declaration of its estimated tax for the current privilege period, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by section 11-603 of this subchapter for the current privilege period, less the amount which it estimates to be the sum of any credits allowable against the tax other than the credit allowable under subdivision eleven of section 11-604 of this subchapter.

3. In the case of a taxpayer which reports on the basis of a calendar year, a declaration of estimated tax shall be filed on or before June fifteenth of the current privilege period, except that if the requirements of subdivision one are first met:

(a) after May thirty-first and before September first of such current privilege period, the declaration shall be filed on or before September fifteenth, or

(b) after August thirty-first and before December first of such current privilege period, the declaration shall be

filed on or before December fifteenth.

4. A taxpayer may amend a declaration under regulations of the commissioner of finance.

5. If, on or before February fifteenth of the succeeding year in the case of a taxpayer which reports on the basis of a calendar year, a taxpayer files its report for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the report,

(a) such report shall be considered as its declaration if no declaration is required to be filed during the calendar or fiscal year for which the tax was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to subdivision three, and

(b) such report shall be considered as the amendment permitted by sudivision four to be filed on or before December fifteenth if the tax shown on the report is greater than the estimated tax shown on a declaration previously made.

6. This section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

7. If the privilege period for which a tax is imposed by section 11-603 of this subchapter is less than twelve months, every taxpayer required to make a declaration of estimated tax for such privilege period shall make such a declaration in accordance with regulations of the commissioner of finance.

8. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as it may require.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 3 amended L.L. 45/1990 § 1 eff. July 12, 1990

Subd. 5 pars (a), (b) amended L.L. 45/1990 § 2 eff. July 12, 1990

DERIVATION

Formerly § R46-7.0 added LL 21/1966 § 1

Sub 3 amended LL 42/1971 § 1

Sub 3 amended LL 19/1972 § 1

Sub 2 amended chap 842/1976 § 31

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Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-608 Payments on account of estimated tax.

1. Every taxpayer subject to the tax imposed by section 11-603 of this subchapter shall pay with the report required to be filed for the preceding privilege period, if any, or with an application for extension of the time and filing such report, an amount equal to twenty-five per centum of the preceding year's tax if such preceding year's tax exceeded one thousand dollars.

1-a. Repealed.

1-b. Repealed.

1-c. Repealed.

1-d. Repealed.

1-e. Repealed.

1-f. Repealed.

2. The estimated tax with respect to which a declaration for such privilege period is required shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(b) If the declaration is filed after June fifteenth and not after September fifteenth of such privilege period, and is not required to be filed on or before June fifteenth of such period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

(c) If the declaration is filed after September fifteenth of such privilege period, and is not required to be filed on or before September fifteenth of such privilege period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect to such privilege period pursuant to subdivision one, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

3. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the privilege period, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

4. Any amount paid shall be applied after payment as a first installment against the estimated tax of the taxpayer for the current privilege period shown on the declaration required to be filed pursuant to section 11-607 of this subchapter or, if no declaration of estimated tax is required to be filed by the taxpayer to such section, any such amount shall be considered a payment on account of the tax shown on the report required to be filed by the taxpayer for such privilege period.

5. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if an amount paid pursuant to subdivision one exceeds the tax shown on the report required to be filed by the taxpayer for the privilege period during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of four percent per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the third month following the close of the privilege period, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar or if such interest becomes payable solely because of a carryback of a net operating loss in a subsequent privilege period.

6. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by section 11-603 of this subchapter for the preceding calendar or fiscal year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the report required to be filed for such preceding calendar or fiscal year, the amount properly estimated pursuant to section 11-607 of this subchapter as the tax imposed upon the taxpayer for such calendar or fiscal year.

7. This section shall apply to a privilege period of less than twelve months in accordance with regulations of the commissioner of finance.

8. The provisions of this section shall apply to privilege periods of twelve months other than a calendar year by

the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

9. The commissioner of finance may grant a reasonable extension of time, not to not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as the commissioner may require including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided however that interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of six percent per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

10. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

11. The portion of an overpayment attributable to a credit allowable pursuant to subdivision eleven of section 11-604 of this subchapter may not be credited against any payment due under this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended L.L. 57/2001 § 10, eff. Oct. 10, 2001.

Subds. 1-a-1-e repealed L.L. 57/2001 § 11, eff. Oct. 10, 2001.

Subd. 1-e added L.L. 50/1987 § 3. [See note after § 22-621.]

Subd. 1-f repealed L.L. 57/2001 § 11, eff. Oct. 10, 2001.

Subd. 1-f added chap 489/1995 § 3, eff. Aug. 2, 1995.

Subd. 2 pars (a), (b), (c) amended L.L. 45/1990 § 3, eff. July 12, 1990

Subd. 3 amended L.L. 45/1990 § 4 eff. July 12, 1990

Subds. 5, 9 amended chap 241/1989 § 6

DERIVATION

Formerly § R46-8.0 added LL 21/1966 § 1

Sub 2 pars a, b amended LL 42/1971 § 2

Sub 2 pars a, b amended LL 19/1972 § 2

Sub 11 added chap 842/1976 § 30

Sub 1 amended LL 64/1977 § 5

Sub 1-b added LL 65/1977 § 3

Sub 1-a added LL 66/1977 § 3

Subs 5, 9 amended LL 94/1977 § 2

Sub 1-c added LL 3/1985 § 3

Sub 1-d added LL 54/1985 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-609

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-609 Collection of taxes.

Every foreign corporation (other than a moneyed corporation) subject to the provisions of this subchapter, except a corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or a vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this subchapter may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon the secretary of state. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon him or her to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon the secretary of state to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having a certificate of authority under section two hundred twelve of the general corporation law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time

pursuant to the provisions of this subchapter, may be made by either: (a) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (b) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-9.0 added LL 21/1966 § 1

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NYC Administrative Code 11-610

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (IN PART) CITY BUSINESS TAXES

SUBCHAPTER 2 GENERAL CORPORATION TAX

§ 11-610 Limitations of time.

The provisions of the civil practice law and rules relative to the limitation of time enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this subchapter, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-10.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-611

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-611 Definitions.

When used in this part:

1. The term "financial corporation" means every corporation doing a banking business as defined in this section, other than a national banking association, a trust company all of the capital stock of which is owned by not less than twenty savings banks organized under a law of this state, or a corporation taxable under subchapter two of this chapter, and shall include the mortgage facilities corporation created by chapter five hundred sixty-four of the laws of nineteen hundred fifty-six and any corporation eighty percent or more of whose voting stock is beneficially owned by a corporation or corporations subject to article three or article three-a of the banking law or a national banking association or associations, provided the corporation whose voting stock is so owned is principally engaged in business which might be lawfully conducted by a corporation subject to article three of the banking law or a national banking association.

2. The word "paid", for the purpose of the deductions and credits under this part, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of

accounting upon the basis of which the net income is computed, under this part. The term "received," for the purpose of the computation of net income under this part means "received or accrued" and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this part.

3. The word "dividend" means any distribution made by a corporation to its shareholders or members, out of its earnings or profits, whether in cash, or in property other than stock of the corporation.

4. The words "doing a banking business" means doing such business as a corporation may be created to do under articles three, five, five-a, and six of the banking law, or doing any business which a corporation is authorized by such articles to do.

5. The words "foreign banker doing a banking business" in the city, include every foreign corporation doing a banking business in the city, except a national banking association.

6. The words "savings and loan association" mean every corporation doing such business as a corporation may be created to do under article ten of the banking law, including every federal savings and loan association organized under authority of the United States.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-11.0 added LL 21/1966 § 1

Sub 1 amended LL 40/1970 § 3

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***** Current through December 2009 ****

NYC Administrative Code 11-612

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-612 Tax based on net income; imposition; minimum tax; new incorporations; dissolution; consolidations; mergers, etc.

1. For the privilege of doing business in the city:

(a) Every bank and savings and loan association organized under the authority of this state;

(b) Every trust company incorporated, organized or formed under, by or pursuant to a law of the state, other than a trust company all of the stock of which is owned by not less than twenty savings banks organized under a law of the state, and every domestic corporation authorized to do a trust company's business solely or in connection with any other business, under a general or special law of the state;

(c) Every other domestic financial corporation;

(d) Every incorporated foreign banker doing a banking business and every other foreign financial corporation; and

(e) Every federal savings and loan association located within the city, shall annually pay a tax at the rate of four and one-half per centum except that for the years nineteen hundred seventy-one and those following, the rate shall be five and sixty-three one hundredths per centum, to be computed as provided in this part, upon the basis of its net income for each calendar year, beginning with the calendar year nineteen hundred sixty-six, next preceding the date when such tax becomes due, if the taxpayer is required to file a declaration of estimated tax and to make payments on account of such estimated tax as provided by section 11-636 of this subchapter, upon the basis of its net income for the calendar year with respect to which such declaration is required to be filed.

2. Every such corporation for the privilege of doing business in the city and every federal savings and loan association located in the city shall be subject to a minimum tax of not less than ten dollars and not less than one mill except that for the years nineteen hundred seventy-one and those following such minimum tax shall be not less than twelve and one-half dollars and not less than one and one-quarter mills upon each dollar of such a part of its issued capital stock on the last day of the calendar year preceding that in which such tax becomes due, at its face value, as the gross income of such corporation derived from business carried on within the city during such calendar year, bears to its gross income derived from all business, both within and without the city, during said year, but if such a corporation has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance; except that a savings bank and savings and loan association shall be subject to a minimum tax of not less than an amount equal to two per centum of the amount of interest or dividends credited by it to depositors or shareholders during the calendar year preceding that in which such tax becomes due except that for the years nineteen hundred seventy-one and those following such minimum tax shall be not less than twelve and one-half dollars and not less than an amount equal to two and one-half per centum of the amount of interest or dividends credited by it to depositors or shareholders during the calendar year preceding that in which such tax becomes due, provided that, in determining such amount each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of two per centum per annum whichever is less and except also that in the case of a trust company or savings bank incorporated in the calendar year preceding that in which its first return under this part shall be due and after the thirtieth day of June in such year, the minimum tax, computed as in this subdivision provided, shall be reduced one-twelfth for each month, or major portion thereof, subsequent to said thirtieth day of June during which such trust company or savings bank did not exercise the privilege of doing business in the city.

3. For the privilege of doing business in the city, every such domestic corporation, except trust companies and savings banks, shall be subject to a tax for the calendar year in which its organization certificate is filed, and, for the privilege of doing business in the city, every such foreign corporation shall be subject to a tax for the calendar year in which it first does business in the city, and, every federal savings and loan association located within the city shall be subject to a tax for the calendar year in which it first becomes located within the city, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for such calendar year, and the issued capital stock shall be taken as of the last day of such calendar year; provided, however, that the tax so computed shall be reduced one-twelfth for each month, or major portion thereof, in such calendar year, during which such corporation was not doing business in the city, or, if a federal savings and loan association, was not located in the city, and in no event shall the tax be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax be less than twelve and one-half dollars.

4. For the privilege of doing business in the city, every such trust company and savings bank which shall become incorporated between the thirty-first day of December and the succeeding first day of July, shall be subject to a tax for such period, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for such period; and the issued capital stock, or interest credited to depositors of a savings bank, shall be taken as of the last day of such period; provided, however, that the tax so computed shall be reduced one-half and an additional one-twelfth for each month, or

major portion thereof, in such period, during which such trust company or savings bank was not doing business in the city, and in no event shall the tax be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax be less than twelve and one-half dollars.

5. For the privilege of doing business in the city, every such corporation, except trust companies and savings banks, which shall be dissolved between the thirty-first day of December and the succeeding second day of September, and shall not become merged or consolidated with another corporation taxable under this part and, every such foreign corporation which shall cease to do business in the city during the same period, and every federal savings and loan association which ceases to be located in the city during the same period, and shall not become merged or consolidated with another corporation taxable under this part, shall pay a tax for the period from the thirty-first day of December up to the time of dissolution, ceasing to do business in the city, or ceasing to be located in the city, as the case may be, equal to that which would have been payable had it not been dissolved, ceased to do business in the city, or ceased to be located in the city, except that such tax shall be reduced one-third and an additional one-twelfth for each month, or major portion thereof, prior to such succeeding second day of September, during which such corporation was not doing business in the city, or was not located in the city, and in no event shall the tax be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax be less than twelve and one-half dollars. If such dissolution or cessation occurs beteween the fifteenth day of March and the second day of September, and if such corporation shall have filed its return on or before the fifteenth day of March as required by section 11-633 of this subchapter, it may file a claim for refund as provided in section 11-678 of this chapter, showing any reduction in tax to which it may be entitled as provided in the preceding sentence; and if it shall be made to appear that the amount of tax due is less than the amount as computed on the basis of the original return, the commissioner of finance shall adjust the computation of tax accordingly. If the amount of tax as so adjusted shall be less than the amount theretofore paid, the excess shall be refunded by the commissioner of finance as provided in subdivision one of section 11-677 of this chapter.

6. Every such trust company and savings bank, which shall be dissolved, and shall not become merged or consolidated with another corporation taxable under this part, shall, if dissolution takes place between the thirtieth day of June and the succeeding first day of January, be subject to a tax, for that part of such period in which it had been doing business, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for the calendar year in which such dissolution occurs; and the issued capital stock, or interest credited to depositors of a savings bank, shall be taken as of the date of dissolution; provided, however, that the tax so computed shall be reduced one-half and an additional one-twelfth for each month, or major portion thereof, between the date of dissolution and the succeeding first day of January. If dissolution occurs between the thirty-first day of December and the succeeding sixteenth day of March, such trust company and savings bank shall be subject to the same tax that would have been due from it on or before the fifteenth day of March had it not been dissolved, except that such tax shall be reduced one-twelfth for each month, or major portion thereof, from the date of dissolution to the succeeding first day of July, and shall be for the period beginning on the preceding first day of July and ending on the date of dissolution. In no event shall the tax under this subdivision be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax under this subdivision be less than twelve and one-half dollars.

7. In the case of a consolidation or merger of taxpayers, or in case a national bank taxable under part two of this subchapter shall be consolidated or merged with a taxpayer under this part, or in case of a series of such transactions, there shall be added to the net income of the taxpayer resulting from such consolidations or mergers the net income of the taxpayers which are consolidated or merged for the period for which the taxpayer resulting from such consolidation or merger is required to render any return under this part, and if such resulting taxpayer is a savings bank or savings and loan association, there shall be added to the interest or dividends credited by it to depositors or shareholders the amount of interest or dividends credited to depositors or shareholders during such period by the taxpayers which are consolidated or merged, except that net income, interest or dividends shall not be included if they have already been used as the basis for a tax under this part, and the tax payable on filing such return shall be based upon the entire net

income reported therein or upon the entire amount of interest or dividends so reported, as the case may be. The acquisition by a taxpayer, directly or indirectly, of the assets or franchises of another taxpayer or national bank shall be deemed a merger for the purposes of this section.

8. The tax imposed by this part shall be for the calendar year next preceding the year in which it becomes due; except that with respect to corporations subject to a tax imposed under subdivision three, four, five or six of this section, the tax shall be for the period therein specified, and except that with respect to corporations required to file a declaration of estimated tax and to make payments on account of such estimated tax as provided by section 11-636 of this subchapter, all payments of tax within a calendar year, whether computed on the basis of net income for the current calendar year or on the basis of net income for the preceding calendar year, shall be for the calendar year in which the payments are required to be made.

9. In the event that it shall be finally determined by a court of competent jurisdiction that the taxes imposed on national banking associations by part two of this subchapter are unconstitutional or invalid for the reason that they are not in conformity with the provisions of section fifty-two hundred nineteen of the United States revised statutes, then, in lieu of the taxes imposed by the provisions of this part, every corporation that otherwise would have been subject to tax under this part shall be subject to the tax imposed under subchapter two as of July thirteenth, nineteen hundred sixty-six, and all of the provisions of subchapter two, unless clearly inappropriate, shall be applicable except subdivision four of section 11-603 of this chapter; and, in such event, any payments made, reports or returns filed or any act of the commissioner of finance or of a taxpayer purportedly under this subchapter shall be treated as though made, filed or done pursuant to subchapter two.

10. Cross reference. For years for which tax is imposed, see section 11-613 of this part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-12.0 added LL 21/1966 § 1

Sub 7 amended LL 17/1968 § 3

Subs 1-b amended LL 45/1971 § 2

Sub 10 added LL 83/1972 § 5

(special provisions LL 83/1972 §§ 13-16)

CASE NOTES FROM FORMER SECTION

¶ 1. The franchise tax under the alternative minimum tax imposed upon savings banks and savings and loan associations is not unconstitutional because it results in a higher tax than is applicable to commercial banks since savings and commercial banks may be classified differently.-Woodside Savings & Loan Association v. Gallman, 73 Misc. 2d 357, aff'd 34 N.Y. 2d 874 [1974].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-613

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-613 Years for which imposed.

1. The tax imposed by section 11-612 of this part is imposed for each calendar year included within the period beginning January first, nineteen hundred sixty-six and ending December thirty-first, nineteen hundred seventy-two.

2. Cross reference. For tax imposed for years or periods subsequent to nineteen hundred seventy-two, see part four of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-13.0 added LL 21/1966 § 1

Amended LL 83/1972 § 6

Administrative Code of the City of New York

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NYC Administrative Code 11-614

Administrative Code of the City of New York

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CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-614 Ascertainment of gain or loss.

1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with section 11-617 of this part.

2. Notwithstanding subdivision one of this section, with respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and accounts or notes receivable acquired in the ordinary course of trade or business from the sale of such stock in trade or property, or for services rendered, net income shall not include:

(a) That portion of the gain included in determining net income pursuant to subdivision one of this section with respect to each such property, which exceeds:

(b) The amount of gain that would be included in determining net income pursuant to subdivision one of this section with respect to each such property if the basis of such property on the date of sale or other disposition were equal to its fair market value on January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to each such property in computing net income for periods on or after January first, nineteen hundred sixty-six provided that the total adjustment to net income provided by this subdivision shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property, as determined pursuant to subdivision one of this section.

3. In the case of any bond, with respect to which a deduction for amortizable bond premium is allowable under subdivision nine of section 11-621 of this part, the basis for determining gain or loss shall be reduced by the total amount of such deductions so allowable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-14.0 added LL 21/1966 § 1

Sub 2 amended LL 37/1967 § 8

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CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-615 Exchange of property.

Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 11-614 of this part, shall be recognized, except as hereinafter provided in this section:

1. No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation;

2. No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan or reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization; 3. No gain or loss shall be recognized if a taxpayer, a party to a reorganization, exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization; and

4. No gain or loss shall be recognized if property is transferred to a corporation by a taxpayer solely in exchange

for stock or securities in such corporation, and immediately after the exchange such taxpayer is in control of the corporation; but in the case of an exchange by a taxpayer and one or more other corporations or persons this subdivision shall apply only if the amount of the stock and securities received by each is substantially in proportion to its interest in the property prior to the exchange.

5. If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat of imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commissioner of finance, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

6. If there is distributed, in pursuance of a plan of reorganization, to a taxpayer shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such taxpayer shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

7. If an exchange would be within the provisions of subdivision one, two, or four of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

8. If an exchange would be within the provisions of subdivision three of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then:

(a) If the taxpayer receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the taxpayer shall be recognized from the exchange, but

(b) If the taxpayer receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the taxpayer shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

9. If an exchange would be within the provisions of subdivision one, two, three, or four of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

10. As used in this section:

The term "reorganization" means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (b) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (c) a recapitalization, or (d) a mere change in identity, form or place of organization, however effected;

The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a

majority of the total number of shares of all other classes of stock of another corporation; and

The term "control" means the ownership of at least eighty per centum of the voting stock and at least eighty per centum of the total number of shares of all other classes of stock of the corporation.

11. No gain or loss shall be recognized upon the receipt by a taxpayer of property distributed in complete liquidation of a corporation. For the purposes of this subdivision a distribution shall be considered to be in complete liquidation only if:

(a) the taxpayer receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such corporation) possessing at least eighty per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least eighty per centum of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and either:

(b) the distribution is by such corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the base year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of the corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified on such resolution; or

(c) such distribution is one of a series of distributions by such corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the year, the commissioner of finance may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as the commissioner may deem necessary to insure, if the transfer of the property is not completed within such three year period, or if the taxpayer does not continue qualified under paragraph (a) until the completion of such transfer, the assessment and collection of all taxes then imposed under this part for such year or subsequent years, to the extent attributable to property so received. A distribution otherwise constituing a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such corporation, merely because the carrying out of the plan involves: (1) the transfer under the plan to the taxpayer by such corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in subdivision three of this section, and (2) the complete cancellation or redemption under the plan, as a result of exchanges described in subdivision two of this section, of the shares not owned by the taxpayers.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-15.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-616

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-616 Exchange of property when no gain or loss is realized.

When property is exchanged for other property and no gain or loss is realized under the provisions of the preceding section, the property received shall be treated as taking the place of the property exchanged therefor. Where no gain or loss is realized under the provisions of subdivision eleven of the preceding section, the basis of the property received shall be the same as it would be in the hands of the transferor determined in accordance with the provisions of section 11-614 of this part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-16.0 added LL 21/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-617

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-617 Inventory.

Whenever in the opinion of the commissioner of finance the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the commissioner of finance may prescribe, conforming as nearly as may be to the best accounting practice in the banking business most clearly reflecting the income.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-17.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-618

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-618 Net income defined.

The term "net income" means the gross income of a taxpayer less the deductions allowed by this part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-18.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-619

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-619 Computation of net income.

The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the commissioner of finance does clearly reflect the income. In determining net income, war losses, taxation of property recovered, and basis of property shall be treated in substantially the same manner as such losses, recoveries and basis are treated under the applicable provisions of section thirteen hundred thirty-one of the internal revenue code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-19.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-620

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-620 Gross income defined.

1. The term "gross income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise in carrying on such business, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds.

2. If the gross income of a taxpayer is derived from business carried on both within and without the city, "gross income" means that proportion thereof which is derived from business carried on within the city, to be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations prescribed by the commissioner of finance.

3. "Gross income" of a savings bank shall include the amount received by it in any taxable year as a distribution in liquidation of the mutual savings bank fund.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-20.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-621

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-621 Deductions.

In computing net income there shall be allowed as deductions:

1. All the ordinary and necessary expenses paid or incurred during the year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which such taxpayer has no equity.

2. All interest paid or accrued during the year on indebtedness.

3. Taxes, other than taxes on income or profits paid or accrued within the year, imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivisions of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government.

4. Losses sustained during the year and not compensated for by insurance or otherwise, if incurred in business; unless in order to clearly reflect the income the losses should in the opinion of the commissioner of finance be accounted for as of a different period. No deduction shall be allowed for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date such sale or other disposition the taxpayer has acquired substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, unless such claim is made with respect to a transaction made in the ordinary course of business. If such acquisition is to the extent of part only of substantially identical property, only a proportionate part of the loss shall be disallowed.

5. Debts ascertained to be worthless and charged off within the year; or in the discretion of the commissioner of finance a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the commissioner of finance may allow such debt to be charged off in part.

6. A reasonable allowance for the exhaustion, wear and tear of property used in business, including a reasonable allowance for obsolescence. In the case of any such property acquired before January first, nineteen hundred sixty-six, the amount of such deduction shall be equal to the deduction properly taken for such property in reporting the tax due pursuant to article nine-b of the tax law. With respect to property such as described in subdivision twelve of this section, this deduction may be computed and allowed as provided therein.

7. If the gross income be derived from business carried on within and without the city, the deductions allowed by this section shall be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations to be prescribed by the commissioner of finance.

8. In the case of any taxpayer who establishes or maintains a pension trust to provide for the payment of reasonable pensions to its employees, there shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subdivision one of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (a) has not theretofore been allowable as a deduction, and (b) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made or, under regulations of the commissioner of finance, covers not more than one-tenth of the total pension liability with respect to services rendered prior to such taxable year; provided that said deduction shall be allowable only with respect to a taxable year (whether the year of the transfer or payment or a subsequent year) of the taxpayer ending within or with a taxable year of the trust with respect to which the trust, by reason of its purposes or activities, is exempt from federal income tax.

9. The amount of the amortizable bond premium on a bond for the year shall be allowed as a deduction as hereinafter provided. In computing such deduction : (a) the amount of the bond premium shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to July thirteenth, nineteen hundred sixty-six with respect to the taxpayer with respect to such bond, and (b) the amortizable bond premium of the year shall be the amount of the bond premium attributable to such year. The determination required in the preceding sentence shall be made in accordance with the method of amortizing bond premium regularly employed by the holder of such bond, if such method is reasonable, and in all other cases in accordance with regulations of the commissioner of finance prescribing reasonable methods of amortizing bond premium. This subdivision shall apply only if the taxpayer shall so elect, in accordance with regulations of the commissioner of finance, and such election shall be made separately with respect to (1) bonds, the interest of which is wholly taxable, and (2) bonds, the interest of which is wholly or partially tax exempt, for purposes of the income tax imposed by chapter one of the internal revenue code. If such election is made with respect to any bond of the taxpayer described in clauses one or two hereof, it shall also apply to all bonds in the same class held by the taxpayer at the beginning of the first year to which the election applies and to all such bonds thereafter acquired by it and shall be binding for all subsequent years with respect to all such bonds of the taxpayer, unless upon the application

by the taxpayer, the commissioner of finance permits the taxpayer, subject to such conditions as the commissioner of finance deems necessary, to revoke such election. As used in this subdivision the term "bond" means any bond, debenture, note or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

10. In the case of a savings bank and savings and loan association, amounts paid or credited to depositors or holders of accounts as interest or dividends on their deposits or withdrawable accounts, if such amounts are withdrawable on demand subject only to customary notice of intention to withdraw.

11. A savings bank and savings and loan association may deduct in any taxable year the amount of the repayment of any loan or advance from the mutual savings bank fund in computing its net income and the amount of interest or dividends subject to the minimum tax under subdivision three of section 11-612 of this part.

12. (a) At the election of the taxpayer there shall be deducted from gross income, or if gross income is derived from business carried on within and without this city, from the portion thereof allocated within the city, depreciation with respect to any property such as described in paragraph (b) of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes.

(b) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (ii) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five, or (iii) acquired, constructed, reconstructed or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six and October ten, nineteen hundred sixty-six shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (i), (ii) or (iii) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph (a) hereof with respect to tangible personal property leased by it to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a

deduction under paragraph (a) in proportion to the part of the year it uses such property.

(c) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the taxpayer's net income computed without the allowance of such deduction and without the allowance of any deduction pursuant to subdivision six of this section with references to the same property, the excess may be carried over to the following taxable year or years and may be deducted in computing net income for such year or years.

(d) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, the gain or loss thereon shall be computed by adjusting the basis of such property to reflect the deductions so allowed, and if the taxpayer's gross income is derived from business carried on both within and without the city, shall be allocated within the city. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-21.0 added LL 21/1966 § 1

Sub 12 par b amended LL 91/1968 § 8

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-622

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 1 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-622 Items not deductible.

In computing net income no deduction shall in any case be allowed in respect of:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-22.0 added LL 21/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-623

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-623 Imposition of tax.

1. Pursuant to the authority conferred by section fifty-two hundred nineteen of the United States revised statutes and in conformity with the provisions contained in subdivision c of clause one of such section, every national banking association organized under authority of the United States and located within the city, shall annually pay a tax, measured by its net income, to be computed, as provided in this part, at the rate of four and one-half per centum except that for the year nineteen hundred seventy-one and those following the rate shall be five and sixty-three one hundredths per centum, upon the basis of its net income for the calendar year next preceding the date when such tax becomes due. Such tax shall be for the calendar year next preceding the year in which it becomes due; except that with respect to national banking associations required to file a declaration of estimated tax and to make payments on account of such estimated tax in accordance with the provisions of section 11-636 of this subchapter, all payments of tax within a calendar year, whether computed on the basis of net income for the current calendar year or on the basis of net income for the preceding calendar year, shall be for the calendar year in which the payments are required to be made. If, however, such a national banking association shall be dissolved between the thirty-first day of December and the succeeding second day of September, and shall not become merged or consolidated with a corporation taxable under part one of this subchapter, it shall pay a tax for the period from the thirty-first day of December up to the time of dissolution equal to that which would have been payable had it not been dissolved, except that such tax shall be reduced

by one-third and an additional one-twelfth for each month, or major portion thereof, prior to such succeeding second day of September, during which such corporation was so dissolved. If such dissolution occurs between the fifteenth day of March and the second day of September, and if such corporation shall have filed its return on or before the fifteenth day of March as required by sections 11-630 and 11-633 of this subchapter, it may file a claim for refund as provided in section 11-678 of this chapter, showing any reduction in tax to which it may be entitled as provided in the preceding sentence; and if it shall be made to appear that the amount of tax due is less than the amount as computed on the basis of the original return, the commissioner of finance shall adjust the computation of tax accordingly. If the amount of tax as so adjusted shall be less than the amount theretofore paid, the excess shall be refunded by the commissioner of finance as provided in subdivision one of section 11-677 of this chapter.

2. In the event that the taxes imposed by this part shall be finally determined to be unconstitutional or invalid for the reason that they do not conform with the provisions of section fifty-two hundred nineteen of the United States revised statutes, then, in lieu of the taxes imposed by the provisions of this part, every national banking association and every production credit association that otherwise would have been subject to tax under this part shall be subject to the tax imposed under subchapter two as of July thirteenth, nineteen hundred sixty-six, and all of the provisions of subchapter two, unless clearly inappropriate, shall be applicable except subdivision four of section 11-603 of this chapter; and, in such event, any payments made, reports or returns filed or any act of the commissioner of finance or of a taxpayer purportedly under this subchapter shall be treated as though made, filed or done pursuant to subchapter two.

3. Cross reference. For years for which tax is imposed, see section 11-624 of this part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-23.0 added LL 21/1966 § 1

Sub 1 amended LL 45/1971 § 3

Sub 3 added LL 83/1972 § 7

(special provisions LL 83/1972 §§ 13-16)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-624

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-624 Years for which imposed.

1. The tax imposed by section 11-623 of this part is imposed for each calendar year included within the period beginning January first, nineteen hundred sixty-six and ending December thirty-first, nineteen hundred seventy-two.

2. Cross reference. For tax imposed for years or periods subsequent to nineteen hundred seventy-two, see part four of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-24.0 added LL 21/1966 § 1

Amended LL 83/1972 § 8

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-625

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-625 Ascertainment of gain or loss; exchange of property.

1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with section 11-626 of this part.

2. Notwithstanding subdivision one of this section, with respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business and accounts or notes receivable acquired in the ordinary course of trade or business from the sale of such stock in trade or property, or for services rendered, net income shall not include:

(a) That portion of the gain included in determining net income pursuant to subdivision one of this section with respect to each such property which exceeds:

(b) The amount of gain, if any, that would be included in determining net income pursuant to subdivision one of

this section with respect to each such property if the basis of such property on the date of sale or other disposition were equal to its fair market value on January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to each such property in computing net income for periods on or after January first, nineteen hundred sixty-six; provided that the total adjustment to net income provided by this subdivision shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property, as determined pursuant to subdivision one of this section.

3. Upon the sale or exchange of property the amount of the gain or loss shall be determined in the manner prescribed by section 11-615 of this subchapter and the basis of such property shall be determined in the manner prescribed by section 11-616 of this subchapter.

4. In the case of any bond, with respect to which a deduction for amortizable bond premium is allowable under paragraph (i) of subdivision one of section 11-629 of this part, the basis for determining gain or loss shall be reduced by the total amount of such deductions so allowable.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-25.0 added LL 21/1966 § 1

Sub 2 amended LL 37/1967 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-626

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-626 Inventory.

Whenever in the opinion of the commissioner of finance the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the commissioner of finance may prescribe, conforming as nearly as may be to the best accounting practice in the banking business and most clearly reflecting the income.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-26.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-627

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-627 Net income defined; computation.

The term "net income" means the gross income of a taxpayer less the deductions allowed by this part.

The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the commissioner of finance does clearly reflect the income. In determining net income, war losses, taxation of property recovered, and basis of property shall be treated in substantially the same manner as such losses, recoveries and basis are treated under the applicable provisions of section thirteen hundred thirty-one of the internal revenue code.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-27.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-628

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-628 Gross income defined.

1. The term "gross income" includes gains, profit and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits, or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise in carrying on such business, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds.

2. If the gross income of such an association is derived from business carried on both within and without the city, "gross income" means that proportion thereof which is derived from business carried on within the city, to be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations prescribed by the commissioner of finance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-28.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-629

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-629 Deductions.

1. In computing net income there shall be allowed as deductions:

(a) All the ordinary and necessary expenses paid or incurred during the year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which such taxpayer has no equity;

(b) All interest paid or accrued during the year on indebtedness; (c) Taxes, other than taxes on income or profits paid or accrued within the year, imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivisions of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government;

(d) Losses sustained during the year and not compensated for by insurance or otherwise, if incurred in business; unless in order to clearly reflect the income the losses should in the opinion of the commissioner of finance be

accounted for as of a different period. No deduction shall be allowed for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of such sale or other disposition the taxpayer has acquired substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, unless such claim is made with respect to a transaction made in the ordinary course of business. If such acquisition is to the extent of part only of substantially identical property, only a proportionate part of the loss shall be disallowed;

(e) Debts ascertained to be worthless and charged off within the year; or in the discretion of the commissioner of finance a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the commissioner of finance may allow such debt to be charged off in part;

(f) A reasonable allowance for the exhaustion, wear and tear of property used in business, including a reasonable allowance for obsolescence. In the case of any such property acquired before January first, nineteen hundred sixty-six, the amount of such deduction shall be equal to the deduction properly taken for such property in reporting the tax due pursuant to article nine-c of the tax law. With respect to property such as described in paragraph (j) of this subdivision, this deduction may be computed and allowed as provided therein;

(g) If the gross income be derived from business carried on within and without the city, the deductions allowed by this section shall be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations to be prescribed by the commissioner of finance;

(h) In the case of any taxpayer, who establishes or maintains a pension trust to provide for the payment of reasonable pensions to its employees, there shall be allowed as a deduction (in addition to the contributions to such trust during the taxable years, to cover the pension liability accruing during the year, allowed as a deduction under paragraph (a) of this subdivision) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount: (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer of payment is made; provided that said deduction shall be allowable only with respect to a taxable year (whether the year of the transfer or payment or a subsequent year) of the taxpayer ending within or with a taxable year of the trust with respect to which the trust, by reason of its purposes or activities is exempt from federal income tax;

(i) The amount of the amortizable bond premium on a bond for the year shall be allowed as a deduction as hereinafter provided. In computing such deduction, (a) the amount of the bond premium shall be determined with reference to the amount of the basis (for determining loss on sale or exchange) of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to July thirteenth, nineteen hundred sixty-six with respect to the taxpayer with respect to such bond, and (b) the amortizable bond premium of the year shall be the amount of the bond premium attributable to such year. The determinations required in the preceding sentence shall be made in accordance with the method of amortizing bond premium regularly employed by the holder of such bond, if such method is reasonable, and in all other cases in accordance with regulations of the commissioner of finance prescribing reasonable methods of amortizing bond premium. This paragraph shall apply only if the taxpayer shall so elect, in accordance with regulations of the commissioner of finance, and such election shall be made separately with respect to: (1) bonds, the interest of which is wholly taxable, and (2) bonds, the interest of which is wholly or partially tax exempt, for purposes of the income tax imposed by chapter one of the internal revenue code. If such election is made with respect to any bond of the taxpayer described in clauses one or two hereof, it shall also apply to all bonds in the same class held by the taxpayer at the beginning of the first year to which the election applies and to all such bonds thereafter acquired by it and shall be binding for all subsequent years with respect to all such bonds of the taxpayer, unless, upon application by the taxpayer, the commissioner of finance permits the taxpayer, subject to such conditions as the commissioner of finance deems necessary, to revoke such election. As used in this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does

not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; and

(j) (1) At the election of the taxpayer there shall be deducted from gross income, or if gross income is derived from business carried on within and without this city, from the portion thereof allocated within the city, depreciation with respect to any property such as described in subparagraph (2) of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes.

(2) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d), of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five or (iii) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (i), (ii) or (iii) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph (a) hereof with respect to tangible personal property leased by it to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph (a) in proportion to the part of the year it uses such property.

(3) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the taxpayer's net income computed without the allowance of such deduction and without the allowance of any deduction pursuant to paragraph (f) of this section with reference to the same property, the excess may be carried over to the following taxable year or years and may be deducted in computing net income for such year or years.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, the gain or loss thereon shall be computed by adjusting the basis of such property to reflect the deductions so allowed, and if the taxpayer's gross income is derived from business carried on both within and without the city, shall be allocated within the city. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

2. In computing net income no deduction shall in any case be allowed in respect of:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property.

(b) Any amount expended in restoring or in making good the exhaustion thereof for which an allowance is or has been made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-29.0 added LL 21/1966 § 1

Sub 1 par j subpar 2 amended LL 91/1968 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-630

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-630 Administration; procedure; provisions of law applicable.

For the purpose of carrying into effect the provisions of this part, and except as otherwise provided in this part, income shall be computed, gain or loss ascertained, deductions made, apportionments and allocations determined, at the same time and subject to the same limitations and conditions, in so far as practicable, as is provided by part one of this subchapter in relation to the tax imposed by such part.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-30.0 added LL 21/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-631

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-631 Tax on production credit associations.

Pursuant to the authority conferred by the federal farm credit act of nineteen hundred thirty-three, every production credit association organized under the authority of the United States and located within the city after the stock held in it by the federal production credit corporation has been retired shall annually pay a tax measured by its net income, which shall be computed in the same manner as the tax imposed upon national banking associations by section 11-623 and shall be subject to the provisions of sections 11-624 to 11-630 inclusive.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-31.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-632

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 2 TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-632 Applicability of part three.

1. This part shall be applicable only to the taxes imposed by parts one and two of this subchapter.

2. Cross reference. For years for which parts one and two of this subchapter impose a tax, see sections 11-613 and 11-624 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-31.1 added LL 83/1972 § 9

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-633

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 3 ADMINISTRATION FOR PARTS 1 AND 2

§ 11-633 Taxpayer's returns.

1. Every taxpayer, on or before March fifteenth of each year, beginning with the year nineteen hundred sixty-seven and ending with the year nineteen hundred seventy-three, shall make a return subscribed by the taxpayer and affirmed by the taxpayer to be true under the penalties of perjury to the commissioner of finance, for the calendar year next preceding, as to the business or that portion of the business of such taxpayer the income from which is the basis of taxation under part one or two of this subchapter, except that every trust company and savings bank which shall become incorporated between the thirty-first day of December and the succeeding first day of July, shall make its return for such period on or before September first, and every taxpayer, other than a trust company and savings bank, which shall commence to do business in the city or become located in the city, shall make its return for the calendar year in which it commences to do business or becomes located, on or before the twentieth day of January of the year succeeding such calendar year, and except that every taxpayer, other than a trust company and savings bank, which shall be dissolved, cease to do business in the city or cease to be located in the city, between the thirty-first day of December and the succeeding sixteenth day of March and shall not become merged or consolidated with another corporation taxable under the same part, shall make its return for such period on or before the date of such dissolution, or cessation of business, and every trust company and savings bank which shall be dissolved, and shall not become merged or consolidated with another corporation taxable under the same part, shall make its return, for the period for which it is taxable under

subdivision six of section 11-612 of this subchapter on or before the date of such dissolution. Such return shall be in such form and contain such information as the commissioner of finance may require for the purpose of making any computation or otherwise performing its duty under parts one, two, and three of this subchapter. Such return shall state specifically the items of gross income derived from such business and the deductions allowed by the part for which the return is filed, the net income which is the basis of the tax, and the amount of tax due. The return shall be subscribed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to subscribe and affirm the return on behalf of the corporation. Blank forms of return shall be furnished by the commissioner of finance upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required. An automatic extension of three months for the filing of its annual return shall be allowed for any taxpayer if, within the time prescribed herein for the filing thereof, such taxpayer files with the commissioner of finance an application for extension in such form as the commissioner of finance may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax. The commissioner of finance may grant a reasonable extension of time for filing a return, which may be in addition to any automatic extension allowed under the preceding sentence, whenever in the commissioner's judgment good cause exists and shall keep a record of every such extension and the reason therefor. No such extension or extensions shall aggregate more than three months, exclusive of any automatic extension.

2. If the amount of taxable income for any year of any taxpayer as returned to the United States treasury department or the New York state tax department is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state tax commission or other competent authority; or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of such section, or if a taxpayer, pursuant to subdivision (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subdivision (c) of such section, such taxpayer shall report such change or corrected taxable income or such execution of such notice of waiver and the changes or corrections of such taxpayer's federal or New York state taxable income on which it is based, within ninety days after such execution or the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended return with the commissioner of finance which shall contain such information as it shall require.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-32.0 added LL 21/1966 § 1

Closing par amended LL 63/1969 § 2

Amended LL 40/1970 § 4

Sub 1 amended LL 83/1972 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-634

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 3 ADMINISTRATION FOR PARTS 1 AND 2

§ 11-634 Consolidated returns.

Corporations which are affiliated may, if authorized, and shall, if required, by the commissioner of finance, under regulations prescribed by the commissioner of finance, make a consolidated return for the purpose of parts one, two and three of this subchapter. The commissioner of finance may, in his or her discretion, authorize bank holding companies as defined in article three-a of the banking law to make a consolidated return with affiliated corporations taxable under part one and under part two in which case the consolidated tax will be computed in accordance with the provisions of part one. In all other cases in which a corporation taxable under part two makes a consolidated return with corporations taxable under part one, the consolidated tax will be computed in accordance with the provisions of part one. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of any such agreement, then on the basis of the net income properly assignable to each.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-33.0 added LL 21/1966 § 1

Amended LL 17/1968 § 4

Amended LL 40/1970 § 5

Amended LL 83/1972 § 11

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-635

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 3 ADMINISTRATION FOR PARTS 1 AND 2

§ 11-635 Payment of tax.

Each taxpayer shall, at the time of filing its return, pay to the commissioner of finance:

(a) the amount of tax payable hereunder as the same shall appear from the face of the return, or

(b) if payments of estimated tax have been made pursuant to section 11-636 of this part, the balance, if any, of the tax payable hereunder, as the same shall appear from the face of the return, after applying thereto any payments made pursuant to said section.

If the time for filing the return shall be extended, the taxpayer shall pay in addition interest at the rate of six per centum per annum from the time when the return was originally required to be filed to the time of payment upon the amount by which the tax, or the portion thereof payable when the return was required to be filed, exceeds the amount then paid:

(1) a payment made on or before the date of filing of an application for an automatic extension shall be deemed properly estimated if its either: (A) not less than ninety per centum of the tax as finally determined, or (B) not less than

the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a return is required to be filed shall be determined without regard to any extension of time for filing such return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-34.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-636

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 3 ADMINISTRATION FOR PARTS 1 AND 2

§ 11-636 Declaration of estimated tax; payments on account of estimated tax.

1. Every taxpayer subject to the tax imposed by part one or two of this subchapter shall make a declaration of the estimated tax upon the basis of its net income for the current calendar year, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed upon it by part one or two of this subchapter upon the basis of its net income for the current calendar year, less the amount which it estimates to be the sum of any credits allowable against the tax.

3. A declaration of estimated tax shall be filed on or before June fifteenth of the calendar year upon the net income of which the tax is based, except that if the requirements of subdivision one are first met:

(a) after June first and before October second of such calendar year, the declaration shall be filed on or before October fifteenth, or

(b) after October first of such calendar year, the declaration shall be filed on or before January fifteenth of the succeeding calendar year.

Notwithstanding any other provision of this subdivision, no declaration need be filed prior to September eleventh, nineteen hundred sixty-six.

4. A taxpayer may amend a declaration under regulations of the commissioner of finance.

5. If, on or before February fifteenth of the succeeding year, a taxpayer files its return for the calendar year upon the net income of which the declaration is required to be based, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the return,

(a) such return shall be considered as its declaration if no declaration was required to be filed during such calendar year, but is otherwise required to be filed on or before January fifteenth of the succeeding year pursuant to subdivision three,

(b) such return shall be considered as an amendment permitted by subdivision four to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown on a declaration previously made.

6. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as the commissioner may require.

7. Every taxpayer subject to the tax imposed by part one or two of this subchapter shall pay with the return of tax, if any, required to be filed upon the basis of its net income for the preceding calendar year, or with an application for extension of the time for filing such return, an amount equal to twenty-five per centum of the preceding year's tax, if such preceding year's tax exceeded one thousand dollars.

8. The estimated tax with respect to which a declaration for such calendar year is required pursuant to this section shall be paid as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount if any, paid during the same calendar year pursuant to subdivision seven, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following October fifteenth, and one on the following January fifteenth.

(b) If the declaration is filed after June fifteenth, and not after October fifteenth of such calendar year, and is not required to be filed on or before June fifteenth of such calendar year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same calendar year pursuant to subdivision seven, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following January fifteenth.

(c) If the declaration is filed after October fifteenth of such calendar year, and is not required to be filed on or before October fifteenth of such calendar year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect of such calendar year pursuant to subdivision seven, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

9. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after October fifteenth of the calendar year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

10. Any amount paid pursuant to subdivision seven shall be applied after payment as a first installment against the estimated tax of the taxpayer shown on the declaration next required to be filed pursuant to this section or, if no declaration of estimated tax is required to be filed by the taxpayer pursuant to this section, any such amount shall be considered a payment on account of the tax shown on the return of tax required to be filed by the taxpayer upon the basis of its net income for the calendar year during which such amount was paid.

11. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if any amount paid pursuant to subdivision seven, exceeds the tax shown on the return required to be filed by the taxpayer upon the basis of its net income for the calendar year during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the rate of six per centum per annum from the date of payment of the amount so paid pursuant to such subdivision to March fifteenth of the succeeding calendar year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar.

12. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by part one or two of this subchapter upon the basis of its net income for the preceding calendar year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of time for filing the return required to be filed for such preceding calendar year, the amount properly estimated pursuant to section 11-635 of this part as the tax imposed upon the basis of its net income for such calendar year.

13. This section shall apply to an income period of less than twelve months in accordance with regulations of the commissioner of finance.

14. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as the commissioner may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided however, that interest at the rate of six per centum per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

15. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-35.0 added LL 21/1966 § 1

Sub 3 amended LL 42/1971 § 3

Sub 8 pars a, b amended LL 42/1971 § 4

Sub 3 amended LL 19/1972 § 3

Sub 8 par a, b amended LL 19/1972 § 4

Subs 1, 2, 7, 12 amended LL 83/1972 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-637

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 3 ADMINISTRATION FOR PARTS 1 AND 2

§ 11-637 Real property taxable.

Nothing in this subchapter shall be construed to exempt the real property of any taxpayer from taxation to the same extent, according to its value, as other real property is taxed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-36.0 added LL 21/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-638

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-638 General definitions.

As used in this part:

(a) The word "taxpayer" means a corporation or association subject to a tax imposed by this part.

(b) The phrase "taxable year" means the taxpayer's taxable year for federal income tax purposes, or the part thereof during which the taxpayer is subject to the tax imposed by this part.

(c) The term "international banking facility" shall mean an international banking facility located in New York state and shall have the same meaning as is set forth in the New York state banking law or regulations of the New York state banking department or as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

(d) The term "subsidiary" means a corporation or association of which over fifty percent of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer.

(e) The term "subsidiary capital" means investments in the stock of subsidiaries and any indebtedness from

subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under this part or subchapter two of this chapter, provided, however, there shall be deducted from subsidiary capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the return, which are attributable to subsidiary capital.

(f) The term "financial holding company" means a corporation that, pursuant to subsection (1) of section 4 of the federal bank holding company act of nineteen hundred fifty-six, as amended, has filed with the federal reserve board a written declaration that the corporation elects to be a financial holding company and whose election has not been found to be ineffective by the federal reserve board.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (f) added chap 63/2000 § HH4, eff. May 15, 2000.

DERIVATION

Formerly § R46-37.0 added LL 83/1972 § 2

Sub c added chap 288/1978 § 8

(Legislative findings, NYC financial preeminence has eroded, chap

288/1978 § 1)

Sub c amended chap 298/1985 § 31

Subs d, e added chap 298/1985 § 32 and shall not apply to corporations

other than savings banks and savings and loan associations for

taxable years beginning on or after Jan. 1, 2010 (as per amendment

by chap 60/2007 § H1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-639

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-639 Imposition of tax.

(a) For the privilege of doing business in the city in a corporate or organized capacity, a tax, computed under section 11-643 of this part, is hereby annually imposed on every banking corporation for each of its taxable years, or any part thereof, beginning on or after January first, nineteen hundred seventy-three.

(b) In the case of a taxpayer whose taxable year is other than a calendar year, there is hereby imposed a tax for the privilege of doing business in the city in a corporate or organized capacity for the period beginning January first, nineteen hundred seventy-three and extending through the subsequent part of its first such taxable year ending after such date. Such tax shall be computed under section 11-643 of this part on the basis of such taxpayer's entire net income, or other applicable basis as the case may be, for such period and shall be paid with a return which shall be separately filed with the department of finance not later than the fifteenth day of the third month succeeding the close of such period. The requirements of sections 11-644 and 11-645, relating to declarations and payments of estimated tax, except subdivision (a) of section 11-645, shall not be applicable to the tax imposed by this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-37.1 added LL 83/1972 § 2

CASE NOTES

¶ 1. The NYC Banking Corporation Tax, Admin. Code §11-639(a), tracks the language of Model Law enabling cities to tax financial corporations. While it does not employ the words "franchise tax" it functions as such a tax. The NYC Banking Corporation Tax is not to be viewed as an income tax.-Matter of Bankers Trust N.Y. Corp. v. Dep't of Finance, 171 AD2d 550 [1991].

¶ 2. Federal law, 31 U.S.C. § 3124(a), exempts United States Government obligations and interest from state or municipal taxation. There is an exception, however, for nondiscriminatory franchise taxes. The court held that the New York City Corporation Tax, which is imposed on corporations for the privilege of doing business in the City, is a franchise tax for this purpose. Thus, the corporation tax can be imposed with respect to income received by the taxpayer from government obligations. Bankers Trust New York Corp. v. Department of Finance of the City of New York, 79 N.Y.2d 457, 583 N.Y.S.2d 821 (1992).

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Administrative Code of the City of New York

***** Current through December 2009 ****

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-640 Banking, corporation defined; exempt corporations.

(a) For the purpose of this part, a banking corporation means: (1) every corporation or association organized under the laws of this state which is authorized to do a banking business or which is doing a banking business;

(2) every corporation or association organized under the laws of any other state or country which is doing a banking business;

(3) every national banking association organized under the authority of the United States which is doing a banking business;

(4) every federal savings bank which is doing a banking business;

(5) every federal savings and loan association which is doing a banking business;

(6) a production credit association organized under the federal farm credit act of nineteen hundred thirty-three, which is doing a banking business and all of whose stock held by the federal production credit corporation has been retired;

(7) every other corporation or association organized under the authority of the United States which is doing a banking business;

(8) the mortgage facilities corporation created by chapter five hundred sixty-four of the laws of nineteen hundred fifty-six;

(9) any corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by a corporation or corporations subject to article three-a of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended, or by a corporation or corporations described in any of the foregoing paragraphs of this subdivision, provided the corporation whose voting stock is so owned or controlled is principally engaged in a business, regardless of where conducted, which (i) might be lawfully conducted by a corporation subject to article three of the banking law or by a national banking association or (ii) is so closely related to banking or managing or controlling banks as to be a proper incident thereto, as set forth in paragraph eight of subsection (c) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended.

(b) Banking business defined. The words "banking business" as used in this section mean such business as a corporation or association may be created to do under article three, three-B, five, five-A, six or ten of the banking law or any business which a corporation or association is authorized by such article to do. However, with respect to a national banking association organized under the authority of the United States, a federal savings bank, a federal savings and loan association or a production credit association, the words "banking business" as used in this section mean such business as a national banking association, federal savings bank, federal savings and loan association or production credit association, respectively, may be created to do or is authorized to do under the laws of the United States or this state. The words "banking business" as used in this section shall also mean such business as any corporation or association organized under the authority of the United States or organized under the laws of any other state or country has authority to do which is substantially similar to the business which a corporation or association may be created to do under article three, three-B, five, five-A, six or ten of the banking law or any business which a corporation or association is authorized by such article to do.

(c) Exempt corporations. A trust company all of whose capital stock is owned by twenty or more savings banks organized under New York law shall be exempt from the tax under this part.

(d) Corporations taxable under subchapter two. Notwithstanding the provisions of this part, all corporations of classes now or heretofore taxable under subchapter two of this chapter shall continue to be taxable under subchapter two, except: (1) corporations orga- nized under article five-a of the banking law; (2) corporations subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended, which make a combined return under the provisions of subdivision (f) of section 11-646; and (3) banking corporations described in paragraph nine of subdivision (a) of section 11-640. Provided, however, that a corporation described in paragraph three of this subdivision which was subject to the tax imposed by subchapter two of this chapter for its taxable year ending during nineteen hundred eighty-four may, on or before the due date for filing its return (determined with regard to extensions) for its taxable year ending during nineteen hundred eighty-five, make a one time election to continue to be taxable under such subchapter two. Such election shall continue to be in effect until revoked by the taxpayer. In no event shall such election or revocation be for a part of a taxable year.

(e) Corporations taxable under article thirty-three of the tax law. Except for corporations described in subsection (1) of section fourteen hundred fifty-three of the tax law, corporations liable to tax under article thirty-three of the tax law shall not be subject to tax under this part.

(f) A banking corporation organized under the laws of a country, or any political subdivision thereof, other than the United States shall not be deemed to be doing business in the city under this subchapter if its activities in the city are limited solely to (1) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (2) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (3) any combination of activities described in paragraphs one and two of this subdivision.

(g) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section, a corporation that was in existence before January first, two thousand and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand and before January first, two thousand one. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section, a banking corporation that was in existence before January first, two thousand and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand and before January first, two thousand one. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with such subdivision (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand and before January first, two thousand one, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand and before January first, two thousand one, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section, a corporation formed on or after January first, two thousand and before January first, two thousand one may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand and before January first, two thousand one in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned

or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph two shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand and before January first, two thousand one, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

(h) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section, a corporation that was in existence before January first, two thousand one and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand one, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand one and before January first, two thousand three. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section, a banking corporation that was in existence before January first, two thousand one and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand one, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand one and before January first, two thousand three. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand one but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand one and before January first, two thousand three, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand one if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand one but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand one and before January first, two thousand three, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand one if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section, a corporation formed on or after January first, two thousand one and before January first, two thousand three may elect to be subject to tax under this subchapter

or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand one and before January first, two thousand three in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand one and before January first, two thousand three, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

(i) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section, a corporation that was in existence before January first, two thousand three and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand three, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand three and before January first, two thousand four. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section, a banking corporation that was in existence before January first, two thousand three and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand three, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand three and before January first, two thousand four. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand three but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand three and before January first, two thousand four, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last

taxable year beginning before January first, two thousand three if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand three but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand three and before January first, two thousand four, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand three if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section, a corporation formed on or after January first, two thousand three and before January first, two thousand four may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand three and before January first, two thousand four in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand three and before January first, two thousand four, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

(j) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section, a corporation that was in existence before January first, two thousand four and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand four, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand four and before January first, two thousand six. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section, a banking corporation that was in existence before January first, two thousand four and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand four, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand four and before January first, two thousand six. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that

election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand four but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand four and before January first, two thousand six, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand four if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand four but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand four and before January first, two thousand six, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand four if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section, a corporation formed on or after January first, two thousand four and before January first, two thousand six may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand four and before January first, two thousand six in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand four and before January first, two thousand six, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section forty-six of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

(k) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act.

(1) Notwithstanding anything to the contrary contained in this section, a corporation that was in existence before January first, two thousand six and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under subchapter two of this chapter for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section, a banking corporation that was in existence before January first, two thousand six and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand six but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand six if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand six but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand six if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section, a corporation formed on or after January first, two thousand six and before January first, two thousand eight may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand six and before January first, two thousand eight in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, provided that the stock ownership requirements described in

subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

(l) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section, a corporation that was in existence before January first, two thousand eight and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand eight, shall continue to be taxable under such subchapter for all taxable years beginning on or after January first, two thousand eight and before January first, two thousand ten. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section, a banking corporation or corporation that was in existence before January first, two thousand eight and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand eight, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand eight and before January first, two thousand ten or in which the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section. For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand eight but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand eight and before January first, two thousand ten, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand eight if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand eight but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand eight and before January first, two thousand ten, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand eight if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section, a corporation formed on or after January first, two thousand eight and before January first, two thousand ten may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand eight and before January first, two thousand ten in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a

corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand eight and before January first, two thousand ten, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursuant to paragraph two of this subdivision for so long as such election shall be in effect.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (e) added chap 525/1988 § 31 and shall apply to taxable years

beginning after Dec. 31, 1986.

Subd. (f) added chap 340/1998 § 4, eff. July 14, 1998.

Subd. (g) added chap 63/2000 § HH5, eff. May 15, 2000.

Subd. (g) par (1) amended chap 383/2001 § P7 eff. Sept. 29, 2001.

Subd. (h) added chap 383/2001 §P 8 eff. Sept. 29, 2001 and applying

to taxable years beginning on or after Jan. 1, 2001.

Subd. (i) added chap 62/2003 § 6 of Part G3, eff. May 15, 2003 and

applying to taxable years beginning on or after Jan. 1, 2003.

Subd. (j) added chap 60/2004 § G6 eff. Aug. 20, 2004 and shall apply to

taxable years beginning on or after Jan. 1, 2004.

Subd. (k) added chap 62/2006 § I6, eff. June 6, 2006.

Subd. (l) added chap 60/2007 § H6, eff. Apr. 9, 2007.

Subd. (l) par (1) amended chap 636/2008 § 2, eff. Sept. 25, 2008.

Subd. (l) par (1) amended chap 96/2007 § 2, eff. June 29, 2007. Note:

chap 96/2007 § 3 affecting this amendment was repealed by chap 636/2008 § 3.

Subd. (l) par (2) amended chap 96/2007 § 2, eff. June 29, 2007. Note: chap 96/2007 § 3 affecting this amendment was repealed by chap 636/2008 § 3.

DERIVATION

Formerly § R46-37.2 added LL 83/1972 § 2

Sub a amended chap 298/1985 § 33 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Sub b amended chap 298/1985 § 34

Sub d amended chap 298/1985 § 35 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

NOTE

1. Provisions of 96/2007:

§ 3. For taxable years beginning on or after January 1, 2010, a banking corporation that was in existence prior to such date and subject to tax under article 32 of the tax law for its last taxable year beginning before January 1, 2010, may be taxable under that article for taxable years beginning on or after January 1, 2010 only if that corporation, in that taxable year, meets the requirements to be a banking corporation as defined in subsection (a) of section 1452 of the tax law, or satisfies the requirements for a corporation to elect to be taxable under article 32 of the tax law specified in subparagraphs (i) and (ii) of paragraph 2 of subsection (m) of section 1452 of the tax law.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-641

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-641 Computations of entire net income.

(a) Entire net income means total net income from all sources which shall be the same as the entire taxable income (but not alternative minimum taxable income)

(1) which the taxpayer is required to report to the United States treasury department, or

(2) which the taxpayer, in the case of a corporation which is exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section 511 of the internal revenue code) but which is subject to tax under this part, would have been required to report to the United States treasury department but for such exemption, or

(3) which, in the case of a corporation organized under the laws of a country other than the United States, is effectively connected with the conduct of a trade or business within the United States as determined under section 882 of the internal revenue code, or

(4) which the taxpayer would have been required to report to the United States treasury department if the

taxpayer had not elected to be taxed under subchapter s of chapter one of the internal revenue code, or

(5) which the taxpayer would have been required to report to the United States treasury department if no election had been made to treat the taxpayer as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, subject to the modifications and adjustments hereinafter provided.

(b) Entire net income shall be computed without the deduction or exclusion of:

(1) (A) in the case of a corporation organized under the laws of a country other than the United States, (i) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, but only if such income is treated as effectively connected with the conduct of a trade or business in the United States pursuant to section eight hundred sixty-four of the internal revenue code, (ii) any income exempt from federal taxable income under any treaty obligation of the United States, but only if such income would be treated as effectively connected in the absence of such exemption, provided that such treaty obligation does not preclude the taxation of such income by a state, or (iii) any income which would be treated as effectively connected if such income were not excluded from gross income pursuant to subsection (a) of section one hundred three of the internal revenue code; (B) in the case of any other corporation, any part of any income from dividends or interest on any kind of stock, securities or indebtedness; (C) except that for purposes of subparagraphs (A) and (B) above there shall be excluded any amounts treated as dividends pursuant to section seventy-eight of the internal revenue code and any amounts described in paragraphs eleven and twelve of subdivision (e) of this section;

(2) taxes on or measured by income or profits paid or accrued within the taxable year to the United States, or any of its possessions or to any foreign country and taxes imposed under article nine, nine-A, thirteen-A or thirty-two of the tax law and any tax imposed under this part or subchapter two of this chapter;

(3) any net operating loss deduction for the taxable year allowable for federal income tax purposes;

(4) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(5) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(6) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code; (7) upon the disposition of property to which paragraph seven of subdivision (e) of this section applies, the amount, if any, by which the aggregate of the amounts described in such paragraph seven attributable to such property exceeds the aggregate of the amounts described in paragraph six of this subdivision attributable to such property;

(8) Repealed.

(9) Repealed.

(10) Repealed

(11) in the case of a taxpayer subject to the provisions of section 585(c) of the internal revenue code, the amount allowed as a deduction pursuant to section 166 of such code; and

(12) for taxpayers subject to the provisions of subdivision (i) of this section, twenty percent of the excess of (A) the amount determined pursuant to such subdivision (i) over (B) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience.

(13) for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property defined in subdivision (p) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code.

(14) for taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the amount allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code.

(15) The amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code.

(16) The amount of any federal deduction for taxes imposed under article twenty-three of the tax law.

(c) (1) Except as otherwise provided in paragraphs two and three hereof, in the case of the sale or exchange of property by a taxpayer which has been subject to part one or two of this subchapter three where the property has a higher adjusted basis for city tax purposes than for federal tax purposes, there shall be allowed as a deduction from entire net income, the portion of any gain or loss on such sale which equals the difference in such basis.

(2) In case of property of a taxpayer, other than a savings bank, acquired prior to January first, nineteen hundred sixty-six, and disposed of thereafter, the computation of entire net income shall be modified as follows:

(i) no gain shall be deemed to have been derived if either the cost or the fair market price or value on January first, nineteen hundred sixty-six, exceeds the value realized;

(ii) no loss shall be deemed to have been sustained if either the cost or the fair market price or value on January first, nineteen hundred sixty-six, is less than the value realized;

(iii) where both the cost and the fair market price or value on January first, nineteen hundred sixty-six, are less than the value realized, the basis for computing gain shall be the cost or the fair market price or value on such date, whichever is higher;

(iv) where both the cost and the fair market price or value on January first, nineteen hundred sixty-six, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on such date, whichever is lower.

(3) In case of property of a savings bank acquired prior to January first, nineteen hundred sixty-six, and disposed of thereafter, in computing entire net income the basis of such property shall be the fair market price or value on January first, nineteen hundred sixty-six.

(d) Entire net income shall not include any refund or credit of a tax for which no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter or subchapter two of this chapter, or imposed by article twenty-three of the tax law for any prior year.

(e) There shall be allowed as a deduction in determining entire net income, to the extent not deductible in determining federal taxable income:

(1) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this part but exempt from federal income tax,

(2) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this part but exempt from federal income tax,

(3) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this part but exempt from federal income tax,

(4) that portion of wages or salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty C of the internal revenue code,

(5) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(6) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(7) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to paragraph four of subdivision (b) of this section, an amount with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code equal to the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty,

(8) upon the disposition of property to which paragraph seven of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in paragraph six of subdivision (b) of this section attributable to such property exceeds the aggregate of the amounts described in paragraph seven of this subdivision attributable to such property,

(9) any amount of money or other property received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, regardless of whether any note or other instrument is issued in exchange therefor,

(10) any amount of money or other property received from the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended, regardless of whether any note or other instrument is issued in exchange therefor,

(11) (i) seventeen percent of interest income from subsidiary capital, and

(ii) sixty percent of dividend income from subsidiary capital, and

(iii) sixty percent of the amount by which gains from subsidiary capital exceed losses from subsidiary capital, to the extent such gains and losses were taken into account in determining the entire taxable income referred to in subdivision (a) of this section,

(12) twenty-two and one-half percent of interest income on obligations of New York state, or of any political subdivision thereof, or on obligations of the United States, other than obligations held for resale in connection with regular trading activities,

(13) in the case of a taxpayer which recaptures its balance of the reserve for losses on loans for federal income tax purposes pursuant to section 585(c) of the internal revenue code, any amount which is included in federal taxable income pursuant to section 585(c) of such code,

(14) in the case of a taxpayer subject to the provisions of section 585(c) of the internal revenue code, any amount which is included in federal taxable income as a result of a recovery of a loan.

(15) in the case of a taxpayer which is currently or has previously been subject to subdivision (h) of this section, any amount which is included in federal taxable income pursuant to section 593(e)(2) of the internal revenue code, and any other amount so included as a result of a recovery of or termination from the use of a bad debt reserve as defined in section 593 of such code as in existence on December thirty-first, nineteen hundred ninety-five as a result of federal legislation enacted after December thirty-first, nineteen hundred ninety-five.

(f) Provided the taxpayer has not made an election pursuant to paragraph two of subdivision (b) of section 11-642 of this part, there shall be allowed as a deduction in determining entire net income, to the extent not deductible in determining federal taxable income, the adjusted eligible net income of an international banking facility determined as follows:

(1) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses.

(2) Eligible gross income shall be the gross income derived by an international banking facility from:

(A) making, arranging for, placing or servicing loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per centum or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, substantially all the proceeds of the loan are intended for use outside of the United States;

(B) making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or

(C) entering into foreign exchange trading or hedging transactions related to any of the transactions described in

this paragraph.

(3) Applicable expenses shall be any expenses or other deductions attributable, directly or indirectly, to the eligible gross income described in paragraph two of this subdivision.

(4) Adjusted eligible net income shall be determined by subtracting from eligible net income the ineligible funding amount, and by subtracting from the amount then remaining the floor amount.

(5) The ineligible funding amount shall be the amount, if any, determined by multiplying eligible net income by a fraction, the numerator of which is the average aggregate amount for the taxable year of all liabilities, including deposits, and other sources of funds of the international banking facility which were not owed to or received from foreign persons, and the denominator of which is the average aggregate amount for the taxable year of all liabilities, including deposits and other sources of funds of the international banking facility.

(6) The floor amount shall be the amount, if any, determined by multiplying the amount remaining after subtracting the ineligible funding amount from the eligible net income by a fraction, not greater than one, which is determined as follows:

(A) The numerator shall be

(i) the percentage, as set forth in subparagraph (C) of this paragraph, of the average aggregate amount of the taxpayer's loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer for its branches, agencies and offices within the state for taxable years nineteen hundred seventy-five, nineteen hundred seventy-six and nineteen hundred seventy-seven, minus

(ii) the average aggregate amount of such loans and such deposits for the taxable year of the taxpayer (other than such loans and deposits of an international banking facility), provided, however, that in no case shall the amount determined in this clause exceed the amount determined in clause (i) of this subparagraph; and

(B) The denominator shall be the average aggregate amount of the loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer's international banking facility for the taxable year.

(C) The percentage shall be one hundred percent for the first taxable year in which the taxpayer establishes an international banking facility and for the next succeeding four taxable years. The percentage shall be eighty percent for the fifth, sixty percent for the sixth, forty percent for the seventh, and twenty percent for the eighth taxable year next succeeding the year such taxpayer establishes such international banking facility, and zero in the ninth succeeding year and thereafter.

(7) In the event adjusted eligible net income is a loss, such loss shall be added to entire net income.

(8) For purposes of this subdivision, the term "foreign person" means:

(A) an individual who is not a resident of the United States,

(B) a foreign corporation, a foreign partnership or a foreign trust, as defined in section seventy-seven hundred one of the internal revenue code, other than a domestic branch thereof,

(C) a foreign branch of a domestic corporation (including the taxpayer),

(D) a foreign government or an international organization or an agency of either, or

(E) an international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section seventy-seven hundred one of the internal revenue code.

(g) Entire net income shall be computed without regard to the reduction in the basis of property that is required by section three hundred sixty-two of the internal revenue code, because of any amount of money or other property received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, or from the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended.

(h) (1) For purposes of this subdivision, a "thrift institution" is a banking corporation which satisfies the requirements of subparagraphs (A) and (B) of this paragraph.

(A) Such banking corporation must be (i) a banking corporation as defined in paragraph one of subdivision (a) of section 11-640 of this part created or authorized to do business under article six or ten of the banking law, (ii) a banking corporation as defined in paragraph two or seven of subdivision (a) of section 11-640 of this part which is doing a business substantially similar to the business which a corporation or association may be created to do under article six or ten of the banking law or any business which a corporation or association is authorized by such article to do, or (iii) a banking corporation as defined in paragraph four or five of subdivision (a) of section 11-640 of this part.

(B) At least sixty percent of the amount of the total assets (at the close of the taxable year) of such banking corporation must consist of (i) cash; (ii) obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a state or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103 of the internal revenue code; (iii) loans secured by a deposit or share of a member; (iv) loans secured by an interest in real property which is (or from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis; (v) property acquired through the liquidation of defaulted loans described in clause (iv) of this subparagraph; (vi) any regular or residual interest in a REMIC, as such term is defined in section 860D of the internal revenue code and any regular interest in a FASIT, as such term is defined in section 860L of the internal revenue code, but only in the proportion which the assets of such REMIC or FASIT consist of property described in any of the preceding clauses of this subparagraph, except that if ninety-five percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (v) of this subparagraph, the entire interest in the REMIC or FASIT shall qualify; (vii) any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in clause (iv) of this subparagraph and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in clause (iv) of this subparagraph; (viii) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations; (ix) loans secured by an interest in real property located within any urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property; (x) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities; (xi) loans made for the payment of expenses of

college or university education or vocational training; (xii) property used by the taxpayer in the conduct of business which consists principally of acquiring the savings of the public and investing in loans; (xiii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in clause (iv) of this subparagraph, but excluding loans for which the taxpayer is the creditor to any banking corporation described in paragraphs one through seven of subdivision (a) of section 11-640 of this part or a real estate investment trust, as such term is defined in section 856 of the internal revenue code, and excluding loans which are treated by the taxpayer as subsidiary capital for purposes of the deductions provided by paragraph eleven of subdivision (e) of this section; (xiv) small business loans or small farm loans located in low-income or moderate-income census tracts or block numbering areas delineated by the United States bureau of the census in the most recent decennial census; and (xv) community development loans or community development investments. For purposes of clause (xv) of this subparagraph, a "community development loan" is a loan that (1) has as its primary purpose community development, (II) has not been reported or collected by the taxpayer for consideration in the taxpayer's community reinvestment act evaluation pursuant to the federal community reinvestment act of 1977, as amened, or section twenty-eight-b of the banking law as a mortgage loan described in clause (iv) of this subparagraph or a small business loan, small farm loan, or consumer loan, (III) benefits the taxpayer's assessment area or areas for purposes of the federal community reinvestment act of 1977, as amended or section twenty-eight-b of the banking law or a broader statewide or regional area that includes the taxpayer's assessment area, and (IV) is identified in the taxpayer's books and records as a community development loan for purposes of its community reinvestment act evaluation pursuant to the federal community reinvestment act of 1977, as amended or section twenty-eight-b of the banking law. For purposes of clause (xv) of this subparagraph, a "community development investment" is an investment in a security which has as its primary purpose community development and which is identified in the taxpayer's books and records as a qualified investment for purposes of its community reinvestment act evaluation pursuant to the federal community reinvestment act of 1977, as amended or section twenty-eight-b of the banking law. For purposes of the two preceding sentences, "community development" means (I) affordable housing (including multifamily rental housing for low-income or moderate-income individuals); (II) community services targeted to low-income or moderate-income individuals; (III) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the small business administration's development company or small business investment company programs or have gross annual revenues of one million dollars or less; (IV) activities that revitalize or stabilize low-income or moderate-income census tracts or block numbering areas delineated by the United States bureau of the census in the most recent decennial census; or (V) activities that seek to prevent defaults and/or foreclosures in loans included in items (I) and (III) of this sentence.

(C) At the election of the taxpayer, the percentage specified in subparagraph (B) of this paragraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year. For purposes of clause (iv) of subparagraph (B) of this paragraph, if a multifamily structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds eighty percent of the property's planned use (determined as of the time the loan is made). Also, for purposes of clause (iv) of subparagraph (B) of this paragraph, loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such three year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (vi) of subparagraph (B) of this paragraph, any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principle of such clause (vi); except that if such REMICS are part of a tiered structure, they shall be treated as one REMIC for purposes of such clause (vi).

(2) A thrift institution must exclude from the computation of its entire net income any amount allowed as a deduction for federal income tax purposes pursuant to section 166, 585 or 593 of the internal revenue code.

(3) A thrift institution shall be allowed as a deduction in computing entire net income the amount of a reasonable addition to its reserve for bad debts. This amount shall be equal to the sum of

(A) the amount determined to be a reasonable addition to the reserve for losses on nonqualifying loans, computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under paragraph one of subdivision (i) of this section, plus

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph four or five of this subdivision, whichever is the larger, but the amount determined under this subparagraph shall in no case be greater than the larger of

(i) the amount determined under paragraph five of this subdivision, or

(ii) the amount which, when added to the amount determined under subparagraph (A) of this paragraph, equals the amount by which twelve percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits and reserves at the beginning of such year (taking into account any portion thereof attributable to the period before the first taxable year beginning after December thirty-first, nineteen hundred fifty-one).

The taxpayer must include in its tax return for each year a computation of the amount of the addition to the bad debt reserve determined under this subdivision. The use of a particular method in the return for a taxable year is not a binding election by the taxpayer.

(4) (A) Subject to subparagraphs (B) and (C) of this paragraph, the amount determined under this paragraph for the taxable year shall be an amount equal to thirty-two percent of the entire net income for such year.

(B) The amount determined under subparagraph (A) of this paragraph shall be reduced (but not below zero) by the amount determined under subparagraph (A) of paragraph three of this subdivision.

(C) The amount determined under this paragraph shall not exceed the amount necessary to increase the balance at the close of the taxable year of the reserve for losses on qualifying real property loans to six percent of such loans outstanding at such time.

(D) For purposes of this paragraph, entire net income shall be computed

(i) by excluding from income any amount included therein by reason of subparagraph (B) of paragraph eight of this subdivision,

(ii) without regard to any deduction allowable for any addition to the reserve for bad debts, and

(iii) by excluding from income an amount equal to the net gain for the taxable year arising from the sale or exchange of stock of a corporation or of obligations the interest on which is excludable from gross income under section 103 of the internal revenue code.

(iv) Whenever a thrift institution is properly includable in a combined return, entire net income, for purposes of this paragraph, shall not exceed the lesser of the thrift institution's separately computed entire net income as adjusted pursuant to clauses (i) through (iii) of this subparagraph or the combined group's entire net income as adjusted pursuant to clauses (i) through (iii) of this subparagraph.

(5) The amount determined under this paragraph for the taxable year shall be computed in the same manner as is provided under paragraph one of subdivision (i) of this section with respect to additions to reserves for losses on loans of banks. Provided, however, that for any taxable year beginning after nineteen hundred ninety-five, for purposes of such computation, the base year shall be the later of (A) the last taxable year beginning in nineteen hundred ninety-five or (B) the last taxable year before the current year in which the amount determined under the provisions of

subparagraph (B) of paragraph three of this subdivision exceeded the amount allowable under this paragraph.

(6) (A) (i) Each taxpayer described in paragraph one of this subdivision shall establish and maintain a New York reserve for losses on qualifying real property loans, a New York reserve for losses on nonqualifying loans and a supplemental reserve for losses on loans. Such reserves shall be maintained for all subsequent taxable years that this subdivision applies to the taxpayer.

(ii) For purposes of this subdivision, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans.

(iii) Except as noted below, the balances of each such reserve at the beginning of the first day of the first taxable year beginning after December thirty-first, nineteen hundred ninety-five shall be the same as the balances maintained for federal income tax purposes in accordance with section 593(c)(1) of the internal revenue code as in existence on December thirty-first, nineteen hundred ninety-five for the last day of the last tax year beginning before January first, nineteen hundred ninety-six. A taxpayer which maintained a New York reserve for loan losses on qualifying real property loans in the last tax year beginning before January first, nineteen hundred ninety-six shall have a continuation of such New York reserve balance in lieu of the amount determined under the preceding sentence.

(iv) Notwithstanding clause (ii) of this subparagraph, any amount allocated to the reserve for losses on qualifying real property loans pursuant to section 593(c)(5) of the internal revenue code as in effect immediately prior to the enactment of the Tax Reform Act of 1976 shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subparagraph (B) of paragraph three of this subdivision, and for such purpose such amount shall be treated as remaining in such reserve.

(B) Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such loans and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans, except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

(C) The New York reserve for losses on qualifying real property loans shall be increased by the amount determined under subparagraph (B) of paragraph three of this subdivision and the New York reserve for losses on nonqualifying loans shall be increased by the amount determined under subparagraph (A) of paragraph three of this subdivision.

(7) (A) For purposes of this subdivision, the term "qualifying real property loan" shall mean any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan. Such term shall include any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in clauses (i) through (v) of subparagraph (B) of paragraph one of this subdivision. However, such term shall not include: (i) any loan evidenced by a security (as defined in section 165(g)(2)(C) of the internal revenue code); (ii) any loan, whether or not evidenced by a security (as defined in such section 165(g)(2)(C)), the primary obligor of which is (I) a government or political subdivision or instrumentality thereof, (II) a banking corporation, or (III) any corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer or by a banking corporation or bank holding company that owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of the taxpayer; (iii) any loan, to the extent secured by a deposit in or share of the taxpayer; or (iv) any loan which, within a sixty-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes.

(B) For purposes of this subdivision, the term "nonqualifying loan" shall mean any loan which is not a

qualifying real property loan.

(C) For purposes of this subdivision, the term "loan" shall mean debt, as the term "debt" is used in section 166 of the internal revenue code.

(D) A regular or residual interest in a REMIC, as such term is defined in section 860D of the internal revenue code, shall be treated as a qualifying real property loan, except that, if less than ninety-five percent of the assets of such REMIC are qualifying real property loans (determined as if the taxpayer held the assets of the REMIC), such interest shall be so treated only in the proportion which the assets of such REMIC consist of such loans. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMICS are part of a tiered structure, they shall be treated as one REMIC for purposes of this paragraph.

(8) (A) Any distribution of property (as defined in section 317(a) of the internal revenue code) by a thrift institution to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591 of such code, shall be treated as made

(i) first out of its New York earnings and profits accumulated in taxable years beginning after December thirty-first, nineteen hundred fifty-one, to the extent thereof,

(ii) then out of the New York reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under paragraph five of this subdivision,

(iii) then out of the supplemental reserve for losses on loans, to the extent thereof,

(iv) then out of such other accounts as may be proper.

This subparagraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of a thrift institution, except that any such distribution shall be treated as made first out of the amount referred to in clause (ii) of this subparagraph, second out of the amount referred to in clause (iii) of this subparagraph, third out of the amount referred to in clause (i) of this subparagraph and then out of such other accounts as may be proper. This subparagraph shall not apply to any transaction to which section 381 of such code (relating to carryovers and certain corporate acquisitions) applies, or to any distribution to the federal savings and loan insurance corporation or the federal deposit insurance corporation in redemption of an interest in an association or institution, if such interest was originally received by the federal savings and loan insurance corporation or the federal deposit insurance corporation in exchange for financial assistance pursuant to section 406(f) of the federal national housing act or pursuant to subsection (c) of section thirteen of the federal deposit insurance act.

(B) If any distribution is treated under subparagraph (A) of this paragraph as having been made out of the reserves described in clauses (ii) and (iii) of such subparagraph, the amount charged against such reserve shall be the amount which, when reduced by the amount of tax imposed under the internal revenue code and attributable to the inclusion of such amount in gross income, is equal to the amount of such distribution; and the amount so charged against such reserve shall be included in the entire net income of the taxpayer.

(C) (i) For purposes of clause (ii) of subparagraph (A) of this paragraph, additions to the New York reserve for losses on qualifying real property loans for the taxable year in which the distribution occurs shall be taken into account.

(ii) For purposes of computing under this subdivision the amount of a reasonable addition to the New York reserve for losses on qualifying real property loans for any taxable year, the amount charged during any year to such reserve pursuant to the provisions of subparagraph (B) of this paragraph shall not be taken into account.

(9) A taxpayer which maintains a New York reserve for losses on qualifying real property loans and which ceases to meet the definition of a thrift institution as defined in paragraph one of this subdivision, must include in its entire net income for the last taxable year such paragraph applied the excess of its New York reserve for losses on qualifying real property loans over the greater of (A) its reserve for losses on qualifying real property loans as of the last day of the last taxable year such reserve is maintained for federal income tax purposes or (B) the balance of the New York reserve for losses on qualifying real property loans which would be allowable to the taxpayer for the last taxable year such taxpayer met such definition of a thrift institution if the taxpayer had computed its reserve balance pursuant to the method described in subparagraph (A) of paragraph one of subdivision (i) of this section.

(i) (1) A taxpayer subject to the provisions of section 585(c) of the internal revenue code and not subject to subdivision (h) of this section may, in computing entire net income, deduct an amount equal to or less than the amount determined pursuant to subparagraph (A) of this paragraph or subparagraph (B) of this paragraph, whichever is greater. Provided, however, in no event shall the deduction be less than the amount determined pursuant to such subparagraph (A).

(A) The amount determined pursuant to this subparagraph shall be the amount necessary to increase the balance of its New York reserve for losses on loans (at the close of the taxable year) to the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the five preceding taxable years (or, with the approval of the commissioner of finance, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such six or fewer taxable years.

(B) (i) The amount determined pursuant to this subparagraph shall be the amount necessary to increase the balance of its New York reserve for losses on loans (at the close of the taxable year) to the lower of-

(I) the balance of the reserve at the close of the base year, or

(II) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

(ii) For purposes of this paragraph, the base year shall be (I) for taxable years beginning in nineteen hundred eighty-seven, the last taxable year before the most recent adoption of the experience method for federal income tax purposes or for purposes of this part, whichever is earlier, and (II) for taxable years beginning after nineteen hundred eighty-seven, the last taxable year beginning before nineteen hundred eighty-eight.

(2) (A) Each taxpayer described in paragraph one of this subdivision shall establish and maintain a New York reserve for losses on loans. Such reserve shall be maintained for all subsequent taxable years. The balance of the New York reserve for losses on loans at the beginning of the first day of the first taxable year the taxpayer becomes subject to this subdivision shall be the same as the balance at the beginning of such day of the reserve for losses on loans maintained for federal income tax purposes. The New York reserve for losses on loans shall be reduced by an amount equal to the deduction allowed, but not more than the amount allowable, for worthless debts for federal income tax purposes pursuant to section 166 of the internal revenue code plus the amount, if any, charged against its reserve for losses on loans pursuant to section 585(c)(4) of such code.

(B) For purposes of subparagraph (A) of this paragraph, a taxpayer which had previously been subject to the provisions of subdivision (h) of this section shall establish a New York reserve for losses on loans equal to the sum of (i) the greater of (I) the balance of its federal reserve for losses on qualifying real property loans as of the first day of the first taxable year the taxpayer becomes subject to the provisions of this subdivision or (II) the greater of the amounts determined under subparagraphs (A) and (B) of paragraph nine of subdivision (h) of this section in the year such

paragraph applied to the taxpayer, (ii) the greater of (I) the balance in its federal reserve for losses on nonqualifying loans as of the first day of the first taxable year the taxpayer becomes subject to this subdivision or (II) the balance in its New York reserve for losses on nonqualifying loans as of the last date the taxpayer was subject to the provisions of subdivision (h) of this section, and (iii) the balance in its supplemental reserve for losses on loans as of the last date the taxpayer was subject to the provisions of subdivision (h) of this section.

(3) The determination and treatment of the New York reserve balance, including any additions thereto, subtractions therefrom, or recapture thereof, for

(A) any banking corporation which was subject to tax for federal income tax purposes but not subject to tax under this part for prior taxable years,

(B) any taxpayer which ceases to be subject to tax under this part, or

(C) any other unusual circumstances shall be determined by the commissioner of finance. Provided, however, any banking corporation which was subject to tax for federal income tax purposes but not subject to tax under this part for prior taxable years shall have as its opening New York reserve for losses on loans the amount determined by applying the provisions of subparagraph (A) of paragraph one of this subdivision to loans outstanding at the close of its last taxable year for federal income tax purposes ending prior to the first taxable year for which the taxpayer is subject to tax under this part and provided, further, that the provisions of subparagraph (B) of paragraph one of this subdivision shall not apply.

(j) (1) For any taxable year beginning in nineteen hundred seventy-three or for any period for which a tax is imposed under subdivision (b) of section 11-639 of this part, entire net income shall be computed without regard to the amount allowable as a deduction for bad debts or an addition to a reserve for bad debts in computing federal taxable income for the taxable year, but, in lieu thereof, a deduction shall be allowed to the extent and in the manner authorized by subdivision five of section 11-621 or subdivision (e) of section 11-629 of this subchapter as if such provisions were set forth in full in this part and by treating such provisions as applicable under this part.

(2) In the case of property placed in service prior to January first, nineteen hundred seventy-three, for which the taxpayer properly adopted a different method of computing depreciation under section 11-621 or section 11-629 of this subchapter than was adopted for federal income tax purposes with respect to such property, entire net income under this part shall be computed without regard to the amount allowable as a deduction for depreciation of such property in computing federal taxable income for the taxable year but, in lieu thereof, shall be computed as if such deduction were determined by the method of depreciation adopted with respect to such property under section 11-621 or 11-629 of this subchapter.

(3) In computing entire net income, the amount allowable as a deduction for charitable contributions for federal income tax purposes shall be: (a) increased for the first taxable year or period beginning in nineteen hundred seventy-three by the amount of any contributions made during such taxable year or period which were not allowable as a deduction for charitable contributions for federal income tax purposes for such taxable year or period because of an election pursuant to paragraph two of subsection (a) of section one hundred seventy of the internal revenue code and which were not deductible in computing the tax due under part one or two of this subchapter three, and (b) decreased by any amount allowed as a deduction for federal income tax purposes for the taxable year under section one hundred seventy of the internal revenue code as a carryover of excess contributions which are not made in such taxable year and which were deductible in computing the tax due under part one or two of this subchapter three.

(4) There shall be excluded from the computation of entire net income any amount allowed as a deduction for federal income tax purposes for the taxable year under section twelve hundred twelve of the internal revenue code as a capital loss carry forward to the taxable year, which was deductible as a loss in computing the tax due under part one or two of this subchapter three.

(5) There shall be excluded from the computation of entire net income the amount of any income or gain from the sale of real or personal property which is includible in determining federal taxable income for the taxable year pursuant to the installment method under section four hundred fifty-three of the internal revenue code, to the extent that such income or gain was includible in the computation of the tax due under part one or two of this subchapter three.

(6) To the extent not otherwise provided in this part, there shall be excluded from entire net income the amount necessary to prevent the taxation under this part of any other amount of income or gain which was properly included in income or gain and was taxable under part one or two of this subchapter three and there shall be disallowed as a deduction in computing entire net income any amount which was allowed as a deduction in computing the tax due under such parts.

(k) (1) At the election of the taxpayer, there shall be deducted from the portion of its entire net income allocated within the city, depreciation with respect to any property such as described in paragraph two of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for depreciation or amortization of the same property, and the total of all deductions allowed under parts one and two of this subchapter three and this part in any taxable year or years with respect to the depreciaton of any such property shall not exceed its cost or other basis.

(2) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (ii) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five, or (iii) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (i), (ii) or (iii) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one hereof with respect to tangible personal property leased by it to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph one in proportion to the part of the year it uses such property.

(3) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the portion of the

taxpayer's entire net income allocated to this city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to this city for such year or years.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, subdivision twelve of section 11-621 or subdivision (j) of section 11-629 of this subchapter, the gain or loss entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to paragraph one of this subdivision. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

(l) If the period covered by a return under this part is other than the period covered by the return to the United States treasury department, entire net income and alternative entire net income shall be determined by multiplying the taxable income reported to such department (as adjusted pursuant to the provisions of this part) by the number of calendar months or major parts thereof covered by the return under this part and dividing by the number of calendar months or major parts thereof covered by the return to such department. If it shall appear that such method of determining entire net income or alternative entire net income does not properly reflect the taxpayer's income during the period covered by the return under this part, the commissioner of finance shall be authorized in his or her discretion to determine such entire net income or alternative entire net income solely on the basis of the taxpayer's income during the period covered by its return under this part.

(m) The commissioner of finance, may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(n)* Notwithstanding23 any other provision of this subchapter, for taxable years beginning on or after August first, two thousand two, in the case of a taxpayer that is a partner in a partnership subject to the tax imposed by chapter eleven of this title as a utility, as defined in subdivision six of section 11-1101 of such chapter, entire net income shall not include the taxpayer's distributive or pro rata share for federal income tax purposes of any item of income, gain, loss or deduction of such partnership, or any item of income, gain, loss or deduction of such partnership that the taxpayer is required to take into account separately for federal income tax purposes.

(n)* for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in subdivision (p) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section one hundred sixty-seven as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of subdivision (r) of this section, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(o) for taxable years ending after September tenth, two thousand one, upon the disposition of property to which subdivision (n) of this section applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to paragraph thirteen of subdivision (b) and

subdivision (n) of this section attributable to such property.

(p) for purposes of subdivisions (n) and (o) of this section, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(q) Related members expense add back and income exclusion.

(1) Definitions. (A) Related member or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation, or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title.

(B) Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and includes amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing entire net income, a taxpayer must add back royalty payments to a related member during the taxable year to the extent deductible in calculating federal taxable income.

(B) The add back of royalty payments shall not be required if and to the extent that such payments meet either of

the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. For the purpose of computing entire net income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this chapter.

(r) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, a taxpayer shall be allowed with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code, the deductions allowable under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five.

(s) Upon the disposition of property to which subdivision (r) of this section applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the modification provided in such subdivision attributable to such property.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 513/2002 § 47, eff. Sept. 17, 2002 and applying

to taxable years beginning after Dec. 31, 1996.

Subd. (a) amended chap 525/1988 § 32, eff. Aug. 5, 1988 and shall apply

to taxable years beginning after Dec. 31, 1986

Subd. (b) par (2) amended chap 525/1988 § 33, eff. Aug. 5, 1988 and

shall apply to taxable years beginning after Dec. 31, 1986

Subd. (b) par (6) amended chap 170/1994 § 39, eff. June 9, 1994

Subd. (b) par (6) amended chap 525/1988 § 34, eff. Aug. 5, 1988

Subd. (b) par (7) amended chap 525/1988 § 35, eff. Aug. 5, 1988

Subd. (b) par (8) repealed chap 472/2000 § 45, eff. Nov. 1, 2000

with special provisions. [See Note to § 11-503]

Subd. (b) par (8) added L.L. 20/1986 § 3, eff. June 25, 1986

Subd. (b) par (9) repealed chap 472/2000 § 45, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. (b) par (9) added L.L. 20/1986 § 23, eff. June 25, 1986

Subd. (b) par (10) repealed L.L. 46/1990 § 7, eff. July 1, 1990

Subd. (b) par (10) added L.L. 49/1987 § 5, eff. July 29, 1987

Subd. (b) pars (11), (12) added chap 525/1988 § 36, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 and shall not apply to taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H3).

Subd. (b) par (13) added L.L. 17/2002 § 8, eff. July 10, 2002. [See Note after § 11-507]

Subd. (b) par (14) added chap 60/2004 § S9, eff. Aug. 20, 2004 and shall apply to tax years beginning on or after Jan. 1, 2004.

Subd. (b) par (14) repealed chap 686/2003 § M20, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. (b) par (14) added chap 63/2003 § N4, eff. May 19, 2003.

Subd. (b) par (15) added chap 57/2008 Part HH-1 § 9, eff. Apr. 23, 2008 and apply to taxable years beginning on or after Jan. 1, 2008.

Subd. (b) par (16) added chap 25/2009 § C18, eff. May 7, 2009. [See § 11-1718 Note 1]

Subd. (d) amended chap 25/2009 § C19, eff. May 7, 2009. [See § 11-1718 Note 1]

Subd. (d) amended chap 525/1988 § 37, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986

Subd. (e) added chap 525/1988 § 31 and shall apply to taxable years beginning after Dec. 31, 1986.

Subd. (e) par (7) amended chap 170/1994 § 39, eff. June 9, 1994

Subd. (e) par (7) amended chap 525/1988 § 38, eff. Aug. 5, 1988

Subd. (e) par (8) amended chap 525/1988 § 39, eff. Aug. 5, 1988

Subd. (e) par (11) subpar (ii) amended chap 170/1994 § 89, eff. June 9, 1994

Subd. (e) par (11) subpar (iii) added chap 170/1994 § 89, eff. June 9, 1994

Subd. (e) par (12) amended chap 525/1988 § 40, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986

Subd. (e) pars (13), (14) added chap 525/1988 § 41, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 and shall not apply to taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H3)

Subd. (e) par (15) added chap 18/1997 § 1, eff. Mar. 11, 1997 and applying to taxable years beginning after Dec. 31, 1995

Subd. (f) par (8) amended chap 525/1988 § 42, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986

Subd. (g) amended chap 525/1988 § 43, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986

Subd. (h) amended chap 18/1997 § 2, eff. Mar. 11, 1997 and applying to taxable years beginning after Dec. 31, 1995

Subd. (h) added chap 525/1988 § 44, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986

Subd. (h) par (1) subpar (B) amended chap 85/2002 § U2, eff. May 29, 2002 and applying to taxable years beginning on or after Jan. 1, 2002.

Subd. (i) added chap 525/1988 § 44, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 and shall not apply to taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H3)

Subd. (i) pars (1), (2) amended chap 18/1997 § 3, eff. Mar. 11, 1997 and

applying to taxable years beginning after Dec. 31, 1995

Subds. (j), (k) relettered chap 525/1988 § 44, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 (formerly subds. (h), (i))

Subd. (l) amended chap 525/1988 § 45, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986

Subd. (l) relettered chap 525/1988 § 44, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 (formerly subd. (j))

Subd. (m) relettered chap 525/1988 § 44, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 (formerly subd. (k))

Subd. (n) (laid out first) added chap 93/2002 § C4, eff. June 24, 2002. [See Note after § 11-1119]

Subd. (n) (laid out second) amended chap 60/2004 § S10, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. (n) (laid out second) added L.L. 17/2002 § 9, eff. July 10, 2002. [See Note after § 11-507]

Subds. (o), (p) added L.L. 17/2002 § 9, eff. July 10, 2002. [See Note after § 11-507]

Subd. (q) added chap 686/2003 § M21, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. (r) added chap 60/2004 § S11, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. (s) added chap 60/2004 § S11, eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

DERIVATION

Formerly § R46-37.3 added LL 83/1972 § 2 (special provision LL 83/1972 § 14)

Sub b par 2 amended chap 883/1975 § 5

Subs g, h, i, j relettered chap 288/1978 § 9

(formerly subs f, g, h, i)

Sub f added chap 288/1978 § 9

(special provision chap 288/1978 § 10)

Sub e amended LL 31/1978 § 2

Sub b pars 4, 5, 6 added LL 37/1982 § 5

Sub e amended LL 37/1982 § 6

Sub b pars 4, 5, 6 amended LL 43/1983 § 6

Sub b par 7 added LL 43/1983 § 7

Sub e pars 5, 6, 7 amended LL 43/1983 § 8

Sub e par 8 added LL 43/1983 § 9

Sub b pars 4, 5, 6 amended chap 43/1985 § 15

Sub e pars 5, 6, 7 amended chap 43/1985 § 16

Sub b par 1 amended chap 298/1985 § 36 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Sub e open par amended chap 298/1985 § 37

Sub e par 8 amended chap 298/1985 § 38 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Sub e pars 9-12 added chap 298/1985 § 39 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Subd. f open par amended chap 298/1985 § 39 and shall not apply to

corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Subds. h-k relettered (formerly g-j) chap 298/1985 § 40 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Subd. g added chap 298/1985 § 40 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Sub b par 2 amended LL 3/1986 § 2

Sub b pars 8, 9 added LL 20/1986 § 7

FOOTNOTES

23

[Footnote 23]: * There are two subds (n).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-641.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-641.1 Computation of alternative entire net income.

(a) Alternative entire net income means entire net income as determined pursuant to section 11-641, except that the deductions described in paragraphs eleven and twelve of subdivision (e) of section 11-641 shall not be allowed.

(b) Any election made pursuant to paragraph two of subdivision (b) of section 11-642 with respect to the modification provided for in subdivision (f) of section 11-641 shall be deemed to have been made for purposes of computing alternative entire net income.

HISTORICAL NOTE

Section added chap 298/1985 § 41 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010, provided, however, that the provisions which relate to the alternative minimum tax measured by

taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Section number supplied by the Legislative Bill Drafting Commission, language juxtaposed per chap 907/ 1985 § 14

DERIVATION

Formerly § § R46-37.3 added chap 298/1985 § 41 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010, provided, however, that the provisions which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-642

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-642 Allocation.

(a) In general. If a taxpayer's entire net income, alternative entire net income, or taxable assets are derived from business carried on within and without the city, the taxpayer shall for purposes of computing allocation percentages compute payroll, receipts, and deposits percentages in accordance with the following rules:

(1) The taxpayer shall ascertain the percentage which eighty percent of the total wages, salaries and other personal service compensation during the taxable year of employees within the city, except wages, salaries and other personal service compensation of general executive officers, bears to the total wages, salaries and other personal service compensation during the taxable year of all the taxpayer's employees within and without the city, except wages, salaries and other personal service compensation of general executive officers.

(2) (A) The taxpayer shall ascertain the percentage which the receipts of the taxpayer arising during the taxable year from:

(i) loans (including a taxpayer's portion of a participation in a loan) and financing leases within the city, and all other business receipts earned within the city, bear to

(ii) the total amount of the taxpayer's receipts from loans (including a taxpayer's portion of a participation in a loan) and financing leases and all other business receipts within and without the city.

(B) All interest from loans and financing leases is located where the greater portion of income producing activity related to the loan or financing lease occurred; provided, however:

(i) In the case of a taxpayer described in paragraph one, two, three, four, five or seven of subdivision (a) of section 11-640 of this part, a loan or financing lease attributed by such taxpayer to a branch without the city shall be presumed to be properly so attributed provided that such presumption may be rebutted if the commissioner of finance demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur at such branch. Where such presumption has been rebutted, the loan or financing lease shall be presumed to be within the city if the taxpayer had a branch within the city at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income producing activity related to the loan or financing lease did not occur within the city. In the case of a loan or financing lease which is recorded on the books of a place without the city which is not a branch, it shall be presumed that the greater portion of incomeproducing activity related to such loan or financing lease occurred within the city if the taxoayer had a branch within the city at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of the income producing activity related to the loan or financing lease did not occur within the city.

(ii) In the case of a taxpayer described in paragraph six or nine of subdivision (a) of section 11-640 of this part, a loan or financing lease attributed by such taxpayer to a bona fide office without the city shall be presumed to be properly so attributed provided that such presumption may be rebutted if the commissioner of finance demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur without the city.

(C) Receipts from lease transactions other than financing leases referred to in subparagraph (B) are located where the property subject to the lease is located.

(D) (i) Interest, and fees and penalties in the nature of interest, from bank, travel, and entertainment card receivables are earned within the city if the card holder's domicile is in the city, and

(ii) Service charges and fees from such cards are earned within the city if the card is serviced in the city; and

(iii) Receipts from merchant discounts are earned within the city.

(E) The portion of total net gains and other income from trading activities (including but not limited to foreign exchange, options and financial futures), and from investment activities which is attributed within the city shall be ascertained by multiplying such total net gains and other income by a fraction the numerator of which is the average value of the trading assets and investment assets attributable to the city and the denominator of which is the average value of all trading and investment assets. A trading asset or investment is attributable to the city if the greater portion of income producing activity related to the trading asset or investment occurred within the city.

(F) Fees or charges from the issuance of letters of credit, travelers checks and money orders are earned within the city if such letters of credit, travelers checks or money orders are issued within the city.

(G) Rules for receipts from certain services to investment companies. (1) For taxable years beginning on or after January first, two thousand one, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with clause two of this subparagraph shall be deemed to arise from services performed within the city (such portion referred to herein as the New York city portion).

(2) The New York city portion shall be the product of (i) the total of such receipts from the sale of such services and (ii) a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined hereinafter)

determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing (i) the number of shares in the investment company which are owned on the last day of the month by shareholders that are domiciled in the city by (ii) the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(3)(i) For purposes of this subparagraph, the term "domicile", in the case of an individual, shall have the meaning ascribed to it under chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of this code; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(ii) For purposes of this subparagraph, the term "investment company" means a regulated investment company, as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(iii) For purposes of this subparagraph, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company in their capacity as such.

(iv) For purposes of this subparagraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

(v) For purposes of this subparagraph, the term "distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was, in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

(vi) For purposes of this subparagraph, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined hereinabove, to such investment company.

(H) All receipts from the performance of services not described above are earned within the city if the services are performed in the city. When a service is performed both within and without the city, the receipts shall be allocated within and without the city in accordance with rules and regulations of the commissioner of finance.

(I) All other receipts not described in subparagraphs (B) through (H) of this paragraph shall be attributable within and without the city in accordance with rules and regulations issued by the commissioner of finance.

(3) The taxpayer shall ascertain the percentage which the average value of deposits maintained at branches

within the city during the taxable years, bears to the average value of all the taxpayer's deposits maintained at branches within and without the city during the taxable year.

(4) Each percentage computed pursuant to this subsection shall be computed on a cash or accrual basis according to the method of accounting used for the taxable year. The receipts percentage shall include only receipts which are included in alternative entire net income for the taxable year. The deposits and payroll percentages shall include only deposits and payroll the expenses of which are included in the computation of alternative entire net income for the taxable year.

(5) For purposes of this section:

(A) The term "bona fide office" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(B) The term "branch" means a bona fide office which is used by the taxpayer on a regular and systematic basis to (i) approve loans (regardless of whether the approval of certain classes of loans requires review of final approval by another office of the taxpayer), (ii) accept loan repayments, (iii) disburse funds, and (iv) conduct one or more other functions of a banking business.

(6) If it shall appear to the commissioner of finance that the allocation percentage determined in subdivision (b), (c), or (d) of this section does not properly reflect the activity, business, income or assets of a taxpayer within the city, the commissioner of finance shall be authorized in his discretion to adjust it by (1) excluding one or more of the factors therein, (2) including one or more other factors, or (3) any other similar or different method calculated to effect a fair and proper allocation of the income or assets reasonably attributable to the city.

(7) The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of paragraph six of this subdivision.

(b) Allocation of entire net income.

(1) If a taxpayer's entire net income is derived from business carried on both within and without the city, the portion thereof which is dervied from business carried on within the city shall be determined by multiplying its entire net income by the income allocation percentage determined as follows: add the percentages ascertained under paragraphs one, two and three of subdivision (a) of this section, plus an additional percentage equal to the receipts percentage ascertained under paragraph two of such subdivision and an additional percentage equal to the deposits percentage ascertained under paragraph three of such subdivision, and divide the result by the number of percentages so added together.

(2) (A) In lieu of the modification provided for in subdivision (f) of section 11-641 of this part, (relating to a modification for the adjusted eligible net income of an international banking facility), a taxpayer may, in the manner prescribed by the commissioner of finance, elect to modify on an annual basis its income allocation percentage in the manner described in clauses (i), (ii) and (iii) below:

(i) wages, salaries and other personal service compensation properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of wages, salaries and other personal service compensation of employees within the city.

(ii) receipts properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of receipts within the city, and

(iii) deposits from foreign persons which are properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of deposits maintained at branches

within the city.

(B) For purposes of this paragraph, the term "eligible gross income" refers to such term as set out in subdivision (f) of section 11-641 of this part except that the term "foreign person" as defined in paragraph eight of such subdivision (f) shall not include a foreign branch of the taxpayer and in no event shall transactions between the taxpayer's international banking facility and its foreign branches be considered.

(c) Allocation of alternative entire net income. If a taxpayer's alternative net income is derived from business carried on both within and without the city, the portion thereof which is derived from business carried on within the city shall be determined by multiplying its alternative entire net income by the alternative net income allocation determined as follows:

(1) Recompute the payroll percentage under paragraph one of subdivision (a) of this section without giving consideration to the phrase "eighty percent of," add to the resulting percentage the percentages ascertained under paragraphs two and three of such subdivision, and divide the result by the number of percentages so added together.

(2) When an election has been made pursuant to paragraph two of subdivision (b) of this section (relating to international banking facilities) the taxpayer shall make the modifications described in such paragraph for purposes of its alternative entire net income allocation percentage.

(d) Allocation of taxable assets. If the taxpayer's taxable assets are derived from business carried on both within and without the city, the portion thereof which is derived from business carried on within the city shall be determined by multiplying its taxable assets by an asset allocation percentage determined in the same manner as the income allocation percentage under subdivision (b) of this section is determined when the election provided for in paragraph two of such subdivision has been made, except that the modifications described in clauses (i), (ii) and (iii) of subparagraph (A) of such paragraph shall not be made.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) par (2) subpar (E) amended chap 525/1988 § 46, eff. Aug. 5, 1988 and shall apply to taxable years beginning after Dec. 31, 1986 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 provided, however, that the provisions which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H3)

Subd. (a) par (2) subpar (G) added chap 63/2000 § AA7, eff. May 15,

2000 and applying to taxable years beginning on or after Jan. 1, 2001.

Subd. (a) par (2) subpar (H) relettered (formerly subpar (G)) chap 63/2000

§ AA7, eff. May 15, 2000 and applying to taxable years beginning on

or after Jan. 1, 2001.

Subd. (a) par (2) subpar (I) amended chap 63/2000 § AA8, eff. May 15,

2000 and applying to taxable years beginning on or after Jan. 1, 2001.

Subd. (a) par (2) subpar (I) relettered (formerly subpar (H)) chap 63/2000

§ AA7, eff. May 15, 2000 and applying to taxable years beginning on or after Jan. 1, 2001.

DERIVATION

Formerly § R46-37.4, added L.L. 83/1972 § 2

Section amended chap 298/1985 § 42 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010, provided, however, that the provisions which relate to the alternative minimum tax measured by taxable assets shall continue to apply to all taxpayers for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-643

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643 Computation of tax for taxable years ending on or before December thirty-first, nineteen hundred seventy-three.

For taxable years ending on or before December thirty-first, nineteen hundred seventy-three, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. Five and sixty-three one-hundredths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) is less than any of the following amounts, the tax shall be the largest of the following amounts:

(1) Except for a savings bank and savings and loan association, one and one-quarter mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, as the gross income of such taxpayer derived from business carried on within the city, during such taxable year, bears to its gross income derived from all business, both

within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(2) For a savings bank and savings and loan association, one and forty-three one-hundredths percent of the interest or dividends credited by it to depositors or shareholders during the taxable year, provided that, in determining such amount, each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and onehalf percent per annum, whichever is less.

(3) Twelve and one-half dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-37.5 added LL 83/1972 § 2

Amended LL 23/1974 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The alternative min. N.Y.C. financial corp. tax imposed on savings bank interest and dividends by subd. (b)(2) does not include in the max. 3.5% interest rate the interest credited to accounts during the taxable year in question. This max. rate is a simple, annual rate of interest.-American Savings Bank and Bowery Savings Bank v. Comr. of Finance of N.Y.C., 101 A.D. 2d 40 [1984].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-643.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.1 Computation of tax for taxable years beginning on or after January first, nineteen hundred seventy-four and ending on or before December thirty-first, nineteen hundred seventy-four.

For taxable years beginning on or after January first, nineteen hundred seventy-four and ending on or before December thirty-first, nineteen hundred seventy-four, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. Six and seven hundred fifty-six one-thousandths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year, or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) is less than any of the following amounts, the tax shall be the largest of the following amounts:

(1) Except for a savings bank and savings and loan association, one and one-half mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance , as the gross income of such taxpayer derived from business

carried on within the city, during such taxable year bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(2) For a savings bank and savings and loan association, one and seven hundred sixteen one-thousandths percent of the interest or dividends credited by it to depositors or shareholders during the taxable year, provided that, in determining such amount, each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less.

(3) Fifteen dollars.

HISTORICAL NOTE

Section renumbered L.L. 37/1986 § 4

(formerly § 11-648)

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-37.51 added LL 23/1974 § 2

Amended LL 39/1975 § 1

Section heading, open par amended chap 883/1975 § 6

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***** Current through December 2009 ****

NYC Administrative Code 11-643.2

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.2 Computation of tax for taxable years beginning in nineteen hundred seventy-three and ending in nineteen hundred seventy-four.

For each taxable year beginning in nineteen hundred seventy-three and ending in nineteen hundred seventy-four, two tentative taxes shall be computed, the first as provided in section 11-643 and the second as provided in section 11-643.1 of this part, and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred seventy-three and the number of days in nineteen hundred seventy-four, respectively, which fall within the taxable year, bears to the number of days in the entire taxable year.

HISTORICAL NOTE

Section renumbered L.L. 37/1986 § 4

(formerly § 11-649)

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-37.52 added LL 23/1974 § 2

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NYC Administrative Code 11-643.3

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.3 Computation of tax for taxable years beginning on or after January first, nineteen hundred seventy-five and before January first, nineteen hundred eighty-five.

For taxable years beginning on or after January first, nineteen hundred seventy-five and before January first, nineteen hundred eighty-five, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. (1) Except for a savings bank and savings and loan association, thirteen and eight hundred twenty-three one-thousandths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year, or part thereof.

(2) For a savings bank and savings and loan association, twelve and one hundred thirty-four thousandths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year, or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) is less than any of the following amounts, the tax shall be the largest of the following amounts:

(1) Except for a savings bank and savings and loan association, two and six-tenths mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, as the gross income of such taxpayer derived from business carried on within the city during such taxable year bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(2) Except as otherwise provided in paragraph three of this subdivision, for a savings bank and savings and loan association, two and five hundred seventy-four one-thousandths percent of the interest or dividends credited by it to depositors or shareholders during any taxable year, provided that, in determining such amount, each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less.

(3) (i) For a savings bank and savings and loan association, for any quarterly accounting period in which such savings bank or savings and loan association credits or pays dividends to its depositors or shareholders on or after the first day of October, nineteen hundred eighty-one but before the first day of July, nineteen hundred eighty-six, and after such credit or payment the net worth of such savings bank or savings and loan association is less than five percent of the amount due depositors, one and eight hundred twenty-four one-thousandths percent of the interest or dividends credited by it to a depositor or shareholder during such accounting period, provided that, in determining such amount, each interest or dividend credit to depositors or shareholders shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less. In determining the lesser of the amount of interest or dividends actually credited to depositors or shareholders or the amount of interest or dividends which would have been credited if such interest or dividends had been computed and credited at the rate of three and one-half percent per annum, the provisions of subparagraph (ii) of this paragraph shall not be considered.

(ii) For purposes of the computation provided for in subparagraph (i), except where the tax computed under subparagraph (i) of this paragraph is computed as if the interest or dividends were computed and credited at the rate of three and one-half percent per annum, that portion of the interest or dividends credited on or after the first day of October, nineteen hundred eighty-one but before the first day of July, nineteen hundred eighty-six by:

(A) a savings bank to a depositor or shareholder which is attributable to an increase or a deemed increase in the gross earnings, surplus fund, or net worth of the savings bank, which increase became available for interest or dividends upon the prior written approval of the superintendent of banks pursuant to the provisions of subdivision four of section two hundred forty-four of the banking law; or

(B) a savings and loan association to a depositor or shareholder which is attributable to an increase or a deemed increase in gross income, undivided profits, surplus account or net worth of the savings and loan association, which increase became available for interest or dividends upon the prior written approval of the superintendent of banks pursuant to the provisions of subdivision two of section three hundred eighty-seven of the banking law; or

(C) a federal savings bank or a federal savings and loan association to a depositor or shareholder, which would have required and received prior written approval of the superintendent of banks in respect to increases in gross income, gross earnings, undivided profits, surplus funds, surplus accounts or net worth available for dividends pursuant to the provisions of subdivision four of section two hundred forty-four of the banking law and subdivision two of section three hundred eighty-seven of the banking law, respectively, were the provisions of sections two hundred forty-four and three hundred eighty-seven of the banking law applicable to federal savings banks and federal savings and loan associations

shall not be considered to have been credited to depositors or shareholders. Where the tax computed under subparagraph (i) of this paragraph is computed as if the interest or dividends were computed and credited at the rate of three and one-half percent per annum, the amount of interest or dividends which shall not be considered to have been credited to depositors or shareholders is an amount which bears the same ratio to the interest or dividends which would have been credited at the rate of three and one-half percent per annum as the amount of that portion of the interest or dividends paid or credited on or after the first day of October, nineteen hundred eighty-one but before the first day of July, nineteen hundred eighty-six, which is attributable to an increase or deemed increase in gross income, gross earnings, undivided profits, surplus funds, surplus account or net worth available for dividends pursuant to the provisions of subdivision four of section two hundred forty-four of the banking law or subdivision two of section three hundred eighty-seven of the banking law, bears to the amount of interest or dividends actually credited. For purposes of this clause, the determination of whether a federal savings bank or federal savings and loan association would have required and received prior written approval of the superintendent of banks shall be made by the superintendent of banks, upon application and upon such forms as he or she may require, by applying the provision of subdivision four of section two hundred forty-four of the banking law, as if such provisions were applicable to federal savings banks, and subdivision two of section three hundred eighty-seven of the banking law, as if such provisions were applicable to federal savings and loan associations, and the superintendent of banks may require and examine such information as he or she may deem necessary to make such determinations.

(4) (i) Except for a savings bank and savings and loan association, twenty-five dollars.

(ii) For a savings bank and savings and loan association, twenty dollars.

HISTORICAL NOTE

Section renumbered L.L. 37/1986 § 4

(formerly § 11-650)

Section added chap 907/1985 § 1

Section heading amended chap 298/1985 § 43 and shall not apply to

corporations other than savings banks and savings and loan associations

for taxable years beginning on or after Jan. 1, 2010 with respect to

those provisions which relate to the basic tax measured by entire net

income.

Opening par amended chap 298/1985 § 43 and shall not apply to

corporations other than savings banks and savings and loan associations

for taxable years beginning on or after Jan. 1, 2010 with respect to

those provisions which relate to the basic tax measured by entire net

income (as per amendment by chap 60/2007 § H1).

DERIVATION

Formerly § R46-37.53 added LL 39/1975 § 2

Section heading amended chap 887/1975 § 2

Open par amended chap 887/1975 § 2

Sub a amended chap 887/1975 § 2

Section heading, open par, sub (a) amended chap 883/1975 § 7

Sub b par 2 amended chap 1015/1981 § 9

Sub b par 4 renumbered chap 1015/1981 § 10

Sub b par 3 added chap 1015/1981 § 10

Sub b par 3 amended chap 919/1982 § 2

Sub b par 3 amended chap 358/1984 § 2

Section heading amended chap 298/1985 § 43

Open par amended chap 298/1985 § 43

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***** Current through December 2009 ****

NYC Administrative Code 11-643.4

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.4 Computation of tax for taxable years beginning in nineteen hundred seventy-four and ending in nineteen hundred seventy-five.

For each taxable year beginning in nineteen hundred seventy-four and ending in nineteen hundred seventy-five, two tentative taxes shall be computed, the first as provided in section 11-643.1 and the second as provided in section 11-643.3 of this part, and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred seventy-four and the number of days in nineteen hundred seventy-five, respectively, which fall within the taxable year, bears to the number of days in the entire taxable year.

HISTORICAL NOTE

Section renumbered L.L. 37/1986 § 4

(formerly § 11-651)

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-37.54 added LL 39/1975 § 2

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NYC Administrative Code 11-643.5

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.5 Computation of tax for taxable years beginning on or after January first, nineteen hundred eighty-five.

For taxable years beginning on or after January first, nineteen hundred eighty-five, the tax imposed by section 11-639 shall be the greater of the following computations:

(a) Basic tax. Nine percent of the taxpayer's entire net income, or the portion thereof allocated to the city, for the taxable year or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) of this section is less than any of the following amounts, the tax shall be the larger of the following amounts:

(1) (i) Except in the case of a corporation organized under the laws of a country other than the United States, one-tenth of a mill upon each dollar of taxable assets, or the portion thereof allocated to the city.

(ii) For the purposes of this part, the term "taxable assets" shall mean the average value of total assets reduced by any amount of money or other property received from or attributable to amounts received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, or

the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended. Total assets are those assets which are properly reflected on a balance sheet the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount) in the computation of alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's international banking facility for the taxable year.

(iii) A taxpayer shall not be subject to the provisions of this paragraph for that portion of the taxable year (A) in which it was a "qualified institution" as defined in subparagraph (B) of paragraph five of subsection (f) of section four hundred six of the federal national housing act, as amended, or as defined in paragraph two of subsection (i) of section thirteen of the federal deposit insurance act, as amended, and (B) in which it had outstanding net worth certificates issued in accordance with such paragraph five or issued in accordance with such subsection (i) provided it would have been exempt from any tax determined on the basis of the deposits held by it or the interest paid on such deposits pursuant to subparagraph (I) of such paragraph five or paragraph nine of such subsection (i).

(2) In the case of a corporation organized under the laws of a country other than the United States,

(i) two and six-tenths mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, or

(ii) if the taxpayer does not have issued capital stock, two and six-tenths mills upon each dollar of such part of the amount by which its average total assets exceeds its average total liabilities, as the gross income of such taxpayer derived from business carried on within the city during such taxable year bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(3) Three percent of the taxpayer's alternative entire net income, or portion thereof allocated to the city, for the taxable year, or part thereof.

(4) One hundred twenty-five dollars.

(c) Repealed.

HISTORICAL NOTE

Section number assigned by Legislative Bill Drafting Commission

Section added chap 298/1985 § 44 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010, provided, however, that the provisions which relate to the alternative minimum taxes measured by assets, issued capital stock and one hundred twenty-five dollars shall continue to apply to all taxpayers for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1).

Subd. (b) par (1) subpar (ii) amended chap 525/1988 § 47

Subd. (b) par (2) amended chap 525/1988 § 48

Subd. (c) repealed chap 472/2000 § 46, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Subd. (c) added L.L. 20/1986 § 25

DERIVATION

Formerly § § R46-37.55 added chap 298/1985 § 44 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010, provided, however, that the provisions which relate to the alternative minimum taxes measured by assets, issued capital stock and one hundred twenty-five dollars shall continue to apply to all taxpayers for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Sub c added LL 20/1986 § 8

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NYC Administrative Code 11-643.6

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.6 Credit relating to local sales tax paid on electricity purchases. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 46/1990 § 8 eff. July 1, 1990

Section added L.L. 49/1987 § 6

Subd. (a) repealed and added L.L. 42/1988 § 3

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***** Current through December 2009 ****

NYC Administrative Code 11-643.7

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.7 Relocation and employment assistance credit.

(a) In addition to any other credit allowed by this part, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to

subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code. For purposes of this section, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code.

(b) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in subdivision (d) of this section, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(c) The credit allowable under this section shall be deducted after the credit allowed by section 11-643.8, but prior to the deduction of any other credit allowed by this part.

(d) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code, the credits allowed under this section, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to subdivision (a) of this section, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this subdivision shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

HISTORICAL NOTE

Section amended chap 425/1990 § 12, eff. July 10, 1990 retroactive

to July 29, 1987

Section added L.L. 50/1987 § 4

Subd. (a) amended chap 143/2004 § 25, eff. July 6, 2004 and deemed to

be in full force and effect on and after July 1, 2003.

Subd. (a) amended chap 261/2000 § 11, eff. Aug. 16, 2000.

Subd. (a) amended chap 4/1995 § 8, eff. Oct. 29, 1995.

Subd. (b) amended chap 143/2004 § 25, eff. July 6, 2004 and deemed to be in full force and effect on and after July 1, 2003.

Subd. (b) amended chap 261/2000 § 11, eff. Aug. 16, 2000.

Subd. (b) amended chap 709/1993 § 6, eff. Aug. 6, 1993

Subd. (c) amended chap 261/2000 § 11, eff. Aug. 16, 2000.

Subd. (d) amended chap 143/2004 § 26, eff. July 6, 2004 and deemed to be in full force and effect on and after July 1, 2003.

Subd. (d) added chap 261/2000 § 12, eff. Aug. 16, 2000.

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-643.8 Credit relating to certain distributions from partnerships.

(a) If a banking corporation is a partner in an unincorporated business taxable under chapter five of this title, and is required to include in entire net income its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such banking corporation shall be allowed a credit against the tax imposed by this part equal to the lesser of the amounts determined in paragraphs one and two of this subdivision:

(1) The amount determined in this paragraph is the product of (A) the sum of (i) the tax imposed by chapter five of this title on the unincorporated business for its taxable year ending within or with the taxable year of the banking corporation and paid by the unincorporated business and (ii) the amount of any credit or credits taken by the unincorporated business under section 11-503 of this title (except the credit allowed by subdivision (b) of such section) for its taxable year ending within or with the taxable year of the banking corporation, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (B) a fraction, the numerator of which is the net total of the banking corporation's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners of the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than

zero.

(2) The amount determined in this paragraph is the product of (A) the excess of (i) the basic tax computed pursuant to subdivision (a) of section 11-643.5 of this part, without allowance of any credits allowed by this part, over (ii) the basic tax so computed, determined as if the banking corporation had no such distributive share or guaranteed payments with respect to the unincorporated business, and (B) a fraction, the numerator of which is four and the denominator of which is nine, provided, however, that the amounts computed in clauses (i) and (ii) of this paragraph shall be computed with the following modifications:

(I) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business, the entire net income of the partner is less than zero, such entire net income shall be treated as zero; and

(II) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from any unincorporated business is less than zero, such net total shall be treated as zero.

The amount determined in this paragraph shall not be less than zero.

(b) (1) Notwithstanding anything to the contrary in subdivision (a) of this section, in the case of a banking corporation that, before the application of this section or any other credit allowed by this part, is liable for the basic tax computed under subdivision (a) of section 11-643.5 of this part, the credit or the sum of the credits that may be taken by such banking corporation for a taxable year under this section with respect to an unincorporated business or unincorporated businesses in which it is a partner shall not exceed the tax so computed, without allowance of any credits allowed by this part, multiplied by a fraction the numerator of which is four and the denominator of which is nine. If the credit allowed under this subdivision or the sum of such credits exceeds the product of such tax and such fraction, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying the provisions of the preceding sentence, the credit determined for the taxable year under subdivision (a) of this section shall be taken before taking any credit carryforward pursuant to this paragraph and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(2) Notwithstanding anything to the contrary in subdivision (a) of this section, in the case of a banking corporation that, before the application of this section or any other credit allowed by this part, is liable for the alternative minimum tax on alternative entire net income under paragraph three of subdivision (b) of section 11-643.5 of this part, the maximum credit that may be taken in any taxable year is the amount that will reduce the tax so computed, without allowance of any credits allowed by this part, to zero. For purposes of this paragraph each dollar of credit shall be applied so as to reduce such tax by seventy-five cents. If the amount of credit allowed under this section or the sum of such credits exceeds the amount that may be taken against such tax, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying the provisions of the preceding sentence, the credit determined for the taxable year under subdivision (a) of this section shall be taken before taking any credit carryforward pursuant to this subdivision and the credit carryforward attributable to the earliest taxble year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(3) No credit under this section may be taken in a taxable year by a taxpayer that, in the absence of such credit, would be liable for the tax computed on the basis of taxable assets under paragraph one, the tax computed on the basis of issued capital stock under paragraph two or the fixed-dollar minimum tax under paragraph four of subdivision (b) of section 11-643.5 of this part.

(c) For banking corporations that file a report on a combined basis pursuant to subdivision (f) of section 11-646 of this part, the credit allowed by this section shall be computed as if the combined group were the partner in each unincorporated business from which any of the members of such group had a distributive share or guaranteed payments,

provided, however, if more than one member of the combined group is a partner in the same unincorporated business, for purposes of the calculation required in paragraph one of subdivision (a) of this section, the numerator of the fraction described in subparagraph (B) of such paragraph one shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all of the partners of the unincorporated business within the combined group for which such net total (as separately determined for each partner) is greater than zero, and the denominator of such fraction shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all partners in the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than zero.

(d) The credit allowed by this section shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under chapter five of this title for any taxable year beginning before July first, nineteen hundred ninety-four.

(e) Notwithstanding any other provisions of this part, the credit allowable under this section shall be taken prior to the taking of any other credit allowed by this part. Notwithstanding any other provisions of this part, the application of this section shall not change the basis on which the taxpayer's tax is computed under subdivision (a) or (b) of section 11-643.5 of this part.

HISTORICAL NOTE

Section amended chap 128/1996 § 16, eff. June 11, 1996 applying to

taxable years beginning on or after Jan. 1, 1996.

Section added chap 485/1994 § 17, eff. July 26, 1994

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***** Current through December 2009 ****

NYC Administrative Code 11-643.9

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§11-643.9 Lower Manhattan relocation and employment assistance credit.

(a) In addition to any other credit allowed by this part, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this section to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code to take such credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this section, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code.

(b) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be

calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(c) Except as provided in subdivision (d) of this section, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(d) The credits allowed under this section, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(e) The credit allowable under this section shall be deducted after the credit allowed by section 11-643.7 of this part, but prior to the deduction of any other credit allowed by this part.

HISTORICAL NOTE

Section added chap 143/2004 § 27, eff. July 6, 2004 and deemed to have

been in full force and effect on and after July 1, 2003.

Subd. (b) amended chap 2/2005 § E7, eff. Aug. 30, 2005.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-644

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-644 Declarations of estimated tax.

(a) Requirements of declaration. Every taxpayer subject to the tax imposed by subdivision (a) of section 11-639 of this part shall make a declaration of its estimated tax for the current taxable year, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

(b) Definition of estimated tax. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by subdivision (a) of section 11-639 of this part for the current taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax.

(c) Time for filing declaration. A declaration of estimated tax shall be filed on or before June fifteenth of the current taxable year in the case of a taxpayer which reports on the basis of a calendar year, except that if the requirements of subdivision (a) of this section are first met:

(1) after May thirty-first and before September first of such current taxable year, the declaration shall be filed on or before September fifteenth, or

(2) after August thirty-first and before December first of such current taxable year, the declaration shall be filed on or before December fifteenth.

(d) Amendments of declaration. A taxpayer may amend a declaration under regulations of the commissioner of finance.

(e) Return as declaration. If, on or before February fifteenth of the succeeding year in the case of a taxpayer whose taxable year is a calendar year, a taxpayer files its return for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year for which the tax was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to paragraph two of subdivision (c) of this section, and

(2) such return shall be considered as the amendment permitted by subdivision (d) of this section to be filed on or before December fifteenth if the tax shown on the return is greater than the estimated tax shown on a declaration previously made.

(f) Fiscal year. This section shall apply to taxable years of twelve months other than a calendar year by the substitutions of the months of such fiscal year for the corresponding months specified in this section.

(g) Short taxable period. If the taxable period for which a tax is imposed by subdivision (a) of section 11-639 of this part is less than twelve months, every taxpayer required to make a declaration of estimated tax for such taxable period shall make such a declaration in accordance with regulations of the commissioner of finance.

(h) Extension of time. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as the commissioner may require.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (c) pars (1), (2) amended L.L. 45/1990 § 5, eff. July 12, 1990

Subd. (e) pars (1), (2) amended L.L. 45/1990 § 6, eff. July 12, 1990

DERIVATION

Formerly § R46-37.6 added LL 83/1972 § 2

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***** Current through December 2009 ****

NYC Administrative Code 11-645

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-645 Payments of estimated tax.

(a) Every taxpayer subject to the tax imposed by section 11-639 of this part shall pay an amount equal to twenty-five percent of the preceding year's tax, if such preceding year's tax exceeded one thousand dollars. Such amount shall be paid with the return required to be filed for the preceding taxable year or with an application for the extension of the time for filing such return. Provided, however, that for the first taxable year or period commencing on or after January first, nineteen hundred seventy-three, the installment required by this subdivision shall be paid with the return required to be filed for the tax imposed pursuant to part one or two of this subchapter three computed on the basis of net income for the calendar year nineteen hundred seventy-two, or under the minimum tax provisions of section 11-612 of this subchapter.

(a-2) Repealed.

(b) Other installments. The estimated tax for each taxable year with respect to which a declaration of estimated tax is required to be filed under this part shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

(1) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same taxable year pursuant to subdivision (a) of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(1-a) Repealed.

(2) If the declaration is filed after June fifteenth and not after September fifteenth of such taxable year, and is not required to be filed on or before June fifteenth of such year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same taxable year pursuant to subdivision (a) of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

(3) If the declaration is filed after September fifteenth of such taxable year, and is not required to be filed on or before September fifteenth of such year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect of such year pursuant to subdivision (a) of this section, shall be paid in full at the time of the filing of the declaration.

(4) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs two and three of this subdivision shall not apply and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(c) Amendments of declarations. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) Application of installments based on the preceding year's tax. Any amount paid pursuant to subdivision (a) shall be applied as a first installment against the estimated tax of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section 11-644, or if no declaration of estimated tax is required to be filed by the taxpayer pursuant to such section, any such amount shall be considered a payment on account of the tax shown on the return required to be filed by the taxpayer for such taxable year.

(e) Interest on certain installments based on the preceding year's tax. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if an amount paid pursuant to subdivision (a) of this section exceeds the tax shown on the return required to be filed by the taxpayer for the taxable year during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of six percent per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the third month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar.

(f) The preceding year's tax defined. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by subdivision (a) of section 11-639 of this part for the preceding taxable year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the return required to be filed for such preceding taxable year, the amount properly estimated pursuant to paragraph one of subdivision b of section 11-647 of this part as the tax imposed upon the taxpayer for such taxable year. Provided, however, that for the first taxable year or period commencing on or after January first, nineteen hundred seventy-three, the term "preceding year's tax" as used in this section shall mean the tax imposed upon the taxpayer pursuant to part one or two of this subchapter three which was computed on the basis of net income for the calendar year nineteen hundred

seventy-two, or under the minimum tax provisions of subdivision two of section 11-612 of this subchapter, or for purposes of computing the first installment of estimated tax for such first taxable year or period when an application has been filed for an extension of the time for filing the return required to be filed for the tax imposed pursuant to part one or two of this subchapter three which was computed on the basis of net income for the calendar year nineteen hundred seventy-two, or under the minimum tax provisions of section 11-612 of this subchapter, the amount of tax properly estimated for purposes of such part one or two pursuant to section 11-635 of this subchapter.

(g) Application to short taxable period. This section shall apply to a taxable period of less than twelve months in accordance with regulations of the commissioner of finance.

(h) Fiscal year. The provisions of this section shall apply to taxable years of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

(i) Extension of time. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as the commissioner may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however that interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of six percent per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

(j) Payment of installments in advance. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a-1) repealed L.L. 46/1990 § 9, eff. July 1, 1990

Subd. (a-1) added L.L. 49/1987 § 7

Subd. (a-2) repealed L.L. 57/2001 § 18, eff. Oct. 10, 2001.

Subd. (a-2) added L.L. 50/1987 § 5

Subd. (1-a) added L.L. 20/1986 § 24

Subd. (b) par (1) amended L.L. 45/1990 § 7, eff. July

12, 1990

Subd. (b) par (1-a) repealed chap 513/2002 § 52, eff. Sept. 17, 2002 and

deemed to have been in full force and effect on and after Oct. 10, 2001.

This paragraph occurs before Subd. (b) in main volume.

Subd. (b) par (1-a) repealed 57/2001 § 19, eff. Oct. 10, 2001. Note:

This paragraph occurs before subd. (b) in main volume.

Subd. (b) pars (2), (3) amended L.L. 45/1990 § 7, eff. July

12, 1990

Subd. (c) amended L.L. 45/1990 § 8, eff. July 12, 1990

Subd. (e) amended chap 241/1989 § 7

Subd. (i) amended chap 241/1989 § 7

DERIVATION

Formerly § R46-37.7 added LL 83/1972 § 2

Subs e, i amended LL 94/1977 § 3

Sub 1-a added LL 20/1986 § 9

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-646 Returns.

(a) Every taxpayer shall annually on or before the fifteenth day of the third month following the close of each of its taxable years transmit to the commissioner of finance a return in a form prescribed by the commissioner setting forth such information as the commissioner of finance may prescribe and every taxpayer which ceases to exercise its franchise in the city or to be subject to the tax imposed by this part shall transmit to the commissioner of finance a return on the date of such cessation or at such other time as the commissioner of finance may require covering each year or period for which no return was therefore filed.

(b) Every taxpayer shall also transmit such other returns and such facts and information as the commissioner of finance may require in the administration of this part.

(c) The commissioner of finance may grant a reasonable extension of time for filing returns whenever good cause exists. An automatic extension of six months for the filing of its annual return shall be allowed any taxpayer, if within the time prescribed by subdivision (a), such taxpayer files with the commissioner of finance an application for extension in such form as said commissioner of finance may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

(d) Every return shall have annexed thereto a certification by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the cor- poration.

(e) If the amount of taxable income, alternative minimum taxable income or other basis of tax for any year of any taxpayer, or of any shareholder of any taxpayer that has elected to be taxed under subchapter s of chapter one of the internal revenue code or of any shareholder of any taxpayer with respect to which an election has been made to be treated as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code as returned to the United States treasury department or the New York state commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state commissioner of taxation and finance or other competent authority, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subsection (c) of said section, such taxpayer shall report such changed or corrected taxable income, alternative minimum taxable income or other basis of tax or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income, alternative minimum taxable income or other basis of tax on which it is based, within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this subchapter for such year) after such execution or the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code, shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this subchapter for such year) thereafter an amended return with the commissioner of finance which shall contain such information as the commissioner shall require.

(f) (1) For purposes of this subdivision, the term "bank holding company" means any corporation subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended.

(2) (i) Any banking corporation or bank holding company which is doing business in the city in a corporate or organized capacity, and

(A) which owns or controls, directly or indirectly, eighty percent or more of the voting stock of one or more banking corporations or bank holding companies, or

(B) whose voting stock is eighty percent or more owned or controlled, directly or indirectly, by a banking corporation or a bank holding company, shall make a return on a combined basis under this part covering itself and such corporations described in clause (A) or (B) and shall set forth such information as the commissioner of finance may require unless the taxpayer or the commissioner of finance shows that the inclusion of such a corporation in the combined return fails to properly reflect the tax liability of such corporation under this part. Provided, however, that no banking corporation or bank holding company not a taxpayer shall be subject to the requirements of this subparagraph unless the commissioner of finance deems that the application of such requirements is necessary in order to properly reflect the tax liability under this part, because of intercompany transactions or some agreement, understanding, arrangement or transaction of the type referred to in subdivision (g) of this section.

(ii) In the discretion of the commissioner of finance, any banking corporation or bank holding company which is doing business in the city in a corporate or organized capacity, and

(A) which owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of one or more banking corporations or bank holding companies, or

(B) whose voting stock is sixty-five percent or more owned or controlled, directly or indirectly, by a banking corporation or a bank holding company, may be required or permitted to make a return on a combined basis under this part covering itself and such corporations described in clause (A) or (B) and shall set forth such information as the commissioner of finance may require; provided, however, that no combined return shall be required or permitted unless the commissioner of finance deems such report necessary in order to properly reflect the tax liability under this part of any one or more of such banking corporations or bank holding companies.

(iii) In the discretion of the commissioner of finance, banking corporations or bank holding companies which are each sixty-five percent or more owned or controlled, directly or indirectly, by the same interest may be permitted or required to make a return on a combined basis under this part and shall set forth such information as the commissioner of finance may require, if at least one such banking corporation or bank holding company is doing business in the city in a corporate or organized capacity. No combined return shall be required or permitted unless the commissioner of finance deems such report necessary in order to properly reflect the tax liability under this part of any one or more of such banking corporations or bank holding companies.

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the city may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the city in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two thousand and before January first, two thousand ten during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand ten, any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the city and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the city in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand ten, a banking corporation described in either of the two preceding sentences which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking corporation, during such subsequent taxable year, continues to exercise its corporate franchise or do business in the city in a corporate or organized capacity and sixty-five percent or more of such banking corporation's voting stock continues to be owned or controlled, directly or indirectly, by such bank holding company, unless the permission of the commissioner has been obtained to file on a separate basis for such subsequent taxable year. Provided further, however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand ten, a banking corporation described in either of the first two sentences of this clause which did not file on a combined basis with any such bank holding company in a previous taxable year, may not file on a combined basis with such bank holding company during any such subsequent taxable year unless the permission of the commissioner has been obtained to file on a combined basis for such subsequent taxable year.

(B) Notwithstanding any provision of this paragraph other than clause (A) of this subparagraph, the commissioner may not require a bank holding company which, during a taxable year beginning on or after January first, two thousand and before January first, two thousand ten, registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year beginning on or after January first, two thousand and before January first, two

thousand ten with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

(3) In the case of a combined return, the tax shall be measured by the combined entire net income, combined alternative entire net income or combined assets of all the corporations included in the return. The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined entire net income and alternative entire net income intercorporate dividends and all other intercorporate transactions shall be eliminated and in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

(4) (i) In no event shall an item of income or expense of a corporation organized under the laws of a country other than the United States be included in a combined return unless it is includible in entire net income or alternative entire net income, as the case may be, nor shall an asset of such a corporation be included in a combined return unless it is included in taxable assets.

(ii) In no event shall a corporation organized under the laws of the United States, this state or any other state, be included in a combined return with a corporation organized under the laws of a country other than the United States.

(iii) In no event shall a corporation which has made an election pursuant to subdivision (d) of section 11-640 of this part to be subject to the tax imposed by subchapter two of this chapter be included in a combined return for those taxable years for which it is subject to the tax imposed by subchapter two of this chapter.

(5) Tax liability under this part may be deemed to be improperly reflected because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision (g) of this section.

(g) In case it shall appear to the commissioner of finance that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or assets of the taxpayer within the city is improperly or inaccurately reflected, the commissioner of finance is authorized and empowered, in his discretion and in such manner as he may determine, to adjust items of income or deductions in computing entire net income or alternative entire net income and to adjust assets, and to adjust wages, salaries and other personal service compensation, receipts or deposits in computing any allocation percentage, provided only that entire net income or alternative entire net income be adjusted accordingly and that any asset directly traceable to the elimination of any receipt be eliminated from assets so as to accurately determine the tax. If however, in the determination of the commissioner of finance, such adjustments do not, or cannot effectively provide for the accurate determination of the tax, the commissioner of finance shall be authorized to require the filing of a combined report by the taxpayer and any such other corporations. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer enters into any transaction with another corporation on such terms as to create an improper loss or net income, the commissioner of finance may include in the entire net income or alternative entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (e) amended chap 513/2002 § 48, eff. Sept. 17, 2002.

Subd. (e) amended L.L. 57/2001 § 20, eff. Oct. 10, 2001.

Subd. (e) amended chap 525/1988 § 49

Subd. (f) par (2) subpar (iv) amended chap 60/2007 § H7, eff. Apr. 9, 2007.

Subd. (f) par (2) subpar (iv) amended chap 62/2006 § I7, eff. June 6, 2006.

Subd. (f) par (2) subpar (iv) amended chap 60/2004 § G7 eff. Aug. 20, 2004 and shall apply to taxable years beginning on or after Jan. 1, 2004.

Subd. (f) par (2) subpar (iv) amended chap 62/2003 § 7 of Part G3, eff. May 15, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. (f) par (2) subpar (iv) amended chap 383/2001 § P9 eff. Sept. 29, 2001 and applying to taxable years beginning on or after Jan. 1, 2001.

Subd. (f) par (2) subpar (iv) added chap 63/2000 § HH6, eff. May 15, 2000.

DERIVATION

Formerly § R46-37.8 added LL 83/1972 § 2

Subd. f repealed chap 298/1985 § 45 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Subds. f, g added chap 298/1985 § 45 and shall not apply to corporations other than savings banks and savings and loan associations for taxable years beginning on or after Jan. 1, 2010 (as per amendment by chap 60/2007 § H1)

Sub c amended LL 64/1985 § 2

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NYC Administrative Code 11-647

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 3 FINANCIAL CORPORATION TAX

PART 4 BANKING CORPORATION TAX

§ 11-647 Payment of tax.

(a) To the extent the tax imposed for section 11-639 of this part shall not have been previously paid pursuant to section 11-645:

(1) such tax, or the balance thereof, shall be payable to the commissioner of finance in full at the time its return is required to be filed, and

(2) such tax, or the balance thereof, imposed on any taxpayer which ceased to exercise its franchise or to be subject to the tax imposed by this part shall be payable to the commissioner of finance at the time the return is required to be filed, provided such tax of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes of any such taxpayer, which pursuant to the foregoing provisions of this subdivision would otherwise be pay- able subsequent to the time such return is required to be filed, shall nevertheless be payable at such time.

(b) If the taxpayer, within the time prescribed by subdivision (c) of section 11-646 of this part, shall have applied for an automatic extension of time to file its annual return and shall have paid to the commissioner of finance on

or before the date of such application is filed an amount properly estimated as provided by said subdivision the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of six percent per annum upon the amount by which the tax, or portion thereof payable on or before the date the return was required to be filed, exceeds the amount so paid. For the purposes of the preceding sentence:

(1) an amount so paid shall be deemed properly estimated if it is either: (i) not less than ninety per cent of the tax as finally determined, or (ii) not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a return is required to be filed shall be determined without regard to any extension of time for filing such return.

(c) The commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this part under such conditions as the commissioner deems just and proper.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (b) amended chap 241/1989 § 8

DERIVATION

Formerly § R46-37.9 added LL 83/1972 § 2

Sub b amended LL 94/1977 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-662

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-662 Tax on transportation corporations and associations.

1. The term "corporation" as used in this subchapter shall include any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments.

2. For the privilege of doing business or holding property in the city every corporation, joint-stock company or association formed for or principally engaged in the conduct of aviation, steamboat, ferry (except a ferry company operating between any of the boroughs of the city under a lease granted by the city), or navigation business, or formed for or principally engaged in the conduct of two or more of such businesses, except a corporation, joint-stock company or association subject to taxation under subchapter two of chapter eleven of this title, shall pay, in advance, an annual tax to be computed upon the basis of the amount of its capital stock within the city during the preceding year, and upon each dollar of such amount.

3. The measure of the amount of capital stock in the city, except as hereinafter provided, shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, employed in any business within the city, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever employed in business. Provided, however, that in the case of a corporation taxable hereunder only for the privilege of holding property, the measure shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, located within the city, bear to the gross assets, exclusive of obligations issued by the United States and cash on

hand and on deposit, wherever located. The capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the assets of the issuing corporation, other than patents, copyrights, trademarks, contracts and good will, are located.

4. Every corporation, joint-stock company or association subject to taxation under this section shall, in any event, pay annually, for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, a minimum tax of not less than ten dollars nor less than one mill, and for taxable years beginning on or after January first, nineteen hundred seventy-five, a minimum tax of not less than fifteen dollars nor less than one and one-half mills, on each dollar of such a portion of the net value of its issued capital stock, which net value for the purposes of this section shall be deemed to be not less than five dollars per share, as may be determined upon such of the bases herein provided for the measurement thereof as is applicable. The term "net value" as used in this section shall be construed to mean not less than the difference between a corporation's assets and liabilities, and not less than the average price at which such stock sold during the year covered by the report which forms the basis for the tax. But if the dividends paid on the par value of any kind of capital stock during any year ending with the thirty-first day of December amounts to six or more than six per centum, the tax upon such kind of capital stock shall be at the rate of one-quarter of a mill for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, and at the rate of four-tenths of a mill for taxable years beginning on or after January first, nineteen hundred seventy-five for each one per centum of dividends paid and shall be computed upon the par value of such capital stock, unless such a tax be less than the minimum tax hereinbefore provided in this section and the commissioner of finance shall, for such purpose, make a fair and equitable apportionment of the assets of the the corporation, joint-stock company or association, between or among the different kinds of stock.

5. If such corporation, joint-stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the par value thereof, has been paid, and upon the other no dividend has been paid, or the dividend or dividends paid thereon amount to less than six per centum upon the par value thereof, then the tax shall be fixed upon each kind as hereinbefore provided.

6. The dividend rate for a corporation having stock without nominal or par value shall be determined by dividing the amount paid as a dividend or dividends during the year by the amount paid in on such stock and, if the rate is six per centum or more, then for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, the rate of one-quarter of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, and for taxable years beginning on or after January first, nineteen hundred seventy-five, the rate of four-tenths of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, unless such tax be less than the minimum tax hereinbefore in this section provided for. Any consideration given by a corporation for the purchase of its own stock in excess of the consideration received by it for the issuance of such stock shall for the purposes of this section, be considered as a dividend.

7. The owning or holding in the city by any corporation of property, other than property exclusively in interstate or foreign commerce, shall constitute carrying on business within the city within the intent of this section, except that a corporation having no property in the city other than a bank balance or stocks or bonds, or one or more of such kinds of property, either held for safe keeping or pledged as collateral security shall not be taxable under this section, and further provided that any corporation having only office furniture or fixtures, a bank balance, and stocks or bonds pledged as collateral security or merely deposited for safe keeping, shall not be taxable under this section.

8. The measure of the amount of capital stock in the city of an aviation corporation shall be a portion of the issued capital stock determined by applying thereto the arithmetical average of the following three ratios: (a) the ratio which the aircraft arrivals and departures within the city scheduled by any such corporation during the preceding calendar year bear to the total aircraft arrivals and departures within and without the city scheduled by it during the same period, provided that in the case of non-scheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures; (b) the ratio which the revenue tons handled by such corporation at airports within

the city during the preceding calendar year bear to the total revenue tons handled by it at airports within and without the city during the same period; and (c) the ratio which such corporation's originating revenue within the city for the preceding calendar years bears to its total originating revenue within and without the city for the same period. As used in this section, the term "aircraft arrivals and departures" means the number of scheduled landings and takeoffs of the aircraft of an aviation corporation, and the number of scheduled air pickups and deliveries by the aircraft of such corporation, and in the case of non-scheduled operations shall include all landings and takeoffs, pickups and deliveries; the term "originating revenue" means revenue to any such corporation from the transportation of revenue passengers and revenue property first received by such corporation either as originating or connecting traffic at airports; and the term "revenue tons handled" by any such corporation at an airport means the weight in tons of revenue passengers (at two hundred pounds per passenger) and revenue cargo first received either as originating or connecting traffic or finally discharged by such corporation at such airport.

9. The measure of the capital stock in the city of a corporation engaged in the operation of vessels in foreign commerce shall be such portion of the issued capital stock as the aggregate number of working days in territorial waters of the city of all such vessels bears to the aggregate number of working days of all such vessels. The dividend rate for such a corporation shall be determined by dividing the amount paid as a dividend or dividends on all classes of stock during the year by the amount of paid-in capital and, if the rate is six per centum or more, then for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, the rate of one-quarter of a mill for each one per centum of dividends shall be applied to the amount of such paid-in capital, and for taxable years beginning on or after January first, nineteen hundred seventy-five, the rate of four-tenths of a mill for each one per centum of dividends shall be applied to the amount of such paid-in capital.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-51.0 added LL 21/1966 § 1

Subs 4, 6, 9 amended LL 41/1975 § 3

Subs 4, 6, 9 amended LL 4/1977 § 1

(Special provisions LL 4/1977 §§ 3-5)

(LL 4/1977 § 4 amended LL 78/1986)

NOTE

Provisions of L.L. 85/1988

A LOCAL LAW

To amend local law number four of the city of New York for the year nineteen hundred seventy-seven, in relation to continuing the present rates of the transportation corporation tax.

Be it enacted by the Council as follows:

Section 1. Section four of local law number four for the year nineteen hundred seventy-seven, as amended by local law number seventy-eight for the year nineteen hundred eighty-six, is amended to read as follows:

§ 4. The rates provided in this local law for taxable years commencing on or after January first, nineteen

hundred seventy-five shall apply to taxable years commencing on or after January first, nineteen hundred seventy-five and ending on or before December thirty-first, nineteen hundred [eighty-eight] **eighty-nine.**Thereafter, the lower rates in effect for taxable years ending on or before December thirty-first nineteen hundred seventy-four shall apply.

§ 2. This local law shall take effect immediately.

CASE NOTES FROM FORMER SECTION

¶ 1. A corporation which was an air freight forwarder was not in the business of aviation and thus could not qualify for the transportation corporate tax.-Airborne Freight Corp. v. Michael, 94 App. Div. 2d 669 [1983].

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NYC Administrative Code 11-663

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-663 Additional tax on transportation corporations and associations.

Every corporation, joint-stock company or association formed for or principally engaged in the conduct of aviation, steamboat, ferry (except a ferry company operating between any of the boroughs of the city under a lease granted by the city), or navigation business or formed for or principally engaged in the conduct of two or more of such businesses, except a corporation, joint-stock company or association subject to taxation under subchapter two of chapter eleven of this title, shall pay for the privilege of carrying on its business in the city, a tax which shall be equal to five-tenths of one per centum for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, and seventy-five hundredths of one per centum for taxable years beginning on or after January first, nineteen hundred seventy-five upon its gross earnings from all sources within the city, excluding earnings derived from business of a character other than wholly intra-city. Provided, however, gross earnings from transportation business both originating and terminating within the city and traversing both the city and any other city, any state or states or any country shall be subject to the tax imposed by this section and such earnings shall be allocated to the city in the same ratio that the mileage within the city bears to the total mileage of such business.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-52.0 added LL 21/1966 § 1

Amended LL 41/1975 § 4

Amended LL 4/1977 § 2

(Special provision, guaranteed obligations finance references, LL 4/1977 §§ 4, 5)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-664

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-664 Receivers, etc., conducting corporate business.

Any receiver, liquidator, referee, trustee, assignee, or other fiduciary or officer or agent appointed by any court, who conducts the business of any corporation, joint-stock company or association shall be subject to the tax or taxes imposed by this subchapter in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation, joint-stock company or association. A dissolved corporation, joint-stock company or association which continues to conduct business shall also be subjected to the tax imposed by this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-53.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-665

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-665 Service of process; limitation of time.

1. Every foreign corporation (other than a moneyed corporation) subject to the provisions of this subchapter, except a corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this subchapter or subchapter five of this chapter may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon the secretary of state. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon the secretary of state to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon the secretary of state to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this subchapter five or

subchapter six of this chapter may be made by either: (1) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (2) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy hereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

2. The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this subchapter or subchapter five of this chapter, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes become due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-54.0 added LL 21/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-666

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-666 Exemption of corporations owned by a municipality.

The provisions of this subchapter shall not apply to any corporation all of the capital stock of which is owned by a municipal corporation of this state.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-55.0 added LL 21/1966 § 1

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NYC Administrative Code 11-667

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-667 Reports of corporations.

Corporations liable to pay a tax under this subchapter shall report as follows:

1. Every corporation, association or joint-stock company liable to pay a tax under section 11-662 of this subchapter shall, on or before March first in each year, make a written report to the commissioner of finance of its condition at the close of its business on the preceding December thirty-first, stating the amount of its authorized capital stock, the amount of stock paid-in, the date and rate per centum of each dividend paid by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in the city during such year.

2. Every corporation, joint-stock company or association liable to pay an additional tax under section 11-663 of this subchapter shall also, on or before February fifteenth, May fifteenth, August fifteenth and November fifteenth in each year, make a written report to the commissioner of finance of the amount of its gross earnings subject to the tax imposed by said section for the quarter year ended on the last day of the second month preceding that in which the report is required to be filed. Any such corporation, joint-stock company or association which ceases to be subject to the tax imposed by section 11-663 of this subchapter by reason of a liquidation, dissolution, merger or consolidation with any other corporation, or any other cause, shall, on the date of such cessation or at such other time as the commissioner of finance may require, make a written report to the commissioner of finance of the amount of its gross earnings subject to the tax imposed by section 11-663 of this subchapter for any period for which no report was therefor filed.

3. The commissioner of finance may for good cause shown extend the time within which any corporation is required to report by this subchapter.

4. Every report required by this subchapter shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, or chief accounting officer or any other officer of the corporation, association or joint-stock company duly authorized so to act, or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification attached to a corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation. Such reports shall contain any other data information or matter which the commissioner of finance may require to be included therein, and it may prescribe the form in which such reports shall be made. When so prescribed such forms shall be used in making the report. The commissioner of finance may require at any time a further or supplemental report under this subchapter which shall contain information and data upon such matters as the commissioner of finance may specify. Reports shall be preserved for five years, and thereafter until the commissioner of finance orders them to be destroyed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-56.0 added LL 21/1966 § 1

(added as second § R46-55.0)

Sub 2 amended LL 37/1967 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-668

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-668 Payment of tax and penalties.

1. The taxes imposed by sections 11-662 and 11-663 of this subchapter shall be due and payable at the time of the filing of the report required by section 11-667 of this subchapter or, in case such a report is not filed when due, on the last day specified for the filing thereof, except that the tax upon dividends imposed by section 11-663 of this subchapter shall be due and payable at the time of filing the report for the period ending June thirtieth, or, in case such report is not filed when due, on the last day specified for the filing thereof.

2. Where an application for consent to dissolution, as provided by section one thousand four of the business corporation law, is filed with the commissioner of finance prior to the commencement of any tax year or period by a corporation subject to tax under this subchapter, such corporation shall not be liable for any tax imposed by this subchapter for such following year or period (except as may be otherwise provided in section 11-664 of this subchapter), provided that the certificate of dissolution for such corporation is duly filed in the office of the secretary of state within twenty days after the filing of such application.

3. Notwithstanding any other provision of this subchapter, the commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this subchapter under such conditions as the commissioner deems just and proper.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-57.0 added LL 21/1966 § 1

Amended LL 17/1968 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-669

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-669 Taxable years to which taxes apply.

The taxes imposed by this subchapter are imposed for each taxable year or period beginning with taxable years or periods ending in or with the calendar year nineteen hundred sixty-six. Notwithstanding the foregoing, no tax shall be imposed pursuant to this subchapter for any taxable year or period ending after December thirty-first, nineteen hundred eighty-eight.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Section amended chap 241/1989 § 76

DERIVATION

Formerly § R46-58.0 added LL 21/1966 § 1

Amended LL 37/1967 § 11

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-670

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 4 TRANSPORTATION CORPORATION TAX

§ 11-670 First reports for payments for nineteen hundred sixty-six.

If any report under this subchapter is due prior to September eleventh, nineteen hundred sixty-six, such report and the payments therewith shall be filed and paid by such date.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-59.0 added LL 21/1966 § 1

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NYC Administrative Code 11-671

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-671 Application of subchapter.

1. General. The provisions of this subchapter shall apply to the administration of and the procedures with respect to the taxes imposed by subchapters two, three and four of this chapter.

2. Definitions. As used in this subchapter: (a) the term "named subchapters" means subchapters two, three and four of this chapter; (b) The term "return" means a report or return of tax, but does not include a declaration of estimated tax;

(c) The term "corporation" includes a corporation, association, joint-stock company or other entity subject to tax under any of the named subchapters; and

(d) The term "person" includes a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual liable for the tax imposed by any of the named subchapters or under a duty to perform an act under any of the named subchapters. Upon notice to the commissioner of finance that any person is acting for any corporation in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties and privileges of such corporation in respect of a tax imposed by any of the named subchapters (except as otherwise specifically provided and except that the tax shall be collected from the estate or other assets of such corporation in the hands of such fiduciary), until notice is given that the fiduciary capacity has terminated.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-61.0 added LL 21/1966 § 1

CASE NOTES

¶ 1. The Activities Reports (Form NYC-425) filed annually by a New Jersey Corporation, used for corporations disclaiming liability for General Corporation Tax, are "returns for the purposes of three-year statute of limitations in Ad Cd §11-674(1). Since a "return" is defined as "a report or return of tax, Ad Cd §11-671(2)(b), and pursuant to Ad Cd §11-605 the filing deadlines made by corporations paying and disclaiming tax liability are described as "returns". Apex Air Freight v. O'Cleireacain, 210 AD2d 7 [1994].

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NYC Administrative Code 11-672

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-672 Notice of deficiency.

1. General. If upon examination of a taxpayer's return, the commissioner of finance determines that there is a deficiency of tax, the commissioner may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a tax return, the commissioner of finance is authorized to estimate the taxpayer's city tax liability from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer, at its last known address in or out of the city. If the taxpayer has terminated its existence, a notice of deficiency may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this subchapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

2. Notice of deficiency as assessment. After ninety days from the mailing of a notice of deficiency or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, after ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, such notice shall be an assessment of the amount of tax specified therein, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax appeals tribunal a petition under section 11-680 of this subchapter. If the notice of deficiency or conciliation decision is addressed to a taxpayer whose last known address is outside of the United States, such period shall be one hundred fifty days instead of ninety days.

3. Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-685 of this subchapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition with the tax appeals tribunal contesting such notice, nor, if a petition with respect to the taxable year has been both served on the commissioner of finance and filed with the tax appeals tribunal, until the decision of the tax appeals tribunal has become final. For exception in the case of judicial review of the decision of the tax appeals tribunal, see subdivision three of section 11-681 of this subchapter.

4. Exceptions for mathematical errors. If a mathematical error appears on a return (including an overstatement of the amount paid as estimated tax), the commissioner of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section 11-678 (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision two of section 11-680 of this subchapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or collection be prohibited by the provisions of subdivision three of this section.

5. Exception where federal or New York state change or correction is not reported.

(a) If the taxpayer fails to comply with subchapter two or three of this chapter in not reporting a change or correction or renegotiation, or computation or recomputation of tax, increasing or decreasing its federal or New York state taxable income, alternative minimum taxable income or other basis of tax as reported on its federal or New York state income tax return or in not reporting a change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver executed pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code or pursuant to subdivision (f) of section one thousand eighty-one of the tax law, instead of the mode and time of assessment provided for in subdivision two of this section, the commissioner of finance may assess a deficiency based upon such increased or decreased federal or New York state taxable income, alternative minimum taxable income or other basis of tax by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or renegotiation, or computation or recomputation of tax, or an amended return, where such return was required by subchapter two or three, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

(b) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section 11-678 (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision two of section 11-680 of this subchapter (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision three of this section.

(c) If the taxpayer has terminated its existence, a notice of additional tax due may be mailed to the taxpayer's last known address in or out of the city, and such notice shall be sufficient for purposes of this subchapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

6. Waiver of restrictions. The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the commissioner of finance.

7. Two or more corporations. In case of a combined return under subchapter two or a consolidated return under

subchapter three of two or more corporations, the commissioner of finance may determine a deficiency of tax under subchapter two or subchapter three of this chapter with respect to the entire tax due upon such return against any taxpayer included therein. In the case of a taxpayer which might have been included in such a return under subchapter two or subchapter three of this chapter when the tax was originally reported, the commissioner of finance may determine a deficiency of tax under subchapter two or three of this chapter against such taxpayer and against any other taxpayers which might have been included in such a return.

8. Deficiency defined. For the purposes of this subchapter, a deficiency means the amount of the tax imposed by the named subchapters, or any of them, less: (a) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by it or by the commissioner of finance), and less (b) the amounts previously assessed (or collected without assessment) as a deficiency and plus (c) the amount of any rebates. For the purpose of this definition, the tax imposed by subchapter two or three of this chapter and the tax shown on the return shall both be determined without regard to any payment of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) as was made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

9. Exception where change or correction of sales and compensating use tax liability is not reported.

(a) If a taxpayer fails to comply with subchapter two of this chapter in not reporting a change or correction of its sales and compensating use tax liability or in not filing a copy of an amended return or report relating to its sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision two of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under subchapter two of this chapter, by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by subchapter two, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

(b) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section 11-678 (limiting credits or refunds after petition to the tax appeals tribunal), or subdivision two of section 11-680 (authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision three of this section.

(c) If the taxpayer has terminated its existence, a notice of additional tax due may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this subchapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. 2, 3, 4 amended chap 808/1992 § 28, eff. Oct. 1, 1992

Subd. 5 subd. heading, par a amended chap 525/1988 § 23

Subd. 5 par (b) amended chap 808/1992 § 28, eff. Oct. 1, 1992

Subd. 9 par (b) amended chap 808/1992 § 28, eff. Oct. 1, 1992

DERIVATION

Formerly § R46-62.0 added LL 21/1966 § 1

Sub 5 amended LL 63/1969 § 3

Sub 5 par a amended LL 37/1982 § 7

Sub 9 added LL 10/1985 § 7

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***** Current through December 2009 ****

NYC Administrative Code 11-673

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-673 Assessment.

1. Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision two of section 11-672 of this subchapter if no petition is both served on the commissioner of finance and filed with the tax appeals tribunal, or if a petition is so served and filed, then upon the date when a decision of the tax appeals tribunal establishing the amount of the deficiency becomes final. If a report or an amended return filed pursuant to subchapter two or three of this chapter concedes the accuracy of a federal or New York state adjustment or change or correction or renegotiation or computation or recomputation of tax, any deficiency in tax under subchapter two or three of this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-674 of this chapter.

If a report filed pursuant to subchapter two of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under subchapter two of this chapter resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section 11-674 of this chapter.

If a notice of additional tax due, as prescribed in subdivision five of section 11-672 of this chapter, has been

mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state adjustment or change or correction or renegotiation or computation or recomputation of tax, or an amended return, where such return was required by subchapter two or three of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

If a notice of additional tax due, as prescribed in subdivision nine of section 11-672 of this subchapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by subchapter two of this chapter, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated tax, shall be deemed to be assessed upon the date of receipt of payment notwithstanding any other provisions.

2. Other assessment powers. If the mode or time for the assessment of any tax under the named subchapters (including interest, additions to tax and assessable penalties) is not otherwise provided for, the commissioner of finance may establish the same by regulations.

3. Estimated tax. No unpaid amount of estimated tax under subchapter two or three of this chapter shall be assessed.

4. Supplemental assessment. The commissioner of finance may, at any time within the period described for assessment, make a supplemental assessment, subject to the provisions of section 11-672 of this subchapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

5. Cross reference. For assessment in case of jeopardy, see section 11-685 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 first unnumbered par. amended chap 808/1992 § 29, eff. Oct.

1, 1992

DERIVATION

Formerly § R46-63.0 added LL 21/1966 § 1

Sub 1 amended LL 63/1969 § 4

Sub 1 amended LL 10/1985 § 8

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-674 Limitations on assessment.

1. General. Except as otherwise provided in this section, any tax under the named subchapters shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

2. Time return deemed filed. For the purposes of this section, a return of tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof shall be deemed to be filed on such last day.

3. Exceptions.

(a) Assessment at any time. The tax may be assessed at any time if:

(1) no return is filed,

(2) a false or fraudulent return is filed with intent to evade tax,

(3) in the case of the tax imposed under subchapter two or three of this chapter, the taxpayer fails to file a report or amended return required thereunder, in respect of an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax, or in respect of a change or correction or renegotiation or in respect of the execution of a notice of waiver report of which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for

federal or New York state income tax purposes, or

(4) in the case of the tax imposed under subchapter two of this chapter, the taxpayer fails to file a report or amended return or report required thereunder, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by subchapter two was claimed.

(b) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Report of federal or New York state change or correction. In the case of the tax imposed under subchapter two or three of this chapter, if the taxpayer files a report or amended return required thereunder, in respect of an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax, or in respect of a change or correction or renegotiation, or in respect of the execution of a notice of waiver report of which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal or New York state change or correction or renegotiation, or computation or recomputation of tax. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(d) Deficiency attributable to carry back. If a deficiency of tax under subchapter two of this chapter is attributable to the application to taxpayer of a net operating loss carry back or a capital loss carry back, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(e) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(f) Request for prompt assessment. The tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the taxpayer or by a fiduciary representing the taxpayer, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision four. This subdivision shall not apply unless:

(1) (A) such written request notifies the commissioner of finance that the taxpayer contemplates dissolution at or before the expiration of such eighteen-month period, (B) the dissolution is in good faith begun before the expiration of such eighteen-month period, (C) the dissolution is completed;

(2) (A) such written request notifies the commissioner of finance that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(g) Change of the allocation of taxpayer's income or capital. No change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based shall be made where an assessment of tax is made during the additional period of limitation under subparagraph three or four of paragraph (a), or under paragraph (c), (d) or (i); and where any such assessment has been made, or where a notice of deficiency has been mailed to the

taxpayer on the basis of any such proposed assessment, no change of the allocation of income or capital shall be made in a proceeding on the taxpayer's claim for refund of such assessment or on the taxpayer's petition for redetermination of such deficiency.

(h) Report concerning waste treatment facility. Under the circumstances described in subparagraph three of paragraph (g) of subdivision eight of section 11-602 of this chapter, the tax may be assessed within three years after the filing of the report containing the information required by such paragraph.

(i) Report of changed or corrected sales and compensating use tax liability. In the case of a tax imposed under subchapter two of this chapter, if the taxpayer files a report or amended return or report required thereunder, in respect of a change or correction of sales and compensating use tax liability, the assessment (if not deemed to have been made upon the filing of the report) may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

4. Omission of income on return. The tax may be assessed at any time within six years after the return was filed if a taxpayer omits from gross income required to be reported on a return under any of the named subchapters an amount properly includable therein which is in excess of twenty-five per centum of the amount of gross income stated in the return.

For the purposes of this subdivision:

(a) the term "gross income" means gross income for federal income tax purposes as reportable on a return under subchapter two of this chapter and "gross earnings, "gross income," "gross operating income" and "gross direct premiums less return premiums," as those terms are used in whichever of the named subchapters is applicable;

(b) there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of finance of the nature and amount of such item.

5. Suspension of running of period of limitations. The running of the period of limitations on assessment or collection of tax or other amount (or of a tranferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision three of section 11-672 of this subchapter from making the assessment or from collecting by levy.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 3 par (a) subpar (3) amended chap 525/1988 § 24

Subd. 3 par (c) amended chap 525/1988 § 24

Subd. 3 par (d) amended L.L. 57/2001 § 12, eff. Oct. 10, 2001.

DERIVATION

Formerly § R46-64.0 added LL 21/1966 § 1

Sub 3 par a subpar 3 amended LL 63/1969 § 5

Sub 3 par c amended LL 63/1969 § 6

Sub 3 par a subpar 3 amended LL 37/1982 § 8

Sub 3 par c amended LL 37/1982 § 9

Sub 3 pars a, g amended LL 10/1985 § 9

Sub 3 par i added LL 10/1985 § 10

CASE NOTES

¶ 1. Section 11-674(4) provides a three year statute of limitations on the City's assessment of General Corporation Tax. There are exceptions where "no return" is filed or where the return is fraudulent. A business which files Activities Reports (Form NYC-425), which disclaims tax liability, is deemed to have filed a "return" for purposes of the statute of limitations. Apex Air Freight, Inc. v. O'Cleireacain, 210 A.D.2d 7, 619 N.Y.S.2d 38 (1st Dept. 1994).

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NYC Administrative Code 11-675

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-675 Interest on underpayment.

1. General. If any amount of tax is not paid on or before the last date prescribed in whichever of the named subchapters is applicable for payment, interest on such amount at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of six percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

2. Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax under subchapter two or subchapter three of this chapter.

3. Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in whichever of the named subchapters is applicable (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

4. Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner of finance for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

5. Tax reduced by carry back. If the amount of tax under subchapter two for any taxable year is reduced by reason of a carry back of a net operating loss or a capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss or capital loss arises. Such filing date shall be determined without regard to extensions of time to file.

6. Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the taxes under the named subchapters. Any reference in this subchapter to the tax imposed by the named subchapters, or any of them, shall be deemed also to refer to interest imposed by this section on such tax.

7. Interest on penalties or addition to tax. Interest shall be imposed under subdivision one in respect to any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision two of section 11-683 of this subchapter in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

8. Payment within ten days after notice and demand. If notice and demand is made for payment of any amount under subdivision two of section 11-683 of this subchapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

9. Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected respectively.

10. Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of six percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

11. Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 241/1989 § 9

Subds. 4, 5, 6, 7 renumbered chap 241/1989 § 27

(former subds. 5, 6, 7, 8)

Subd. 5 amended L.L. 57/2001 § 13, eff. Oct. 10, 2001.

Subd. 8 renumbered chap 241/1989 § 27

(former subd. 11)

Subds. 9, 10 repealed chap 241/1989 § 27

Subd. 9 renumbered chap 241/1989 § 27

(former subd. 12)

Subd. 10 renumbered chap 241/1989 § 27

(former subd. 13 amended chap 241/1989 § 9)

Subd. 11 renumbered chap 241/1989 § 27

(former subd. 14)

DERIVATION

Formerly § R46-65.0 added LL 21/1966 § 1

Subs 1, 13 amended LL 94/1977 § 5

Sub 4 repealed LL 43/1983 § 10

Sub 6 amended LL 43/1983 § 11

CASE NOTES FROM FORMER SECTION

¶ 1. Corporation that filed a city business tax return in the wrong category was subject to three year statute of limitations and did not come within the exception for failure to file a return.-Airborne Freight Corp. v. Michael, 94 App. Div. 2d 699 [1983].

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-676 Additions to tax and civil penalties.

1. (a) Failure to file return. (A) In case of failure to file a return under the named subchapters on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Failure to pay tax shown on return. In case of failure to pay the amounts shown as tax on any return required to be filed under the named subchapters on or before the prescribed date (determined with regard to any extension of

time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(c) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under the named subchapters which is not so shown (including an assessment made pursuant to subdivision one of section 11-673 of this subchapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(d) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph (a) of this subdivision shall be reduced by the amount of the addition under paragraph (b) of this subdivision for any month to which an addition applies under both paragraphs (a) and (b). In any case described in subparagraph (B) of paragraph (a) of this subdivision, the amount of the addition under such paragraph (a) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (c) of this subdivision shall be reduced by the amount of the addition under paragraph (a) of this subdivision (determined without regard to subparagraph (B) of such paragraph (a)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

2. Deficiency due to negligence. (a) If any part of a deficiency is due to negligence or intentional disregard of this subchapter or any of the named subchapters or rules or regulations thereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency.

(b) There shall be added to the tax (in addition to the amount determined under paragraph (a) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision one of section 11-675 with respect to the portion of the deficiency described in such paragraph (a) which is attributable to the negligence or intentional disregard referred to in such paragraph (a), for the period beginning on the last date prescribed by law for payment of such deficiency (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(c) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in gross income, as that term is defined in paragraph (a) of subdivision four of section 11-674, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any addition to tax is imposed under this subdivision by reason of the preceding sentence, the amount of the addition to tax imposed by paragraph (a) of this subdivision shall be five percent of the portion of the underpayment

which is attributable to the failure described in the preceding sentence.

3. Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax under subchapter two or three of this chapter, or fails to pay all or any part of an amount which is applied as an installment against such estimated tax, it shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of six percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the third month following the close of the taxable year. The amount of the underpayment shall be, with respect to any installment of estimated tax computed on the basis of the preceding year's tax, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment or, with respect to any other installment of estimated tax, the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year (or if no return was filed, ninety percent of the tax for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. In any case in which there would be no underpayment if "eighty percent" were substituted for "ninety percent" each place it appears in this subdivision, the addition to the tax shall be equal to seventy-five percent of the amount otherwise determined. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the termination of existence of the taxpayer.

4. Exception to addition for underpayment of estimated tax. The addition to tax under subdivision three with respect to any underpayment of any amount which is applied as an installment against estimated tax under subchapter two or three of this chapter shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of any such amount equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(a) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(b) An amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year, or

(c) (i) An amount equal to ninety per centum of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(1) for the first three months or the first five months of the taxable year, in the case of the installment required to be paid in the sixth month.

(2) for the first six months or the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(3) for the first nine months or the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(ii) For purposes of subparagraph (i) the taxable income shall be placed on an annualized basis by:

(1) multiplying it by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) and

(2) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subparagraph (i), or

(d) (i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner:

(A) take the taxable income for all months during the taxable year preceding the filing month,

(B) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(C) determine the tax on the amount determined under clause (B), and

(D) multiply the tax determined under clause (C) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of subparagraph (i):

(A) the base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances, and

(B) the term "filing month" means the month in which the installment is required to be paid.

5. (a) Except as provided in paragraph (b) hereof, paragraphs (a) and (b) of subdivision four of this section shall not apply in the case of any corporation (or any predecessor corporation) which had entire net income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(b) The amount treated as the estimated tax under paragraphs (a) and (b) of subdivision four of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

6. Deficiency due to fraud. (a) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency.

(b) There shall be added to the tax (in addition to the amount determined under paragraph (a) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision one of section 11-675 with respect to the portion of the underpayment described in such paragraph (a) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(c) The addition to tax under this subdivision shall be in lieu of any other addition to tax imposed by subdivision one or two.

7. Additional penalty. Any person who with fraudulent intent shall fail to pay under the named subchapters any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under any of the named subchapters, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this subchapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

8. Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this subchapter to tax imposed by any of the named subchapters shall be deemed also to refer to the additions to tax and penalties

provided by this section. For purposes of section 11-672 of this subchapter, this subdivision shall not apply to:

(a) any addition to tax under subdivision one except as to that portion attributable to a deficiency;

(b) any addition to tax under subdivision three or fourteen; and

(c) any additional penalties under subdivisions seven and twelve.

9. Determination of deficiency. For purposes of subdivisions two and six the amount shown as the tax by the taxpayer upon its return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

10. Person defined. For purposes of subdivisions seven and twelve, the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

11. Substantial understatement of liability. If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of subdivision eight of section 11-672). The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

12. Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (a) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(b) For purposes of paragraph (a) of this subdivision, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(c) For purposes of paragraph (a) of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(d) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

13. Failure to file report of information relating to certain interest payments. In case of failure to file the report of information required under subdivision two-a of section 11-605 of this chapter, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax a penalty of five hundred dollars.

14. Failure to include on return information relating to issuer's allocation percentage. Where a return is filed but does not contain (1) the information necessary to compute the taxpayer's issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of section 11-604 of this chapter, where the same is called for on the return, or, (2) the taxpayer's issuer's allocation percentage, where the same is called for on the return but where all of the information necessary for the computation of such percentage is not called for on the return, then unless it is shown that such failure is due to reasonable cause and not due to willful neglect there shall be added to the tax a penalty of five hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 3 amended chap 241/1989 § 10

Subd. 4 par (c) amended L.L. 45/1990 § 9, eff. July 12, 1990

Subd. 8 par (b) amended chap 241/1989 § 54

Subd. 13 added chap 525/1988 § 22

Subd. 14 added chap 241/1989 § 55

DERIVATION

Formerly § R46-66.0 added LL 21/1966 § 1

Sub 4 par c unnumbered par added LL 23/1974 § 3

Sub 4 par d amended LL 23/1974 § 4

Sub 3 amended LL 94/1977 § 6

Sub 4 par c amended LL 22/1981 § 1

Sub 3 amended LL 1/1983 § 1

Sub 4 par c amended LL 1/1983 § 2

Sub 1 amended LL 2/1983 § 18

Sub 3 amended LL 43/1983 § 12

Sub 4 amended LL 43/1983 § 13

Subs 6-10 renumbered LL 43/1983 § 14

(formerly subs 5-9)

Sub 5 added LL 43/1983 § 14

Subs 8, 9, 10 amended LL 43/1983 § 15

Sub 11 added LL 43/1983 § 16

Sub 1 pars a, d amended chap 765/1985 § 62

Subs 2, 6, 8, 10, 11 amended chap 765/1985 § 62

Sub 12 added chap 765/1985 § 62

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-677 Overpayment.

1. General. The commissioner of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by any of the named subchapters of this chapter or on the taxpayer who made the overpayment, and the balance shall be refunded out of the proceeds of the tax.

2. Credits against estimated tax. The commissioner of finance may prescribe regulations providing for the crediting against the estimated tax under subchapter two or three of this chapter for any taxable year of the amount determined to be an overpayment of tax under any such subchapter for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax under subchapter two or three of this chapter for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

3. Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

4. Assessment and collection after limitation period. If any amount of tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

5. Assignment of overpayment. A credit for an overpayment of tax under any of the named subchapters may be assigned by the taxpayer to a corporation liable to pay taxes under any of the named subchapters, and the assignee of the whole or any part of such credit, on filing such assignment with the commissioner of finance, shall thereupon be entitled to credit upon the books of the commissioner of finance for the amount thereof on its current account for taxes, in the same manner and to the same effect as though the credit had originally been allowed in its favor.

6. Notwithstanding article fifty-two of the civil practice law and rules or any other provision of law to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of such department, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-67.0 added LL 21/1966 § 1

Sub 6 added LL 95/1977 § 1

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-678 Limitations on credit or refund.

1. General. Claim for credit or refund of an overpayment of tax under any of the named subchapters shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed. For special restriction in a proceeding on a claim for refund of tax paid pursuant to an assessment made as a result of: (a) a net operating loss carryback, or (b) an increase or decrease in federal or New York state taxable income or other basis of tax or federal or New York state tax, or (c) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

2. Extension of time by agreement. If any agreement under the provisions of paragraph (b) of subdivision three of section 11-674 of this subchapter (extending the period of assessment of tax) is made within the period prescribed in subdivision one for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for

making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision one if a claim had been filed on the date the agreement was executed.

3. Notice of change or correction of federal or New York state income or other basis of tax. If a taxpayer is required by subchapter two or three of this chapter to file a report or amended return in respect of (a) a decrease or increase in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax, (b) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. If the report or amended return required by subchapter two or three of this chapter is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal or New York state change or correction. The amount of such credit or refund:

(c) shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based, and

(d) shall not exceed the amount of the reduction in tax attributable to such decrease or increase in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax or to such federal or New York state change or correction or renegotiation, or computation or recomputation of tax.

This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

4. Overpayment attributable to net operating loss carry back or capital loss carry back. A claim for credit or refund of so much of an overpayment under subchapter two of this chapter as is attributable to the application to the taxpayer of a net operating loss carry back or a capital loss carry back shall be filed within three years from the time the return was due (including extensions thereof) for the taxable year of the loss, or within the period prescribed in subdivision two in respect of such taxable year, or within the period prescribed in subdivision three, where applicable, in respect to the taxable year to which the net operating loss or capital loss is carried back, whichever expires the latest. Where such claim for credit or refund is filed after the expiration of the period prescribed in subdivision one or in subdivision two where applicable, in respect to the taxable year to which the net operating loss or capital loss is carried back, the amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based.

5. Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision six of this section or subdivision four of section 11-681 of this subchapter, after the expiration of the applicable period of limitation specified in this subchapter, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under the named subchapters.

6. Effect of a petition to tax appeals tribunal. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-672 of this subchapter and if the taxpayer files a timely petition with the tax appeals tribunal under section 11-680 of this subchapter, the tax appeals tribunal may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(a) as to overpayment determined by a decision of the tax appeals tribunal which has become final; and

(b) as to any amount collected in excess of an amount computed in accordance with the decision of the tax appeals tribunal which has become final; and

(c) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(d) as to any amount claimed as a result of a change or correction described in subdivision three.

7. Limit on amount of credit or refund. The amount of overpayment determined under subdivision six shall, when the decision of the tax appeals tribunal has become final, be credited or refunded in accordance with subdivision one of section 11-677 of this subchapter and shall not exceed the amount of tax which the tax appeals tribunal determines as part of its decision was paid:

(a) after the mailing of the notice of deficiency, or

(b) within the period which would be applicable under subdivision one, two or three, if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the ground upon which the tax appeals tribunal finds that there is an overpayment.

For special restriction on credit or refund in a proceeding on a petition for redetermination of a deficiency where the notice of deficiency is issued as a result of (i) a net operating loss carryback, or (ii) an increase or decrease in federal or New York state taxable income or other basis of tax or federal or New York state tax, or (iii) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

8. Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

9. Prepaid tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment (including any amount paid by the taxpayer as estimated tax for a taxable year) shall be deemed to have been paid by it on the fifteenth day of the third month following the close of the taxable year the income of which is the basis for tax under subchapter two or three of this chapter, or on the last day prescribed in part one of subchapter three or subchapter four for the filing of a final return for such taxable year, or portion thereof, determined in all cases without regard to any extension of time granted the taxpayer.

10. Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision two of section 11-677 of this subchapter.

11. Notice of change or correction of sales and compensating use tax liability. (a) If a taxpayer is required by subchapter two of this chapter to file a report or amended return in respect of a change or correction of its sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. The amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return (or any additional assessment) was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability.

(b) This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 525/1988 § 50

Subd. 3 amended chap 241/1989 § 33

Subd. 3 amended chap 525/1988 § 25

Subd. 4 amended L.L. 57/2001 § 14, eff. Oct. 10, 2001.

Subd. 6 amended chap 808/1992 § 30, eff. Oct. 1, 1992

Subd. 7 amended chap 808/1992 § 30, eff. Oct. 1, 1992

Subd. 7 amended chap 525/1988 § 50

DERIVATION

Formerly § R46-68.0 added LL 21/1966 § 1

Sub 1 amended LL 63/1969 § 7

Sub 3 amended LL 63/1969 § 8

Sub 7 amended LL 63/1969 § 9

Sub 1 amended LL 37/1982 § 10

Sub 3 amended LL 37/1982 § 11

Sub 7 amended LL 37/1982 § 12

Sub 11 added LL 10/1985 § 11

CASE NOTES FROM FORMER SECTION

¶ 1. Extensions in a deficiency assessment proceeding could not operate to revive a claim for credit or refund, under subdivision 1 of this section, of an overpayment of tax as to which the Statute of Limitations had already run.-Mobil v. Comm'r of Finance of the City of N.Y., 101 A.D. 2d 723 [1984].

CASE NOTES

¶ 1. A taxpayer brought a declaratory judgment action challenging the City's denial of its refund claim. The court rejected the City's claim that the plaintiff had failed to exhaust administrative remedies. Where a taxpayer challenges the City's tax adjustments as unauthorized under Admin. Code §11-678, and there is no claim that an exercise of duly granted authority was tainted by factual or mathematical errors or were otherwise arbitrary or irrational, the taxpayer does not have to exhaust administrative remedies before commencing litigation. However, the court agreed with the City's contention that in determining whether or not plaintiff was entitled to a refund, the City can examine the entire return (not just the portion of the return relating to the refund claim) to ascertain whether there were any adjustments that could be made in the City's favor that would offset the claimed refund. The court held that the City had the right to look for offsetting adjustments to the taxpayer's refund claim, even though the three-year Statute of Limitations would have barred the City from affirmative recovery of a tax deficiency based on such adjustments. Bankers Trust Corp. v.

New York City Dept. of Finance, 301 A.D.2d 321, 750 N.Y.S.2d 29 (1st Dept. 2002), leave to appeal granted, 99 N.Y.2d 507, 757 N.Y.S.2d 818 (2003).

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CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-679 Interest on overpayment.

1. General. Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect to the tax imposed by any of the named subchapters:

(a) from the date of the overpayment to the due date of an amount against which a credit is taken;

(b) from the date of the overpayment to a date (to be determined by the commissioner of finance) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) Late and amended returns and claims for credit or refund. Notwithstanding paragraph (a) or (b) of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(d) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph (c) of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall be not construed as limiting or mitigating the effect of any statute of limitations or any other provision of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund of an overpayment.

(e) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

2. Advance payment of tax and estimated tax. The provisions of subdivisions eight and nine of section 11-678 of this subchapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

3. Tax refund within three months of claim for overpayment. If any overpayment of tax imposed by any of the named subchapters is credited or refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, or within three months after an amended return was filed claiming such overpayment or within three months after a claim for credit or refund was filed on which such overpayment was claimed, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year or period shall be considered as filed on such last day.

4. Refund of tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by subchapter two of this chapter results from a carry back of a net operating loss or a net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision three of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

5. No interest until return in processible form.

(a) For purposes of subdivisions one and three of this section, a return shall not be treated as filed until it is filed in processible form.

(b) For purposes of paragraph (a) of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name; address, and identifying number and the required signatures, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

6. Cross reference. For provision with respect to interest after failure to file a report of federal or New York state change or correction or amended return under subchapter two or three, see subdivison three of section 11-678 of this

subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 241/1989 § 11

Subd. 1 par (c) amended chap 241/1989 § 34

Subd. 1 par (d) added chap 241/1989 § 35

Subd. 1 par (e) so designated and amended chap 241/1989 § 35

(formerly subd. 1 closing par)

Subd. 3 amended chap 241/1989 § 36

Subd. 4 amended L.L. 57/2001 § 15, eff. Oct. 10, 2001.

Subd. 6 amended chap 241/1989 § 37

DERIVATION

Formerly § R46-69.0 added LL 21/1966 § 1

Sub 1 amended LL 94/1977 § 7

Sub 1 amended LL 43/1983 § 17

Sub 4 amended LL 43/1983 § 18

Sub 6 renumbered LL 43/1983 § 19

(formerly sub 5)

Sub 5 added LL 43/1983 § 19

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CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-680 Petition to tax appeals tribunal.

1. General. The form of a petition to the tax appeals tribunal, and further proceedings before the tax appeals tribunal in any case initiated by the filing of a petition, shall be governed by such rules as the tax appeals tribunal shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. A decision of the tax appeals tribunal shall be rendered, and notice thereof shall be given, in the manner provided by section one hundred seventy-one of the charter.

2. Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a taxpayer whose last known address is outside of the United States, after the mailing of the notice of deficiency authorized by section 11-672 of this subchapter, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, after ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, the taxpayer may file a petition with the tax appeals tribunal for redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision seven of section 11-678 of this subchapter. For special restriction where the notice of deficiency relates to a proposed assessment made as a result of: (a) a net operating loss carry back or a capital loss carry back, (b) an increase or decrease in federal or New York state taxable

income or other basis of tax or federal or New York state tax, or (c) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

3. Petition for refund. A taxpayer may file a petition with the tax appeals tribunal for the amounts asserted in a claim for refund if:

(a) the taxpayer has filed a timely claim for refund with the commissioner of finance,

(b) the taxpayer has not previously filed with the tax appeals tribunal a timely petition under subdivision two for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision six of section 11-678 of this subchapter, and

(c) either: (1) six months have expired since the claim was filed, or (2) the commissioner of finance has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the commissioner of finance. If a taxpayer files a written waiver of the requirement that the taxpayer be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) If the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code, a taxpayer which is eligible to file a petition for refund with the tax appeals tribunal pursuant to this subdivision may request a conciliation conference prior to filing such petition, provided the request is made within the time prescribed for filing the petition. Notwithstanding anything in this subdivision to the contrary, if the taxpayer has requested a conciliation conference in accordance with the procedure established pursuant to section 11-124 of the code, a petition for refund may be filed no later than ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding.

4. Assertion of deficiency after filing petition.

(a) Petition for redetermination of deficiency. If a taxpayer files with the tax appeals tribunal a petition for redetermination of a deficiency, the tax appeals tribunal shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section 11-676 of this subchapter, if claim therefor is asserted at or before the hearing under rules of the tax appeals tribunal.

(b) Petition for refund. If the taxpayer files with the tax appeals tribunal a petition for credit or refund for a taxable year, the tax appeals tribunal may:

(1) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax appeals tribunal and within the period in which an assessment would be timely under section 11-674 of this subchapter, or

(2) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax appeals tribunal.

(c) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner of finance under this subdivision.

(d) Restriction on further notices of deficiency. If the taxpayer files a petition with the tax appeals tribunal under

this section, no notice of deficiency under section 11-672 of this subchapter may thereafter be issued by the commissioner of finance for the same taxable year, except in case of fraud or with respect to an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax or a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, required to be reported under subchapter two or three of this chapter or with respect to a state change or correction of sales and compensating use tax liability required to be reported under subchapter two of this chapter.

5. Burden of proof. In any case before the tax appeals tribunal under this subchapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner of finance:

(a) whether the petitioner has been guilty of fraud with intent to evade tax;

(b) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;

(c) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax or a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, required to be reported under subchapter two or three of this chapter, and of which increase, decrease, change or correction or renegotiation, or computation or recomputation, the commissioner of finance had no notice at the time he or she mailed the notice of deficiency or unless such increase indeficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under subchapter two of this chapter, and of which change or correction the commissioner of finance had no notice at the time he or she mailed the notice of deficiency; and

(d) whether any person is liable for a penalty under subdivision twelve of section 11-676.

6. Evidence of related federal or state determination. Evidence of a federal or state determination relating to issues raised in a case before the tax appeals tribunal under this section shall be admissible, under rules established by the tax appeals tribunal.

7. Jurisdiction over other years. The tax appeals tribunal shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

HISTORICAL NOTE

Section amended chap 808/1992 § 31, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

Subd. 2 amended L.L. 57/2001 § 16, eff. Oct. 10, 2001.

Subd. 2 amended chap 525/1988 § 51

Subd. 4 par (d) amended chap 525/1988 § 26

Subd. 5 par (c) amended chap 525/1988 § 26

DERIVATION

Formerly § R46-70.0 added LL 21/1966 § 1

Sub 2 amended LL 63/1969 § 10

Sub 4 par d amended LL 63/1969 § 11

Sub 5 amended LL 63/1969 § 12

Sub 2 amended LL 37/1982 § 13

Sub 4 par d amended LL 37/1982 § 14

Sub 5 par c amended LL 37/1982 § 15

Sub 5 amended chap 765/1985 § 63

Sub 4 par d amended LL 10/1985 § 12

Subs 5, 6 amended LL 10/1985 § 13

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NYC Administrative Code 11-681

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-681 Review of tax appeals tribunal's decision.

1. General. A decision of the tax appeals tribunal sitting en banc shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified mail, return receipt requested, to the taxpayer and the commissioner of finance.

2. Judicial review exclusive remedy. The review of a decision of the tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by the named subchapters.

3. Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner of finance may assess a deficiency determined by the tax appeals tribunal in a decision rendered pursuant to section one hundred seventy-one of the charter after the expiration of the period specified in subdivision one, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer unless the taxpayer, at or before the time the taxpayer's application for review is made, has paid the deficiency, has deposited with the commissioner of finance the amount of the deficiency, or has filed with the commissioner of finance a bond (which may be a jeopardy bond under subdivision eight of section 11-685 of this subchapter) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against the taxpayer in the prosecution of

the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state, conditioned upon the payment of the deficiency (including interest and other amounts) as finally determined and such costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the tax appeals tribunal is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

4. Credit, refund or abatement after review. If the amount of a deficiency determined by the tax appeals tribunal is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

5. Date of finality of tax appeals tribunal decision. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subdivision one for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of decision is sent by certified mail to the taxpayer and the commissioner of finance.

HISTORICAL NOTE

Section amended chap 808/1992 § 32, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-71.0 added LL 21/1966 § 1

CASE NOTES

¶ 1. In the absence of any claim that the statute was unconstitutional or was wholly inapplicable to the taxpayer, Sec. 11-681 is the exclusive remedy of a taxpayer challenging its tax liability. Bankers Trust Corp v. New York City Dept. of Finance, 1 N.Y.3d 315, 773 N.Y.S.2d 1, 805 N.E.2d 92 (2003).

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-682 Mailing rules; holidays; miscellaneous.

1. Timely mailing. (a) If any return, declaration of estimated tax, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this subchapter or of the named subchapters is, after such period or such date, delivered by United States mail to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner of finance or, where relevant, the tax appeals tribunal shall prescribe by regulation, certified mail may be used in lieu of registered mail under this subdivision. Except as provided in paragraph (b) of this subdivision, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulations of the commissioner of finance or, where relevant, the tax appeals tribunal.

(b) (i) Any reference in paragraph (a) of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph (a) of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner may withdraw such designation for purposes of this title. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in paragraph (a) of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in paragraph (a) of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(ii) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph (a) of this subdivision. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

2. Last known address. For purposes of this subchapter, a taxpayer's last known address shall be the address given in the last return filed by it, unless subsequently to the filing of such return the taxpayer shall have notified the commissioner of finance of a change of address.

3. Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this subchapter or the named subchapters (including any extension of time) for performing any act falls on a Saturday, Sunday, or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

4. Certificate; unfiled return. For purposes of this subchapter and sections one hundred sixty-eight through one hundred seventy-two of the charter, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 513/2002 § 3, eff. Sept. 17, 2002 and applying to

any document required to be filed and any payment required to be made

on or after Oct. 17, 2002.

Subds. 1, 4 amended chap. 808/1992 § 33, eff. Oct. 1, 1992

DERIVATION

Formerly § R46-72.0 added LL 21/1966 § 1

Sub 1 amended LL 41/1984 § 10

Section heading amended chap 765/1985 § 64

Sub 4 added chap 765/1985 § 65

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NYC Administrative Code 11-683

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-683 Collection, levy and liens.

1. Collection procedures. The taxes imposed by the named subchapters shall be collected by the commissioner of finance, and he or she may establish the mode or time for the collection of any amount due him or her thereunder if not otherwise specified. The commissioner of finance shall, upon request, give a receipt for any sum collected thereunder. The commissioner of finance may authorize banks or trust companies which are depositaries or financial agents of the city to receive and give a receipt for any tax imposed under the named subchapters in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

2. Notice and demand for tax. The commissioner of finance shall as soon as practicable give notice to each taxpayer liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the principal office of the taxpayer in the city or shall be sent by mail to such taxpayer's last known address. Except where the commissioner of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

3. Issuance of warrant after notice and demand. If any corporation or other person liable under the named subchapters for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten

days after notice and demand therefor is given to such corporation or other person under subdivision two, the commissioner of finance may within six years after the date of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance, commanding him or her to levy upon and sell the real and personal property of such corporation or other person for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner of finance, and pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner of finance finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner of finance and upon failure or refusal to pay such tax or other amount the commissioner of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

4. Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision three shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

5. Judgment. When a warrant has been filed with the county clerk the commissioner of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

6. Execution. The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

7. Foreign corporations. Where a notice and demand under subdivision two shall have been given to a foreign corporation or other person who is not then a resident, and it appears to the commissioner of finance that it is not practicable to find in the state property of such foreign corporation or nonresident person sufficient to pay the entire balance of tax or other amount owing by such foreign corporation or nonresidential person, the commissioner of finance may, in accordance with subdivision three, issue a warrant directed to an officer or employee of the department of finance, a copy of which warrant shall be mailed by certified or registered mail to such foreign corporation or nonresident person at its last known address, subject to the rules of mailing provided in subdivision one of section 11-672. Such warrant shall command the officer or employee to proceed in New York county, and he or she shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner of finance may also, in his or her discretion, designate agents or retain counsel for the purpose of collecting, outside the state, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this subchapter or under any of the named subchapters, against foreign corporations or other non-resident persons, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the commissioner of finance shall deem proper and sufficient.

8. Action by city for recovery of taxes. Action may be brought by the corporation counsel of the city at the instance of the commissioner of finance to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this subchapter or under the named subchapters within six years prior to the date the action is commenced.

9. Release of lien or vacating warrant. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision four or seven of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

10. Lien from due date of return. (a) In addition to any other lien provided for in this section, each tax imposed by the named subchapters shall become a lien on the date on which the return is required to be filed (without regard to any extension of time for filing such return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax imposed by any of the named subchapters, or to do business in this state in a corporate or organized capacity. Each such tax shall be a lien and binding upon the real and personal property of the taxpayer, or of a transferee liable to pay the same, until the same is paid in full, except that no lien for any additional tax assessed pursuant to this subchapter shall be enforceable against property which prior to the issuance to the taxpayer of a notice of deficiency under section 11-672 of this subchapter had been transferred in good faith to a bona fide transferee for value. But the lien of each such tax shall be subject to the lien of any mortgage indebtedness existing against real property previous to the time when the tax became a lien and where such mortgage indebtedness has been incurred in good faith and was not given, directly or indirectly, to any officer or stockholder of the corporation owning such real property, whether as a purchase money mortgage or otherwise, and shall also be subject to the lien of local taxes and assessments, without regard to when the lien for such taxes and assessments may have accrued. If the return is filed and the tax shown on the report to be due is paid on or before the date on which the report is required to be filed, without regard to any extensions of time for filing such report, the lien shall not be enforceable against the interest of any purchaser or mortgagee in property which is thereafter, but prior to the issuance to the taxpayer of a notice of deficiency under section 11-672 of this subchapter transferred to a bona fide purchaser for value, or mortgaged where the mortgage indebtedness is incurred in good faith and the mortgage is not given, directly or indirectly, to any officer or stockholder of the corporation. In any action to foreclose any such mortgage, or to foreclose the lien of local taxes or assessments, to which the people of the state, or the city shall have been made a party defendant by reason of the existence of a lien for any such tax, or if no such tax was due or was a lien at the time of the commencement of such action and the filing of the notice of pendency thereof but such a tax becomes due or becomes a lien subsequent to the time of the commencement of such action and the filing of the notice of pendency thereof, such real property shall be sold and conveyed in such action free from any such tax lien, and any such tax lien may become a lien on any surplus moneys which may result from such sale, to be determined in the proceedings for the distribution of such surplus moneys. Where title to real property passes from an individual, or from a corporation owing no tax, to another corporation which is in default for such tax, the lien herein provided shall not be enforceable except as to any equity after the prior mortgage or purchase money mortgage encumbrance.

(b) The commissioner of finance may, upon application made to the commissioner and the payment of a fee of twenty-five dollars, release any real property from the lien under this subdivision, provided payment be made to the commissioner of finance of such a sum as the commissioner of finance shall deem adequate consideration for such release, or deposit be made of such security or such bond be filed as the commissioner of finance shall deem proper to secure payment of any such tax. The application for such release shall contain an accurate description of the property to be released together with such information as the commissioner of finance may require. Such release may be recorded in any office in which conveyances of real estate are entitled to be recorded.

(c) All taxes, additions to tax, penalties and interest which have become a lien under this subdivision shall cease to be a lien after the expiration of twenty years from the date they become due and payable, except that taxes, additions to tax, penalties and interest which have become a lien under this subdivision (1) as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such taxes, additions to tax, penalties or interest and (2) as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such taxes, additions to tax, penalties or interest, as against such purchasers or holders, shall cease to be a lien after the

expiration of ten years from the date they become due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 9 amended chap 513/2002 § 26, eff. Sept. 17, 2002.

Subd. 10 par (c) amended L.L. 57/2001 § 17, eff. Oct. 10, 2001.

DERIVATION

Formerly § R46-73.0 added LL 21/1966 § 1

Sub 10 par b amended LL 12/1975 § 2

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-684 Transferees.

1. General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the commissioner of finance under this subchapter or under the named subchapters, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes, in case of successive transfers, donee, heir, legatee, devisee, distributee, and successor by merger, consolidation or other reorganization.

2. Exceptions.

(a) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner of finance in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(b) If, before the expiration of the time prescribed in subdivision one or the immediately preceding paragraph of this subdivision for the assessment of the liability, the commissioner of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period

agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision two of section 11-678 of this subchapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision two of section 11-678 of this subchapter on the amount of the credit or refund, the period specified in subdivision one of section 11-678 of this subchapter shall be increased by the period from the date of such expiration to the date of the agreement.

3. Period for assessment against certain transferors. For purposes of this section, if any person is deceased or is a corporation which has terminated its existence, the period of limitation for assessment against such person or corporation shall be the period that would be effect had death or termination of existence not occurred.

4. Evidence. The commissioner of finance shall use his or her powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision five of section 11-680 of this subchapter for rule as to burden of proof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-74.0 added LL 21/1966 § 1

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CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-685 Jeopardy assessments.

1. Authority for making. If the commissioner of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, the commissioner shall, notwithstanding the provisions of section 11-672 of this subchapter immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the commissioner of finance for the payment thereof.

2. Notice of deficiency. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 11-672 of this subchapter, then the commissioner of finance shall mail a notice under such section within sixty days after the making of the assessment.

3. Amount assessable before decision of the tax appeals tribunal. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the tax appeals tribunal. The commissioner of finance may, at any time before tax appeals tribunal renders its decision, abate such assessment, or any unpaid portion thereof, to the extent that the commissioner believes the assessment to be excessive in amount. The tax appeals tribunal may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

4. Amounts assessable after decision of the tax appeals tribunal. If the jeopardy assessment is made after the decision of the tax appeals tribunal is rendered, such assessment may be made only in respect of the deficiency

determined by the tax appeals tribunal in its decision.

5. Expiration of right to assess. A jeopardy assessment may not be made after the decision of the tax appeals tribunal has become final or after the taxpayer has made an application for review of the decision of the tax appeals tribunal.

6. Collection of unpaid amounts. When a petition has been filed with the tax appeals tribunal and when the amount which should have been assessed has been determined by a decision of the tax appeals tribunal which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-677 of this subchapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the tax appeals tribunal.

7. Abatement if jeopardy does not exist. The commissioner of finance may abate the jeopardy assessment if the commissioner finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax appeals tribunal in respect of the deficiency has been rendered or, if no petition is filed with the tax appeals tribunal, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

8. Bond to stay collection. The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the commissioner of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time of which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section 11-672 of this subchapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

9. Petition to tax appeals tribunal. If the bond is given before the taxpayer has filed its petition under section 11-680 of this subchapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the tax appeals tribunal which has become final. If the tax appeals tribunal determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax appeals tribunal is rendered.

10. Stay of sale of seized property pending tax appeals tribunal's decision. Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(a) if subdivision two is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-680 of this subchapter for filing a petition with the tax appeals tribunal, and

(b) if a petition is filed with the tax appeals tribunal (whether before or after the making of such jeopardy assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision one were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the commissioner of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

11. Interest. For the purpose of subdivision one of section 11-675 of this subchapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

12. Early termination of taxable year. If the commissioner of finance finds that a taxpayer designs quickly to remove its property from this state, or to conceal its property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the commissioner of finance made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

13. Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the commissioner of finance, as provided in subdivision twelve, the commissioner of finance may reopen such taxable period each time the taxpayer is found by the commissioner of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner of finance may be reopened by the taxpayer if it files with the commissioner of finance a true and accurate return under any of the named subchapters for such taxable period, together with such other information as the commissioner of finance may by regulations pre- scribe.

14. Furnishing of bond where taxable year is closed by the commissioner of finance. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision twelve prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes for prior years.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. 3-7, 9, 10 amended chap 808/1992 § 34, eff. Oct. 1, 1992

DERIVATION

Formerly § R46-75.0 added LL 21/1966 § 1

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NYC Administrative Code 11-686

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-686 Criminal penalties; cross-reference.

For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section repealed and added chap 765/1985 § 66

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-76.0 added LL 21/1966 § 1

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NYC Administrative Code 11-687

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-687 General powers of the commissioner of finance.

1. General. The commissioner of finance shall administer and enforce the tax imposed by the named subchapters and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provisions of this subchapter and of the named subchapters; and the commissioner may delegate the commissioner's powers and functions under all subchapters of this chapter to one of the commissioner's deputies or to any employee or employees of his or her department.

2. Examination of books and witnesses. The commissioner of finance, for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax liability of any corporation, shall have power to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the corporation rendering the return through any officer or employee of such corporation, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons.

3. Abatement authority. The commissioner of finance, of the commissioner's own motion, may abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, if the commissioner of finance determines under uniform rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of

the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

4. Special refund authority. Where no questions of fact or law are involved and it appears from the records of the commissioner of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this subchapter or any of the named subchapters, the commissioner of finance at anytime, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

5. (a) Authority to set interest rates. The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-606, 11-608, 11-645, 11-647, 11-675, 11-676, and 11-679 of this chapter, but if no such rate or rates of interest are set, such rate or rates shall be deemed to be set at six percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph (b) of this subdivision but the underpayment rate shall not be less than six percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(b) General rule. (A) Overpayment rate. The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph (c) of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph (c) of this subdivision, plus (ii) five percentage points.

(c) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the overpayment and underpayment rates for the month of September, nineteen hundred eighty-nine.

(d) Publication of interest rates. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(e) Cross-reference. For provisions relating to the power of the commissioner of finance to abate small amounts of interest, see subdivision three of this section.

6. In computing the amount of any interest required to be paid under this subchapter or any of the named subchapters by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision three of section 11-676 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 5 amended chap 241/1989 § 12

Subd. 5 par (a) amended L.L. 39/2003 § 1, eff. July 1, 2003. [See Note 2]

Subd. 5 par (b) subpar (B) amended L.L. 38/2003 § 1, eff. July 1, 2003. [See Note 1]

DERIVATION

Formerly § R46-77.0 added LL 21/1966 § 1

Sub 5 added LL 94/1977 § 8

Sub 5 amended LL 2/1983 § 19

Sub 6 added LL 43/1983 § 20

NOTE 1. Provisions of L.L. 38/2003 § 1: § 2. This local law shall take effect on July 1, 2003, and shall apply to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, which remain or become due on or after such date. The interest rates set prior to amendment by this local law shall apply up to and including June 30, 2003, to the interest chargeable or due on taxes or on other amounts for which interest rates are set under this local law. 2. Provisions of L.L. 39/2003: §2. This local law shall take effect on July 1, 2003, provided that if New York Assembly Bill No. 2106-B,*24 which passed the New York Assembly on May 2, 2003 and the New York Senate on May 2, 2003, and was delivered to the Governor on May 2, 2003, has not become a law prior to the time that this local law becomes a law, then this local law, shall take effect immediately upon the enactment into law of such bill. This local law shall apply to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, which remain or become due on or after such date. The interest rates set prior to amendment by this local law shall apply up to and including the day before the effective date of this local law, to the interest chargeable or due on taxes or on other amounts for which interest rates are set under this local law.

CASE NOTES FROM FORMER SECTION

¶ 1. The fact that the Commissioner was free to pursue a tax deficiency reassessment, while petitioner was precluded from asserting a claim for a refund for the same tax year, resulted in an inequity requiring remedial action by the Commissioner under his discretionary authority pursuant to this section.-Mobil v. Comm'r of Finance of the City of N.Y., 101 A.D. 2d 723 [1984].

FOOTNOTES

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[Footnote 24]: * [A2106-B was vetoed by the Governor on May 14, 2003. A2106-B became a law when the veto was overriden by the Senate and Assembly on May 15, 2003.]

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NYC Administrative Code 11-688

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-688 Secrecy required of official; penalty for violation.

1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, the tax appeals tribunal, any commissioner or employee of such tribunal, any person who, pursuant to this section, is permitted to inspect any report or return, or to whom any information contained in any report or return is furnished, any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a report filed pursuant to this chapter, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return, under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports or returns or of facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative of a copy of any report filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer which shall bring action to set

aside or review the tax based thereon, or against which an action or proceeding under this chapter or under any local law of the city imposed as authorized by the act authorizing the adoption of this chapter has been recommended by the commissioner of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns of any taxpayer by the duly designated officers or employees of the city for purposes of an audit under this chapter or an audit authorized by the act authorizing the adoption of this chapter; and nothing in this subchapter or chapter eleven of this title shall be construed to prohibit the publication of the issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of section 11-604 of this chapter, of any corporation which may be required to be allocated within the city for purposes of the tax imposed by any of the named subchapters or chapter eleven of this title.

2. (a) Any officer or employee of the state or city who willfully violates the provisions of subdivision one of this section shall be dismissed from office and be incapable of holding any public office in the city or this state for a period of five years thereafter.

(b) Cross-reference: For criminal penalties, see chapter forty of this title.

3. Notwithstanding any provisions of this section, the commissioner of finance may permit the secretary of the treasury of the United States or his or her delegates, or the proper officer of this or any other state charged with tax administration, or the authorized representative of either such officer, to inspect the returns or reports filed under any of the named subchapters, or may furnish to such officer or his or her authorized representative an abstract of any such return or report or supply information concerning an item contained in any such return or report, or supply him or her with information concerning an item contained in any such return or report, or disclosed by an investigation of tax liability under any of the named subchapters, but such permission shall be granted or such information furnished to such officer or his or her representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner of finance and such information is to be used for tax purposes only; and provided further the commissioner of finance may furnish to the secretary of the treasury of the United States or his or her delegates or to the tax commission of the state of New York or its delegates such returns or reports filed under any of the named subchapters and other tax information, as he or she may consider proper, for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the commissioner of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury or his or her delegates or to such tax commission or its delegates. Where the commissioner of finance has so authorized use of returns, reports or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns, reports of other infor- mation.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this chapter to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax, applications for automatic extensions of time to file reports, and reports with such banks, banking houses or trust companies as agents of the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of the city.

5. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

6. Notwithstanding anything in subdivision one of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any

information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

7. Notwithstanding anything in subdivision one of this section, the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in paragraph (n) of subdivision eight of section 11-602 or paragraph one of subdivision (q) of section 11-641 of this chapter, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner of finance under this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 808/1992 § 35, eff. Oct. 1, 1992

Subd. 1 amended chap 241/1989 § 57

Subd. 5 added chap 714/1989 § 3

Subd. 6 added chap 808/1992 § 36, eff. Oct. 1, 1992

Subd. 7 added chap 686/2003 § M22, eff. Oct. 21, 2003 and applying to

taxable years begnning on or after Jan. 1, 2003.

DERIVATION

Formerly § R46-78.0 added LL 21/1966 § 1

Sub 1 amended LL 22/1973 § 1

Sub 4 added LL 22/1973 § 2

Sub 2 amended chap 765/1985 § 67

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NYC Administrative Code 11-689

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-689 Disposition of revenues.

All revenues resulting from the imposition of the taxes under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-79.0 added LL 21/1966 § 1

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Title 11 Taxation and Finance

CHAPTER 6 (CONTINUED) CITY BUSINESS TAXES

SUBCHAPTER 5 CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-690 Inconsistencies with other laws.

If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § R46-80.0 added LL 21/1966 § 1

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NYC Administrative Code 11-701

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-701 Definitions.

When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint stock company, corporation, estate, receiver, assignee, trustee or any other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of in- dividuals.

2. "Landlord." A person who grants the right to use or occupy premises to any lessee, sublessee, licensee or concessionaire, whether or not such person is the owner of the premises.

3. "Tenant." A person paying or required to pay rent for premises as a lessee, sublessee, licensee or concessionaire.

4. "Premises." Any real property or part thereof, and any structure thereon or space therein.

5. "Taxable premises." Any premises in the city occupied, used or intended to be occupied or used for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity, including any premises so used even though it is used solely for the purpose of renting, or granting the right to occupy or use, the same premises in whole or in part to tenants; except premises within the area leased by the city of New York to the New York world's fair 1964-1965 corporation pursuant to chapter four hundred twenty-eight of the laws of nineteen hundred sixty, as amended during the period of such lease.

6. "Rent." The consideration paid or required to be paid by a tenant for the use or occupancy of premises, valued in money, whether received in money or otherwise, including all credits and property or services of any kind and including any payment required to be made by a tenant on behalf of his or her landlord for real estate taxes, water rents or charges, sewer rents or any other expenses (including insurance) normally payable by a landlord who owns the realty other than expenses for the improvement, repair or maintenance of the tenant's premises.

7. "Base rent." The rent paid for each taxable premises by a tenant to his or her landlord for a period, less the amounts received by or due such tenant for the same period from any tenant of any part of such premises:

(i) as rent for premises which constitute taxable premises of such tenant except where such tenant is exempt from tax thereon pursuant to subdivision b or paragraph six of subdivision c of section 11-704 of this chapter; provided, however, that for tax periods beginning on and after June first, nineteen hundred eighty-five, rent received or due from a tenant exempt from tax thereon pursuant to paragraph two of subdivision b of section 11-704 of this chapter, as such paragraph two was in effect immediately prior to its amendment by local law number fifty-seven for the year nineteen hundred ninety-three, may be deducted if such tenant occupies or uses the premises pursuant to a written agreement made prior to June first, nineteen hundred eighty-four, the terms and conditions of which have not been changed or amended; and provided, further, that for tax periods beginning on and after June first, nineteen hundred eighty-five, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter, as such paragraph two was in effect immediately prior to its amendment by local law number fifty-seven for the year nineteen hundred ninety-three, because of the reduction in base rent provided for in subdivision h of section 11-704 of this chapter, rent received or due from such tenant may be deducted if such tenant occupies or uses the premises pursuant to a written agreement made prior to June first, nineteen hundred eighty-five, the terms and conditions of which have not been changed or amended; and provided, further, that for tax periods beginning on and after June first, nineteen hundred ninety-four, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter as a result of the amendment of such paragraph two by local law number fifty-seven for the year nineteen hundred ninety-three, whether or not such exemption is due to the reduction in base rent provided for in subdivision h of section 11-704 of this chapter, rent received or due from such tenant may be deducted if such tenant occupies or uses the premises pursuant to a written agreement made prior to June first, nineteen hundred ninety-three, the terms and conditions of which have not been changed or amended; and provided, further, that for tax periods beginning on and after July twenty-ninth, nineteen hundred eighty-seven, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter because of the reduction in base rent provided for in subdivision f of section 11-704 of this chapter, rent received or due from such tenant may be deducted; and provided, further, that, notwithstanding anything in this paragraph to the contrary, for tax periods beginning on and after June first, nineteen hundred ninety-five, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter, rents received or due from such tenant may be deducted;

(ii) as rent for premises which do not constitute taxable premises and which are used by such tenant as lodging or residential premises (including such residential premises in hotels, apartment hotels or lodging houses as defined in former title V of chapter forty-six of the code);

(iii) who is exempt from tax under subdivision a of section 11-704 of this chapter;

(iv) as rent for premises which do not constitute taxable premises where such rent is, or to the extent that such rent is, deductible from the base rent of such tenant by reason of paragraph five of subdivision c of section 11-704 of this chapter; and

(v) as rent for premises which do not constitute taxable premises, pursuant to a common law relationship of landlord and tenant (notwithstanding the definition given to those terms by paragraphs two and three of this section) except where it is received as rent, whether or not such landlord-tenant relationship exists, for premises which are occupied as or constitute:

(a) a locker, safe deposit box or beach cabana;

(b) storage space in part of a warehouse or in part of any other structure or area in which goods are stored;

(c) garage space or parking space in any part of a garage, of a parking lot or of a parking area where the entire garage, entire parking lot or entire parking area accommodates more than two motor vehicles;

(d) an occupancy of a type which customarily has not been the subject of such a common law relationship of landlord and tenant.

Nothing contained in this chapter shall be construed to permit a tenant to deduct the same rent from his or her base rent more than once.

8. "Premises used for railroad transportation purposes." The portion of any premises of any person actually operating a railroad, used by such person for normal or necessary railroad transportation purposes. The words normal or necessary railroad transportation purposes, as used in this definition, shall not include any activities which are normally carried on by persons not engaged in furnishing railroad transportation service such as the operation of retail stores, barber shops, restaurants, theatres, hotels, and newsstands; nor shall such words include any activities which are not deemed transportation purposes under sections four hundred eighty-nine-b and four hundred eighty-nine-m of the real property tax law.

9. "Premises used for air transportation purposes." The portion of any premises, located within an airport or within an air transportation terminal shared by more than one air line, of any person actually operating an air line as a common carrier, used by such person for normal or necessary air transportation purposes. The words normal or necessary air transportation purposes, as used in this definition, shall not include any activities which are normally carried on by persons not engaged in furnishing air transportation service such as the operation of retail stores, barber shops, restaurants, theatres, hotels and newsstands.

10. "Return." Any return filed or required to be filed as herein provided other than an information return.

11. "Tax period." The period for which any return is required to be filed under this chapter.

12. "Tax year." June first of any calendar year through May thirty-first of the following calendar year.

13. "Day." A calendar day or any part thereof.

14. "City." The city of New York.

15. "Commissioner of finance." The commissioner of finance of the city.

16. "Comptroller." The comptroller of the city.

17. "Dramatic or musical arts performance." A performance or repetition thereof in a theatre, opera house or concert hall of a live dramatic performance, whether or not musical in part. The performance encompassed by this definition shall include so-called legitimate theatre plays, musical comedies and operettas. They shall not include circuses, ice skating shows or aquashows; they shall not include performances of any kind in a roof garden, cabaret or other similar place; and they shall not include radio or television performances, whether or not such performances are prerecorded for later broadcast.

18. "Premises used for omnibus transportation purposes." The portion of any premises located within a passenger terminal of any person actually operating an omnibus line or route as a common carrier, used by such person for normal or necessary omnibus line or route transportation purposes. The words normal or necessary omnibus line or route transportation purposes, as used in this definition, shall not include any activities, which are normally carried on

by persons not engaged in furnishing omnibus line or route transportation services such as the operation of retail stores, barber shops, restaurants, theatres, hotels and newsstands.

19. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

20. "Premises used for retail sales purposes." Premises primarily used for the selling or otherwise disposing or furnishing of tangible goods directly to the ultimate user or consumer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 7 par (i) amended L.L. 22/1994 § 1, eff. July 21, 1994

Subd. 7 par (i) amended L.L. 57/1993 § 1 eff. June 30, 1993

Subd. 7 par (i) amended L.L. 42/1988 § 4

Subd. 19 added chap 808/1992 § 37 eff. Oct. 1, 1992

Subd. 20 added chap 2/ 2005 § A1, eff. Dec. 1, 2005.

DERIVATION

Formerly § L46-1.0 added LL 38/1963 § 1

Sub 7 par i amended LL 50/1985 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. This chapter is constitutional.-Ampco Printing-Advertisers' Offset Corp. v. City of New York, 14 N.Y. 2d 11, 247 N.Y.S. 2d 865, 197 N.E. 2d 285 [1964].

¶ 2. Apartments leased by respondent business as living quarters for its employees while they were in the City for purposes of the company business were not subject to commercial rent or occupancy taxes as these premises were not used for commercial activities.-J.C. Penney Co. Inc. v. Lewisohn, 33 N.Y. 2d 528 [1973].

¶ 3. A landlord-tenant relationship within the meaning of this section was established where petitioner paid a percentage of its net sales as rent under an agreement called a lease even though petitioner was not entitled to occupy a specified area of landlord's store, the landlord was not excluded from the area set aside for the petitioner and petitioner had no key to gain entry to store.-Dehenhams v. Com'r. of Finance of N.Y.C., 92 App. Div. 829 [1983].

¶ 4. Tax assessed against petitioner under New York City commercial rent and occupancy tax law was not invalid because assessed in part against amounts paid to landlord for cleaning and janitorial services since such services were rent where petitioner's rent was billed and paid for in one lump sum monthly without any breakdown for amounts claimed to be attributable to cleaning services.-Mobile Oil Corp. v. Finance Administrator of City of N.Y., 58 N.Y., 2d 95 [1983].

CASE NOTES

¶ 1. The clear meaning of subsection [6] of this section is that improvements made by a tenant that are required by the lease, are not "rent" for purposes of the commercial rent or occupancy tax. Therefore, the determination of the respondent Department of Finance assessing a tax deficiency against petitioner based on expenditures for improvements

is annulled.-Sin, Inc. v. Dept. of Finance, 126 AD2d 339, [1987] affirmed 71 NY2d 616 [1988].

¶ 2. Madison Square Garden luxury "sky" boxes are used as social entertainment and do not represent rent for which commercial or occupancy tax is applicable. It is the use to which the premises are put which determines the applicability of the tax. Peat Marwick Main v. NYC Dept. of Finance, 139 Misc 2d 1093 [1988]. "Sky box" assessment sustained.-Peat Marwick Main v. NYC Dept. of Finance, 155 AD2d 239 [1989].

¶ 3. A partnership operated a nursing home, and the individual partners then acquired, as individual tenants in common, the real estate on which the nursing home was located. The nursing home partnership then paid "rent" by means of paying mortgage, real estate tax, insurance and sewer rents on behalf of the individual partners. The court held that the rent payments were subject to commercial rent tax. A partnership may be treated as an entity separate and distinct from the partners for tax purposes. Temkin v. Grayson, 162 A.D.2d 366, 557 N.Y.S.2d 34 (1st Dept. 1990).

¶ 4. A foreign insurer doing business in the State of New York may not claim amounts paid as commercial rent tax, Ad Cd § 11-701 et seq, as a credit toward the retaliatory tax imposed in Insurance Law § 112. The commercial rent tax is applied to all businesses for the privilege of doing business in New York City, and is not paid for the privilege of doing insurance business.-Industrial Indem. Co. v. Cooper, 81 NY2d 50 [1993].

¶ 5. A document entitle "Management Agreement", granting an exclusive license to operate a parking facility, was determined to be a lease rather than an independent management agreement. Ad Cd §11-701(3) includes a licensee in the definition of tenant and Ad Cd §11-701(6) defines rent as payment for the use or occupancy of premises. City correctly determined petitioner was a tenant and its exclusive license was rent subject to taxation. Matter of Square Plus Operating Corp. v. City of New York, 212 AD2d 448, 622 N.Y.S.2d 938, leave to appeal denied, 87 N.Y.2d 804, 639 N.Y.S.2d 782 [1995].

¶ 6. Where a tenant pays a commercial rent tax based on the tenant's payment to the landlord in connection with heating, ventilation and air conditioning, such services are not a "sale" and therefore are not subject to the sales tax. Debevoise & Plimpton v. New York State Department of Taxation and Finance, 149 Misc.2d 571, 565 N.Y.S.2d 973 (Sup.Ct. New York Co. 1991).

¶ 7. Payments made by an accounting firm for use of a luxury skybox at a sports and entertainment facility are not subject to the commercial rent tax. The use of the skybox was held not to be a commercial activity within the meaning of the law, even though the skybox was sometimes used to enterain clients. Peat Marwick Main & Co. v. New York City Dept. of Finance, 76 N.Y.2d 527, 561 N.Y.S.2d 695 (1990).

¶ 8. Where a tenant retained the landlord as its contractor to perform work on the premses, and the work itself was being done at the tenant's option, and the monthly installments for that work were separately billed and not included in the normal lump sum rent payments, the amount paid by the tenant on account of the work was not deemed "rent" for purposes of the commercial rent tax statute. Application of Ally & Gargano, 126 A.D.2d 354, 513 N.Y.S.2d 435 (1st Dept. 1987). In **Ally**, the court distinguished **Matter of Mobil Oil Corp. v. Finance Administrator of the City of New York**, 58 N.Y.2d 95, 459 N.Y.S.2d 566. In **Mobil**, the court upheld the imposition of the commercial rent tax upon sums paid by the tenant to the landlord for cleaning and janitorial services. The lease provided that the landlord would supply such services but granted the tenant the option to provide its own cleaning services at its own expense, with a pro rata abatement of the rent. Although not dispositive, the **Mobil** court noted that the monthly rent had been billed and paid in one lump sum and did not separately apportion the amount attributable to such cleaning services. In**Ally**, however, the cost of the tenant work was not included in the regular monthly rent payments but was separately identified, billed and paid for as the work progressed. Unlike **Mobil**, the payments in **Ally** were not for an ongoing service but related to one-time work basically completed before the tenant took possession and the lease commenced.

NYC Administrative Code 11-702

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-702 Imposition of tax.

a. (1) For each tax year commencing on or after June first, nineteen hundred sixty-three and ending on or before May thirty-first, nineteen hundred seventy, every tenant shall pay a tax of two and one-half per centum of his or her base rent for such tax year where his or her base rent is not in excess of twenty-five hundred dollars per year or where his or her base rent is for a period of less than one year and would not exceed twenty-five hundred dollars for a year if it were paid on an equivalent basis for an entire year or a tax of five per centum of his or her base rent for such tax year where his or her base rent is in excess of twenty-five hundred dollars per year or where his or her base rent is for a period of less than one year and would exceed twenty-five hundred dollars a year if it were paid on an equivalent basis for an entire year.

(2) For each tax year commencing on or after, June first, nineteen hundred seventy, every tenant shall pay a tax at the rates shown in the following tables:

[See tabular material in printed version]

For tax years embraced within the period beginning after May thirty-first, nineteen hundred seventy-seven and ending May thirty-first, nineteen hundred eighty, the tax shall be imposed at rates equal to ninety percent of the rates shown in the foregoing table.

For tax years beginning after May thirty-first, nineteen hundred eighty and ending May thirty-first, nineteen hundred eighty-one, the tax shall be imposed at rates equal to eighty-five percent of the rates shown in the foregoing table.

For tax years beginning after May thirty-first, nineteen hundred eighty-one, the tax shall be imposed at rates equal to eighty percent of the rates shown in the foregoing table.

Where the rent is for a period of less than one year, the rate shall be determined by assuming that the rent is on an equivalent basis for the entire year.

b. Nothing contained in this chapter shall be deemed to require payment of a double or multiple tax pursuant to this chapter on any part of any taxable premises.

c. Where a tenant pays an undivided rent for premises used both for residential purposes and as taxable premises, the tax shall be applicable to so much of the rent as is ascribable to the portion of such premises used as taxable premises. Where, however, the rent ascribable to so much of such premises as is used as taxable premises does not exceed fifty dollars a month, such rent shall be excluded from such tenant's base rent. Nothing contained in this subdivision shall be construed as indicating an intent to exclude any base rent from the tax imposed by this chapter merely because it is paid as part of an undivided rent for premises which are only partially used as taxable premises.

d. The tax imposed by this chapter shall be in addition to any and all other taxes including the public housing tax imposed by chapter ten of this title.

e. Nothing contained in this section shall be construed as permitting base rent of a tenant for one taxable premises to be reduced by deducting rents received by him or her for another taxable premises of which he or she is also a tenant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-2.0 added LL 38/1963 § 1

Amended LL 20/1970 § 1

Amended LL 82/1972 § 1

Amended LL 63/1977 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Local Law No. 38 of 1963 which levies a tax on every tenant who uses or occupies property for any business or commercial activity is constitutional. A tax on a leasehold is not a real property tax within the meaning of the State Constitution. Neither is it an ad valorem tax levied solely because of the ownership or possession of "moneys, credits, securities and other intangible personal property". The "due process" and "equal protection" clauses were not violated because the tax was limited to New York City or because the tax was based in part on the amount of rent paid.-Robert B. Blaikie & Co., Inc. v. City of New York, 41 Misc. 2d 371, 245 N.Y.S. 2d 121 [1963], aff'd 14 N.Y. 2d 11, 247 N.Y.S. 2d 865, 197 N.E. 2d 285 [1964].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-703

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-703 Presumptions and burden of proof.

a. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed it shall be presumed that all premises are taxable premises and that all rent paid or required to be paid by a tenant is base rent until the contrary is established, and the burden of proving that such presumptive base rent or any portion thereof is not included in the measure of the tax imposed by this chapter shall be on the tenant.

b. Where a tenant uses premises both for residential purposes and as taxable premises and the tenant pays an undivided rent for the premises so used, it shall be conclusively presumed against such tenant that the rent ascribable to so much of such premises as is used as taxable premises shall be the amount which such tenant deducts as rent for such premises in determining the tenant's federal income tax (as reduced by any disallowance of such deduction which is not being contested) which is fairly attributable to the tax period or tax year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-3.0 added LL 38/1963 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-704

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-704 Exemptions and deductions from base rent.

a. The following shall be exempt from the payment of the tax imposed by this chapter:

1. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

2. The United States of America, insofar as it is immune from taxation;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph;

5. Any tenant who would be subject to taxes under this chapter aggregating not more than one dollar for a tax year with respect to all taxable premises used by the tenant; and

6. Any tenant located in the "World Trade Center Area," as defined as follows: the area in the borough of Manhattan bounded by Church Street on the east starting at the intersection of Liberty Street and Church Street; running northerly along the center line of Church Street to the intersection of Church Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Broadway; running northerly along the center line of West Broadway to the intersection of West Broadway and Barclay Street; running westerly along the center line of Barclay Street to the intersection of Barclay Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Street; running southerly along the center line of West Street to the intersection of West Street and Liberty Street; running easterly along the center line of Liberty Street to the intersection of Liberty Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Albany Street; running easterly along the center line of Albany Street to the intersection of Albany Street and Greenwich Street; running northerly along the center line of Greenwich Street to Liberty Street; and running easterly along the center line of Liberty Street to the intersection of Liberty Street and Church Street.

b. (1) A tenant who uses premises for no more than fourteen days in a tax year whether or not consecutive, where his or her agreement with his or her landlord does not require him or her to pay rent for a longer period shall be exempt from the payment of the tax imposed by this chapter in respect to the rent paid by him or her for such premises.

(2) A tenant whose base rent, (i) for tax years beginning on or after June first, nineteen hundred eighty-one and ending on or before May thirty-first, nineteen hundred eighty-four, is not in excess of four thousand nine hundred ninety-nine dollars per year, (ii) for the tax year beginning June first, nineteen hundred eighty-four and ending May thirty-first, nineteen hundred eighty-five, is not in excess of seven thousand nine hundred ninety-nine dollars per year, (iii) for the tax years beginning on or after June first, nineteen hundred eighty-five and ending on or before May thirty-first, nineteen hundred ninety-four, is not in excess of ten thousand nine hundred ninety-nine dollars per year, (iv) for the tax year beginning June first, nineteen hundred ninety-four and ending May thirty-first, nineteen hundred ninety-five, is not in excess of twenty thousand nine hundred ninety-nine dollars per year, (v) for the tax year beginning June first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six, is not in excess of thirty thousand nine hundred ninety-nine dollars per year, (vi) for the tax year beginning June first, nineteen hundred ninety-six and ending May thirty-first, nineteen hundred ninety-seven, is not in excess of thirty-nine thousand nine hundred ninety-nine dollars per year, and (vii) for tax years beginning on or after June first, nineteen hundred ninety-seven and ending on or before May thirty-first, two thousand, is not in excess of ninety-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, (viii) for the period beginning June first, two thousand and ending November thirtieth, two thousand, is not in excess of ninety-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, (ix) for the period beginning December first, two thousand and ending May thirty-first, two thousand one, is not in excess of one hundred forty-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, and (x) for tax years beginning on or after June first, two thousand one, is not in excess of two hundred forty-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, shall be exempt from the payment of the tax imposed by this chapter with respect to such rent, provided, however, that where the base rent of such tenant is for a period of less than one year, such base rent shall, for purposes of this paragraph, be determined as if it had been on an equivalent basis for the entire year; and provided further, that for purposes of subparagraphs (viii) and (ix) of this paragraph, base rent for the period specified in each of such subparagraphs shall be separately annualized as if it had been on an equivalent basis for an entire year, irrespective of the actual base rent for the tax year including the period specified in such subparagraph. Notwithstanding the preceding sentence, (xi) a tenant whose base rent for the tax year beginning June first, nineteen hundred eighty-four and ending May thirty-first, nineteen hundred eighty-five, is at least eight thousand dollars per year, but not in excess of ten thousand nine hundred ninety-nine dollars per year, shall be exempt from the payment of the tax imposed by this chapter with respect to such

rent for the period beginning December first, nineteen hundred eighty-four and ending May thirty-first, nineteen hundred eighty-five, and (xii) a tenant whose base rent for the tax year beginning June first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six, is at least thirty-one thousand dollars per year, but not in excess of thirty-nine thousand nine hundred ninety-nine dollars per year, shall be exempt from the payment of the tax imposed by this chapter with respect to such rent for the period beginning September first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six.

c. Base rent shall be reduced by the amount of the taxpayer's rent for, or reasonably ascribable to, the taxpayer's own use of the premises:

1. As premises used for railroad transportation purposes.

2. As premises used for air transportation purposes.

3. As piers insofar as such premises are used in interstate or foreign commerce.

4. Which are located in, upon, above or under any public street, highway or other public place, and which are defined as special franchise property in the real property tax law.

5. Which are taxed pursuant to subchapter one of chapter twenty-two-A or chapter twenty of this title to the extent that such premises are subject to, and during the period that they are subject to, such tax.

6. Which are taxed pursuant to subdivision b or c of section 11-1005 of chapter ten of this title.

7. Which are advertising signs, advertising space, vending machines or newsstands within or attached to stations, platforms, stairways, entranceways, passageways, mezzanines or tracks of a rapid transit subway or elevated railroad operated by the New York city transit authority when the rent of the tenant or of the tenant's landlord is payable to such authority.

8. As premises used for omnibus transportation purposes.

9. As premises used for retail sales purposes where such premises are located in the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street, connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street. Any tax lot which is partly located inside such area shall be deemed to be entirely located inside such area.

d. A tenant who uses taxable premises for renting to others for residential purposes to the extent of seventy-five per centum or more of the rentable floor space shall be exempt from the tax imposed by this chapter in respect to the rent paid for such premises from the time that construction thereof commences, provided, however, that this paragraph shall not be applicable to hotels, apartment hotels or lodging houses as defined in former title V of chapter forty-six of the code.

e. (1) A tenant who uses taxable premises for a dramatic or musical arts performance for less than four weeks where there is no indication prior to or at the time that such performance commences that the performance is intended to continue for less than four weeks shall be exempt from the tax imposed by this chapter with respect to the rent paid for such taxable premises.

(2) (i) Notwithstanding any other provision of law to the contrary, a tenant who uses taxable premises for the production and performance of a theatrical work shall be exempt from the tax imposed by this chapter with respect to the rent paid for such taxable premises for a period not exceeding fifty-two weeks beginning on the date that the production of such theatrical work commences, provided, however, that this subparagraph shall not apply to any theatrical work the production of which commenced prior to June first, nineteen hundred ninety-five.

(ii) For purposes of this paragraph, the term "theatrical work" shall mean a performance or repetition thereof in a theater of a live dramatic performance (whether or not musical in part) that contains sustained plots or recognizable thematic material, including so-called legitimate theater plays or musicals, dramas, melodramas, comedies, compilations, farces or reviews, provided that such performance is intended to be open to the public for at least two weeks. The term "theatrical work" shall not include performances of any kind in a roof garden, cabaret or similar place, circuses, ice skating shows, aqua shows, variety shows, magic shows, animal acts, concerts, industrial shows or similar performances, or radio or television performances, whether or not such performances are pre-recorded for later broadcast.

f. (1) A tenant who is an eligible business and has obtained the certifications required by paragraph four of this subdivision shall be permitted to reduce his or her base rent for particular premises to which he or she has relocated by an amount determined by multiplying such base rent by a fraction the numerator of which is the number of eligible aggregate employment shares maintained by such tenant with respect to such premises in the tax year for which such tenant claims the reduction and the denominator of which is a number equal to the number of aggregate employment shares maintained by such tenant in such premises in the tax year for which such tenant claims the reduction allowed by this subdivision, provided, however, that such denominator shall not exceed the highest number of aggregate employment shares maintained by such tenant in such premises in any of the tax years described below which commence prior to or concurrently with the tax year for which such tenant claims the reduction allowed by this subdivision: (i) the tax year during which such tenant relocates to such particular premises; and (ii) each of the three tax years immediately succeeding the tax year during which such tenant relocates to such premises. Base rent for a particular premises may be reduced as provided in this subdivision for the tax year during which the tenant relocates to such premises and for any of the eleven immediately succeeding tax years during which the tenant maintains eligible aggregate employment shares with respect to such premises, provided, however, that there shall be no such reduction with respect to base rent for any part of the tax year preceding the date of relocation to such premises, and provided, further, that there shall be no such reduction with respect to premises used for retail activity or hotel services.

(2) (i) For purposes of this subdivision, the terms "eligible area," "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code, provided that whenever the term "taxable year" appears in such section 22-621, such term shall be read as "tax year," as the term "tax year" is defined in subdivision twelve of section 11-701 of this chapter except when the taxable year referred to is the taxable year immediately preceding the taxable year during which such tenant relocates.

(ii) For purposes of this subdivision, the term "eligible business" shall have the meaning ascribed by section 22-621 of the code, provided that such term shall in addition include any person subject to a tax imposed under subchapter four of chapter six of this title and any person who is an insurance corporation as defined in section one thousand five hundred of the tax law, which: (A) has been conducting substantial business operations at one or more business locations outside the eligible area for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates; and (B) on or after May twenty-seventh, nineteen hundred eighty-seven relocates all or part of such business operations; and (C) on or after May twenty-seventh, nineteen hundred eighty-seven first enters into a lease for the premises to which it relocates or a parcel on which will be constructed such premises.

(3) The reduction allowed by this subdivision may be claimed on an estimated basis on the returns filed for the tax periods ending on the last days of August, November and February of each year if, and to the extent, permitted by regulations promulgated by the commissioner of finance.

(4) No tenant shall be authorized to receive a reduction in base rent subject to tax under the provisions of this subdivision, until the premises with respect to which it is claiming a reduction in base rent meet the requirements in the definition of eligible premises and until it has obtained a certification of eligibility from the mayor or an agency designated by the mayor, and an annual certification from the mayor or an agency designated by the mayor as to the number of eligible aggregate employment shares maintained by such tenant which may qualify for obtaining a base rent reduction for the tenant's tax year. Any written documentation submitted to the mayor or such agency or agencies in order to obtain any such certification shall be deemed a written instrument for purposes of section 175.00 of the penal law. Application fees for such certifications shall be determined by the mayor or such agency or agencies. No certification of eligibility shall be issued to an eligible business on or after July first, nineteen hundred ninety-two unless such business meets the requirements of either subparagraph (a) or (b) below:

(a) (1) prior to such date such business has purchased, leased or entered into a contract to purchase or lease particular premises or a parcel on which will be constructed such premises or already owned such premises or parcel;

(2) prior to such date improvements have been commenced on such premises or parcel which improvements will meet the re- quirements of subdivision (e) of section 22-621 of this code relating to expenditures for improvements;

(3) prior to such date such business submits a preliminary application for a certification of eligibility to such mayor or such agency or agencies with respect to a proposed relocation to such particular premises; and

(4) such business relocates to such particular premises not later than thirty-six months from the date of submission of such preliminary application; or

(b) (1) not later than June thirtieth, nineteen hundred ninety-five, such business has purchased, leased or entered into a contract to purchase or lease particular premises wholly contained in a building in which at least an aggregate of forty per centum or two hundred thousand square feet, whichever is less, of the nonresidential floor area of such building has been purchased or leased by a business or businesses which meet or will meet the requirements of subparagraph (a) of this paragraph with respect to such floor area and which are or will become certified as eligible to receive a credit under section 22-622 of this code with respect to such floor area;

(2) not later than June thirtieth, nineteen hundred ninety-five, such business submits a preliminary application for a certification of eligibility to such mayor or such agency or agencies with respect to a proposed relocation to such particular premises; and

(3) not later than June thirtieth, nineteen hundred ninety-five, such business relocates to such particular premises.

Any tenant subject to a tax imposed under chapter five, or subchapter two or three of chapter six, of this title obtaining a certification of eligibility pursuant to subdivision (b) of section 22-622 of the code shall be deemed to have obtained the certification of eligibility required by this paragraph.

g. Whenever the rent paid by a tenant for his or her occupancy of taxable premises is measured in whole or in part by the gross receipts from the tenant's sales within such place, the tenant's rent, to the extent paid on the basis of such gross receipts, shall be deemed not to exceed fifteen percent of such gross receipts.

h. (1) In the case of any taxable premises located in the borough of Manhattan north of the center line of ninety-sixth street or in the boroughs of the Bronx, Brooklyn, Queens and Staten Island, the base rent for such premises shall be reduced by ten percent for the period beginning on January first, nineteen hundred eighty-six and ending May thirty-first, nineteen hundred eighty-seven, by twenty percent for the period beginning June first, nineteen hundred eighty-seven and ending May thirty-first, nineteen hundred eighty-nine, and by thirty percent for the period beginning June first, nineteen hundred eighty-nine and ending August thirty-first, nineteen hundred ninety-five, such reduction to be made after all other exemptions and deductions authorized by this chapter have been taken. For periods beginning

September first, nineteen hundred ninety-five and thereafter, a tenant of taxable premises located in that part of the city specified in the preceding sentence shall be exempt from the payment of the tax imposed by this chapter with respect to the rent for such taxable premises.

(2) In the case of any taxable premises located in the borough of Manhattan south of the center line of ninety-sixth street, the base rent for such premises shall be reduced by (i) fifteen percent for the period beginning March first, nineteen hundred ninety-six and ending May thirty-first, nineteen hundred ninety-six, (ii) twenty-five percent for the period beginning June first, nineteen hundred ninety-six and ending August thirty-first, nineteen hundred ninety-eight, and (iii) thirty-five percent for periods beginning September first, nineteen hundred ninety-eight and thereafter, such reduction to be made after all other exemptions and deductions authorized by this chapter have been taken.

i. (1) (a) (i) For purposes of, and to the extent relevant to, this subdivision, the following terms shall, except to the extent hereinafter modified, have the definitions assigned to such terms in section four hundred ninety-nine-a of the real property tax law, and such definitions shall apply with the same force and effect as if they had been set forth in full in this subdivision: "abatement zone," "aggregate floor area," "applicant," "department of finance," "eligible building," "eligibility period," "eligible premises," "expansion premises," "expansion tenant," "governmental agency," "landlord," "lease commencement date," "mixed-use building," "new tenant," "person," "relocation area," "renewal tenant," "rent commencement date," "subtenant" and "tenant."

(ii) For purposes of this subdivision, the definitions assigned by clause (i) of this subparagraph to the terms "eligible premises," "expansion tenant," "landlord," "new tenant" and "renewal tenant" shall be modified as follows:

(A) whenever the term "eligible building" appears in any of such definitions, such term, notwithstanding anything to the contrary, shall be deemed to include an eligible government-owned building and, for purposes of subparagraph (b-2) of paragraph two of subdivision i of this section, a non-residential or mixed-use building located south of the center line of Canal Street in the borough of Manhattan, regardless of when it received its initial certificate of occupancy or initial temporary certificate of occupancy and regardless of when it was constructed and shall be deemed to include an eligible government-owned building; and

(B) a reference in any of such definitions to a lease which meets the eligibility requirements of section four hundred ninety-nine-c of the real property tax law shall be deemed to include, in the case of a lease of premises in an eligible government-owned building, a lease which meets the eligibility requirements of paragraph four of this subdivision.

(b) When used in this subdivision, the following terms shall mean or include:

(i) "Eligible government-owned building." A building that would be an eligible building, as such term is defined in section four hundred ninety-nine-a of the real property tax law, but for the fact that it is owned by a governmental agency.

(ii) "Eligible taxable premises." Taxable premises that are eligible premises or expansion premises.

(iii) "Eligible tenant." A tenant with respect to whose lease of eligible taxable premises there has been issued a certificate of abatement or a certificate of eligibility.

(iv) "Base year." The twelve-month period that commences on the rent commencement date.

(v) "Base rent for the base year." The total base rent for eligible taxable premises for the base year, determined without regard to the special reduction allowed by this subdivision.

(vi) "Certificate of abatement." The certificate of abatement issued pursuant to section four hundred

ninety-nine-d of the real property tax law.

(vii) "Certificate of eligibility." The certificate of eligibility issued pursuant to paragraph five of this subdivision.

(2) (a) An eligible tenant of eligible taxable premises shall be allowed a special reduction in determining the taxable base rent for such eligible taxable premises. Such special reduction shall be allowed with respect to the rent for such eligible taxable premises for a period not exceeding sixty months or, with respect to a lease commencing on or after April first, nineteen hundred ninety-seven with an initial lease term of less than five years, but not less than three years, for a period not exceeding thirty-six months, commencing on the rent commencement date applicable to such eligible taxable premises, provided, however, that in no event shall any special reduction be allowed for any period beginning after March thirty-first, two thousand sixteen. For purposes of applying such special reduction, the base rent for the base year shall, where necessary to determine the amount of the special reduction allowable with respect to any number of months falling within a tax period, be prorated by dividing the base rent for the base year by twelve and multiplying the result by such number of months.

(a-1) Notwithstanding paragraph one of this subdivision, for purposes of, and to the extent relevant to, the special reduction allowed by this subparagraph, the definitions set forth in section four hundred ninety-nine-aa of the real property tax law shall apply with the same force and effect as if they had been set forth in full in this subdivision, except as such definitions are hereinafter modified. An eligible tenant of eligible taxable premises shall be allowed a special reduction in determining the taxable base rent for such eligible taxable premises, provided, however, that (i) such eligible taxable premises are eligible premises as defined in paragraph (c) of subdivision ten of section four hundred ninety-nine-aa of the real property tax law, (ii) such eligible taxable premises are located in the special garment center district identified in the abatement zone defined in paragraph (c) of subdivision two of section four hundred ninety-nine-aa of the real property tax law, (iii) the lease for such eligible taxable premises commences within the eligibility period applicable to the abatement zone defined in paragraph (c) of subdivision two of section four hundred ninety-nine-aa of the real property tax law, (iv) the lease for such eligible taxable premises has an initial lease term of at least three years and (v) such special reduction is limited to the benefit period, as defined in subdivision five of section four hundred ninety-nine-aa of the real property tax law, applicable to a lease commencing on or after July first, two thousand five for eligible premises located within the abatement zone defined in paragraph (c) of subdivision two of section four hundred ninety-nine-aa of the real property tax law.

(a-2) The amount of the special reduction allowed by subparagraph (a-1) of this paragraph shall be determined as follows:

(i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first through ninth twelve-month periods following the base year the amount of such special reduction shall be equal to the lesser of (A) the base rent for each such twelve-month period or (B) the base rent for the base year.

(a-3) When used in this subdivision, for purposes of the special reduction allowed by subparagraph (a-1) of this paragraph, the following terms shall mean or include:

(i) "Eligible taxable premises." Taxable premises that are eligible premises or expansion premises.

(ii) "Eligible tenant." A tenant with respect to whose lease of eligible taxable premises there has been issued a certificate of abatement.

(iii) "Base year." The twelve-month period that commences on the rent commencement date.

(iv) "Base rent for the base year." The total base rent for eligible taxable premises for the base year, determined without the special reduction allowed by subparagraph (a-1) of this paragraph.

(v) "Certificate of abatement." The certificate of abatement issued pursuant to section four hundred ninety-nine-dd of the real property tax law.

(b) Except as provided in subparagraphs (b-1) and (b-2) of this paragraph, the amount of the special reduction allowed by this subdivision shall be determined as follows:

(i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first and second twelve-month periods following the base year the amount of such special reduction shall be equal to the lesser of (A) the base rent for each such twelve-month period or (B) the base rent for the base year.

(iii) For the third twelve-month period following the base year the amount of such special reduction shall be equal to two-thirds of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(iv) For the fourth twelve-month period following the base year the amount of such special reduction shall be equal to one-third of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(v) Repealed.

(b-1) The amount of the special reduction allowed by this subdivision with respect to a lease commencing on or after April first, nineteen hundred ninety-seven with an initial lease term of less than five years, but not less than three years, shall be determined as follows:

(i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first twelve-month period following the base year the amount of such special reduction shall be equal to two-thirds of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(iii) For the second twelve-month period following the base year the amount of such special reduction shall be equal to one-third of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(b-2) The amount of the special reduction allowed by this subdivision with respect to a lease other than a sublease commencing between July first, two thousand five and June thirtieth, two thousand nine with an initial or renewal lease term of at least five years shall be determined as follows: (i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first, second, third and fourth twelve-month periods following the base year the amount of such special reduction shall be equal to the lesser of (A) the base rent for each such twelve-month period or (B) the base rent for the base year.

(c) For purposes of determining (i) whether a tenant is, pursuant to the provisions of paragraph two of subdivision b of this section, exempt from payment of the tax imposed by this chapter with respect to the base rent for eligible taxable premises or (ii) whether, and the extent to which, a tenant is eligible for the credit allowed pursuant to the provisions of section 11-704.3 of this chapter with respect to eligible taxable premises, the term "base rent" as used in such provisions shall be the base rent as determined prior to the allowance of any special reduction allowed by this subdivision.

(d) Notwithstanding anything to the contrary, for purposes of this subdivision, expansion premises shall be treated as separate and distinct from any other premises of the expansion tenant in the same eligible building.

(3) The special reduction allowed by this subdivision shall be allowed commencing on the rent commencement date; however, if the date of the certificate of abatement or certificate of eligibility is later than the rent commencement date, the tenant shall not, in the first instance, claim the special reduction on any return required to be filed for a tax

period ending prior to the date of such certificate of abatement or certificate of eligibility. If the date of such certificate of abatement or certificate of eligibility falls in a tax period subsequent to the tax period in which the rent commencement date falls, but both such dates fall within the same tax year, the special reduction that was not claimed in the first instance for any period preceding the date of such certificate of abatement or certificate of eligibility shall be reflected in the final return for the tax year. If the date of the certificate of abatement or certificate of eligibility falls in the tax year following the tax year in which the rent commencement date falls, an amended final return shall be filed for such earlier tax year in which shall be reflected any special reduction allowable for such tax year; in addition, the final return for such later tax year shall reflect any special reduction that was not claimed in the first instance for any period in such tax year preceding the date of the certificate of abatement or certificate of eligi-bility.

(4) (a) With respect to premises located in an eligible government-owned building, no special reduction shall be allowed under this subdivision unless:

(i) the landlord enters into a lease for eligible premises with a new tenant or a renewal tenant and:

(A) the lease commencement date is within the eligibility period; and

(B) (I) if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs fifty or fewer employees in the eligible premises, the initial lease term is for a period of at least five years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs one hundred twenty-five or fewer employees in the eligible premises, the initial lease term is for a period of at least five years, and provided, further, that with respect to a lease commencing on or after April first, nineteen hundred ninety-seven if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs one hundred twenty-five or fewer employees in the eligible premises, the initial lease term is for a period of at least three years, or (II) if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs more than fifty employees in the eligible premises, the initial lease term is for a period of at least ten years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs more than one hundred twenty-five employees in the eligible premises, the initial lease term is for a period of at least ten years; or

(ii) the landlord enters into a lease with an expansion tenant for expansion premises and:

(A) the lease commencement date is within the eligibility period;

(B) if the expansion premises are located in the eligible building previously occupied by such expansion tenant, the lease term for the premises in the eligible building previously occupied by such expansion tenant will expire no earlier than the expiration date of the initial lease term for the expansion premises, provided that where such expansion tenant occupies premises in the eligible building under more than one lease, the foregoing provision of this subclause shall be applied with reference to the lease for the premises containing the largest amount of square feet, provided, however, that this subclause shall not apply to a lease commencing on or after July first, nineteen hundred ninety-six; and

(C) (I) if, by the sixtieth day following the rent commencement date, such expansion tenant employs fifty or fewer employees in the eligible building in which the expansion premises are located, the initial lease term for the expansion premises is for a period of at least five years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such expansion tenant employs one hundred twenty-five or fewer employees in the expansion premises, the initial lease term for the expansion premises is for a period of at least five years, and provided, further, that with respect to a lease commencing on or after April first, nineteen hundred ninety-seven if, by the sixtieth day following the rent commencement date, such expansion tenant employs one hundred twenty-five or fewer employees in the expansion

premises, the initial lease term for the expansion premises is for a period of at least three years, or (II) if, by the sixtieth day following the rent commencement date, such expansion tenant employs more than fifty employees in such eligible building, the initial lease term for the expansion premises is for a period of at least ten years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such expansion tenant employs more than one hundred twenty-five employees in the expansion premises, the initial lease term for the expansion premises is for a period of at least ten years.

(b) Notwithstanding anything in this subdivision to the contrary, with respect to premises located in an eligible government-owned building, no certificate of eligibility shall be issued and no special reduction shall be allowed under this subdivision if:

(i) the tenant has relocated to such premises from any area in the borough of Manhattan north of the center line of 96th street or from any portion of the boroughs of the Bronx, Brooklyn, Queens, or Staten Island; or

(ii) the lease for such premises provides that during the initial lease term required under subparagraph (A) of this paragraph either the landlord or the tenant may terminate such lease prior to the expiration of such required initial lease term, provided that such lease may provide that either the landlord or the tenant may terminate such lease if (A) the other party is in default of any of such party's obligations under the lease, (B) the eligible premises are damaged or destroyed by fire or other casualty, (C) the eligible premises are rendered unusable for any reason not attributable to any act or failure to act of either tenant or landlord or (D) the eligible premises are acquired by eminent domain.

(c) For purposes of this paragraph, the expiration date of a lease shall be determined by the expiration date set forth in such lease, without giving effect to any rights of the landlord or the tenant to terminate such lease prior to the expiration date set forth therein.

(5) (a) (i) With respect to premises located in an eligible government-owned building, an application for a certificate of eligibility entitling a tenant to claim the special reduction allowed by this subdivision shall be filed by such tenant with the department of finance on or after the date on which the lease for the eligible premises is executed by the landlord and tenant but in no event more than one hundred eighty days following the later of the rent commencement date or the date that chapter four of the laws of nineteen hundred ninety-five became a law, and no such certificate of eligibility shall be issued unless such application is filed within such time.

(ii) Notwithstanding clause (i) of this subparagraph and any other provision of law to the contrary, with respect to a lease commencing on or after July first, nineteen hundred ninety-six in premises located in an eligible government-owned building, an application for a certificate of eligibility entitling a tenant to claim the special reduction allowed by this subdivision shall be filed by such tenant with the department of finance on or after the date on which the lease for the eligible premises is executed by the landlord and tenant but in no event more than one hundred eighty days following the rent commencement date or sixty days following the date that the chapter of the laws of nineteen hundred ninety-seven that added this clause became a law, whichever is later, and no such certificate of eligibility shall be issued unless such application is filed within such time.

(b) In addition to any other information required by the department of finance, such application for a certificate of eligibility shall include (i) an abstract of the lease for the eligible taxable premises, which shall include the lease commencement date, the rent commencement date and the expiration date of such lease, (ii) a statement as to the number of persons employed by the tenant in the eligible taxable premises and, where applicable, in the eligible building containing such premises, by the sixtieth day following the rent commencement date, (iii) a statement as to the location of all office or retail space in the city occupied by the tenant prior to the execution of the lease for the eligible taxable premises and the commencement and expiration dates of all leases for such office or retail space located in the abatement zone. Such application shall also state that the tenant agrees to comply with and be subject to such rules as may be issued from time to time by the department of finance.

(c) The department of finance shall issue a certificate of eligibility upon determining that an application filed pursuant to this paragraph meets the requirements set forth in this subdivision, provided, however, that no such certificate of eligibility shall be issued if any payments in lieu of taxes, water or sewer charges or other lienable charges are due and owing with respect to such eligible government-owned building at the time such application is pending, unless such payments in lieu of taxes or charges are at such time being paid in timely installments pursuant to a written agreement with the department of finance or other appropriate agency.

(d) The burden of proof shall be on the tenant to show by clear and convincing evidence that the requirements for granting a certificate of eligibility have been satisfied. The department of finance shall have the authority to require that statements in connection with applications pursuant to this paragraph be made under oath.

(e) The department of finance may provide by rule for the payment by tenants of premises in eligible government-owned buildings of reasonable administrative charges or fees necessary to defray expenses in connection with the determination of initial and continuing eligibility for the special reduction allowed by this subdivision.

(6) (a) If an eligible tenant (i) sublets any portion of the eligible taxable premises to any other person, or (ii) otherwise ceases to occupy or use any portion of the premises as eligible taxable premises, such tenant shall, immediately upon the occurrence of any such event, cease to be eligible for the special reduction allowed by this subdivision with respect to the portion of the premises which is sublet or which ceases to be occupied or used by such tenant as eligible taxable premises, and for any period following the occurrence of any such event, the special reduction otherwise allowed by this subdivision shall be reduced by an amount determined by multiplying the amount of such special reduction by the percentage of the premises which is sublet or which has ceased to be occupied or used as eligible taxable premises. Such tenant shall give written notice of the occurrence of any such event to the department of finance within thirty days thereof. If the tenant fails to give such notice, an assessment of any additional tax that may become due as a result of the occurrence of any such event may be made at any time, notwithstanding anything in section 11-717 of this chapter to the contrary.

(b) Notwithstanding anything in this chapter to the contrary, a tenant claiming the special reduction allowed by this subdivision shall file a return for each tax period with respect to which such special reduction is claimed. Each such return shall contain a certification by the tenant, in such form as the department of finance may prescribe, to the effect that such tenant meets all the requirements of this subdivision, and no special reduction shall be allowed if such return does not contain such certification by such tenant.

(c) If any special reduction allowed under this subdivision was obtained by a tenant as a result of having made a false or misleading statement as to a material fact or having omitted to state any material fact necessary in order to make such statement not false or misleading, no such special reduction shall be allowed and any additional tax that becomes due as a result of such disallowance may be assessed at any time, notwithstanding anything in section 11-717 of this chapter to the contrary. In addition, the department of finance may declare any such tenant to be ineligible to claim any special reduction under this subdivision in the future with respect to the same or any other premises.

7. A determination by the department of finance pursuant to subdivision six of section four hundred ninety-nine-f of the real property tax law to deny, terminate or revoke any abatement applied for or granted pursuant to title four of article four of the real property tax law based on the relationship between the landlord and the tenant shall not be dispositive of whether such tenant is eligible for a special reduction under this subdivision. The department of finance may determine that such tenant is eligible for a special reduction under this subdivision and may issue a certificate of eligibility to such tenant in accordance with the procedures and pursuant to the standards applicable to a tenant of premises located in an eligible government-owned building, provided, however, that any application filed pursuant to paragraph five of this subdivision by a tenant whose application for a certificate of abatement pursuant to title four of article four of the real property tax law was denied by the department of finance pursuant to subdivision six of section four hundred ninety-nine-f of the real property tax law based on the relationship between the landlord and the tenant, or by a tenant whose application for a certificate of abatement pursuant to title four of article four of the real

property tax law was granted by the department of finance, but whose abatement was terminated or revoked by the department of finance pursuant to subdivision six of section four hundred ninety-nine-f of the real property tax law based on the relationship between the landlord and the tenant, may be deemed by the department of finance to have been filed on the date the application for such certificate of abatement was filed. This paragraph shall only apply to leases commencing on or after April first, nineteen hundred ninety-seven.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a pars 4, 5 amended chap 2/2005 § A4, eff. Aug. 30, 2005.

Subd. a par 6 added chap 2/2005 § A4, eff. Aug. 30, 2005.

Subd. b par (2) amended L.L. 38/2001 § 1, eff. June 18, 2001 and retroactive to June 1, 2001.

Subd. b par (2) amended L.L. 6/2001 § 1, eff. Feb. 2, 2001 and retroactive to Dec. 1, 2000.

Subd. b par (2) amended L.L. 63/1997 § 1, eff. July 14, 1997.

Subd. b par (2) amended L.L. 57/1995 § 1, eff. June 27, 1995

Subd. b par (2) amended L.L. 22/1994 § 2, eff. July 21, 1994

Subd. b par (2) amended L.L. 57/1993 § 2, eff. June 30, 1993

Subd. c par 9 added chap 2/2005 § A2, eff. Dec. 1, 2005.

Subd. e amended L.L. 57/1995 § 2, eff. June 27, 1995

Subd. f added L.L. 50/1987 § 6

Subd. f par (1) amended chap 709/1993 § 7, eff. Aug. 6, 1993

Subd. f par (1) amended chap 425/1990 § 13, retro. to July 29, 1987

Subd. f par (1) amended L.L. 42/1988 § 5

Subd. f par (2) amended chap 425/1990 § 13, retro. to July 29, 1987

Subd. f par (2) amended L.L. 42/1988 § 5

Subd. f par (4) amended chap 831/1992 § 3, eff. Aug. 7, 1992

Subd. f par (4) amended chap 425/1990 § 13 eff. July 10, 1990 retroactive to July 29, 1987

Subd. f par (4) added L.L. 42/1988 § 6

Subd. g relettered L.L. 50/1987 § 6

(formerly subd. f)

Subd. h amended L.L. 57/1995 § 3, eff. June 27, 1995.

Subd. h amended L.L. 22/1994 § 3, eff. July 21, 1994.

Subd. h relettered L.L. 50/1987 § 6

(formerly subd. g)

Subd. h par (2) amended L.L. 63/1997 § 2, eff. July 14, 1997.

Subd. i added chap 4/1995 § 18, eff. Oct. 29, 1995 and retroactive to April 1, 1995.

Subd. i par (1) subpar (a) clause (ii) item (A) amended chap 2/2005 § A3, eff. Aug. 30, 2005.

Subd. i par (2) subpar (a) amended chap 60/2007 § O4, eff. Apr. 9, 2007 and deemed in full force and effect on and after Apr. 1, 2007.

Subd. i par (2) subpar (a) amended chap 529/2006 § 1, eff. Aug. 16, 2006 and deemed to have been in full force and effect on and after July 1, 2005.

Subd. i par (2) subpar (a) separately amended chap 2/2005 § A5, eff. Aug. 30, 2005 and chap 727/2005 § 10 effective July 1, 2005.

Subd. i par (2) subpar (a) amended chap 440/2003 § 7, eff. Aug. 26, 2003 and deemed in full force and effect on and after July 1, 2003.

Subd. i par (2) subpar (a) amended chap 118/2001 § FF6, eff. Aug. 3, 2001 and deemed to have been in full force and effect on and after Apr. 1, 2001.

Subd. i par (2) subpar (a) amended chap 629/1997 § 22, eff. Sept. 17, 1997.

Subd. i par (2) subpar (a-1) added chap 529/2006 § 2, eff. Aug. 16, 2006 and deemed to have been in full force and effect on and after July 1, 2005.

Subd. i par (2) subpar (a-2) added chap 529/2006 § 2, eff. Aug. 16, 2006

and deemed to have been in full force and effect on and after July 1, 2005.

Subd. i par (2) subpar (a-3) added chap 529/2006 § 2, eff. Aug. 16, 2006 and deemed to have been in full force and effect on and after July 1, 2005.

Subd. i par (2) subpar (b) amended chap 629/1997 § 22, eff. Sept. 17, 1997.

Subd. i par (2) subpar (b) open par amended chap 2/2005 § A6, eff. Aug. 30, 2005.

Subd. i par (2) subpar (b) clause (v) repealed chap 2/2005 § A7, eff. Aug. 30, 2005.

Subd. i par (2) subpar (b-1) added chap 629/1997 § 23, eff. Sept. 17, 1997.

Subd. i par (2) subpar (b-2) added chap 2/2005 § A8, eff. Aug. 30, 2005.

Subd. i par (4) subpar (a) amended chap 629/1997 § 24, eff. Sept. 17, 1997.

Subd. i par (5) subpar (a) amended chap 629/1997 § 25, eff. Sept. 17, 1997.

Subd. i par 7 added chap 629/1997 § 26, eff. Sept. 17, 1997.

DERIVATION

Formerly § L46-4.0 added LL 38/1963 § 1

Sub f added LL 29/1967 § 1

Sub c par 5 amended LL 50/1968 § 1

Sub b amended LL 57/1981 § 1

Sub b par 2 amended LL 32/1984 § 1

Sub g added LL 50/1985 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Petitioner was not entitled to a rent deduction for "premises used for air transportation purposes" where it did

not own or operate aircraft during the audit period but offered an air shipment service to deliver cargo to and recover it from the airlines.-Emery Air Freight Corp. v. Tishelman, 55 N.Y. 2d 740 [1981].

CASE NOTES

¶ 1. Ad Cd §11-704(f) limits rent subject to commercial rent or occupancy tax to 15% of gross receipts of tenant/taxpayer, applies only to that portion of the rent paid and calculated solely on tenant parking facility gross receipts. They do not apply to the guaranteed minimum portion of such rent, as demonstrated by illustration (B) of 19 RCNY 7-01(7)(i). Matter of Square Plus Operating Corp. v. City of New York, 212 AD2d 448 [1995].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-704.1

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Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-704.1 [Credit for taxpayer who has not received special energy rebate.] Repealed.

HISTORICAL NOTE

Section repealed chap 472/2000 § 47, eff. Nov. 1, 2000 with special provisions. [See Note to § 11-503]

Section added L.L. 20/1986 § 26

DERIVATION

Formerly § L46-4.1 added L.L. 20/1986 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-704.2

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-704.2 Special credit.

A tenant whose base rent for the tax year beginning June first, nineteen hundred ninety-three and ending May thirty-first, nineteen hundred ninety-four is at least eleven thousand dollars per year but not in excess of thirteen thousand nine hundred ninety-nine dollars per year shall be allowed a credit against the tax imposed by this chapter for such tax year, such credit shall be equal to twenty-five percent of the tax imposed on such base rent for such tax year. Where the base rent of a tenant is for a period of less than one year, such base rent shall, for the purposes of this section, be determined as if it had been on an equivalent basis for the entire year. The credit allowed under this section shall be deducted prior to the deduction of any credit allowable under section 11-704.1 of this chapter.

HISTORICAL NOTE

Section added L.L. 57/1993 § 3 eff. June 30, 1993

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-704.3

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-704.3 Tax credit.

(a) (1) For the period beginning September first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

If the tenant's annualized base rent for such period is:		The credit shall be an amount equal to the following percentage of the tax imposed on such annualized base rent for such period:
At least:	But not over:	
$40,000	$44,999	80%
$45,000	$49,999	60%
$50,000	$54,999	40%
$55,000	$59,999	20%

If the tenant's annualized base rent for such period is over fifty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph.

(2) For the tax year beginning June first, nineteen hundred ninety-six and ending May thirty-first, nineteen hundred ninety-seven, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

If the tenant's base rent is:		The credit shall be an amount equal to the following percentage of the tax imposed on such base rent for the tax year:
At least:	But not over:	
$40,000	$44,999	80%

$45,000	$49,999	60%
$50,000	$54,999	40%
$55,000	$59,999	20%

If the tenant's base rent is over fifty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph.

(3) For each tax year beginning on or after June first, nineteen hundred ninety-seven and ending on or before May thirty-first, two thousand, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

If the tenant's base rent is:		The credit shall be an amount equal to the following percentage of the tax imposed by this chapter for the tax year:
At least:	But not over:	
$100,000	$109,999	80%
$110,000	$119,999	60%
$120,000	$129,999	40%
$130,000	$139,999	20%

If the tenant's base rent is over one hundred thirty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph, `base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(4) For the period beginning June first, two thousand and ending November thirtieth, two thousand, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

If the tenant's annualized base rent for such period is:		The credit shall be an amount equal to the following percentage of the tax imposed on such annualized base rent for such period:
At least:	But not over:	
$100,000	$109,999	80%
$110,000	$119,999	60%
$120,000	$129,999	40%
$130,000	$139,999	20%

If the tenant's annualized base rent for such period is over one hundred thirty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph `base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(5) For the period beginning December first, two thousand and ending May thirty-first, two thousand one, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

If the tenant's annualized base rent for such period is:		The credit shall be an amount equal to the following percentage of the tax imposed on such annualized base rent for such period:
At least:	But not over:	
$150,000	$159,999	80%
$160,000	$169,999	60%
$170,000	$179,999	40%
$180,000	$189,999	20%

If the tenant's annualized base rent for such period is over one hundred eighty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph, `base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of

this chapter.

(6) For each tax year beginning on or after June first, two thousand one, a credit shall be allowed against the tax imposed by this chapter as follows: a tenant whose base rent is at least two hundred and fifty thousand dollars but not more than three hundred thousand dollars shall be allowed a credit in an amount determined by multiplying three and nine-tenths percent of base rent by a fraction the numerator of which is three hundred thousand dollars minus the amount of base rent and the denominator of which is fifty thousand dollars. If the tenant's base rent is over three hundred thousand dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph, `base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(b) (1) Where the base rent of a tenant is for a period of less than one year, such base rent shall, for purposes of this section, be determined as if it had been on an equivalent basis for the entire year. The credits allowed under this section shall be deducted prior to the deduction of any credit allowable under section 11-704.1 of this chapter.

(2) For purposes of paragraphs four and five of subdivision (a) of this section, base rent for the period specified in each of such paragraphs shall be separately annualized as if it had been on an equivalent basis for an entire year, irrespective of the actual base rent for the tax year including the period specified in such paragraph.

HISTORICAL NOTE

Section amended L.L. 6/2001 § 2, eff. Feb. 2, 2001 and retroactive to

Dec. 1, 2000.

Section amended L.L. 57/1995 § 4, eff. June 27, 1995

Section added L.L. 22/1994 § 4, eff. July 21, 1994

Subd. (a) par (2) amended (as Subd. (2)) L.L. 63/1997 § 3, eff. July 14,

1997.

Subd. (a) par (3) added (as Subd. (3)) L.L. 63/1997 § 4, eff. July 14,

1997.

Subd. (a) par (6) amended L.L. 38/2001 § 2, eff. June 18, 2001 and

retroactive to June 1, 2001.

Subd. (b) is former Subd. (4) renumbered L.L. 63/1997 § 4, former subd.

(3).

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Administrative Code of the City of New York

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NYC Administrative Code 11-705

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-705 Returns.

a. Every tenant subject to tax under this chapter shall file with the commissioner of finance a return with respect to the taxes payable for the three month periods ending on the last days of August, November and February of each year and a final return with respect to the taxes payable for the tax year ending on the last day of May of each year. Such returns shall be filed within twenty days from the expiration of the period covered thereby. A tenant who is exempt from the tax by reason of paragraph two of subdivision b of section 11-704 of this chapter shall nevertheless be required to file a final return, provided, however, that for tax years beginning on or after June first, nineteen hundred ninety-five and ending on or before May thirty-first, nineteen hundred ninety-seven, no such final return shall be required from such exempt tenant with respect to taxable premises if (1) the tenant's rent for such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, does not exceed fifteen thousand dollars for the tax year and (2) in the case of a tenant who has more than one taxable premises, the aggregate rents for all such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, do not exceed fifteen thousand dollars for the tax year. For tax years beginning on June first, nineteen hundred ninety-seven and ending on or before May thirty-first, two thousand one, no such final return shall be required from such exempt tenant with respect to any taxable premises if (1) the tenant's rent for such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, does not exceed seventy-five thousand dollars for the tax year and (2) the amount of rent received or due from any subtenant of such exempt tenant with respect to such premises does not exceed seventy-five thousand dollars for the tax year. For tax years beginning on or after June first, two thousand one, no such final return shall be required from such exempt tenant with respect to any taxable premises if (1) the tenant's rent for such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, does not exceed two hundred thousand dollars for the tax year and (2) the

amount of rent received or due from any subtenant of such exempt tenant with respect to such premises does not exceed two hundred thousand dollars for the tax year. Notwithstanding anything in this subdivision to the contrary, for tax periods beginning on or after September first, nineteen hundred ninety-five, no return shall be required pursuant to this subdivision with respect to any taxable premises located in that part of the city specified in paragraph one of subdivision h of section 11-704 of this chapter, and no such taxable premises shall be taken into account for purposes of clause two of the preceding sentence. The commissioner of finance may permit or require returns (including final returns) to be made for other periods and upon such dates as the commissioner may specify and if he or she deems it necessary in order to insure the payment of the tax imposed by this chapter, the commissioner may require such returns to be made for shorter periods than those prescribed by the foregoing provisions of this section, and upon such dates as he or she may specify.

b. The commissioner of finance may by regulation require the filing of information returns and supplemental information returns by landlords and by tenants of taxable premises, whether or not they are required to pay the tax imposed by this chapter, upon such dates or at such times as the commissioner may specify if he or she deems the filing of such information returns necessary for proper administration of this chapter.

c. The form of returns and information returns shall be prescribed by the commissioner of finance and shall contain such information as the commissioner may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns or amended information returns to be filed within twenty days after notice and to contain the information specified in the notice.

d. If a return or information return is not filed, or if a return of any kind when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 38/2001 § 3, eff. June 18, 2001 and retroactive

to June 1, 2001.

Subd. a amended L.L. 63/1997 § 5, eff. July 14, 1997

Subd. a amended L.L. 57/1995 § 5, eff. June 27, 1995

Subd. a amended L.L. 22/1994 § 5, eff. July 21, 1994

Subd. a amended L.L. 62/1987 § 1

DERIVATION

Formerly § L46-5.0 added LL 38/1963 § 1

Sub a amended LL 59/1967 § 1

Sub a amended LL 57/1981 § 2

Sub a amended LL 32/1984 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-706

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-706 Payment of tax.

a. The tax imposed by this chapter shall be due and payable on or before the twentieth day of the calendar month following the end of each tax period and shall be paid to the commissioner of finance, as follows: The tax to be paid at such time shall be based on the base rent for such tax period and the rate of tax shall be the one which would be applicable if the base rent for such period were the same for each tax period during the tax year, except that the payment required to be made together with the final return or at the time that the final return should be filed shall be the amount by which the actual tax for the tax year exceeds the amounts previously paid for the tax year.

b. Where the final return shows that the amount of tax paid for the tax year exceeds the actual tax for such year, the commissioner of finance shall make the appropriate refund as promptly as possible, provided, however, that where the commissioner of finance has reason to believe that the final return is inaccurate, the commissioner may withhold the refund in whole or in part. The making of a refund pursuant to this subdivision shall not prevent the commissioner of finance from making a determination that additional tax is due or from pursuing any other method to recover the full amount of the actual tax due for the tax year.

c. Where a tenant ceases to do business the tax, as measured by the tenant's base rent for the prior part of the tax year, shall be due immediately, and the tenant shall file a final return, but, should the tenant continue to pay rent for the taxable premises, the tenant shall file the normally required returns and a final return for the tax year, provided, however, that any such tax payment shall be applied in reduction of the tax payments required to be made with such returns or with the final return for such tax year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-6.0 added LL 38/1963 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-707

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-707 Records to be kept.

Every landlord of taxable premises and every tenant of taxable premises shall keep records of rent paid and received by him or her in such form as the commissioner of finance may by regulation require, all leases or agreements which fix the rents or rights of tenants of taxable premises, and such other records, receipts and other papers relevant to the ascertainment of the tax due under this chapter as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner of finance. Such records, unless the commissioner of finance consents to a sooner destruction or requires that they be kept for a longer time, shall be preserved for a period of three years except that leases or agreements which fix the rents or rights of a tenant shall be kept for a period of three years after the expiration of the tenancy thereunder.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-7.0 added LL 38/1963 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-708

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-708 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the conciliation*21 of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of**22 the commissioner's own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with interest and penalties thereon, if any, shall be first deposited and there is filed an undertaking with the

commissioner of finance, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the taxpayer such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 38, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-8.0 added LL 38/1963 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Petition for redetermination of determination by Finance department is deemed to be timely made within the 30 day period, if mailed by the taxpayer within such 30 day period. It is not required that the petition be received by the department within the 30 day period.-Matter of Ciraldo (Dept. of Finance) 191 (108) N.Y.L.J. (6-5-84) 4, Col. 3B.

FOOTNOTES

21

[Footnote 21]: * So in original, ("conciliation" s.b. "commissioner").

22

[Footnote 22]: ** So in original, ("of" s.b. "on").

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***** Current through December 2009 ****

NYC Administrative Code 11-709

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-709 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner of finance for such refund shall be made within eighteen months from the date fixed by this chapter for filing the return on which such payment was based or within six months of the payment thereof, whichever of such periods expire the later. Whenever a refund or credit is made or denied, the commissioner of finance shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing of any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to section one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article

seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner of finance, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-708 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-708 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional, or otherwise improper, by the tax appeals tribunal after a hearing, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 39, eff. Oct. 1, 1992

DERIVATION

Formerly § L46-9.0 added LL 38/1963 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Refusal of City to refund tax assessed against petitioner under the Commercial Rent or Occupancy Tax Law was unwarranted where law, including the provision as to remedy was unconstitutional as applied to petitioner, a national bank and when the tax had been paid under protest but petitioner had not filed for a refund until six months of the date of each payment or 18 months from the dates fixed by law for the filing of each tax return when it waited for the Supreme Court to reaffirm the immunity of national banks, and bank should be awarded 3% interest on refunded taxes.-First Nat. City Bank v. City of N.Y., 36 N.Y. 2d 87 [1975].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-710

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-710 Remedies exclusive.

The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-708 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 40, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-10.0 added LL 38/1963 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-711

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-711 Reserves.

In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-11.0 added LL 38/1963 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-712

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-712 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties might be satisfied and that any such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the

warrant the sheriff shall be entitled to the same fees which the sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding paragraph, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of section forty-four of the personal property law, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 27, eff. Sept. 17, 2002.

DERIVATION

Formerly § L46-12.0 added LL 38/1963 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-713

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-713 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding ninety days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state on New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person;

4. To delegate the commissioner's functions hereunder to a deputy commissioner of finance or other employee or employees of the commissioner's department;

5. To assess, determine, revise and adjust the taxes imposed under this chapter;

6. To require any tenant who uses premises for both residential purposes and as taxable premises and who pays an undivided rent for the entire premises so used to provide the commissioner with a signed and notarized request to the United States director of internal revenue for photostatic copies of the tenant's income tax return for any year when the

commissioner deems such income tax return necessary to determine the rent ascribable to so much of such premises as is used as taxable premises; and, if the tenant refuses to provide the commissioner with such a signed written request, to treat the rent for the entire premises as the rent for so much as is used as taxable premises;

7. To prescribe methods for determining how much of any tenant's base rent is ascribable to a use which results in a reduction of the base rent or for determining any other division of rent or of use of premises necessary for the determination of the base rent or the amount of base rent subject to tax under this chapter;

8. To authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-13.0 added LL 38/1963 § 1

Sub 8 added LL 26/1967 § 1

Sub 2 amended LL 2/1983 § 14

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NYC Administrative Code 11-714

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-714 Administration of oaths and compelling testimony.

a. The commissioner of finance, the commissioner's employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4002 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and the sheriff's duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 41, eff. Oct. 1, 1992

DERIVATION

Formerly § L46-14.0 added LL 38/1963 § 1

Sub c repealed and added chap 765/1985 § 53

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-715

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-715 Interest and penalties.

(a) Interest on underpayment; quarterly return. If any amount of tax required to be paid together with a return, other than the final return for a tax year, is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (h) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date until twenty days after the end of the tax year during which such payments were due or until such prior time as the tax paid for the tax year equals seventy-five percent of the full tax required to be paid for the tax year. Such interest shall be paid with the final return for the tax year to which it relates. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) Interest on underpayment; final return. If any amount of tax required to be paid together with the final return for a tax year is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (h) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(c) (1) Failure to file final return. (A) in case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five

percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate, and, in addition thereto, where a tenant, with respect to any taxable premises, is exempt from tax by reason of paragraph two of subdivision b of section 11-704 of this chapter, there shall be imposed a penalty of one hundred dollars.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on final return. In case of failure to pay the amount shown as tax on a final return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on final return. In case of failure to pay any amount in respect of any tax required to be shown on a final return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-708 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any final return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any final return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(d) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (b) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(e) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (b) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (c) or (d) of this section.

(f) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(g) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(h) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivisions (a) and (b) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the same for each subdivision and shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(i) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(j) Substantial understatement of liability. If there is a substantial understatement of tax for any tax year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any tax year if the amount of the understatement for the tax year exceeds the greater of ten percent of the tax required to be shown on the final return for the tax year or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the final return for the tax year, over the amount of the tax imposed which is shown on the return, reduced by any rebate. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(k) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph (1) of this subdivision, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph (1) of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (c) par (1) subpar (A) amended L.L. 62/1987 § 2

Subd. (h) amended chap 241/1989 § 13

Subd. (h) par (2) amended chap 63/2003 § E2 eff. May 19, 2003 and deemed in full force and effect on and after may 1, 2003. [See § 11-537 Note 1]

DERIVATION

Formerly § L46-15.0 added LL 38/1963 § 1

Repealed and added LL 2/1983 § 15

Subs d-i relettered LL 32/1984 § 3
(formerly second sub c, subs d-h)

Sub c par 1 amended LL 32/1984 § 3

Subs a, b, d, e, i amended chap 765/1985 § 54

Subs j, k added chap 765/1985 § 54

Sub c pars 1, 4 amended chap 765/1985 § 54

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Administrative Code of the City of New York

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NYC Administrative Code 11-716

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-716 Returns to be secret.

a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner any information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the courts may require the production of, and may admit in evidence so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return filed in connection with his or her tax; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, to the United States of America or any department thereof, the state of New York or any department thereof, any agency or any department of the city of New York provided the same is requested for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 42, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 1

Subd. c added chap 714/1989 § 4

Subd. d added chap 808/1992 § 43, eff. Oct. 1, 1992

DERIVATION

Formerly § L46-16.0 added LL 38/1963 § 1

Amended LL 26/1967 § 2

Sub a designated chap 765/1985 § 55

(formerly open par)

Sub b added chap 765/1985 § 55

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-717

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-717 Notices and limitation of time.

a. Any notice authorized or required under the provisions of this chapter may be given to the person for whom it is intended by mailing it in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or if no return has been filed or application made, then to such address as may be obtainable. The mailing of a notice as in this paragraph provided for shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice as in this subdivision provided.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the final return for the tax year to which the assessment relates; provided, however, that where no return has been made as provided by law, the tax may be assessed at any time.

c. Where before the expiration of the period prescribed herein for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 513/2002 § 4, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 44, eff. Oct. 1, 1992

Subd. f added chap 513/2002 § 5, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § L46-17.0 added LL 38/1963 § 1

Subs d, e added LL 41/1984 § 7

CASE NOTES

¶ 1. Three-year statute of limitations in § 11-717(b) is not available as partial defense to liability because it never furnished information sufficient to put taxing authority on notice of petitioner's occupancy of luxury "sky box" and was as if plaintiff had failed to file any tax return at all.-Peat Marwick Main v. NYC Dept. of Finance, 155 AD2d 239 [1989].

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NYC Administrative Code 11-718

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 7 COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-718 Construction and enforcement.

This chapter shall be construed in conformity with chapter two hundred fifty-seven of the laws of nineteen hundred sixty-three, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § L46-18.0 added LL 38/1963 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-801

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-801 Definitions.

When used in this chapter, the following terms shall mean or include:

1. "Person." An individual, partnership, corporation, joint-stock company, society, association, receiver, lessee, trustee, estate, referee, assignee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Motor vehicle." Any vehicle operated upon a public highway or public street propelled by any power other than muscular power.

3. "Commercial motor vehicle." (a) Each truck, tractor, trailer or semi-trailer, and any other motor vehicle constructed or specially equipped for the transportation of goods, wares and merchandise which is commonly known as an auto truck or light delivery car;

(b) Any traction engine, road roller, tractor crane, truck crane, power shovel, road building machine, snow plow, road sweeper, sand spreader, well driller, or well servicing rig; and

(c) Any earth moving equipment as defined in the vehicle and traffic law;

provided that such motor vehicles are used principally in the city or used principally in connection with a business carried on within the city.

4. "Motor vehicle for transportation of passengers." (a) Any motor vehicle licensed as a taxicab or as a coach, or any motor vehicle, not so licensed, which carries passengers for compensation, including limousine service, whether the compensation paid by or on behalf of the passenger is based on mileage, trip, time consumed or any other basis; and

(b) Any omnibus, except one operated pursuant to a franchise when, under such franchise or under a contract (relating to transportation to or from airports in the city) with the port of New York authority, the holder of the franchise pays to the city or to the port of New York authority a percentage of its gross earnings or gross receipts or one used exclusively in interstate commerce; provided such motor vehicles, as defined in paragraph (a) or (b) of this subdivision, are used regularly, even though not principally, in the city; and further provided that this definition shall not be deemed to include any motor vehicle used principally for the transportation of children to and from schools and day camps operated by non-profit agencies as defined in subdivision four of section 11-803, any motor vehicle used exclusively for transportation of persons in connection with funerals or any motor vehicle for transportation of passengers where neither the owner of such motor vehicle nor any person or business engaged in transporting passengers by motor vehicle for-hire that is affiliated with such owner has a place of business in such city, a telephone number in such city, or solicits business or specifically advertises in such city.

5. "Owner." Any person owning a commercial motor vehicle or a motor vehicle for the transporation of passengers and shall include a purchaser under a reserve title contract, conditional sales agreement or vendor's lien agreement. In addition, an owner shall be deemed to include any lessee, licensee or bailee having the exclusive use of a commercial motor vehicle or a vehicle for the transportation of passengers, under a lease or otherwise, for a period of thirty days or more.

6. "Omnibus." Any motor vehicle for transportation of passengers for hire having a seating capacity of more than seven persons.

7. "Use." Any use of a motor vehicle upon the public highways or streets of the city.

8. "Maximum gross weight." The weight of the motor vehicle plus the weight of the maximum load to be carried, if any, by such vehicle.

9. "Registered owner." The person who registers a motor vehicle as owner thereof pursuant to the registration requirements of the vehicle and traffic law of the state of New York.

10. "Registration fee." The full annual fee or charge prescribed in the vehicle and traffic law of the state of New York for the registration of a motor vehicle.

11. "City." The city of New York.

12. "Comptroller." The comptroller of the city.

13. "Commissioner of finance." The commissioner of finance of the city.

14. "Tax year." June first of any calendar year through May thirty-first of the following calendar year.

15. "Medallion taxicab." A motor vehicle for transportation of passengers which is duly licensed as a taxicab by the taxi and limousine commission of the city and permitted to accept hails from passengers in the street.

16. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

17. "Commissioner of motor vehicles." The commissioner of motor vehicles of the state of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 4 amended chap 789/1992 § 7, eff. Aug. 7, 1992 applying to tax years beginning on and after June 1, 1993

Subd. 15 added L.L. 60/1989 § 1

Subd. 16 added chap 808/1992 § 45, eff. Oct. 1, 1992

Subd. 17 added L.L. 57/1996 § 1, eff. June 27, 1996

DERIVATION

Formerly § K46-1.0 added LL 39/1960 § 1

Sub 4 par b amended LL 68/1960 § 1

Sub 13 amended chap 100/1963 § 1680

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-802

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-802 Imposition of tax.

a. In addition to any and all other taxes, including the compensating use tax, there is hereby imposed and there shall be paid annually for each tax year beginning June first, nineteen hundred sixty, a tax on the use in the city of motor vehicles to be paid by the owners of such vehicles as follows:

1. (A) For tax years ending on or before May thirty-first, nineteen hundred seventy-two, on commercial vehicles, twenty dollars for each such vehicle having a maximum gross weight of five tons or less, and thirty dollars for each such vehicle having a maximum gross weight of more than five tons, provided, however, that for each such vehicle having a registration fee prescribed in the vehicle and traffic law of the state of New York which is less than twenty dollars, the tax shall be an amount equal to such registration fee;

(B) For tax years beginning on and after June first, nineteen hundred seventy-two but before June first, nineteen hundred ninety, on commercial vehicles, forty dollars for each such vehicle having a maximum gross weight of five tons or less, and sixty dollars for each such vehicle having a maximum gross weight of more than five tons, provided, however, that for each such vehicle having a registration fee prescribed in the vehicle and traffic law of the state of New York which is less than forty dollars, the tax shall be an amount equal to such registration fee.

(C) For tax years beginning on and after June first, nineteen hundred ninety, on commercial vehicles, forty dollars for each such vehicle having a maximum gross weight of ten thousand pounds or less, two hundred dollars for each such vehicle having a maximum gross weight of more than ten thousand pounds but not more than twelve thousand five hundred pounds, two hundred seventy-five dollars for each such vehicle having a maximum gross weight

of more than twelve thousand five hundred pounds but not more than fifteen thousand pounds and three hundred dollars for each such vehicle having a maximum gross weight of more than fifteen thousand pounds, provided, however, that for each such vehicle having a registration fee prescribed in the vehicle and traffic law of the state of New York which is less than forty dollars, the tax shall be an amount equal to such registration fee.

2. (A) For tax years ending on or before May thirty-first, nineteen hundred ninety, on motor vehicles for the transportation of passengers other than medallion taxicabs, and for tax years ending on or before May thirty-first, nineteen hundred eight*24 -nine, on medallion taxicabs, one hundred dollars for each such vehicle.

(B) For the tax year beginning June first, nineteen hundred eighty-nine and ending May thirty-first, nineteen hundred ninety, on medallion taxicabs, five hundred dollars for each such vehicle.

(C) For tax years beginning on and after June first, nineteen hundred ninety, on medallion taxicabs, one thousand dollars for each such vehicle, and on all other motor vehicles for transportation of passengers, four hundred dollars for each such vehicle.

b. To the extent that the tax as imposed by subdivision a of this section may be invalid solely because it is based on the use in the city of the motor vehicles, the tax shall also be deemed to be based on the privilege of using the public highways or streets of the city by such motor vehicle. Under such circumstances the rate of tax shall be the same and all other provisions of this chapter shall be equally applicable.

c. If the first use of any motor vehicle subject to the tax imposed hereunder occurs on or after December first and before March first in any tax year, the tax for that year shall be one-half of the tax hereinabove provided; and, if the first such use occurs on or after March first in any tax year, the tax for that tax year shall be one-fourth of the tax hereinabove provided.

d. In applying the tax on commercial motor vehicles with respect to tractors, trailers and semi-trailers, the tax shall be measured by the weight of the tractor plus the maximum gross weight of the trailer or semi-trailer with the greatest such maximum gross weight to be drawn by such tractor. No trailer or semi-trailer shall be subject to any separate or additional tax under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a par 1 subpar (B) amended L.L. 60/1989 § 2

Subd. a par 1 subpar (C) amended L.L. 57/1996 § 2, eff. June 27, 1996

and retroactive to July 25, 1989

Subd. a par 1 subpar (C) added L.L. 60/1989 § 3

Subd. a par 2 amended L.L. 60/1989 § 4

DERIVATION

Formerly § K46-2.0 added LL 39/1960 § 1

Sub d added LL 68/1960 § 2

Sub a par 1 amended LL 35/1971 § 1

FOOTNOTES

24

[Footnote 24]: * So in original.

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Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-803 Exemptions.

The provisions of this chapter shall not apply to motor vehicles owned and operated, or leased for their exclusive use by:

1. The state of New York, or any public corporation (including a corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

2. The United States of America;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision;

5. Any foreign nation or representative of a foreign nation with respect to motor vehicles for which they need

not pay a registration fee under the provisions of the vehicle and traffic law;

6. Dealers in new and used motor vehicles where the use of the motor vehicle is confined solely to demonstrations to prospective customers or to delivery by or to the dealer and the vehicle bears dealer's license plates.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-3.0 added LL 39/1960 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-804

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-804 Presumption and burden of proof.

For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all motor vehicles used in the city of the types described in paragraphs (a), (b) and (c) of subdivision three of section 11-801 of this chapter are used principally in the city or used principally in connection with a business carried on within the city and are subject to the tax until the contrary is established; and it shall be presumed that all motor vehicles used in the city of the types described in paragraphs (a) and (b) of subdivision four of section 11-801 of this chapter are used regularly, even though not principally in the city and are subject to the tax until the contrary is established. The burden of proving that a motor vehicle is not taxable under this chapter shall be on the owner of the motor vehicle.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-4.0 added LL 39/1960 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-805

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-805 Records to be kept.

Every owner of a motor vehicle subject to tax under this chapter shall keep such records of his or her vehicles and of their use in the city in such form as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner of finance or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-5.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1681

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-806

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-806 Registration.

a. By July thirteenth, nineteen hundred sixty or, upon acquiring any motor vehicle subject to tax hereunder after such date, within two days of such acquisition, every owner shall file with the commissioner of finance a certificate of registration in such form as prescribed by the commissioner of finance.

b. In order to determine whether motor vehicles are subject to the tax under this chapter and to facilitate administration thereof an information registration certificate in such form as is prescribed by the commissioner of finance shall be filed with the commissioner of finance by any person who owns or acquires:

1. A motor vehicle of a type described in paragraph (a), (b) or (c) of subdivision three of section 11-801 of this chapter which is registered in the city under the vehicle and traffic law or is used in the city in connection with a business carried on within the city; or

2. A motor vehicle of the type described in paragraphs (a) and (b) of subdivision four of section 11-801 of this chapter which is registered in the city under the vehicle and traffic law or is used in the city.

Such an information registration certificate shall be filed by July thirteenth, nineteen hundred sixty or, if a motor vehicle is acquired after such date, within two days after such acquisition. An information registration certificate, however, need not be filed with respect to any motor vehicle for which a registration certificate has been filed pursuant to subdivision a of this section. The commissioner of finance may, by regulation, provide that information registration certificates need not be filed with respect to a type of motor vehicle or with respect to any general group within a type of

motor vehicle.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-6.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1682

Amended LL 84/1972 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-807

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-807 Returns.

a. On or before the twentieth day of June in each year commencing with the year nineteen hundred sixty, every owner of a motor vehicle subject to tax under this chapter shall file a return with the commissioner of finance. A supplemental return shall also be filed by every owner with regard to each motor vehicle subject to tax acquired during any tax year at a time subsequent to the filing of the owner's regular return. Such supplemental return shall be filed with the commissioner of finance within a stated time, as fixed by regulation of the commissioner of finance, after the acquisition of the motor vehicle. An owner who acquires a motor vehicle subject to the tax after the commencement of a tax year and who has not filed a return or supplemental return with respect to such motor vehicle shall file a return with respect to it within two days after its acquisition by the owner.

b. The commissioner of finance, by regulation, may require that each person required under this chapter to file an information registration certificate file an information return with the commissioner of finance annually or at such other times as the commissioner deems appropriate for proper administration of this chapter. The commissioner of finance may, by regulation, provide that information returns need not be filed or that they be filed at different times with respect to a type of motor vehicle or with respect to any general group within a type of motor vehicle or with respect to any particular circumstances.

c. The commissioner of finance may permit or require returns, supplemental returns or information returns to be filed at times other than those specified in the commissioner's regulations. If the commissioner deems it necessary in order to insure payment of the tax imposed by this chapter, the commissioner of finance may require any return, supplemental return or information return to be filed with him or her at a time other than that fixed by such

commissioner.

d. The form of returns, supplemental returns and information returns shall be prescribed by the commissioner of finance and shall contain such information as the commissioner may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns, amended supplemental returns or amended information returns to be filed within twenty days after notice and to contain the information specified in the notice.

e. If a return, supplemental return or information return is not filed, or if a return of any kind when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-7.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1683

Sub a amended LL 84/1972 § 2

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Administrative Code of the City of New York

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NYC Administrative Code 11-808

Administrative Code of the City of New York

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CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-808 Payment of tax.

a. At the time of filing a return or supplemental return the owner shall pay to the commissioner of finance the tax imposed hereunder. Such tax shall be due and payable on the last day on which such return or supplemental return is required to be filed, regardless of whether such a return is filed or whether the return which is filed correctly indicates the amount of tax due.

b. Where an owner of a motor vehicle subject to tax under this chapter replaces it with another motor vehicle during a tax year, the owner shall be entitled, upon approval by the commissioner of finance, to have any tax paid with respect to the replaced vehicle credited toward the tax payable with respect to the replacement vehicle for the balance of such tax year, and the owner shall pay no additional tax for such tax year with respect to it unless its nature or its maximum gross weight requires the payment of a higher amount of tax than that paid with respect to the replaced vehicle. A supplemental return, where required, shall be filed with respect to a replacement vehicle irrespective of whether additional tax is payable. Upon the grant of a waiver of tax by the commissioner of finance a purchaser of a motor vehicle subject to tax under this chapter who purchases it during a tax year from an owner who has paid the tax shall not be required to pay the tax with respect to such motor vehicle for the balance of such tax year if, and only if, the owner obtains, and submits to the commissioner of finance together with his or her return or supplemental return, a certificate or its equivalent (as prescribed by the commissioner of finance) signed by the prior owner to the effect that the prior owner has not had the tax paid credited toward any replacement vehicle and will not seek to obtain such a credit for any replacement vehicle purchased in the future. Nothing contained in this subdivision shall be deemed to authorize a refund merely because a motor vehicle with respect to which the tax has been paid is sold or otherwise

disposed of during the course of the tax year.

c. Notwithstanding any other provision of law to the contrary, the tax imposed on medallion taxicabs pursuant to subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter shall be due and payable in two equal installments, the first of which shall be due and payable on or before the last day on which the return or supplemental return for the tax year is required to be filed, and the second of which shall be due and payable on or before the first day of December in such tax year; provided, however, that if a medallion taxicab is acquired subsequent to the first day of November in such tax year, the full amount of the tax imposed for the tax year shall be due and payable on or before the last day on which the supplemental return with respect to such medallion taxicab is required to be filed.

d. Notwithstanding any other provision of law to the contrary, the tax imposed on medallion taxicabs pursuant to subparagraph (B) of paragraph two of subdivision a of section 11-802 of this chapter shall, to the extent not previously paid, be due and payable on or before December first, nineteen hundred eighty-nine; provided, however, that if the tax imposed on a medallion taxicab would, but for the provisions of this subdivision, be due and payable subsequent to December first, nineteen hundred eighty-nine, the due date of such tax shall be determined without regard to this subdivision; and provided, further, that nothing in this subdivision shall be deemed to extend the date for payment of any tax imposed by paragraph two of subdivision a of section 11-802 of this chapter as such paragraph two was in effect immediately prior to its amendment by the local law which added this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. c, d added L.L. 60/1989 § 5

DERIVATION

Formerly § K46-8.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1684

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-809

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-809 Stamps and other indicia of payment.

a. The commissioner of finance may, by regulation, provide that the payment of the tax imposed by this chapter shall be evidenced by suitable stamps or other indicia of payment in a form prescribed by the commissioner of finance and that every owner shall affix such stamps or other indicia of payment in the manner prescribed by regulation to each motor vehicle for which a tax had been paid, or shall otherwise keep the indicia of payment with the vehicle, readily available for inspection, in the manner prescribed by regulation. The owner or driver of the vehicle, upon demand, shall exhibit the indicia of payment to the commissioner of finance or the commissioner's duly authorized agent or employee or to any police officer of this city or state. The commissioner of finance may, by regulation, make similar provision for the use of stamps or other indicia that no tax is payable with respect to particular motor vehicles.

b. An owner who sells a motor vehicle shall not transfer any stamp or other indicia of payment to the purchaser except on a sale to a purchaser to whom the owner has properly given the certificate provided for in section 11-808 of this chapter with regard to not obtaining a credit toward any tax payable with respect to a replacement vehicle. The commissioner of finance shall, by regulation, provide for the destruction of the stamp or other indicia of payment or its return to the commissioner of finance upon all sales except where transfer to the purchaser is permitted and, where the motor vehicle sold has been replaced, for the issuance of replacement stamps or indicia of payment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-9.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1685

Amended LL 37/1970 § 2

CASE NOTES FROM FORMER SECTION

¶ 1. Defendant charged with misdemeanor for failing to produce required tax stamp for livery vehicle which he drove could not be convicted of disorderly conduct since disorderly conduct is not a lesser included offense of the unclassified misdemeanor of failing to display a vehicular tax stamp.-People v. Greene, 85 Misc. 2d 890 [1976].

CASE NOTES

¶ 1. A commercial vehicle owned by a Suffolk County business was not subject to tax where it was not used principally within the City of New York. The company did no more than 20 percent of its business in New York City. People v. Hoffman Floor Covering Corp., 179 Misc.2d 656, 686 N.Y.S.2d 651, (Crim.Ct. New York Co. 1999).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-809.1

Administrative Code of the City of New York

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§ 11-809.1 Collection of tax by commissioner of motor vehicles.

a. Notwithstanding any provision of this chapter to the contrary, the tax imposed by this chapter on any commercial motor vehicle with a maximum gross weight of ten thousand pounds or less and on any motor vehicle for transportation of passengers, other than a medallion taxicab, shall be collected by the commissioner of motor vehicles, provided that any such motor vehicle is registered or required to be registered pursuant to any provision of section four hundred one of the vehicle and traffic law. The owner of each such motor vehicle shall pay the tax due thereon to the commissioner of motor vehicles on or before the date upon which such owner registers or renews the registration of such motor vehicle or is required to register or renew the registration thereof pursuant to section four hundred one of the vehicle and traffic law.

b. Notwithstanding any provision of section four hundred of the vehicle and traffic law to the contrary, payment of the tax with respect to a motor vehicle described in subdivision a of this section shall be a condition precedent to the registration or renewal thereof of such motor vehicle and to the issuance of any certificate of registration and plates or removable date tag in accordance with the vehicle and traffic law and the rules and regulations promulgated thereunder, and no such certificate of registration, plates or tag shall be issued unless such tax has been paid. If the registration period applicable to any such vehicle is a period of not less than two years, as a result of the application of the provisions of paragraph c of subdivision five of section four hundred one of the vehicle and traffic law, the tax required to be paid pursuant to this section shall be the annual tax specified in section 11-802 of this chapter multiplied by the number of years in the registration period. The commissioner of motor vehicles, upon payment of the tax pursuant to this section or upon the application of any person exempt therefrom, shall furnish to each taxpayer paying the tax a

receipt for such tax and to each other taxpayer or exempt person a statement, document or other form prescribed by the commissioner of motor vehicles, showing that such tax has been paid or is not due with respect to such motor vehicle.

c. Notwithstanding the definition of the term "tax year" contained in subdivision fourteen of section 11-801 of this chapter, for purposes of the taxes payable to the commissioner of motor vehicles pursuant to this section, "tax year" shall mean the twelve-month registration period applicable to the subject motor vehicle under the vehicle and traffic law and, in the case of a registration period of at least two years, shall mean each succeeding twelve-month period falling within such registration period.

d. Where the tax imposed by this chapter has been paid to the commissioner of finance with respect to a motor vehicle for a tax year described in subdivision fourteen of section 11-801 of this chapter, and subsequent thereto but within such tax year the same taxpayer pays a tax to the commissioner of motor vehicles with respect to such motor vehicle pursuant to this section, such taxpayer shall be entitled to a refund or credit from the commissioner of finance for the portion of the tax paid to the commissioner of finance which is attributable to the period beginning on the first day of the first tax year (as the term "tax year" is defined in subdivision c of this section) for which the tax is paid to the commissioner of motor vehicles and ending on the following May thirty-first, provided, however, that no such refund or credit shall be allowed if the amount thereof is less than five dollars. Any refund or credit to which a taxpayer is entitled pursuant to this subdivision shall be promptly refunded or credited, without interest, by the commissioner of finance, and the commissioner of finance may promulgate such rules as he or she deems necessary to carry out the provisions of this subdivision. Any amount for which the taxpayer is entitled to a refund or credit pursuant to this subdivision may be allowed as a credit against the tax payable to the commissioner of motor vehicles pursuant to this section to the extent and in the manner provided for in the agreement authorized by subdivision k of this section.

e. Whenever any fee or portion of a fee paid for the registration of a motor vehicle under the provisions of the vehicle and traffic law is refunded pursuant to the provisions of subdivision one or one-a of section four hundred twenty-eight thereof, the amount of any tax paid to the commissioner of motor vehicles pursuant to this section upon such registration shall also be refunded by the commissioner of motor vehicles, provided that where a fee is refunded pursuant to subdivision one-a of such section four hundred twenty-eight, the amount of tax to be refunded shall be limited to the tax paid for a tax year commencing subsequent to the end of the first twelve-month period of such registration.

f. Where the annual registration period applicable to a particular class of motor vehicle begins and ends on the same dates for all motor vehicles within such class, the tax payable to the commissioner of motor vehicles pursuant to this section with respect to a motor vehicle within such class which is registered or required to be registered after the commencement of such annual registration period shall be determined for such period as follows:

1. If such motor vehicle is registered or required to be registered before the first day of the seventh month of such period, the tax shall be the amount specified in subdivision a of section 11-802 of this chapter.

2. If such motor vehicle is registered or required to be registered on or after the first day of the seventh month of such period but before the first day of the tenth month of such period, the tax shall be one-half of the amount specified in subdivision a of section 11-802 of this chapter.

3. If such motor vehicle is registered or required to be registered on or after the first day of the tenth month of such period, the tax shall be one-fourth of the amount specified in subdivision a of section 11-802 of this chapter.

g. The provisions of subdivision b of section 11-808 of this chapter shall apply to this section with such modifications or adaptations as are necessary to carry out the purposes of this section and to ensure collection of the appropriate annual tax specified in subdivision a of section 11-802 of this chapter, and with due regard to the respective responsibilities of the commissioner of finance and the commissioner of motor vehicles under this section and to the definitions of "tax year" contained in subdivision c of this section and subdivision fourteen of section 11-801 of this

chapter. The agreement between the commissioner of finance and the commissioner of motor vehicles authorized by subdivision k of this section may contain such provisions concerning the division of responsibility for collection of the taxes imposed by this chapter and the granting of refunds or credits as are consistent with this section and subdivision b of section 11-808 of this chapter, and the commissioner of finance and the commissioner of motor vehicles may also adopt such rules as they deem necessary for such purposes.

h. Notwithstanding any provision of section 11-807 of this chapter to the contrary, at the time a tax is required to be paid to the commissioner of motor vehicles pursuant to this section, the person required to pay such tax shall file a return with the commissioner of motor vehicles in such form and containing such information as he or she may prescribe. The taxpayer's application for registration or the renewal thereof shall constitute the return required under this subdivision unless the commissioner of motor vehicles shall otherwise provide by rule. A return filed pursuant to this subdivision with respect to a motor vehicle for a tax year or years shall be in lieu of any return otherwise required to be filed with respect thereto pursuant to section 11-807 of this chapter.

i. In any case in which the tax imposed by this chapter is required to be paid to the commissioner of motor vehicles but is not so paid, the commissioner of finance shall collect such tax and all of the provisions of this chapter relating to collection of taxes by the commissioner of finance shall apply with respect thereto.

j. Notwithstanding any provision of section four hundred of the vehicle and traffic law to the contrary, in those cases in which the commissioner of finance is responsible for collecting the tax imposed by this chapter, the commissioner of motor vehicles shall not issue a certificate of registration, plates or removable date tag for any motor vehicle subject to such tax with respect to which the commissioner of finance has notified the commissioner of motor vehicles that such tax has not been paid, unless the registrant submits proof, in a form approved by the commissioner of motor vehicles, that such tax has been paid, or is not due, with respect to such motor vehicle.

k. The commissioner of finance is hereby authorized and empowered to enter into an agreement with the commissioner of motor vehicles to govern the collection of the taxes imposed by this chapter which are required to be paid to the commissioner of motor vehicles pursuant to this section. Such agreement shall provide for the exclusive method of collection, custody and remittal to the commissioner of finance of the proceeds of any such tax; for the payment by the city of the reasonable expenses incurred by the department of motor vehicles in connection with the collection of any such tax; for the commissioner of finance, or a duly designated representative, upon his or her request, not more frequently than once in each calendar year at a time agreed upon by the state comptroller, to audit the accuracy of the payments, distributions and remittances to the city; and for such other matters as may be necessary and proper to effectuate the purposes of such agreement. Such agreement shall have the force and effect of a rule or regulation of the commissioner of motor vehicles and shall be filed and published in accordance with any statutory requirements relating thereto.

l. The commissioner of motor vehicles shall promptly notify the corporation counsel of the city of any litigation instituted against such commissioner which challenges the constitutionality or validity of any provision of this chapter, or of the enabling act pursuant to which it was adopted, or which attempts to limit or question the application of either such law, and such notification shall include copies of the papers served upon such commissioner.

m. The commissioner of motor vehicles shall begin to collect taxes in accordance with the provisions of this section at such time as is specified in the agreement between the commissioner of motor vehicles and the commissioner of finance provided for in subdivision k of this section.

n. In addition to any other powers granted to the commissioner of motor vehicles in this chapter or any other law, he or she is hereby authorized and empowered:

1. to adopt and amend rules appropriate to the carrying out of his or her responsibilities under this chapter;

2. to request information concerning motor vehicles and persons subject to the provisions of this chapter from

the department of motor vehicles of any other state, the treasury department of the United States or the appropriate officials of any city or county of the state of New York; and to afford such information to such department of motor vehicles, treasury department or officials of such city or county, any provision of this chapter to the contrary notwithstanding;

3. to delegate his or her functions under this section to a deputy commissioner in the department of motor vehicles or any employee of such department or to any county clerk or other officer who acts as the agent of such commissioner in the registration of motor vehicles;

4. to require all persons owning motor vehicles with respect to which the tax imposed by this chapter is payable to the commissioner of motor vehicles to keep such records as he or she may prescribe and to furnish such information upon his or her request; and

5. to extend, for cause shown, the time for filing any return required to be filed with the commissioner of motor vehicles for a period not exceeding sixty days.

o. To the extent that any provision of this section is in conflict with any other provision of this chapter, the provisions of this section shall be controlling, but in all other respects such other provisions of this chapter shall remain fully applicable with respect to the imposition, administration and collection of the taxes imposed by this chapter.

HISTORICAL NOTE

Section added L.L. 57/1996 § 3, eff. June 27, 1996

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-810

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-810 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices such as motor vehicle registration with the department of motor vehicles and/or any other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (i)*25 serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be

instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 46, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-10.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1686

FOOTNOTES

25

[Footnote 25]: * So in original ("(i)" s.b. "(1)").

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-811

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-811 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied, the commissioner of finance shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing or*26 notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article

seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer, unless an undertaking shall first be filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-810 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-810 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or on the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Subds. a, b, c amended chap 808/1992 § 47, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-11.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1687

FOOTNOTES

26

[Footnote 26]: * So in original ("or" s.b. "of").

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-812

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-812 Remedies exclusive.

The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-810 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 48, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-12.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1688

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-813

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-813 Reserves.

In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-13.0 added LL 39/1960 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-814

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-814 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties might be satisfied and that any such tax or penalty will not be paid when due, the commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgement docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in

respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the sheriff shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but such officer or employee shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding paragraph, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of section forty-four of the personal property law, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 28, eff. Sept. 17, 2002.

DERIVATION

Formerly § K46-14.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1689

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Administrative Code of the City of New York

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NYC Administrative Code 11-815

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-815 General powers of the commissioner of finance.

In addition to all other powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered: 1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any kind of return for a period not exceeding sixty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles and from the department of taxation and finance of the state of New York or any successor to their duties, or the treasury department of the United States relative to any person; and to afford information to such department of motor vehicles, department of taxation and finance or any successor to their duties, or to such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate the commissioner's functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To assess, reassess, determine, revise and readjust the taxes imposed under this chapter;

6. To provide methods for identifying motor vehicles not subject to or exempt from the tax imposed under this chapter;

7. To provide that a certificate of registration need not be filed with respect to any or all types of motor vehicles, or to provide that such certificate of registration with respect to any or all types of motor vehicles shall be contained on or combined with any return or supplemental return required to be filed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-15.0 added LL 39/1960 § 1

Section heading, open par, subs 2, 3, 4 amended chap 100/1963 § 1690

Sub 2 amended LL 2/1983 § 12

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-816

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-816 Administration of oaths and compelling testimony.

a. The commissioner of finance, the commissioner's employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and the sheriff's duly appointed deputies or any officers or employees of the department of finance or the tax appeals

tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 49, eff. Oct. 1, 1992

DERIVATION

Formerly § K46-17.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1692

Sub c repealed and added chap 765/1985 § 50

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-817

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-817 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the

amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-810 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision)

an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this subchapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a motor vehicle has not be registered, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended chap 241/1989 § 14

Subd. (g) par (2) amended chap 63/2003 § E3, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See §11-537 Note 1]

DERIVATION

Formerly § K46-18.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1693

Sub c added LL 84/1972 § 3

Repealed and added LL 2/1983 § 13

Subs a, c, d, h amended chap 765/1985 § 51

Sub b pars 1, 4 amended chap 765/1985 § 51

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-818

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-818 Information and records to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the tax appeals tribunal, any other agency, officer or employee of the city, the commissioner of motor vehicles, any officer or employee of the department of motor vehicles, any agent of the commissioner of motor vehicles, or any other person who, pursuant to this section, is permitted to inspect any registration or return filed hereunder, or to whom a copy, an abstract or portion of any registration or return filed hereunder is furnished, or to whom any information contained in any registration or return filed hereunder is furnished, to divulge or make known in any manner any information relating to or contained in any registration or any kind of return filed hereunder. The officers charged with the custody of such registration and returns pertaining to the tax hereunder shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city, the commissioner of finance, the state or the commissioner of motor vehicles, in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the registration, return or facts shown therein are directly involved in such action or proceeding, in either of which events, the court may require the production of, and may admit in evidence, so much of said registration, return, or of the facts shown therein, as are pertinent to the action or proceeding and no more. The commissioner of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to section 11-810 or 11-811 of this chapter. Nothing herein shall be construed to prohibit the delivery to a person or such person's duly authorized representative of a certified copy of any registration or return filed by such person; nor to prohibit the delivery of any original return, with any notation that the commissioner of finance or the

commissioner of motor vehicles may cause to be made thereon, to the person filing the return, whether such person files the return on his or her own behalf or on behalf of another, or to the person on whose behalf the return is filed; nor to prohibit the commissioner of finance from providing by rule for the display or production of any original return, as an indicium of payment of the tax imposed by this chapter; nor to prohibit the publication of statistics so classified as to prevent the identification of particular registrations and returns and the items thereof; nor to prohibit the delivery of a certified copy of any registration or return to the United States of America or any department thereof, the state of New York or any department thereof, the city of New York or any department thereof provided it is requested for official business, nor to prohibit the inspection by the corporation counsel or other legal representatives of the city, the attorney general of the state of New York or other legal representatives of the department of motor vehicles, or by the district attorney of any county within the city of the registration or return of any person who shall bring action to set aside or review any tax hereunder, or against whom an action or proceeding under this chapter is instituted. Returns, or reproductions thereof, pertaining to any motor vehicle registered hereunder shall be preserved for three years and thereafter until the commissioner of finance or the commissioner of motor vehicles permits them to be destroyed.

b. (1) Any officer or employee of the city or the state of New York who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city or the state of New York for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 57/1996 § 4, eff. June 27, 1996

Subd. a amended chap 808/1992 § 50, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 2

Subd. b par (1) amended L.L. 57/1996 § 5, eff. June 27, 1996

Subd. c added chap 714/1989 § 5

Subd. d added chap 808/1992 § 51, eff. Oct. 1, 1992

DERIVATION

Formerly § K46-19.0 added LL 39/1960 § 1

Amended chap 100/1963 § 1694

Amended LL 37/1970 § 3

Sub a designated chap 765/1985 § 52

(formerly undesignated par)

Sub b added chap 765/1985 § 52

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NYC Administrative Code 11-819

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-819 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given to the person for whom it is intended by mailing it in a postpaid envelope addressed to such person at the address given in the last registration of a motor vehicle filed by such person pursuant to the provisions of this chapter, or in any application made by such person, or if no such registration has been filed or application made, then to such address as may be obtainable. The mailing of a notice as in this subdivision provided for shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice as in this subdivision provided.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent registration or return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of such return; provided, however, that where no registration or no return has been made as provided by law, the tax may be assessed at any time.

c. Where before the expiration of the period prescribed herein for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, commissioner of motor vehicles, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, commissioner of motor vehicles, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, commissioner of motor vehicles, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by rule of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of

designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 513/2002 § 6, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended L.L. 57/1996 § 6, eff. June 27, 1996

Subd. d amended chap 808/1992 § 52, eff. Oct. 1, 1992

Subd. f added chap 513/2002 § 7, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § K46-20.0 added LL 39/1960 § 1

Subs d, e added LL 41/1984 § 6

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-820

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 8 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-820 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter one thousand thirty-two of the laws of nineteen hundred sixty, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § K46-21.0 added LL 39/1960 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-901

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-901 Definitions.

Wherever used in this chapter, the following words and phrases shall mean and include:

"Alien insurer." Any insurer incorporated or organized under the laws of any foreign nation, or of any province or territory not included under the definition of a foreign insurer.

"Foreign insurer." Any insurer, except a mutual insurance company taxed under the provisions of section nine thousand one hundred five of the insurance law, incorporated or organized under the laws of any state, as herein defined, other than this state.

"Fire insurance corporation, association or individuals." Any insurer, regardless of the name, designation or authority under which it purports to act, which insures property of any kind or nature against loss or damage by fire.

"Loss or damage by fire." Loss or damage by fire, lightning, smoke or anything used to combat fire, regardless of whether such risks or the premiums therefor are stated or charged separately and apart from any other risk or premium.

"State." Any state of the United States and the District of Columbia.

"Commissioner of finance." The commissioner of finance of the city or any other officer of the city designated to perform the same functions.

"Department of finance." The department of finance of the city or any other agency or department designated to perform the same functions.

"Fire commissioner." The fire commissioner of the city.

"Comptroller." The comptroller of the city.

"Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

"Tax appeals tribunal" added ch. 808/1992 § 53, eff. Oct. 1, 1992

DERIVATION

Formerly § H46-1.0 added chap 929/1937 § 1

Amended chap 742/1953 § 3

Amended chap 100/1963 § 421

Amended chap 1025/1965 § 1

Renumbered and amended chap 383/1968 § 1

(formerly § B19-14.0)

Third undesignated par amended chap 805/1984 § 109

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-902

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-902 General powers of the commissioner of finance.

In addition to all other powers granted to the commissioner of finance under this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof.

2. To compromise disputed claims in connection with taxes hereby imposed.

3. To delegate his or her functions hereunder to any officer or employee of the department of finance.

4. To prescribe reasonable methods, approved by the New York superintendent of insurance, for determining the amounts of premiums subject to the tax.

5. To require any foreign or alien insurer subject to the tax to keep detailed records of the premiums in a manner reasonably designed to show the amounts thereof subject to the tax and to furnish such information on request.

6. To assess, determine, revise and adjust the tax imposed under this chapter.

7. To audit the reports of any insurer.

8. To allow an extension of time not in excess of thirty days for filing the report and paying the tax required by this chapter, provided the taxpayer requests such extension in writing prior to the date prescribed for such filing and

such payment by sections 11-904 and 11-903 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § H46-4.0 added chap 1025/1965 § 3

(Ocean marine or inland marine insurance exception chap 1025/1965 § 4)

Renumbered and amended chap 383/1968 § 1

(formerly § B19-17.0)

Sub 2 amended chap 860/1984 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-903

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-903 Tax on premiums on policies of foreign and alien insurers.

There shall be paid to the department of finance for the use and benefit of the fire department of the city, on or before the first day of March, in each year by every foreign and alien fire insurance corporation, association or individuals which insure property against loss or damage by fire, the sum of two percent of all gross direct premiums less return premiums which, during the year ending on the preceding thirty-first day of December, shall have been received by any such insurer for any insurance against loss or damage by fire in the city. Any such insurer which in any year shall cease or terminate doing business in the city shall pay the tax for such year within thirty days after such cessation or termination.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § H46-2.0 added chap 929/1937 § 1

Amended chap 742/1953 § 3

Amended chap 1025/1965 § 2

Renumbered and amended chap 383/1968 § 1

(formerly § B19-15.0)

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NYC Administrative Code 11-904

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-904 Report of premiums by insurers.

Each insurer required to pay a tax under this chapter shall, at the time such tax is paid or payable, whichever is sooner, render to the commissioner of finance a verified report setting forth such information as may be required by the commissioner for the determination of the tax and the proper administration of this chapter. The commissioner of finance shall prescribe the form and furnish the necessary forms to enable such insurers to make such reports. The commissioner or the commissioner's designated representative or the tax appeals tribunal or its designated representative shall have power to examine any such insurer under oath and to require the production by such insurer of all books and papers as the commissioner or the tax appeals tribunal may deem necessary. All expenses of collecting such tax shall be paid by the commissioner of finance from the funds received under this chapter prior to the distribution thereof as hereinafter authorized.

HISTORICAL NOTE

Section amended chap 808/1992 § 54, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § H46-3.0 added chap 929/1937 § 1

Amended chap 742/1953 § 3

Amended chap 1025/1965 § 2

Renumbered and amended chap 383/1968 § 1

(formerly § B19-16.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-905

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-905 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the underpayment rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-906 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules and regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion

of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any insurer who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to subdivision (a) of this section and subdivision (a) of section 11-906 of this chapter, but if no such rate or rates of interest are set, such rate or rates shall be deemed to be set at six percent per annum. Such rates shall be the overpayment and underpayment rates prescribed in paragraph two of this subdivision but the underpayment rate shall not be less than six percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rates are in effect.

(2) General rule. (A) Overpayment rate. The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of

such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 241/89 § 15

Subd. (g) amended chap 241/89 § 15

Subd. (g) par (1) amended chap 60/2004 § U2, eff. Aug. 20, 2004. [See § 11-537 Note 2]

Subd. (g) par (2) subpar (B) amended chap 63/2003 § E4, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

DERIVATION

Formerly § H46-5.0 added chap 1025/1965 § 3

Renumbered and amended chap 383/1968 § 1 (formerly § B19-18.0)

Repealed and added chap 860/1984 § 2 (special provision chap 860/1984 § 5)

Sub b pars 1, 4 amended chap 765/1985 § 43

Subs c, d amended chap 765/1985 § 43

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NYC Administrative Code 11-906

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-906 Assessment, refund, collection, review and reserves.

(a) The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action by the commissioner of finance to levy, assess, determine or enforce the collection of tax, interest or penalty imposed by this chapter. However, except in the case of a wilfully false or fraudulent report, no assessment of additional tax, interest or penalty shall be made after the expiration of more than three years from the date of the filing of a report, provided, however, that where no report has been filed as provided by law the tax may be assessed at any time. The commissioner of finance shall refund or credit, with interest at the overpayment rate set by the commissioner of finance pursuant to subdivision (g) of section 11-905 of this chapter or, if no rate is set, at the rate of six percent per annum computed from the date of overpayment to a date (to be determined by the commissioner of finance) preceding the date of a refund check by not more than thirty days, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within six months from the payment thereof. Notice of any determination of the commissioner of finance with respect to an assessment of tax, interest or penalty or with respect to a claim for refund or any other notice, demand or request shall be given by mailing the same to the insurer to the address of its New York city office last filed with the commissioner of finance or, if there is no such office, to the address of its main office last filed with the commissioner of finance or, in the absence of any filed address, to such address as may be obtainable. The mailing of any notice, demand or request by the commissioner of finance shall be presumptive evidence of its receipt by the insurer and any period of time to be determined with reference to the giving of such notice, demand or request shall commence to run from the date of such mailing. The determination of the commissioner of finance shall finally and irrevocably fix the amount of any tax, interest or penalty due or to be refunded unless the taxpayer, within ninety days after the giving of notice of such determination, or if the commissioner

of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the taxpayer and to the commissioner of finance with reference to the amount of the tax, interest or penalty assessed or to be refunded. The decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason, by a proceeding under article seventy-eight of the civil practice law and rules if such proceeding is commenced by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. Such proceeding shall not be commenced by the taxpayer unless: (1) the amount of any tax assessed and sought to be reviewed with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the decision confirmed, the taxpayer will pay all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, or (2) in the case of a review of a decision assessing any taxes, penalties and interest, at the option of the taxpayer, such undertaking may be in a sum sufficient to cover all of the taxes, penalties and interest assessed by such decision plus the costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the commencement of the proceeding. No determination or proposed determination of tax, interest or penalty due or to be refunded shall be reviewed or enjoined in any manner except as set forth herein.

(b) In cases where the taxpayer has applied for a refund and has commenced a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal adverse to such taxpayer on its application for a refund, the commissioner of finance shall set up appropriate reserves to meet any decision adverse to the city.

(c) In computing the amount of interest to be paid under this section, such interest shall be compounded daily.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 808/1992 § 55, eff. Oct. 1, 1992

Subd. (a) amended chap 241/1989 § 16

Subd. (b) amended chap 808/1992 § 55, eff. Oct. 1, 1992

DERIVATION

Formerly § H46-6.0 added chap 1025/1965 § 3

Renumbered and amended chap 383/1968 § 1

(formerly § B19-19.0)

Sub a amended chap 860/1984 § 3

Sub c added chap 860/1984 § 4

(special provision chap 860/1984 § 5)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-907

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-907 Place of business to be reported.

Every insurer, on or before the first day of March in each year, and as often in each year as such insurer shall change its principal place of business or change or terminate any office or place of business in the city, shall report in writing, to the commissioner of finance, the location of its principal place of business and any new principal place of business or of any new office or place of business in the city or of the termination of any such office or place of business. In the event of such change or termination, such report shall be made no later than fifteen days after such change or termination. Any insurer who fails or neglects to make such report within the time limited therefor shall be subject to a penalty of one hundred dollars and, in addition thereto, fifty dollars for each month or part thereof during which such report is not made. The total of such penalties shall not exceed one thousand dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § H46-7.0 added chap 929/1937 § 1

Amended chap 742/1953 § 3

Renumbered and amended chap 1025/1965 § 4

(formerly § B19-21.0)

Renumbered and amended chap 383/1968 § 1

(formerly § B19-20.0)

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NYC Administrative Code 11-908

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-908 Suits for violations.

The tax provided to be paid by this chapter, and the pecuniary penalties and interest imposed therein, or any or either of them, may be sued for and recovered, with costs of suit, in any court of record, by the commissioner of finance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § H46-8.0 added chap 929/1937 § 1

Amended chap 100/1963 § 423

Renumbered and amended chap 1025/1965 § 4

(formerly § B19-22.0)

Renumbered and amended chap 383/1968 § 1

(formerly § B19-21.0)

NYC Administrative Code 11-909

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 9 TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-909 Distribution of tax on policies covering property in the city of New York.

(a) The moneys received by the commissioner of finance as a tax on policies covering property in each borough of the city shall be disbursed by the commissioner of finance as follows:

1. Ten percent to the firemen's association of the state of New York, for the endowment, benefit and maintenance of the volunteer firemen's home at Hudson, but in no event to exceed the sum of thirty-five thousand dollars ($35,000) annually.

2. The balance to the general fund of the city established pursuant to section one hundred nine of the charter, except as provided in paragraph three of this subdivision.

3. a. Volunteer firemen's benevolent fund; trustee. From the balance specified in paragraph two of this subdivision, a sum, not to exceed one hundred fifty thousand dollars in any one year, shall be paid into a fund to be known as the volunteer firemen's benevolent fund, which shall be administered as hereinafter provided by the fire commissioner, as trustee of such fund, for the benefit of indigent volunteer firefighters, their surviving spouses and orphans.

b. Persons entitled to benefits from fund. All funds received by the fire commissioner as trustee under this paragraph shall be expended by the fire commissioner for the relief of:

(i) all indigent volunteer firefighters who served as such for a period of five years in a duly organized volunteer fire company in the former towns of New Lots, Flatlands, Gravesend, New Utrecht and Flatbush in the county of Kings,

or in the territory now included in the borough of Richmond, or in the territory now included in the borough of Queens, or in the territory now included in the borough of the Bronx, and who were honorably discharged after such five years of service, or who having been members of a duly organized volunteer fire company within any such town or territory, which company was disbanded by reason of the installation of a paid fire department, and were members of such company for at least one year prior to its disbandment;

(ii) the surviving spouses and orphans of any such volunteer firefighters.

c. Fund benefits of beneficiaries on rolls as of December thirty-first, nineteen hundred fifty-one. During the lifetime of those relief beneficiaries who appear as such as of December thirty-first, nineteen hundred fifty-one upon the records of the trustees of the exempt firemen's benevolent fund of the county of Kings, or of the trustees of the exempt firemen's benevolent fund of the borough of Queens, or of the trustees of the exempt firemen's benevolent fund of the borough of Staten Island, or of the trustees of the exempt firemen's benevolent fund of the borough of the Bronx, it shall be the duty of the fire commissioner, as such trustee, to pay to such beneficiaries from the volunteer firemen's benevolent fund referred to in subparagraph a hereof, the same amounts as were being periodically paid to such beneficiaries as of June thirtieth, nineteen hundred fifty-two.

d. Fund benefits of residents of firemen's home. It shall be the duty of the fire commissioner, as such trustee, to pay from such fund referred to in subparagraph a, the sum of ten dollars monthly to each volunteer firefighter in residence at the volunteer firemen's home at Hudson, who qualified for entrance into such home by reason of service as a volunteer firefighter within the area now included within the boundaries of the city of New York. No other payments shall be made from such fund to any such volunteer firefighter while in residence at such home.

e. Eligibility of persons who applied for fund benefits after December thirty-first, nineteen hundred fifty-one, and prior to the establishment of fund. Upon the establishment of the volunteer firemen's benevolent fund referred to in subparagraph a hereof, the fire commissioner or the fire commissioner's authorized subordinates shall investigate and determine the need for benefits of all persons who, after December thirty-first, nineteen hundred fifty-one and prior to the establishment of such volunteer firemen's benevolent fund, applied for benefits payable from any of the benevolent funds mentioned in subparagraph c hereof, and who are receiving benefits therefrom at the time of the establishment of such fund referred to in subparagraph a. No such person shall be found to be in need of benefits, nor shall any such person be paid any benefits from such last-mentioned fund unless the fire commissioner or the fire commissioner's authorized subordinates shall determine that such person is indigent. In the event that any such person is thus found to be in need of benefits, the fire commissioner shall pay to such person from such last-mentioned fund, the same periodic amounts as the trustees mentioned in subparagraph c hereof were paying as of June thirtieth, nineteen hundred fifty-two, to a person who had the same status and who was receiving benefits from the borough or county fund which would be currently liable for the payment of benefits to such person, but for the provision of section 13-532 of the code. It shall be the duty of the fire commissioner and the fire commissioner's authorized subordinates to maintain and carry out continuously, such investigation procedures as may be necessary to assure that benefits will not be paid from such fund to any persons who are not in need as herein specified.

f. Eligibility for benefits of persons applying therefor after establishment of fund. All persons applying after the establishment of the volunteer firemen's benevolent fund for benefits payable therefrom shall be investigated as to need by the fire commissioner or the fire commissioner's authorized subordinates, and the eligibility of such persons for benefits and the amount thereof to be awarded and paid to them shall be determined by the fire commissioner or the fire commissioner's authorized subordinates in accordance with the standards specified in subparagraph e hereof. Benefits shall be paid from such fund to eligible persons in accordance with such determination and it shall be the duty of the fire commissioner and the fire commissioner's subordinates continuously to maintain and carry out as to such persons investigation procedures such as are described in subparagraph e hereof. The fire commissioner, as part of his or her investigation to determine eligibility of persons for fund benefits, shall request from the duly appointed representative of the volunteer firefighters in each borough a report on such person's service and indigency. Such report shall be solely for the information of the fire commissioner and shall not be binding upon the fire commissioner in arriving at a

determination as to eligibility. In the event that such report is not submitted within ten days from the date of request, the fire commissioner shall determine eligibility on the basis of the facts developed in the fire commissioner's own investigation.

g. Excess moneys. In the event that the benefits paid by the fire commissioner, as trustee, during any period of one year beginning on the first day of February shall not equal the sum of one hundred fifty thousand dollars, the unexpended balance shall be paid into the general fund of the city established pursuant to section one hundred nine of the charter, except that the fire commissioner may retain in the volunteer firemen's benevolent fund such amount as may be necessary to meet the commitments of such fund until the revenue from the tax collected under this chapter in the ensuing taxable year shall become available.

h. Depositories. The fire commissioner, as trustee, is hereby empowered and directed to receive all moneys and assets belonging or payable to such volunteer firemen's benevolent fund and shall deposit all such moneys to the credit of such fund in banks and trust companies to be selected by the fire commissioner.

i. Bond. The fire commissioner, as trustee of such fund, shall give a bond with one or more sureties, in a sum sufficient for the faithful performance of his or her duties, such bond to be approved as to amount and adequacy, by the comptroller and filed in the comptroller's office.

j. Records. The officers and employees of the fire department who are responsible for the maintenance of the books and records of the New York fire department pension fund shall have charge of, and keep the accounts of the fire commissioner as trustee of the volunteer firemen's benevolent fund.

k. Reports. The fire commissioner, as trustee of such volunteer firemen's benevolent fund, shall submit to the mayor on or before the first day of April of each year, a verified report in which shall be set forth the account of the fire commissioner's proceedings as such trustee during the twelve-month period ending on the thirty-first day of January immediately preceding. Such report shall include a statement of all receipts and disbursements on account of such benevolent fund, a list of the names, residences and as nearly as possible, the ages of the beneficiaries of such fund and the respective amounts paid to them during such period.

1. Audit. The comptroller shall have the power to audit the books and records of the fire commissioner as trustee of the volunteer firemen's benevolent fund.

(b) The moneys received by the fire commissioner as trustee pursuant to the provisions of paragraph three of subdivision (a) of this section shall be expended by the fire commissioner only as provided in such paragraph.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) par 2 amended chap 500/1995 § 8, eff. Aug. 2, 1995.

Subd. (a) par 3 subpar g amended chap 500/1995 § 9, eff. Aug. 2, 1995.

DERIVATION

Formerly § H46-9.0 added chap 929/1937 § 1

Sub a par 2 amended LL 180/1939 § 2

Sub a par 2 amended LL 50/1942 § 54

Sub a par 2 amended LL 108/1949 § 1

Sub a par 2 amended LL 16/1951 § 1

Sub a par 2 amended LL 202/1951 § 1

Sub a par 2 amended LL 131/1952 § 1

Sub a par 3 added LL 131/1952 § 2

Sub b amended LL 131/1952 § 3

(special provisions, duties of trustees LL 131/1952 § 4)

Sub a open par, par 1 amended LL 132/1952 § 1

(special provision LL 132/1952 § 3)

Renumbered and amended chap 383/1968 § 1

(formerly § B19-29.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1001

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1001 Legislative findings.

It is hereby declared that: In certain areas of the city of New York there exist unsanitary or substandard housing conditions owing to overcrowding and concentration of population, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, or lack of proper sanitary facilities; there is not an adequate supply of decent, safe and sanitary dwelling accommodations for persons of low income; these conditions cause an increase and spread of disease and crime and constitute a menace to the health, safety, morals, welfare and comfort of the citizens of the state, and impair economic values; these conditions cannot be remedied by the ordinary operation of private enterprise; the clearance, replanning and reconstruction of the areas in which unsanitary or substandard housing conditions exist and the providing of decent, safe and sanitary dwelling accommodations in such areas and elsewhere for persons of low income are public uses and purposes for which public money may be spent and private property acquired; therefore the necessity in the public interest for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-1.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1011-1.0)

Renumbered chap 100/1963 § 359

(formerly § C17-1.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Administrative Code §§ C17-1.0 to C17-3.0, relating to certain procedural requirements, has been superseded by the Redevelopment Companies Law.-Beebe Improvement Corp. v. City of N.Y., 129 N.Y.S. 2d 263 [1954].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1002

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1002 Low rent housing and slum clearance; governmental functions.

It is hereby declared as a matter of legislative determination that the clearing of areas in which the conditions described in section 11-1001 of this chapter exist and the furnishing of low rent housing for the occupants thereof be hereafter a function of the government of the city of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-2.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1011-2.0)

Section heading amended LL 50/1942 § 34

Renumbered and amended chap 100/1963 § 360

(formerly § C17-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1003

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1003 Housing authority; agent for city.

It is hereby declared that the New York city housing authority be and it hereby is appointed as the agent for the city of New York to carry out the functions described in section 11-1002 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-3.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1011-3.0)

Section heading amended LL 50/1942 § 34

Renumbered and amended chap 100/1963 § 361

(formerly § C17-3.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1004

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1004 Definitions.

When used in this chapter:

a. The word "occupation" means the use or possession for a consideration of any premises under any lease, concession, permit, right of access, license to use, or other agreement, for any gainful purpose.

b. The word "occupant" means any person who uses or possesses for a consideration any premises under any lease, concession, permit, right of access, license to use or other agreement for any gainful purpose.

c. The word "person" means an individual, co-partnership, society, association, joint-stock company, corporation, estate, receiver, assignee, trustee or any other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of individuals.

d. The word "premises" means any real property, or any part thereof, any kind of space, or structure, except premises, as herein defined, which are located in, upon, above or under any public street, highway or public place, separately occupied in the city of New York by any person for his or her own use for gainful purpose or by any concessionaire for such use for gainful purpose, whether by ownership, lease, sublease, profit-sharing arrangement or otherwise.

e. The words "rental value" mean the amount of the consideration annually fixed or charged against any person for the occupation of any premises during the period of one year commencing on July sixteenth of the year prior to the year in which the tax is due and terminating on July fifteenth of the year in which the tax is due, or if computed on a

basis other than an annual basis, then the amount which would be equivalent to an annual charge for the occupation of the premises.

f. The words "non-federal project" shall mean a project not aided or financed in whole or in part by the federal government and where such government does not reserve the right to approve or supervise the construction or operation of the project.

g. The words "vending machine" mean a machine which vends or sells tangible personal property; and shall also include but not be limited to amusement devices, automatic sanitary facilities and all other machines vending services.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-4.0 added LL 18/1938 § 1

Sub g added LL 125/1940 § 1

Renumbered LL 4/1942 § 2

(formerly § 1012-1.0)

Sub e amended LL 26/1962 § 1

Renumbered chap 100/1963 § 362

(formerly § C17-4.0)

Sub g amended LL 42/1963 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. The payment of occupancy taxes to the City of New York by defendant corporation was consistent only with the doing of business in New York City, as respects question whether defendant was doing business within the State of New York so as to be subject to the service of process therein.-Chaplin v. Selznick, 293 N.Y. 529, 58 N.E. 2d 719 [1944].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1005

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1005 Imposition of the tax.

a. To provide additional funds for the purpose of fulfilling any contract to make capital or periodic subsidies to the New York city housing authority in aid of a low rent or slum clearance project or for the purpose of paying an indebtedness incurred for a low rent or slum clearance project, every occupant of premises for a year or any part thereof in excess of one month and fifteen days shall pay annually to the commissioner of finance on June twentieth of each year until and including June twentieth, nineteen hundred eighty-one, a tax for each separate premises occupied at the rates computed, with reference to the rental value for separate premises in the city of New York, as specified in the following table:

[See tabular material in printed version]

b. Where the premises are occupied by vending machines which sell tangible personal property the tax shall be computed as specified in the following table:

[See tabular material in printed version]

c. Where the premises are occupied by vending machines other than those which sell tangible personal property the tax shall be computed as specified in the following table:

[See tabular material in printed version]

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-5.0 added LL 18/1938 § 1

Amended LL 20/1939 § 1

Amended LL 125/1940 § 2

Renumbered LL 4/1942 § 2

(formerly § 1013-1.0)

Sub a open par amended LL 3/1946 § 1

Amended LL 26/1962 § 2

Renumbered chap 100/1963 § 363

(formerly § C17-5.0)

Sub a amended chap 100/1963 § 363

Amended LL 86/1965 § 1

Sub a amended LL 18/1970 § 1

Sub a amended LL 55/1981 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1006

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1006 Exemptions.

No tax as imposed by section 11-1005 of this chapter shall be due or payable in any event for the occupation of any of the premises described herein to the extent so occupied and no return need be made therefor pursuant to the provisions of this chapter if any of the following conditions be demonstrated to the satisfaction of the commissioner of finance:

1. That the premises are occupied by:

(a) Peddlers.

(b) Bootblacks, excluding shoe shine machines or enterprises where services other than the shining of shoes are rendered.

(c) Operators of pushcarts.

(d) Operators of kiosk or subway stands engaged solely and exclusively in the sale of newspapers, magazines and periodicals, or any combination thereof.

(e) Operators of stoop line stands licensed pursuant to chapter two of title twenty of the code.

(f) Operators of newspaper stands licensed pursuant to chapter two of title twenty of the code.

2. That the premises are occupied for a period of less than one month and fifteen days during the period of one

year preceding July fifteenth of the year in which the tax is due.

3. That the premises are occupied by a co-operative corporation organized under the provisions of the cooperative corporations law of the state of New York, or an agricultural co-operative organized under the authority of the federal government.

4. That the premises are occupied by the state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada), improvement district or other political subdivision of the state where it is the purchaser, user or consumer.

5. That the premises are occupied by the United Nations or other world-wide international organizations of which the United States of America is a member.

6. That the premises are occupied by a corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

7. That the premises are occupied by the United States of America under circumstances which make the premises immune from taxation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-6.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-2.0)

Amended LL 72/1952 § 1

Sub 2 amended LL 26/1962 § 3

Renumbered and amended chap 100/1963 § 364

(formerly § C17-6.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1007

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1007 Returns; payment of taxes.

On or before the twentieth day of June in each year, every person subject to a tax hereunder, shall file a return with the commissioner of finance on the form to be furnished by the commissioner of finance. At the time of filing such return each person shall pay to the commissioner of finance the tax imposed herein. Such tax shall be due and payable annually upon the twentieth day of June, whether or not a return is filed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-7.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-3.0)

Amended LL 26/1962 § 4

Renumbered and amended chap 100/1963 § 365

(formerly § C17-7.0)

Amended LL 90/1968 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1008

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1008 Presumption and burden of proof.

It shall be presumed that the occupant of any premises is subject to the tax until the contrary is established, and the burden of proving that any occupation of premises is exempt from taxation shall be upon such occupant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-8.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-4.0)

Renumbered chap 100/1963 § 366

(formerly § C17-8.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1009

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1009 Determination of tax by the commissioner of finance.

a. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after it is required by a notice from the commissioner of finance, the commissioner of finance shall tentatively determine the amount of tax due from such information as he or she may be able to obtain and, if necessary, may estimate the tax on the basis of external indices. The commissioner of finance shall give notice of the amount so fixed to the person liable for the tax. Unless the person against whom the tax is assessed shall within fifteen days after the giving of such notice apply in writing to the commissioner of finance for a hearing to correct such assessment, such notice shall constitute a final and irrevocable determination of the tax. After such hearing the commissioner of finance shall give notice of his or her decision to the person liable for the tax.

b. Such determination and the decision of the commissioner of finance upon any application to correct may be reviewed for error, illegality or unconstitutionality or for any reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules in the nature of a certiorari proceeding if application therefor is made to the supreme court within thirty days after the giving of notice thereof. Whenever under this chapter a proceeding to review is instituted, it shall not be allowed unless the amount of any tax sought to be reviewed, with penalties thereon, if any, shall be first deposited with the commissioner of finance, and an undertaking filed with the commissioner of finance, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-9.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-5.0)

Renumbered and amended chap 100/1963 § 367

(formerly § C17-9.0)

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Administrative Code of the City of New York

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NYC Administrative Code 11-1010

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1010 Refunds.

The commissioner of finance shall refund any tax erroneously, illegally or unconstitutionally collected by or paid to him or her, under protest in writing, stating in detail the ground or grounds of the protest, if application therefor shall be made to the commissioner of finance within one year from the payment thereof. For like cause and within the same period a refund may be made on the initiative of the commissioner of finance. Whenever a refund is made the commissioner of finance shall state his or her reasons therefor in writing. A person shall not be entitled to a hearing in connection with any application for a refund if he or she has already been given the opportunity of a hearing as provided in section 11-1009 of this chapter. No refund shall be made of a tax or penalty paid pursuant to a determination of the commissioner of finance as provided in section 11-1009 of this chapter, unless the commissioner of finance, after a hearing as in said section provided, or of his or her own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding under article seventy-eight of the civil practice law and rules that such determination was erroneous, illegal, unconstitutional, or otherwise improper, in which event a refund with interest shall be made as provided upon the determination of such proceeding. An application for a refund made as herein provided shall be deemed an application for a revision of any tax or penalty complained of and the commissioner of finance may receive evidence with respect thereto. After making his or her determination the commissioner of finance shall give notice thereof to the person interested who shall be entitled to review such determination by a proceeding under article seventy-eight of the civil practice law and rules if application to the supreme court be made therefor within thirty days after such determination and an undertaking shall first be filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such order be dismissed or the tax confirmed, the applicant for the order will pay all costs and charges which may accrue in the prosecution of the certiorari proceeding.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-10.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-6.0)

Renumbered and amended chap 100/1963 § 368

(formerly § C17-10.0)

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Administrative Code of the City of New York

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NYC Administrative Code 11-1011

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1011 Remedies exclusive.

The remedies provided by section 11-1009 of this chapter hereof shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination of tax or determination on an application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any legal or equitable action or proceeding other than one under article seventy-eight of the civil practice law and rules.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-11.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-7.0)

Renumbered chap 100/1963 § 369

(formerly § C17-11.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1012

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1012 Reserves.

In cases where the taxpayer has paid any tax under written protest stating in detail the ground or grounds therefor, or has applied for a refund and an order under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on the taxpayer's application for refund, or has deposited the amount of tax assessed in connection with a proceeding under section 11-1009 of this chapter the commissioner of finance shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-12.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 1

(formerly § 1013-8.0)

Renumbered and amended chap 100/1963 § 370

(formerly § C17-12.0)

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Administrative Code of the City of New York

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NYC Administrative Code 11-1013

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1013 Proceeding to recover tax.

a. The commissioner of finance may issue a warrant directed to any officer or employee of the department of finance commanding him or her to levy upon and sell the real and personal property of the person from whom the tax is due for the payment of the amount thereof, with penalties, and the cost of executing the warrants, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due hereunder as if the city had recovered judgment therefor and the execution thereon had been returned not satisfied. A copy of any warrant issued may be filed with the county clerk in any of the counties of the city of New York and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax and penalty for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in the real and personal property of the person against whom the warrant is issued.

b. As an additional or alternate remedy the commissioner of finance may request the corporation counsel to bring an action in the name of the city to enforce payment of a tax or penalty which any person has failed to pay.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision a of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which

such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c added chap 513/2002 § 29, eff. Sept. 17, 2002.

DERIVATION

Formerly § E46-13.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-9.0)

Renumbered and amended chap 100/1963 § 371

(formerly § C17-13.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1014

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1014 Notices and limitation of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a post paid envelope addressed to such person at the address given in the return filed by such person pursuant to the provisions of this chapter or if no return has been filed then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action by the city taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-14.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-10.0)

Renumbered chap 100/1963 § 372

(formerly § C17-14.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1015

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1015 Penalties and interest.

a. Any person failing to file a return or corrected return or to pay any tax or any portion thereof that may be required by this chapter shall be subject to a penalty of five times the amount of the tax due, plus five per centum of such tax for each month of delay or fraction thereof, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest. Penalties shall be paid to the commissioner of finance and disposed of in the manner as other receipts under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

b. Any person filing or causing to be filed any return, certificate, affidavit or statement required or authorized by this chapter, which is wilfully false and any person who shall fail to file a return or to furnish a statement or other information as required under this chapter, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

A certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-15.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-11.0)

Renumbered and amended chap 100/1963 § 373

(formerly § C17-15.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1016

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1016 General powers of the commissioner of finance.

In the administration of this chapter, the commissioner of finance is authorized to:

1. Make and publish reasonable rules and regulations as may be necessary for the exercise of the commissioner's powers and the performance of the commissioner's duties under this chapter.

2. Assess the tax authorized to be imposed under this chapter.

3. Subpoena and require the attendance of witnesses and the production of books, papers and other documents, and to take testimony and proofs, under oath, with reference to any matter within the line of the commissioner's official duty under this chapter.

4. Delegate the commissioner's functions hereunder to a deputy commissioner of finance or other employee or employees of the department of finance.

5. Prescribe methods for determining the rental values of premises, the occupant of which is taxable pursuant to the provisions of this chapter.

6. Require any person who receives or is entitled to receive a consideration for the occupation of premises to furnish a statement to the commissioner of finance, upon his or her request, containing information as to the name of each occupant and rental value of each for the occupation of such premises.

7. Nothing contained in section 11-1017 of this chapter or in any other provision of this chapter shall be

construed to limit the authority of the commissioner of finance, hereby authorized, to furnish any information, whether or not contained in a return, to the tax commission or any other agency or department of the state of New York, or to the treasury department of the United States, or to any agency of the city of New York, or to the district attorney of any county within the city of New York.

8. To extend, for cause shown, the time for filing any return for a period not exceeding twenty days.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-16.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-12.0)

Sub 7 added LL 20/1955 § 1

Sub 8 added LL 26/1962 § 5

Renumbered and amended chap 100/1963 § 374

(formerly § C17-16.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1017

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1017 Returns to be secret.

Except in accordance with judicial order, or upon subpoena issued by a court of competent jurisdiction, it shall be unlawful for the commissioner of finance or any officer or employee of the city to divulge or make known in any manner, any information contained in any return required under this chapter. Nothing herein shall be construed to prohibit the delivery to a taxpayer of a certified copy of any return filed by the taxpayer, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns, or the inspection by the corporation counsel of the return to any taxpayer who shall bring action or proceeding to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted or is contemplated for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the commissioner of finance orders them to be destroyed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-17.0 added LL 18/1938 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-13.0)

Renumbered and amended chap 100/1963 § 375

(formerly § C17-17.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1018

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1018 Disposition of revenue.

All revenues and moneys heretofore or hereafter collected resulting from the imposition of taxes and penalties imposed by this chapter shall be deposited in the city treasury, and credited to a separate account. During each fiscal year, an amount not in excess of the amount of the subsidies to be made, and the amount of indebtedness incurred for low rent or slum clearance projects to be paid, during such fiscal year shall be charged to such account and credited to the general fund. No other payments shall be charged to such an account. The mayor may contract to make capital or periodic subsidies to the New York city housing authority in aid of a low rent project, or may incur indebtedness for a low rent slum clearance project, but such periodic subsidies shall not be contracted for a period longer than the life of such project and in no event for more than fifty years. If the amount of any such periodic subsidy shall be equal to or greater than the interest on and the amounts required annually for the payment of the indebtedness contracted by the authority on account of such project in each year, such contract shall constitute a guarantee of the principal of and the interest on such indebtedness, and such contract and the payments thereunder may be pledged by the authority as security in addition to all other security which the authority may give for such bonds. No such contract or periodic subsidies shall be made until the plan for such project shall have been approved in the manner provided by the public housing law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-18.0 added LL 18/1938 § 1

Amended LL 20/1939 § 1

Amended LL 63/1941 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-14.0)

Amended LL 3/1946 § 2

Amended LL 14/1960 § 1

Renumbered and amended chap 100/1963 § 376

(formerly § C17-18.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1019

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 10 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1019 Application; construction.

If any provision of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered. This chapter shall be construed in conformity with the public housing law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § E46-19.0 added LL 18/1938 § 1

Amended LL 20/1939 § 1

Amended LL 63/1941 § 1

Renumbered LL 4/1942 § 2

(formerly § 1013-15.0)

Renumbered chap 100/1963 § 377

(formerly § C17-19.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1101

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1101 Definitions.

When used in this chapter the following terms shall mean or include:

1. "Person." Includes any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, assignee of rents, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Comptroller." The comptroller of the city.

3. "Commissioner of finance." The commissioner of finance of the city.

4. "Gross income." All receipts received in or by reason of any sale made including receipts from the sale of residuals and by-products (except sale of real property) or service rendered in the city, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit) without any deduction therefrom on account of the cost of the property sold, the cost of material used, labor or services, delivery costs, any other costs whatsoever, interest or discount paid, or any other expense whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable period for which a return is made); also receipts from interest, dividends and royalties without any deductions therefrom for any expense whatsoever incurred in connection with the receipt thereof, and also gains or profits from any source whatsoever; but shall not include gross income of railroads from the transportation of freight, gross income from the operation of hotels, multiple dwellings or

office buildings by persons in the business of operating or leasing sleeping or parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, or interest or dividends received from a corporation by such persons or by persons subject to taxation under the provisions of section one hundred eighty-six-a of the tax law. Rents or rentals shall not be deemed to be gross receipts subject to tax, except rents or rentals derived from facilities used in the public service; provided, however, that in the case of persons in the business of operating or leasing sleeping or parlor railroad cars or of operating railroads other than street surface, rapid transit, subways and elevated railroads, such last-mentioned rents or rentals derived from other such utilities with respect to the operation of terminal facilities shall not be deemed to be gross income subject to tax except for the amount in excess of a user proportion of New York city real property and special franchise taxes and expenses of maintenance and operation. Notwithstanding anything to the contrary in this subdivision or any other provision of law, for taxable periods beginning on or after August first, two thousand two, gross income shall include eighty-four percent of charges for the provision of mobile telecommunications services where the place of primary use of the mobile telecommunications services is within the territorial limits of the city except to the extent that such inclusion would result in the taxation of charges for the provision of mobile telecommunications services that is prohibited by federal law.

5. "Gross operating income." Includes receipts received in or by reason of any sale made or service rendered, of the property and services specified in subdivision seven of this section in the city, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or other services, delivery costs or any other costs whatsoever, interest or discount paid or any other expenses whatsoever, provided however, that if a vendor of utility service purchases gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigeration service in a transaction the receipts from which are not subject to the tax imposed under this chapter, the gross operating income derived by such vendor of utility service from the resale of such gas, electricity, steam, water or refrigeration or such gas, electric, steam, water or refrigeration service to its tenants as an incident to such vendor's activity of renting premises to tenants, shall, if subject to the tax imposed under this chapter on such vendor, be conclusively presumed to be equal to the amount of such vendor's cost (including any associated transportation cost) for the purchase of such gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigeration service for resale by such vendor. Notwithstanding anything to the contrary in this subdivision or any other provision of law, for taxable periods beginning on or after August first, two thousand two, gross operating income shall include eighty-four percent of charges for the provision of mobile telecommunications services where the place of primary use of the mobile telecommunications services is within the territorial limits of the city except to the extent that such inclusion would result in the taxation of charges for the provision of mobile telecommunications services that is prohibited by federal law.

6. "Utility." Every person subject to the supervision of the department of public service and, for taxable periods beginning on or after August first, two thousand two, every person, whether or not supervised by the department of public service, eighty percent or more of the gross receipts of which consists of charges for the provision of mobile telecommunications services to customers. Notwithstanding anything to the contrary in any other provision of law, for purposes of this subdivision, the gross receipts of a person shall not include the gross receipts of any other related or unrelated person.

7. "Vendor of utility services." Every person not subject to the supervision of the department of public service, and not otherwise a utility as defined in subdivision six of this section, who furnishes or sells gas, electricity, steam, water or refrigeration, or furnishes or sells gas, electric, steam, water, refrigeration or telecommunications services, or who operates omnibuses (whether or not such operation is on the public streets); regardless of whether such furnishing, selling or operation constitutes the main activity of such person or is merely incidental thereto.

8. "Return." Includes any return filed or required to be filed as herein provided.

9. "Telecommunications services." Telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of voice image, data, information and paging, through the use of wire, cable,

fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof and shall include services that are ancillary to the provision of telephone service (such as, but not limited to, dial tone, basic service, directory information, call forwarding, caller-identification, call waiting and the like) and also include any equipment and services provided therewith; provided, however, that the definition of telecommunication services shall not apply to separately stated charges for any service that alters the substantive content of the message received by the recipient from that sent; and that such services shall not include (i) cable television services that consist of the transmitting to subscribers of programs broadcast by one or more television or radio stations or any other programs originated by any person by means of wire, cable, microwave or any other means or (ii) air safety and navigation services where such telecommunication service is provided by an organization, at least ninety percent of which (if a corporation, ninety percent of the voting stock of which) is owned, directly or indirectly, by air carriers, and which organization's principal function is to fulfill the requirements of (a) the federal aviation administration (or the successor thereto) or (b) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation.

10. "Limited fare omnibus company." An omnibus company whose principal source of revenue is derived from the daily transportation of passengers wholly within the city on a route or zoned portion thereof pursuant to a franchise agreement with, or consent of, the city, at the following fares: for the period from August first, nineteen hundred sixty-five until and including December thirty-first, nineteen hundred seventy-five, at a fare not in excess of thirty-five cents per passenger; for the period from January first, nineteen hundred seventy-six until and including June twenty-seventh, nineteen hundred eighty, at a fare not in excess of fifty cents per passenger; for the period from June twenty-eighth, nineteen hundred eighty until and including August thirty-first, nineteen hundred eighty, at a fare not in excess of sixty cents per passenger; for the period from September first, nineteen hundred eighty and thereafter, at a fare not in excess of the regular rate of fare charged per passenger for comparable service both local and express on regular rapid transit and surface lines operated by the New York city transit authority. For purposes of this subdivision, the term "regular rate of fare" shall be exclusive of fares for special train or bus service, or additional charges for bridge or tunnel tolls or transfer privileges.

11. "Commuter service." Mass transportation service (exclusive of limited stop service to airports, racetracks or any place where entertainment, amusement or sport activities are held or where recreational facilities are supplied) provided pursuant to a franchise with, or consent of, the city of New York.

12. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

13. "Base Year." Means the calendar year ending immediately prior to the calendar year containing the taxable period or periods for which a return is required to be filed pursuant to the provisions of section 11-1104 of this chapter.

14. "Taxable Period." Means the period for which a return is required to be filed pursuant to the provisions of this chapter and shall be either (i) the semiannual period beginning the first day of January or the first day of July of the calendar year, or (ii) the calendar month.

15. "Premises." Means for purposes of section 11-1102 of this chapter, any real property or part thereof, and any structure thereon or space therein.

16. "Tenant." Means a person paying, or required to pay, rent for premises as a lessee, sublessee, licensee or concessionaire.

17. "Mobile telecommunications services." Telecommunications services that are commercial mobile radio services.

18. "Commercial mobile radio services." Commercial mobile radio services as defined in section 20.3 of title 47

of the Code of Federal Regulations as in effect on June first, nineteen hundred ninety-nine.

19. "Charges for mobile telecommunications services." Any charge for, or associated with, the provision of mobile telecommunications services and any charge for, or associated with, a service provided as an adjunct to mobile telecommunications services that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

20. "Place of primary use." The street address representative of where the customer's use of the mobile telecommunications services primarily occurs, which must be (i) the residential street address or the primary business street address of the customer; and (ii) within the licensed service area of the home service provider.

21. "Licensed service area." The geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio services to the customer.

22. "Home service provider." The facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

23. "Customer." The person or entity that contracts with the home service provider for mobile telecommunications services. If the end user of mobile telecommunications services is not the contracting party, then, solely for purposes of subdivision twenty of this section, the term "customer" shall mean the end user of the mobile telecommunications services. The term customer does not include a reseller of mobile telecommunications services, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

24. "Reseller." A provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. The term reseller does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

25.*"Serving36 carrier." A facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(25)* "Cogeneration facility" means (i) a facility that was in operation before January first, two thousand four and that produces electric energy and steam or other forms of useful energy (such thermal energy) that are supplied to and used by tenants and/or occupants of a cooperative corporation for industrial, commercial, or residential heating or cooling purposes; or (ii) a cogeneration facility, as defined in clause (i) of this subparagraph, that has been replaced by any other facility used to generate electricity and steam or other forms of useful energy (such as thermal energy), when such electricity and steam or other forms of useful energy (such as thermal energy) are supplied to and used by tenants and/or occupants of a cooperative corporation.

26.** "Enhanced zip code." A United States postal zip code of nine or more digits.

(26)** "Cooperative37 corporation" means a corporation organized under the laws of New York, at least some of the stockholders of which are entitled, by reason of the stockholders' ownership interest of stock in the corporation, to occupy for dwelling purposes an apartment in a building owned by the corporation pursuant to a lease or occupancy agreement with the corporation.

27. Repealed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 4 amended chap 93/2002 § C5, eff. June 24, 2002. [See Note after

§ 11-1119]

Subd. 4 amended chap 536/1998 § 3, eff. retroactive to Jan. 1, 1998.

Subd. 5 amended chap 93/2002 § C5, eff. June 24, 2002. [See Note after § 11-1119]

Subd. 5 amended chap 536/1998 § 4, eff. retroactive to Jan. 1, 1998.

Subd. 6 amended chap 93/2002 § C5, eff. June 24, 2002. [See Note after § 11-1119]

Subd. 7 amended chap 93/2002 § C5, eff. June 24, 2002. [See Note after § 11-1119]

Subd. 7 amended chap 536/1998 § 5, eff. Aug. 4, 1998.

Subd. 9 amended chap 536/1998 § 6, eff. Aug. 4, 1998.

Subd. 12 added chap 808/1992 § 56, eff. Oct. 1, 1992

Subd. 12 repealed L.L. 46/1990 § 10, eff. July 1, 1990

Subd. 12 added L.L. 49/1987 § 8

Subd. 13 added chap 536/1998 § 7, eff. retroactive to Jan. 1, 1998.

Subd. 13 repealed L.L. 46/1990 § 10 eff. July 1, 1990

Subd. 13 added L.L. 49/1987 § 8

Subd. 14 added chap 536/1998 § 7, eff. retroactive to Jan. 1, 1998.

Subds. 15, 16 added chap 536/1998 § 8, eff. retroactive to Jan. 1, 1998.

Subds. 17-24 added chap 93/2002 § C6 eff. June 24, 2002. [See Note after § 11-1119]

Subd. 25 (laid out first) added chap 93/2002 § C6, eff. June 24, 2002. [See Note after § 11-1119]

Subd. (25) (laid out second) added L.L. 88/2005 § 1, eff. Jan. 1, 2006.

Subd. 26 (laid out first) added chap 93/2002 § C6, eff. June 24, 2002. [See Note after § 11-1119]

Subd. (26) (laid out second) added L.L. 88/2005 § 1, eff. Jan. 1, 2006.

Subd. 27 repealed chap 686/2003 § M23, eff. Oct. 21, 2003 and applying

to taxable years beginning on or after Jan. 1, 2003.

Subd. 27 added chap 63/2003 § N6, eff. May 19, 2003.

DERIVATION

Formerly § QQ46-1.0 added LL 81/1965 § 1

Sub 10 amended LL 68/1969 § 1

(amended as § Q946-1.0)

Sub 10 amended LL 65/1970 § 1

Sub 10 amended LL 1/1973 § 1

Sub 4 amended LL 106/1977 § 1

Sub 3 amended LL 1/1984 § 1

Sub 10 repealed and added LL 1/1984 § 2

Sub 11 added LL 1/1984 § 3

CASE NOTES FROM FORMER SECTION

¶ 1. The term telegraphic services as used in this section does not apply to the sale of market analysis services by use of remote access electronic data processing and digital computer services.-Bunker Ramo Corp. v. Irizarry, 49 A.D. 2d 836 [1975], aff'd, 40 N.Y. 2d 1045 [1976].

¶ 2. Selective enforcement of the utility tax only against the plaintiffs which provided express bus service and not against nonexpress bus operators improperly discriminated against plaintiffs.-New York Bus Tours v. City of N.Y., 111 Misc. 2d 10 [1981].

CASE NOTES

¶ 1. The NYC Tax Tribunal's determination that reimbursements to Varsity Transit, Inc. by an affiliated company for the use of buses and personnel do not constitute taxable income is rational. Varsity is subject to gross operating income tax, Ad Cd §11-1101(5), which includes services rendered in operating omnibuses but the affilates payments were not part of gross operating income because by supplying the affiliate with equipment and staff, the transit company was merely enabling another taxpayer, the affiliate, to be in a position to vend utility services. Varsity was not providing the services itself. The court determined that the reimbursements were taxable as rending of service "of making the buses and personnel available" to affiliate is distinguishable because it involved a customer's payments to cover costs to bus company in providing customer's transportation. Matter of O'Cleireacain v. NYC Tax Appeals Tribunal, 205 AD2d 318, 612 NYS2d 570.

¶ 2. A regulated utility, while exempt from the general corporation tax, is subject to a tax on gross income imposed under the Utility Tax. Cable & Wireless, Inc. v. City of N.Y. Department of Finance, 190 Misc.2d 410, 735 N.Y.S.2d 717 (Sup.Ct. New York Co. 2001).

FOOTNOTES

36

[Footnote 36]: ** There are 2 subds. (25).

37

[Footnote 37]: ** There are 2 subds. (26).

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NYC Administrative Code 11-1102

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Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1102 Imposition of excise tax.

a. Notwithstanding any other provisions of law to the contrary, for the privilege of exercising its franchise or franchises, or of holding property, or of doing business in the city, on or after August first, nineteen hundred sixty-five, every utility shall pay to the commissioner of finance an excise tax which shall be equal to two per centum of its gross income until and including December thirty-first, nineteen hundred sixty-five, and shall be equal to two and thirty-five hundredths per centum thereafter, except that the rate as to persons engaged in the business of operating omnibuses with a carrying capacity of more than seven persons shall be one per centum until and including December thirty-first, nineteen hundred sixty-five, and one and seventeen hundredths per centum thereafter, and except that as to persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, the rate shall be three per centum until and including December thirty-first, nineteen hundred sixty-five, and three and fifty-two one hundredths per centum thereafter, and every vendor of utility services in the city shall pay to the commissioner of finance an excise tax which shall be equal to two per centum of its gross operating income until and including December thirty-first, nineteen hundred sixty-five, and shall be equal to two and thirty-five one hundredths per centum thereafter, except that as to persons engaged in the business of operating omnibuses with a carrying capacity of more than seven persons other than omnibuses used exclusively for the transportation of children to and from schools operated under contracts made pursuant to the provisions of the education law, and not subject to the jurisdiction of the department of public service, the rate shall be one per centum of its gross operating income until and including December thirty-first, nineteen hundred sixty-five, and one and seventeen hundredths per centum thereafter. Such tax shall be in addition to any and all other taxes, charges and fees imposed by any other provision of law and shall be paid at the time and in the manner hereinafter provided, but any person to the extent that it is subject to tax hereunder shall not be liable to any tax under any other of the local laws of

the city enacted pursuant to chapter ninety-three of the laws of nineteen hundred sixty-five as amended, or article two-b of the general city law, with respect to its gross income or gross operating income hereunder taxed, as the case may be.

b. So much of the gross income of a utility shall be excluded from the measure of the tax imposed by this chapter, as is derived from sales for resale to vendors of utility services validly subject to the tax imposed by this chapter, except to the extent that such gross income is derived from sales of gas, electricity, steam, water or refrigeration or sales or rendering of gas, electric, steam, water or refrigeration service to a vendor of utility services for resale to its tenants as an incident to such vendor's activity of renting premises to tenants.

c. For the purpose of proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that the gross income or gross operating income of any person taxable hereunder is taxable and is derived from business conducted wholly within the territorial limits of the city until the contrary is established, and the burden of proving that any part of its gross income or gross operating income is not so derived shall be upon such person. Notwithstanding anything to the contrary in the preceding sentence or in any provision of section twenty-b of the general city law or any other provision of law, for taxable periods beginning on or after August first, two thousand two, gross income and gross operating income derived from the provision of mobile telecommunications services shall be deemed to be derived from business conducted wholly within the territorial limits of the city where the place of primary use of the mobile telecommunications services is within the territorial limits of the city.

d. The tax imposed by this chapter shall be inapplicable to the gross income received by a limited fare omnibus company until and including August thirty-first, nineteen hundred eighty. Thereafter, such tax shall be applicable to such gross income received as follows: (1) for gross income received from commuter service from September first, nineteen hundred eighty until and including December thirty-first, nineteen hundred eighty-three, the rate of tax shall be one hundredth of one per centum; (2) for gross income received from commuter service from January first, nineteen hundred eighty-four and thereafter, the rate of tax shall be one tenth of one per centum; and (3) for gross income received from all other sources, the rate of tax shall be as provided in subdivision a of this section.

e. The gross operating income of a vendor of utility services derived from sales to its tenants of gas, electricity, steam, water, or refrigeration or sales or rendering to its tenants of gas, electric, steam, water or refrigeration service, as an incident to such vendor's activity of renting premises to tenants, shall be excluded from the measure of the tax imposed by this chapter, but, with regard to sales to its tenants of gas, electricity, or steam or sales or rendering to its tenants of gas, electric or steam service, only to the extent that the tax imposed by this chapter has been validly paid or accrued with respect to a prior sale of such gas, electricity or steam or sale or rendering of gas, electric or steam service.

f. (1) Notwithstanding anything contained in this chapter to the contrary, for taxable periods beginning on or after August first, two thousand two, if a partnership is subject to the tax imposed by this chapter as a utility or as a vendor of utility services, no person who is a partner in such a partnership shall be subject to the tax imposed by this chapter on such partner's distributive share of the gross income or gross operating income of such partnership.

(2) If a person is a partner in a partnership subject to the tax imposed by this chapter and that person is separately subject to the supervision of the state department of public service or is a utility or a vendor of utility services based on its activities exclusive of any activities of such partnership, for taxable periods beginning on or after August first, two thousand two, such person shall be subject to the tax imposed by this chapter only on its separate gross income or separate gross operating income, which shall not include such person's distributive share of the gross income or gross operating income of such partnership.

(3) For purposes of this subdivision, the term "partner" shall include a person who receives a distributive share of the gross income or gross operating income, directly or indirectly through one or more tiers of partnerships, of a partnership subject to the tax imposed by this chapter.

(g) Notwithstanding anything else contained in this chapter to the contrary, for the taxable periods beginning on

or after January 1, 2006, if a cooperative corporation containing at least fifteen hundred apartments furnishes or sells electricity, steam, refrigeration or water, or furnishes or sells electric, steam, refrigeration or water services that are (i) metered, (ii) generated or produced by a cogeneration facility owned or operated by such cooperative corporation, and (iii) such electricity, steam, refrigeration or water and/or electric, steam, refrigeration or water services are distributed to tenants and/or occupants of a cooperative corporation, then such cooperative corporation shall pay to the commissioner of finance an excise tax which shall be equal to zero per centum of its gross income or its gross operating income, as the case may be.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended chap 536/1998 § 9, eff. retroactive to Jan. 1, 1998.

Subd. c amended chap 93/2002 § C7, eff. June 24, 2002. [See Note after § 11-1119]

Subd. e added chap 536/1998 § 10, eff. retroactive to Jan. 1, 1998.

Subd. f added chap 93/2002 § C8, eff. June 24, 2002. [See Note after § 11-1119]

Subd. (g) added L.L. 88/2005 § 2, eff. Jan. 1, 2006.

Subd. g repealed chap 686/2003 § M24, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. g repealed chap 686/2003 § M24, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. g added chap 63/2003 § N7, eff. May 19, 2003.

DERIVATION

Formerly § QQ46-2.0 added LL 81/1965 § 1

Sub a amended LL 20/1966 § 1

Sub d amended LL 1/1984 § 4

CASE NOTES FROM FORMER SECTION

¶ 1. Exclusion contained in Tax Law § 186-a (2-a) that "any utility engaged in the business of operating one or more omnibuses having a seating capacity of more than seven passengers, in computing its gross income . . . may exclude from receipt from all omnibus transportation, otherwise includible in each such return, the amount of one hundred twenty-five thousand dollars" requires a similar exclusion with respect to the city utility tax.-Carey v. Perrotta, 29 N.Y. 2d 814 [1971].

¶ 2. Petitioner, the operator of omnibuses having a seating capacity of more than seven persons, was not exempt from city utility tax on revenues obtained from transporting children to school from their homes under a contract with

city's Board of Education and the transportation of school children for educational, charitable and religious institutions.-Parochial Bus System, Inc. v. Lewisohn, 35 N.Y. 2d 938 [1974].

¶ 3. Petitioner's receipts from rail and water transportation services rendered entirely within city were subject to city's utility tax.-N.Y. Dock Railway v. Director of Finance, 50 A.D. 2d 540 [1975], aff'd, 40 N.Y. 2d 1037 [1976].

¶ 4. Limousine service which operated omnibuses with carrying capacity of more than seven persons was not exempt from tax on ground that it was a part of interstate commerce because it was a contract carrier for airlines transporting passengers arriving in New York from interstate and international flights to accommodations in New York.-Brown's Limousine Service v. Irizarry, 85 Misc. 2d 280 [1975].

¶ 5. Petitioner who operated vans with a carrying capacity of more than seven persons was subject to the tax on gross operating income imposed by this section and was not exempted therefrom because his vans were used exclusively to transport handicapped children.-Matter of RLM Transportation Corp. v. Director of Finance of City of N.Y., 49 N.Y. 2d 350, 402 N.E. 2d 137, 425 N.Y.S. 2d 799 [1980].

¶ 6. Chauffeured Cadillac limousines that carried seven passengers plus the driver in normal use was not an omnibus with a carrying capacity of over seven persons.-London Towncars, Inc. v. Michael, 56 App. Div. 2d 841 [1982].

CASE NOTES

¶ 1. A surcharge imposed by a hotel upon guests' long distance telephone calls (charges in addition to those imposed by the telelphone company) are subject to the city utility tax even though the calls terminate outside the City of New York. Hilton Hotels Corp. v. Commissioner of Finance, City of New York, 632 N.Y.S.2d 56 (App.Div. 1st Dept. 1996).

¶ 2. A pager service, located within the City of New York, is subject to the City's utility tax. In Re Paging Network of New York, Inc. v. Commissioner of Finance, 269 A.D.2d 313, 703 N.Y.S.2d 466 (App.Div. 1st Dept. 2000).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1102.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1102.1 Deduction relating to certain sales to non-residential energy users.

HISTORICAL NOTE

Section repealed L.L. 46/1990 § 11 eff. July 1, 1990

Section added L.L. 49/1987 § 9, see note after § 22-611

Subd. a par (1) subpars (ii), (iii) amended L.L. 42/1988 § 7

Subd. a par (2) amended L.L. 42/1988 § 7

Subd. c added L.L. 42/1988 § 8

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1103

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1103 Records to be kept.

Every person subject to tax hereunder shall keep records of its business and in such form as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by such commissioner or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-3.0 added LL 81/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1104

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1104 Returns; requirements as to.

a. Except as otherwise provided in subdivision e of this section with respect to taxable periods beginning after nineteen hundred ninety-eight, on or before the twenty-fifth day of September, nineteen hundred sixty-five, and on or before the twenty-fifth day of every month thereafter, every person subject to tax hereunder shall file a return with the commissioner of finance on a form to be prescribed by such commissioner. Such return shall state the gross income or gross operating income as the case may be for the preceding calendar month, and shall contain any other data, information or other matter which the commissioner of finance may require to be included therein. The commissioner of finance may require at any further time a supplemental return hereunder, which shall contain any data upon such matters as such commissioner may specify. Notwithstanding the foregoing and notwithstanding the provisions of subdivision e of this section, a vendor of utility services, all of whose gross operating income is excluded from the measure of the tax imposed by this chapter pursuant to subdivision e of section 11-1102 of this chapter during any taxable period, shall not be required to file a return for such taxable period, provided, however, that on or before the first day of September of each year, any such vendor of utility services who was not required to file a return for any taxable period during the period covered by the statement required to be filed by such date pursuant to subdivision a of section 11-208.1 of this title shall file an information return covering such period in such form and containing such information as the commissioner of finance may specify.

b. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

c. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such return or of a corrected return.

d. Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report with the state tax commission relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

e. With respect to taxable periods beginning after nineteen hundred ninety-eight, notwithstanding the provisions of subdivision a of this section, if the amount of tax imposed hereunder on any person in the base year does not exceed one hundred thousand dollars, the taxable period for which such person is required to file a return is the semiannual period described in paragraph i of subdivision fourteen of section 11-1101 of this chapter, and such person shall file a return for each semiannual period of the first calendar year beginning after the base year on or before the twenty-fifth day of the month following the end of each such taxable period. Such return shall be filed with the commissioner of finance on a form to be prescribed by such commissioner. Such return shall state the gross income or gross operating income as the case may be for the preceding taxable period and shall contain any other data, information or other matter which the commissioner of finance may require to be included therein. The commissioner of finance may require at any further time a supplemental return hereunder, which shall contain any data upon such matters as such commissioner may specify. For the purposes of this subdivision, if the amount of tax imposed hereunder on such person in the base year is for a period of less than one year, the amount of tax imposed on such person shall be annualized by multiplying the amount of tax imposed by a fraction, the denominator of which is the number of months or parts thereof during which the person was subject to the tax imposed hereunder and the numerator of which is twelve. Notwithstanding the foregoing provisions of this subdivision, a person that first becomes subject to the tax hereunder shall file a return for each month in the calendar year in which such person first becomes subject to such tax in accordance with subdivision a of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 536/1998 § 11, eff. retroactive to Jan. 1, 1998.

Subd. e added chap 536/1998 § 12, eff. Aug. 4, 1998.

DERIVATION

Formerly § QQ46-4.0 added LL 81/1965 § 1

Sub d added LL 10/1985 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1105

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1105 Payment of tax; credit for certain sales and compensating use taxes.

a. At the time of filing each return, as provided under section 11-1104 of this chapter, each person taxable hereunder shall pay to the commissioner of finance the taxes imposed by this chapter upon its gross income or gross operating income, as the case may be, for the taxable period covered by such return, less any credit to which such person may be entitled under subdivision b of this section. Such taxes shall be due and payable on the last day on which the return for such period is required to be filed, regardless of whether a return is filed or whether the return which is filed correctly indicates the amount of tax due.

b. (1) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law which became legally due on or after, and which were paid on or after, July first, nineteen hundred seventy-seven but within the taxable period for which a credit is claimed, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus.

(2) The amount of the credit provided in paragraph one of this subdivision shall be limited to the amount of such sales and compensating use taxes paid during the taxable period covered by the return under this chapter on which the credit is taken less the amount of any credit or refund of such sales and compensating use taxes during such taxable period. If such credit exceeds the amount of tax under this chapter payable for the taxable period in question, such

excess amount shall be refunded or credited except in the case of a vendor of utility services who is entitled to a credit and/or refund for such sales and compensating use taxes under chapter five or six of this title. The credit allowed under this subdivision shall be deemed an erroneous payment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-1108 of this chapter, except as otherwise provided in the previous sentence.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer has claimed a credit under the provisions of this subdivision in a prior taxable period, the amount of such refund or credit shall be added to the tax imposed by section 11-1102 of this chapter of the taxable period in which such refund or credit of tax under section eleven hundred seven of the tax law is received.

HISTORICAL NOTE

Section amended chap 536/1998 § 13, eff. retroactive to Jan. 1, 1998.

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-5.0 added LL 81/1965 § 1

Amended LL 64/1977 § 8

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1105.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1105.1 Credit for rebates*2 of charges for energy.

A taxpayer shall be allowed a credit against the amount of taxes imposed by this chapter for the amount of special rebates and discounts made in accordance with the provisions of section 22-602 of this chapter and for the amount of special rebates and discounts made in accordance with the provisions of section twenty-five-bb of the general city law. Such credit shall be applied against the amount of tax otherwise required to be paid as provided in subdivision a of section 11-1105 of this chapter and shall be claimed for the taxable period immediately succeeding the taxable period in which such rebates or discounts are made.

HISTORICAL NOTE

Section amended chap 536/1998 § 14, eff. retroactive to Jan. 1, 1998.

Section amended chap 4/1995 § 13, eff. Oct. 29, 1995.

Section amended L.L. 20/1986 § 27

Section added L.L. 54/1985 § 1, number supplied by the Legislative Bill

Drafting Commission

DERIVATION

Formerly § QQ46-5.1 added LL 54/1985 § 1

Amended LL 20/1986 § 2

FOOTNOTES

2

[Footnote 2]: * "and discounts" is missing

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1105.2

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1105.2 Credit for amount of local sales tax paid on sales of energy.

HISTORICAL NOTE

Section repealed L.L. 46/1990 § 12 eff. July 1, 1990

Section added L.L. 49/1987 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1105.2

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1105.2 Relocation and employment assistance program credit.

(a) A taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter, provided, however, that a taxpayer that is a vendor of utility services shall not be allowed the credit against the tax imposed by this chapter unless it elects as provided in subdivision (d) of section 22-622 of the code to take the credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the calendar year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code is on or after January first, nineteen hundred ninety-nine, and before July first, two thousand, the amount to be multiplied by the number of eligible aggregate employment shares shall be one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code. For purposes of this subdivision, the terms "eligible aggregate employment shares", "relocate", "retail activity" and "hotel services" shall

have the meanings ascribed by section 22-621 of the code.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the taxable periods in the first calendar year during which such eligible aggregate employment shares are maintained with respect to such premises and for taxable periods in any of the twelve succeeding calendar years during which eligible aggregate employment shares are maintained with respect to such premises, provided that the credit allowed for the taxable periods in the twelfth succeeding calendar year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding calendar year by the lesser of one and a fraction the numerator of which is the number of days in the calendar year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the calendar year of relocation and the denominator of which is the number of days in such twelfth succeeding year during which such eligible aggregate employment shares are maintained with respect to such premises. The credit allowable under this section shall be applied against the amount of tax otherwise required to be paid for the last taxable period of the calendar year as provided in subdivision a of section 11-1105 of this chapter, shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of such section, and shall be claimed on the tax return for the last taxable period of the calendar year. Except as provided in subdivision (c) of this section, if the amount of the credit allowable under this subdivision for any calendar year exceeds the tax imposed for such last taxable period in such calendar year, the excess may be carried over, in order, to the immediately succeeding taxable periods in the five immediately succeeding calendar years and, to the extent not previously allowable, shall be applied against the tax otherwise required to be paid for such periods. Such carryover credit shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of section 11-1105 of this chapter. With respect to the last taxable period in a calendar year, the credit for such calendar year shall be taken prior to any carryover credit. If in any period there are carryover credits available from more than one year, such credits shall be applied against the tax in the order in which they were earned with the oldest available credit being taken first.

(c) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code, the credits allowed under this section, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to subdivision (a) of this section, against the tax imposed by this chapter for the calendar year of such relocation and for the four calendar years immediately succeeding the calendar year of such relocation, shall be deemed to be erroneous payments of tax by the taxpayer to be credited or refunded, in accordance with the provisions of section 11-1108 of this chapter. For such calendar years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this subdivision shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three unless the date of such relocation is on or after July first, two thousand.

HISTORICAL NOTE

Section amended chap 143/2004 § 28, eff. July 6, 2004 and deemed to

have been in full force and effect on and after July 1, 2003.

Section amended chap 261/2000 § 13, eff. Aug. 16, 2000.

Section added chap 149/1999 § 11, eff. July 1, 1999.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1105.3

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§11-1105.3 Lower Manhattan relocation employment assistance credit.

(a) A taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code shall be allowed a credit against the tax imposed by this chapter, provided, however, that a taxpayer that is a vendor of utility services shall not be allowed the credit against the tax imposed by this chapter unless it elects as provided in subdivision (d) of section 22-624 of the code to take the credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the calendar year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code.

(b) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable period in which the relocation to eligible premises takes place and for succeeding taxable periods in the calendar year of the relocation and in any of the twelve succeeding calendar years during which eligible aggregate employment shares are maintained with respect to eligible premises, provided that the credit allowed for the taxable periods in the twelfth succeeding calendar year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding calendar year by the lesser of one and a fraction the numerator of which is the number of days in the calendar year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the calendar year of relocation and the denominator of which is the number of days in such twelfth succeeding calendar year during which such eligible aggregate employment shares are maintained with

respect to such premises. The credit allowable under this section shall be applied against the amount of tax otherwise required to be paid for the last taxable period of the calendar year as provided in subdivision a of section 11-1105 of this chapter, shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of such section but after the credit provided for in section 11-1105.2 of this chapter, and shall be claimed on the tax return for the last taxable period of the calendar year. Except as provided in subdivision (c) of this section, if the amount of the credit allowable under this subdivision for any calendar year exceeds the tax imposed for such last taxable period in such calendar year, the excess may be carried over, in order, to the immediately succeeding taxable periods in the five immediately succeeding calendar years and, to the extent not previously allowable, shall be applied against the tax otherwise required to be paid for such periods. Such carryover credit shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of section 11-1105 of this chapter but after the credit provided for in section 11-1105.2 of this chapter. With respect to the last taxable period in a calendar year, the credit for such calendar year shall be taken prior to any carryover credit. If in any period there are carryover credits available from more than one year, such credits shall be applied against the tax in the order in which they were earned with the oldest available credit being taken first.

(c) The credits allowed under this section, against the tax imposed by this chapter for the calendar year of the relocation and for the four taxable years immediately succeeding the calendar year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-1108 of this chapter. For such calendar years, such credits or portions thereof may not be carried over to any succeeding calendar year.

HISTORICAL NOTE

Section added chap 143/2004 § 29, eff. July 6, 2004 and deemed to have

been in full force and effect on and after July 1, 2003.

Subd. (b) amended chap 2/2005 § E8, eff. Aug. 30, 2005.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1106

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1106 Determination of tax.

In case the return required by this chapter shall be insufficient or unsatisfactory or if such return is not filed, the commissioner of finance shall determine the amount of the tax due from such information as is obtainable, and if necessary the tax may be estimated upon the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix such tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless such commissioner of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if instituted by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under such article of such law and rules shall not be instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed with penalties and interest thereon, if any, shall first be deposited with the commissioner of finance and there shall be filed with such commissioner an undertaking, issued by a surety company authorized to transact business

in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accruee in the prosecution of the proceeding, or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 57, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-6.0 added LL 81/1965 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Thirty day period to object to determination was tolled because of failure to serve petitioner's counsel where a power of attorney had been filed approximately one year before the forwarding of the notice of determination herein and specifically referred to "utility tax" and issues with regard to previous assessment and assessment at issue were identical.-In re Staten Island Bus, Inc. (City of N.Y.), 182 (77) N.Y.L.J. (19-19-79) 5, Col. 1 B.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1107

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1107 Assessment of tax where change or correction of sales and compensating use tax liability involved.

a. If a taxpayer fails to comply with subdivision d of section 11-1104 of this chapter in not reporting a change or correction of its sales and compensating use tax liability or in not filing a copy of an amended return or report relating to its sales and compensating use tax liability, instead of the mode and time of assessment provided for in section 11-1106 of this chapter, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under this chapter, by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous. Such notice shall not be considered as a notice of determination for the purposes of section 11-1106 of this chapter.

b. If a report filed pursuant to subdivision d of section 11-1104 of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax resulting therefor shall be deemed assessed on the date of filing such report.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-6.1 added LL 10/1985 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1108

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1108 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if application for such refund shall be made to the commissioner of finance within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the

supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, a final determination of tax due was not previously made.

c. If a taxpayer is required by subdivision d of section 11-1104 of this chapter to file a report or amended return in respect of a change or correction of its sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within one year from the time such report or amended return was required to be filed with the commissioner of finance. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

d. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-1106 or 11-1107 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said sections, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1106 or 11-1107 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner of finance's own motion or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 58, eff. Oct. 1, 1992

DERIVATION

Formerly § QQ46-7.0 added LL 81/1965 § 1

Amended LL 10/1985 § 3

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1109

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1109 Reserves.

In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-8.0 added LL 81/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1110

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1110 Remedies exclusive.

The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by a declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1106 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 59, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-9.0 added LL 81/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1111

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1111 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, such commissioner in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties might be satisfied and that any such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As a further additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff, commanding him or her to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and the cost of executing the warrant and to return such warrant to such commissioner and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall have the full force and effect of a judgment and shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions against property upon judgments of a court of record, and for services in executing the

warrant he or she shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance and in the execution thereof such officer or employee shall have all the power conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandising or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether or not any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give the notice to the commissioner of finance required by this subdivision, or whenever such commissioner shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor and such liability may be assessed and enforced in the same manner as the liability for tax is imposed under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 30, eff. Sept. 17, 2002.

DERIVATION

Formerly § QQ46-10.0 added LL 81/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1112

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1112 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to prescribe the form of blanks, reports and other records relating to the enforcement and administration of this chapter;

2. To prescribe methods for determining the amount of "gross income" and "gross operating income" received by a person subject to tax hereunder;

3. To request information from the tax commission of the state of New York or treasury department of the United States relative to any person; and to afford returns, reports and other information to such tax commission or such treasury department relative to any person, any other provision in this chapter to the contrary notwithstanding;

4. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

5. To delegate his or her functions hereunder to a deputy commissioner of finance or other employee or employees of the department of finance of the city;

6. To assess, determine, revise and readjust the taxes imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-11.0 added LL 81/1965 § 1

Sub 4 amended LL 2/1983 § 16

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1113

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1113 Administration of oaths and compelling testimony.

a. The commissioner of finance, his or her employees duly designated and authorized by him or her, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceedings in the exercise of their powers and duties under this chapter. Such commissioner and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of such commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioneer of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4002 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 60, eff. Oct. 1, 1992

DERIVATION

Formerly § QQ46-12.0 added LL 81/1965 § 1

Sub c repealed and added chap 765/1985 § 59

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1114

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1114 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-1106 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph (1) *3 which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in gross income or gross operating income,

when required under this chapter to be so included, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under this subdivision by reason of the preceding sentence, the amount of the penalty imposed by paragraph (1) of this subdivision shall be five percent of the portion of the underpayment which is attributable to the failure described in the preceding sentence.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in acccordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(i) Substantial understatement of liability. If there is a substantial understatement of tax for any taxable period, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period, over the amount of the tax imposed which is shown on the return, reduced by any rebate. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(j) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this title of any return, report, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph (1) of this subdivision, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph (1) of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

(k) Failure to include on return information relating to issuer's allocation percentage. Where a return is filed but does not contain (1) the information necessary to compute the taxpayer's issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of section 11-604 of this title, where the same is called for on

the return, or, (2) the taxpayer's issuer's allocation percentage, where the same is called for on the return but where all of the information necessary for the computation of such percentage is not called for on the return, then unless it is shown that such failure is due to reasonable cause and not due to willful neglect there shall be added to the tax a penalty of five hundred dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended chap 241/1989 § 17

Subd. (g) par (2) amended chap 63/2003 § E5, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

Subd. (k) added chap 241/1989 § 56

DERIVATION

Formerly § QQ46-13.0 added LL 81/1965 § 1

Repealed and added LL 2/1983 § 17

Subs a, c, d, h amended chap 765/1985 § 60

Sub b pars 1, 4 amended chap 765/1985 § 60

Subs i, j added chap 765/1985 § 60

FOOTNOTES

3

[Footnote 3]: * So in original. (Closing parenthesis missing.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1115

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1115 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by him or her, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action by the city taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax imposed under a local law enacted subsequent to July first, nineteen hundred thirty-eight, shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed, or where the taxpayer fails to file a report or return in respect of a change or correction in the amount of sales and compensating use tax liability as provided by law, the tax may be assessed at any time. Where the taxpayer files a report or return in respect of a change or correction in sales and compensating use tax liability, as required by subdivision d of section 11-1104, an assessment may be made at any time within two years after such report or return was filed, provided, however, that this sentence shall not affect the time within which an assessment may otherwise be made.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer

has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state , the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title.

Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 513/2002 § 8, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 61 eff. Oct. 1, 1992

Subd. f added chap 513/2002 § 9, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § QQ46-14.0 added LL 81/1965 § 1

Subs d, e added LL 41/1984 § 9

Sub b amended LL 10/1985 § 4

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NYC Administrative Code 11-1116

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1116 Returns to be secret.

a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the tax appeals tribunal, or any officer or employee of the department of finance or the tax appeals tribunal to divulge or make known in any manner, the receipts or any other information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city or the commissioner of finance, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events, the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with his or her tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel of the city or other legal representatives of such city of the return of any taxpayer who shall bring action or proceeding to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted or is contemplated for the collection of a tax, penalty or interest. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 62, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 3

Subd. c added chap 714/1989 § 6

Subd. d added chap 808/1992 § 63, eff. Oct. 1, 1992

DERIVATION

Formerly § QQ46-15.0 added LL 81/1965 § 1

Sub a designated chap 765/1985 § 61

(formerly open par)

Sub b added chap 765/1985 § 61

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1117

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1117 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter ninety-three of the laws of nineteen hundred sixty-five, as amended, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-16.0 added LL 81/1965 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1118

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1118 Disposition of revenues.

All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § QQ46-18.0 added LL 81/1965 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1119

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1119 Determinations of place of primary use of wireless telecommunications services.

a. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use as defined in subdivision twenty of section 11-1101 of this chapter. Except as provided in subdivision b of this section, if the home service provider's reliance on the information provided by its customer is in good faith: (1) the home service provider can rely on the applicable residential or business street address supplied by the home service provider's customer; and (2) the home service provider shall not be held liable for any additional taxes under this chapter based on a different determination of the place of primary use.

b. The commissioner of finance, or the commissioner of taxation and finance of the state of New York on behalf of the commissioner of finance, may determine that the address used by a home service provider for purposes of this chapter does not meet the definition of place of primary use as defined in subdivision twenty of section 11-1101 of this chapter and may give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if:

(1) where the determination is made by the commissioner of finance, such commissioner obtains the consent of all affected taxing jurisdictions within this state before giving such notice of determination; and

(2) before the commissioner of finance or the commissioner of taxation and finance of the state of New York gives such notice of determination, the customer is given an opportunity to demonstrate, in accordance with applicable procedures established by the commissioner of finance making the determination, that that address is the customer's place of primary use.

c. Except as provided in subdivision b of this section, a home service provider may treat the address used by the home service provider for purposes of this chapter for the last taxable period beginning before August first, two thousand two, for any customer under a service contract or agreement in effect on July twenty-eighth, two thousand two as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement.

HISTORICAL NOTE

Section added chap 93/2002 § C9, eff. June 24, 2002. [See Note]

NOTE

Provisions of chap 93/2002 § C10:

§ 10. Nonseverability. If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of sections 116 through 126 of title 4 U.S.C., then sections one through nine of this act are declared to be invalid and shall have no legal effect as of the date of entry of such judgment.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1120

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 11 UTILITY TAX

§ 11-1120 Assignment of place of primary use of telecommunications services to the city.

a. If an electronic database meeting the requirements of subsection a of section 119 of title four of the United States Code is provided by the state of New York, or by a designated database provider as defined in subsection three of section 124 of such title, and the requirements of subsection b of such section 119 are met, a home service provider shall use that database to determine whether the customer's place of primary use is within the territorial limits of the city and shall reflect changes to such database in accordance with subsection c of such section 119.

b. A home service provider using the data contained in an electronic database described in subdivision a of this section shall be held harmless from any tax liability that otherwise would be due under this chapter solely as a result of any error or omission in such database provided the home service provider has properly reflected changes to such database in accordance with subsection c of section 119 of title four of the United States Code.

c. (1) If no electronic database is provided as described in subdivision a of this section, a home service provider shall be held harmless from any tax liability under this chapter that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to subdivision d of this section, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with subdivision d of this section is deemed to be in compliance with this subdivision. For purposes of this subdivision, there is a rebuttable presumption that a home service provider has

exercised due diligence if such home service provider demonstrates that it has: (i) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(ii) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

(iii) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

(2) Paragraph one of this subdivision applies to a home service provider that is in compliance with the requirements of such paragraph until the later of:

(i) eighteen months after the nationwide standard numeric code described in subsection (a) of section 119 of title four of the United States Code has been approved by the federation of tax administrators and the multistate tax commission; or

(ii) six months after the state of New York or a designated database provider provides a database as prescribed in subdivision a of this section.

d. The commissioner of finance, or the commissioner of taxation and finance of the state of New York on behalf of the commissioner of finance, may determine that the assignment of a street address to a taxing jurisdiction by a home service provider under subdivision c of this section does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if:

(1) where the determination is made by the commissioner of finance, such commissioner obtains the consent of all affected taxing jurisdictions within this state before giving such notice of determination; and

(2) the home service provider is given an opportunity to demonstrate in accordance with applicable procedures established by the commissioner of finance making the determination that the assignment reflects the correct taxing jurisdiction.

HISTORICAL NOTE

Section added chap 93/2002 § C9, eff. June 24, 2002. [See Note after

§ 11-1119]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1201

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1201 Definitions

*27 When used in this chapter the following terms shall mean or include:

1. "Racing corporation or association." A racing corporation or association or other person owning or operating race meeting grounds or enclosures located wholly or partly within the city of New York, and/or a racing corporation or association or other person conducting race meetings at such grounds or enclosures.

2. "Person." Includes an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

3. "Return." Includes any return filed or required to be filed as herein provided.

4. "Comptroller." The comptroller of the city.

5. "Commissioner of finance." The commissioner of finance of the city.

6. "Admissions." The charge required to be paid by patrons for admission to a running horse race meeting, including any charge required to be paid by such patrons for admission to the clubhouse or other special facilities within the race meeting grounds or enclosure at which the running race meeting is conducted.

7. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 7 added chap 808/1992 § 64, eff. Oct. 1, 1992

DERIVATION

Formerly § C46-1.0 added LL 23/1952 § 1

Sub 6 amended LL 9/1954 § 1

Sub 5 amended chap 100/1963 § 1608

FOOTNOTES

27

[Footnote 27]: * So in original. (Period omitted.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1202

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1202 Imposition of tax.

A tax is hereby imposed on all admissions to running horse race meetings conducted at race meeting grounds or enclosures located wholly or partly within the city of New York at the rate of three percent of the admission price. The racing association or corporation conducting a running horse race meeting shall, in addition to the admission price, collect such tax on all tickets sold or otherwise disposed of to patrons for admission with the sole exception of those issued free passes, cards or badges in accordance with the specific authority of the laws of the state of New York. In case of failure to collect such tax the tax shall be imposed on the racing corporation or association conducting such meeting.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-2.0 added LL 23/1952 § 1

Amended LL 9/1954 § 2

Amended LL 72/1973 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1203

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1203 Payment of the tax.

a. The tax imposed by this chapter shall be paid by the racing corporation or association to the commissioner of finance daily after each day of each race meeting, by depositing it to the account of the city in such bank or banks as may be designated by the city in accordance with the provisions of section four hundred twenty-one of the New York city charter or at such regular intervals as the commissioner of finance may require.

b. The amount of the tax paid on admissions pursuant to this chapter shall be the property of the city of New York and shall be held by the racing corporation or association as trustee for and on account of the city of New York and the racing corporation or association shall be liable for the tax. Officers of the racing corporation or association shall be personally liable for the tax collected or required to be collected hereunder.

c. Every racing corporation or association conducting running horse race meetings at race meeting grounds or enclosures located wholly or partly within the city of New York shall, on or before April first, nineteen hundred fifty-two and annually thereafter, before the opening of any race meeting in each year, execute and file with the commissioner of finance a bond issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility in an amount sufficient to secure the payment of the taxes and/or penalties and interest due or which may become due hereunder, to be fixed by the commissioner of finance.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-3.0 added LL 23/1952 § 1

Subs a, c amended chap 100/1963 § 1609

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1204

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1204 Returns.

a. Every racing corporation or association shall file with the commissioner of finance daily after each day of each race meeting or at such regular intervals as the commissioner of finance may require and upon such forms as shall be prescribed by the commissioner of finance a return showing the taxes collected pursuant to this chapter and the number of persons admitted to meetings conducted by the racing corporation or association during the periods covered by the return, together with any and all other information which the commissioner of finance shall require to be included and reported in such return. The commissioner of finance may require at any time supplemental or amended returns of such additional information or data as he or she may specify.

b. Every return required hereunder shall have annexed thereto an affidavit of an officer of the racing corporation or association to the effect that the statements contained therein are true.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-4.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1610

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1205

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1205 Records to be kept and audits by commissioner of finance.

Every racing corporation or association shall keep such records as may be prescribed by the commissioner of finance, of all admissions and taxes collected pursuant to this chapter. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or the commissioner's duly authorized agents or employees, and such records shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period, and may require that they be kept longer than three years.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-5.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1611

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1206

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1206 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of race meetings held, admissions, paid attendance, and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving the notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person liable for the tax and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed with interest and penalties thereon, if any, shall be

first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding, or at the option of such person such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event such person shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 65, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-6.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1612

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1207

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1207 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally, or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reason therefor and give notice thereof to the applicant in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure, pursuant to section 11-124 of the code and the applicant has requested a conciliation conference in accordance therewith, within ninety days of the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to section one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc,

provided such proceeding is instituted within four months after the giving of the notice of such decision, and provided, in the case of an application by a person liable for the tax, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a person liable for the tax unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which has been determined to be due pursuant to the provisions of section 11-1206 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1206 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 66 eff. Oct. 1, 1992

DERIVATION

Formerly § C46-7.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1613

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1208

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1208 Reserves.

In cases where a person has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such person on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-8.0 added LL 23/1952 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1209

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1209 Remedies exclusive.

The remedies provided by sections 11-1206 and 11-1207 of this chapter shall be exclusive remedies available to any person for the review of tax liability imposed by this chapter, and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a deecision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that such person may proceed by declaratory judgment if such person institutes suit within ninety days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1206 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 67, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-9.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1614

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Administrative Code of the City of New York

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NYC Administrative Code 11-1210

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1210 Proceedings to recover tax.

a. Whenever any racing corporation or association or any of its officers or any other person shall fail to collect and pay over any tax or to pay any tax, penalty or interest imposed by this chapter as therein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a person subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, the commissioner of finance may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the racing corporation or association or its officers or any other person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner of finance the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions

issued against property upon judgments of a court of record and for services in executing the warrants the city sheriff shall be entitled to the same fees, which the city sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever a corporation or association shall make a sale, transfer or assignment in bulk or any part or the whole of its race meeting grounds or enclosures and the building and structures thereon, or its lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures or of the equipment, machinery, fixtures or supplies, or of the said race meeting grounds or enclosures and the building and structures thereon, or lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures, and the equipment, machinery, fixtures or supplies pertaining to the conduct or the operation of the said race meeting grounds or enclosures, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such race meeting grounds or enclosures and the building and structures thereon, or lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures or the equipment, machinery, fixtures or supplies, or of the said race meeting grounds or enclosures and the building and structures thereon, or lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures, and the equipment, machinery, fixtures or supplies or paying thereof, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding paragraph, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap. 513/2002 § 31, eff. Sept. 17, 2002.

DERIVATION

Formerly § C46-10.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1615

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1211

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1211 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, such commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the racing commission and the tax commission of the state of New York, or any other state or the treasury department of the United States relative to any person; and to afford information to such commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To prescribe methods for determining the amount of the admissions and for determining the tax;

6. To require racing corporations or associations to keep detailed records of all race meetings and all attendance thereat, and to furnish such information upon request to the commissioner of finance; 7. To require that the amount

of the tax be printed, separate from the price of admission, on tickets of admission.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-11.0 added LL 23/1952 § 1

Sub 5 amended LL 9/1954 § 3

Amended chap 100/1963 § 1616

Sub 2 amended LL 2/1983 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1212

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1212 Administration of oaths and compelling testimony.

a. The commissioner of finance, his or her employees or agents duly designated and authorized by the commissioner of finance, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner of finance or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies, or any officers or employees of the department of finance or the tax appeals tribunal,

designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 68, eff. Oct. 1, 1992

DERIVATION

Formerly § C41-13.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1618

Sub c repealed and added chap 765/1985 § 34

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1213

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1213 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid over or paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-1206 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subpara- graph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last

day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) Officers of a racing corporation or association shall be personally liable for the tax collected or required to be collected under this chapter, and subject to the penalties hereinabove imposed.

(2) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or bond has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(3) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended chap 241/1989 § 18

Subd. (g) par (2) amended chap 63/2003 § E6, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

DERIVATION

Formerly § C46-14.0 added LL 23/1952 § 1

Amended chap 100/1963 § 1619

Repealed and added LL 2/1983 § 2

Subs a, c, d, h amended chap 765/1985 § 35

Sub b pars 1, 4 amended chap 765/1985 § 35

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1214

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1214 Returns to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance or the tax appeals tribunal or any officer or employee of the department of finance to divulge or make known in any manner any of the information relating to the business of any person contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the courts may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to section 11-1206 or 11-1207 of this chapter. Nothing herein shall be construed to prohibit the delivery to a person or such person's duly authorized representative of a certified copy of any return filed by such person nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city, or by the district attorney of any county within the city, of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Nothing herein shall be construed to prohibit the inspection by the fiscal representatives of any county entitled to any portion of the revenues pursuant to subdivision b of section 11-1216 of this chapter of returns of tax collected at any racing ground or enclosure situated partly in such county. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 69, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 4

Subd. c added chap 714/1989 § 7

Subd. d added chap 808/1992 § 70, eff. Oct. 1, 1992

DERIVATION

Formerly § C46-15.0 added LL 23/1952 § 1

Sub a amended chap 100/1963 § 1620

Sub b amended chap 765/1985 § 36

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1215

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1215 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 513/2002 § 10 eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 71, eff. Oct. 1, 1992

Subd. f added chap 513/2002 § 11 eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § C46-16.0 added LL 23/1952 § 1

Subs d, e added LL 41/1984 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1216

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 12 HORSE RACE ADMISSIONS TAX

§ 11-1216 Disposition of revenues.

a. All revenues resulting from the imposition of the tax under this chapter at race meeting grounds or enclosures located wholly within the city of New York shall be credited and deposited in the general fund of the city.

b. All revenues resulting from the imposition of the tax under this chapter at race meeting grounds or enclosures situated in two counties, only one of which is wholly located within the city of New York, shall be deposited in a special fund, and seventy-five percent of the moneys in such special fund shall, within sixty days after collection thereof by the city, be paid to the county not located within the city of New York, less the expenses for collection of such tax and except that the sum of five thousand dollars shall be retained at all times in such special fund for the purpose of making refunds or any necessary adjustments. The balance then remaining in such special fund shall be paid into the general fund of the city of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C46-17.0 added LL 23/1952 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1301

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1301 Definitions.

When used in this chapter the following words shall have the meanings herein indicated:

1. "Cigarette." (a) Any roll for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. However, a roll will not be considered to be a cigarette for purposes of paragraph (b) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.

2. "Person." Any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

3. "Sale or purchase." Any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever or any agreement therefor.

4. "Use." Any exercise of a right or power, actual or constructive, and shall include but is not limited to the receipt, storage, or any keeping or retention for any length of time, but shall not include possession for sale by a dealer.

5. "Dealer." Any wholesale dealer or retail dealer as hereinafter defined.

6. "Wholesale dealer." Any person who sells cigarettes to retail dealers or other persons for purposes of resale only, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

7. "Retail dealer." Any person other than a wholesale dealer engaged in selling cigarettes. For the purposes of this chapter, the possession or transportation at any one time of five thousand or more cigarettes by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

8. "Package." The individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

9. "Agent." Any person authorized to purchase and affix adhesive or meter stamps under this chapter who is designated as an agent by the commissioner of finance.

10. "Comptroller." The comptroller of the city.

11. "Commissioner of finance." The commissioner of finance of the city.

12. "City." The city of New York.

13. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 1 amended chap 57/2008 Part MM-1 § 3, eff. July 1, 2008. [See Note 1]

Subd. 13 added chap 808/1992 § 72, eff. Oct. 1, 1992

DERIVATION

Formerly § D46-1.0 added LL 60/1952 § 1

Sub 6 amended LL 12/1958 § 1

Sub 1 amended LL 55/1961 § 1

Subs 9, 11 amended chap 100/1963 § 1621

Sub 3 amended LL 119/1967 § 1

Sub 7 amended LL 119/1967 § 2

NOTE

1. Provisions of chap 57/2008 Part MM-1:

§ 6. Notwithstanding any provision of law to the contrary, any retailer subject to article 20, 20-A, 28, 29, or 37

of the tax law, at the retailer's option, may continue to sell its inventory of tobacco products that, as the result of the amendments made by this act, are first being defined as cigarettes for a period of thirty days after the effective date of this act. Any retailer selling its inventory of these tobacco products without a cigarette tax stamp during this time is not in violation of article 20, 20-A, 28, 29 or 37 of the tax law.

§ 7. This act shall take effect July 1, 2008; provided, however, that any tobacco product manufacturer required to file a certification between April 16 and April 30, 2008, under subdivision 1 of section 480-b of the tax law, with respect to cigarettes that are first being defined as cigarettes as a result of the amendments made by this act, must file that certification no later than July 1, 2008.

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***** Current through December 2009 ****

NYC Administrative Code 11-1302

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1302 Imposition of tax.

*a. There34 is hereby imposed and shall be paid a tax on:

1. All cigarettes possessed in the city for sale except as hereinafter provided;

2. The use of all cigarettes in the city except as hereinafter provided;

3. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent, distributor or dealer who shall pay the tax to the commissioner of finance shall collect the tax from the purchaser or consumer. Such tax shall be at the rate of four cents for each ten cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be two cents for each five cigarettes or fraction thereof. Provided further, however, that on and after July second, two thousand two, such tax shall be at the rate of seventy-five cents for each ten cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be thirty-eight cents for each five cigarettes or fraction thereof. Such tax shall be imposed only once on the same package of cigarettes.

**a. There35 is hereby imposed and shall be paid a tax on:

1. All cigarettes possessed in the city for sale except as hereinafter provided;

2. The use of all cigarettes in the city except as hereinafter provided;

3. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent, distributor or dealer who shall pay the tax to the director of finance shall collect the tax from the purchaser or consumer.

Such tax shall be at the basic rate of two cents for each ten cigarettes or fraction thereof and shall be imposed only once on the same package of cigarettes. In addition to such tax there is hereby imposed an additional tax at the following rates:

1. One and one-half cents for each ten cigarettes where either their tar content exceeds seventeen milligrams per cigarette or their nicotine content exceeds one and one-tenth milligrams per cigarette; 2. Two cents for each ten cigarettes where their tar content exceeds seventeen milligrams per cigarette and their nicotine content exceeds one and one-tenth milligrams per cigarette.

b. The tax imposed hereunder shall not apply to:

1. The use, otherwise than for sale, of four hundred cigarettes or less brought into the city, on or in possession of, any person;

2. Cigarettes sold to the United States;

3. Cigarettes sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States;

4. Cigarettes possessed in the city by any agent or wholesale dealer for sale to a dealer outside the city or for sale and shipment to any person in another state for use there, provided such agent or wholesale dealer complies with the regulations relating thereto.

c. The tax imposed hereunder shall be in addition to any and all other taxes.

d. It shall be presumed that all sales or uses mentioned in this section are subject to tax until the contrary is established, and the burden of proof that a sale or use is not taxable hereunder shall be upon the vendor or the purchaser.

e. Except as hereinafter provided, the tax shall be advanced and paid by the agent or distributor. The agent shall be liable for the collection and payment of the tax to the commissioner of finance by purchasing from the commissioner of finance adhesive stamps of such design and denomination as may be prescribed by such commissioner, subject to the approval of the state tax commission. The tax may also be paid by the use of such metering machines as are prescribed by the commissioner of finance subject to the approval of the state tax commission.

f. Within twenty-four hours after liability for the tax on the use of cigarettes accrues each person liable for the tax shall file with the commissioner of finance a return in such form as the commissioner of finance may prescribe, together with a remittance of the tax shown to be due thereon.

g. Agents located within or without the city shall purchase stamps and affix them in the manner prescribed to packages of cigarettes to be sold within the city.

h. The amount of taxes advanced and paid by the agent or distributor as hereinabove provided shall be added to and collected as part of the sales price of the cigarettes.

i. The commissioner of finance, notwithstanding any other provision of this chapter, may, subject to the approval of the state tax commission, provide by regulation that the tax imposed by this section shall be collected without the use of stamps.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a (laid out first) par 3 amended L.L. 10/2002 § 1, eff. July 1, 2002.

DERIVATION

Formerly § D46-2.0 added LL 60/1952 § 1

Sub a amended LL 34/1959 § 1

Subs e, f, h amended chap 100/1963 § 1622

Amended LL 37/1963 § 1

(Amended without section number and heading)

Sub b par 1 amended chap 441/1966 § 9

Sub a amended LL 34/1971 § 1

Subd. a amended chap 877/1975 § 3 and expires 12/31/2011 and reverts

to subd. a amended L.L. 34/1971 per chap 877/1975 § 4, as amended

chap 525/2008 § 18.

(Legislative findings, grave financial emergency, chap 877/1975 § 1)

Sub a amended chap 29/1985 § 16

CASE NOTES FROM FORMER SECTION

¶ 1. This section creating a use tax on out of state mail sales of cigarettes to a New York City or State resident is not unconstitutional as being an unreasonable restraint on interstate commerce or any other constitutional ground.-Angelica v. Goodman, 52 Misc. 2d 844, 276 N.Y.S. 2d 766 [1966].

¶ 2. Provision of this section requiring a price differential to reflect certain taxes based on levels of tar and nicotine in cigarettes sold so that the seller cannot absorb the tax is permissible under the state enabling act and is a proper exercise of the police power since its purpose is to direct attention to "cigarettes containing excessive tar and nicotine and thereby to promote the health and welfare of the people of the City".-Long Island Tobacco Co. Inc. v. Lindsay, 74 Misc. 2d 455 [1973].

CASE NOTES

¶ 1. The court upheld the constitutionality of the $1.50 per pack tax on cigarettes. The tobacco industry representatives unsuccessful argued that the tax was so high as to constitute a violation of the substantive due process clause. New York State Assn. of Tobacco and Candy Distributors v. City of New York, N.Y.L.J., Nov. 24, 2003, at 19, col. 1 (Sup.Ct. New York Co.).

FOOTNOTES

34

[Footnote 34]: ** Effective until December 31, 2011.

35

[Footnote 35]: ** Effective December 31, 2011.

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***** Current through December 2009 ****

NYC Administrative Code 11-1303

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1303 License.

a. License required of wholesale and retail dealers. 1. It shall be unlawful for a person to engage in business as a wholesale or retail dealer without a license as prescribed in this section or subchapter one of chapter two of title twenty of the code, whichever is applicable.

2. It shall be unlawful for a person to permit any premises under such person's control to be used by any other person in violation of paragraph one of subdivision a of this section.

b. Application for license. 1. Wholesale cigarette license. In order to obtain a license to engage in business as a wholesale dealer, a person shall file application with the commissioner of finance for one license for each place of business that he or she desires to have for the sale of cigarettes in the city. Every application for a wholesale cigarette license shall be made upon a form prescribed and prepared by the commissioner of finance and shall set forth such information as the commissioner shall require. The commissioner of finance may, for cause, refuse to issue a wholesale cigarette license. Upon approval of the application, the commissioner of finance shall grant and issue to the applicant a wholesale cigarette license for each place of business within the city set forth in the application. Cigarette licenses shall not be assignable and shall be valid only for the persons in whose names such licenses have been issued and for the transaction of business in the places designated therein and shall at all times be conspicuously displayed at the places for which issued.

2. Retail cigarette license. In order to obtain a license to engage in business as a retail dealer, a person shall file application with the commissioner of consumer affairs in accordance with the provisions of section 20-202 of the code.

c. Duplicate licenses. Whenever any license issued by the commissioner of finance under the provisions of this section is defaced, destroyed or lost, the commissioner of finance shall issue a duplicate license to the holder of the defaced, destroyed or lost license upon the payment of a fee of fifteen dollars. A duplicate retail dealer license may be obtained from the commissioner of consumer affairs as provided in section 20-204 of this code.

d. Suspension or revocation of licenses. (1) After a hearing, the commissioner of finance may suspend or revoke a wholesale cigarette license and the commissioner of consumer affairs, upon notice from the commissioner of finance, may suspend or revoke a retail cigarette license whenever the commissioner of finance finds that the holder thereof has failed to comply with any of the provisions of this chapter or any rules of the commissioner of finance prescribed, adopted and promulgated under this chapter.

(2) The commissioner of finance may also suspend or revoke a wholesale cigarette license or any rules promulgated thereunder*33 which authorizes the suspension or revocation of a wholesale cigarette license.

(3) The commissioner of consumer affairs may also suspend or revoke a retail cigarette license in accordance with the requirements of any other section of this code or any rules promulgated thereunder which authorize suspension or revocation of a retail cigarette license.

(4) Upon suspending or revoking any wholesale cigarette license, the commissioner of finance shall direct the holder thereof to surrender to the commissioner of finance immediately all wholesale cigarette licenses or duplicates thereof issued to such holder and the holder shall surrender promptly all such licenses to the commissioner of finance as directed. Before the commissioner of finance suspends or revokes a wholesale cigarette license or notifies the commissioner of consumer affairs of a finding of a violation of this chapter with respect to a retail cigarette license pursuant to paragraph (1) of this subdivision, he or she shall notify the holder and the holder shall be entitled to a hearing, if desired, if the holder, within ninety days from the date of such notification, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (A) serves a petition upon the commissioner of finance and (B) files a petition with the tax appeals tribunal for a hearing. After such hearing, the commissioner of finance, good cause appearing therefor, may suspend or revoke the wholesale cigarette license, and, in the case of a retail cigarette license, notify the commissioner of consumer affairs of a violation of this chapter or any rules promulgated thereunder. Upon such notification, the commissioner of consumer affairs may suspend or revoke a retail cigarette license as provided in subdivision b of section 20-206 of the code. The commissioner of finance may, by rule, provide for granting a similar hearing to an applicant who has been refused a wholesale cigarette license by the commissioner of finance.

e. Prohibited sales and purchases. No agent or dealer shall sell cigarettes to an unlicensed wholesale or retail dealer, or to a wholesale or retail dealer whose license has been suspended or revoked. No dealer shall purchase cigarettes from any person other than a manufacturer or a licensed wholesale dealer.

f. Retail dealers. The commissioner of finance may, after hearing, issue an order prohibiting a retail dealer from selling cigarettes, for such period as the order shall specify, for failure to comply with any of the provisions of this chapter or any rules or regulations of the commissioner of finance prescribed, adopted and promulgated under this chapter.

g. License fees; numbering and registering of licenses; term. 1. The annual fee for a wholesale cigarette dealer's license shall be six hundred dollars, and the annual fee for a retail cigarette dealer's license shall be as provided in subdivision c of section 20-202 of this code.

2. Wholesale cigarette licenses shall be regularly numbered and duly registered.

3. Wholesale cigarette licenses shall expire on January thirty-first next succeeding the date of issuance unless

sooner suspended or revoked.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended L.L. 2/2000 § 1, eff. Aug. 2, 2000.

Subd. d amended L.L. 2/2000 § 1, eff. Aug. 2, 2000.

Subd. d amended L.L. 3/1998 § 9, eff. July 13, 1998 as per L.L. 10/1998 § 1.

Subd. d amended L.L. 83/1992 § 3, eff. Apr. 25, 1993

Subd. d amended chap 808/1992 § 73, eff. Oct. 1, 1992

Subd. f amended L.L. 34/1987 § 1

Subd. g amended L.L. 2/2000 § 1, eff. Aug. 2, 2000.

Subd. g added L.L. 34/1987 § 2

Subd. g par 1 amended L.L. 52/1991 § 1, eff. July 17, 1991 and applying on Feb. 1, 1992

DERIVATION

Formerly § D46-3.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1623

Amended LL 119/1967 § 3

(Special provision LL 119/1967 § 4)

Sub f par 3 amended LL 13/1968 § 1

FOOTNOTES

33

[Footnote 33]: * So in original. ("in accordance with the requirements of any other sections of this code" inadvertently dropped.)

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NYC Administrative Code 11-1304

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§ 11-1304 Preparation and sale of stamps; commissions.

a. The commissioner of finance shall, subject to the approval of the state tax commission, prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax imposed by this chapter, and may, from time to time, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. Such stamps shall be in the form of a single stamp for the payment of the tax imposed by this chapter or, in lieu thereof, a joint single stamp to be prepared and issued by the state of New York and the city for the payment of the tax imposed by this chapter and the taxes imposed by article twenty of the tax law. The commissioner of finance may make such arrangements with the state tax commission for the method of acquiring and the manner of sharing the costs of such joint single stamps as he or she deems appropriate. The commissioner of finance, subject to the approval of the state tax commission, shall make provisions for the sale of such stamps at such places as he or she may deem necessary, and may appoint fiscal agents for such purpose.

b. The commissioner of finance may appoint wholesale dealers of cigarettes and any other person within or without the city as agents to affix stamps to be used in paying the tax hereby imposed, but an agent shall at all times have the right to appoint the person in his or her employ who is to affix the stamps to any cigarettes under the agent's control. Whenever the commissioner of finance shall sell, consign or deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his or her services and expenses in affixing such stamps, and to retain out of the moneys to be paid by the agent for such stamps, a commission on the par value thereof. The commissioner of finance is hereby authorized to prescribe a schedule of commissions not exceeding five per centum, allowable to such agent for affixing such stamps; provided, however, that the commissioner of finance may authorize commissions to agents and temporary agents not exceeding ten per centum for a special period not exceeding fifteen

days immediately following the enactment of this chapter to cover the initial stamping of packages of cigarettes. Such schedule shall be uniform for each type and denomination of stamp used, and may be on a graduated scale with respect to the number of stamps purchased. In the event that a joint stamp is issued, the commissions allowed shall be determined jointly by the state tax commission and the commissioner of finance and shall be based on the full par value of such stamp. The extent to which the city and the state of New York shall bear the expense of such commissions shall be determined by agreement between the state tax commission and the commissioner of finance. The commissioner of finance may in his or her discretion permit an agent to pay for such stamps within thirty days after the date of sale, consignment or delivery of such stamps to such agents, and may require any such agent to file with the commissioner of finance a bond, issued by a surety company approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in the state, in such amounts as the commissioner of finance may fix, to secure the payment of any sums from such agent pursuant to this chapter.

c. The commissioner of finance may redeem unused stamps lawfully in the possession of any person. No person shall sell or offer for sale any stamp issued under this chapter, except by written permission of the commissioner of finance. The commissioner of finance may prescribe rules and regulations concerning refunds, sales of stamps and redemptions under the provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-4.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1624

Sub b amended LL 64/1973 § 1

CASE NOTES

¶ 1. Subdivision b of this section provides that the City Director of Finance may appoint any person as an agent to affix tax stamps to cigarette packages and the agency may be terminated at will and without cause.-Matter of Res Bro., Inc. v. Michael, 105 A.D. 2d 839 [1984].

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NYC Administrative Code 11-1305

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§ 11-1305 Affixation and cancellation of stamps; presumptions.

a. Each agent shall affix to each package of cigarettes stamps evidencing the payment of tax imposed by this chapter and shall cancel such stamps prior to delivery of such cigarettes to any dealer in the city, unless stamps have been affixed to such packages of cigarettes and cancelled before such agent received them.

b. Each dealer, other than an agent, in the city shall immediately upon the receipt of any cigarettes at his or her place of business mark in ink on each unopened box, carton or other container of such cigarettes the word "received" and the year, month, day and hour of such receipt and shall affix his or her signature thereto or shall mark them in any other manner prescribed by the commissioner of finance. In addition, each retail dealer shall, within twenty-four hours after receipt of any cigarettes at his or her place of business and prior to exposing for sale or sale by such retail dealer of such cigarettes, open such box, carton or other container and, unless such stamps have been previously affixed, immediately notify the dealer from whom he or she purchased such cigarettes and arrange for the replacement by the dealer of such cigarettes by cigarettes with such stamps affixed within twenty-four hours.

c. Stamps shall be cancelled in the manner prescribed by regulation.

d. Whenever any cigarettes are found in the place of business of a dealer without the stamps affixed and cancelled, or not marked as having been received within the preceding twenty-four hours, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this chapter.

e. Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-5.0 added LL 60/1952 § 1

Sub b amended chap 100/1963 § 1625

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***** Current through December 2009 ****

NYC Administrative Code 11-1306

Administrative Code of the City of New York

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CHAPTER 13 CIGARETTE TAX

§ 11-1306 Possession and transportation of unstamped cigarettes.

Every person who shall possess or transport upon the public highways, roads or streets of this city more than four hundred cigarettes in unstamped packages, shall be required to have in his or her actual possession invoices or delivery tickets for such cigarettes. All such invoices or delivery tickets shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser and the quantity and brands of the cigarettes transported. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in the city and subject to the provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-6.0 added LL 60/1952 § 1

Amended chap 441/1966 § 10

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NYC Administrative Code 11-1307

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§ 11-1307 Records to be kept; examination.

a. At the time of delivering cigarettes to any person each agent or wholesale dealer in the city shall make a true duplicate invoice showing the date of delivery, the number of packages and the number of cigarettes contained therein in each shipment of cigarettes delivered, and the name of the purchaser to whom delivery is made, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance. Each dealer in the city shall procure and retain invoices showing the number of packages and the number of cigarettes contained therein in each shipment of cigarettes received by such dealer, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance.

b. The commissioner of finance by regulation may provide that whenever cigarettes are shipped into the city, the railroad company, express company, trucking company, or carrier transporting any shipment thereof shall file with the commissioner of finance a copy of the freight bill within ten days after the delivery in the city of each shipment.

c. All dealers within the city shall maintain and keep for a period of three years such other records of cigarettes received, sold or delivered within the city as may be required by the commissioner of finance.

d. Without limiting the powers granted the commissioner of consumer affairs pursuant to title twenty of the code and any rules promulgated thereunder, the commissioner of finance or the commissioner's duly authorized representatives are hereby authorized to examine the books, papers, invoices and other records, stock of cigarettes in and upon any premises where the same are placed, stored and sold, and equipment of any such agent or dealer pertaining to the sale and delivery of cigarettes taxable under this chapter. To verify the accuracy of the tax imposed and assessed by this chapter, each such person is hereby directed and required to give to the commissioner of finance or the

commissioner's duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

e. The commissioner of finance shall investigate any failure to pay the tax required by this chapter or any other failure to comply with this chapter or the rules or regulations promulgated thereunder, and shall take the necessary steps to enforce compliance therewith.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended L.L. 2/2000 § 2, eff. Aug. 2, 2000.

DERIVATION

Formerly § D46-7.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1626

CASE NOTES FROM FORMER SECTION

¶ 1. Where defendant store owner gave investigator who was acting on information received from his superiors permission to examine stock in rear room of store search was not illegal because consent had been given and defendant's claim that his consent was not voluntary but a submission to authority was without merit.-People v. Lombardo, 172 (35) N.Y.L.J. (8-19-74) 13, Col. 6 T.

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NYC Administrative Code 11-1308

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§ 11-1308 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to require the filing of reports by agents and/or dealers;

2. To prescribe the method and the means to be used in the cancellation of stamps;

3. To fix the denominations and the method of sale of stamps;

4. To delegate his or her powers to a deputy or other employee or employees of the department of finance;

5. To extend, for cause shown, the time for filing any return or reports for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

6. To assess, determine, revise and adjust the taxes imposed under this chapter;

7. To request information from the state tax commission or of the treasury department of the United States or of the taxing officials of any other state or city which imposes a similar cigarette tax, and to afford information to such commission, department or other state or city, any other provision of this chapter to the contrary notwithstanding;

8. To enter into an arrangement with the state tax commission with respect to cooperative collection, auditing or

administration of the taxes imposed by this chapter and the taxes imposed by article twenty of the tax law of the state of New York.

9. To prescribe forms to be filled out by the vendor or purchaser, or both, in each instance in which a sale is made by an agent or wholesale dealer to a person outside the state or the city or to a dealer in the city for purposes of resale outside the state or the city.

10. To appoint any dealer as a temporary agent to buy and affix stamps for a period not in excess of fifteen days.

11. In furtherance of the purposes of paragraph three of subdivision a of section 11-1302 of this chapter, to provide by appropriate regulation for the maintenance of such differentials in wholesale and retail prices of cigarettes sold by any vendor, other than the manufacturer, so as to reflect the amounts of tax attributable to the tar and nicotine content of cigarettes sold. In so doing he or she may use and consider the factory price of various brands of cigarettes. In addition, the commissioner may consider the mode or method by which retail sales are effected and limit his or her regulations so as to affect any one or more or all of such modes or methods.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-8.0 added LL 60/1952 § 1

Section heading, open par, subs 4, 5 amended chap 100/1963 § 1627

Sub 10 added chap 100/1963 § 1628

Sub 11 added LL 34/1971 § 2

Sub 5 amended LL 2/1983 § 3

NOTE

Chap 93/2002 part E authorized an increase in the rate of tax

on cigarettes. Note provisions of §§ 7, 8 of such part E:

§ 7. Notwithstanding any other provision of the law to the contrary, the tax due on cigarettes possessed in the city of New York, as of the close of business on the day before the effective date of a local law imposing such tax authorized by this act, by any person for sale, solely attributable to the increase imposed by such local law, may be paid in two installments, due on the twentieth days of the third and seventh months after the last day of the month preceding the month during which such local law takes effect, subject to such terms and conditions as the department of finance of the city of New York may prescribe; provided, however that no less than 25 percent of each such tax due shall be paid by the twentieth day of the third month thereafter.

§ 8. The city of New York is hereby authorized and directed to compensate the state of New York for certain processing and administrative costs incurred, pursuant to the authority of section 475 of the tax law or subdivision 8 of section 11-1308 of the administrative code of the city of New York, by the state department of taxation and finance with respect to the tax due on cigarettes possessed in such city, as of the close of business on the day before the effective date of a local law imposing such tax authorized by this act, by such person for sale, solely attributable to the increase imposed by such local law.

CASE NOTES FROM FORMER SECTION

¶ 1. Provision of this section requiring a price differential to reflect certain taxes based on levels of tar and nicotine in cigarettes sold so that the seller cannot absorb the tax is permissible under the state enabling act and is a proper exercise of the police power since its purpose is to direct attention to "cigarettes containing excessive tar and nicotine and thereby to promote the health and welfare of the people of the City".-Long Island Tobacco Co. Inc. v. Lindsay, 74 Misc. 2d 455 [1973], aff'd, 42 App. Div. 2d 1056, aff'd, 34 N.Y. 2d 748 [1974].

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NYC Administrative Code 11-1309

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§ 11-1309 Administration of oaths and compelling testimony.

a. The commissioner of finance, the employees or agents duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal hereunder.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and the city sheriff's duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 74, eff. Oct. 1, 1992

DERIVATION

Formerly § D46-10.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1630

Sub c repealed and added chap 765/1985 § 37

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1310

Administrative Code of the City of New York

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§ 11-1310 Determination of tax.

If any person fails to pay the tax, or to file a return required by this chapter or if a return, when filed, is insufficient and the maker fails to file a corrected or sufficient return within ten days after the same may be required by notice from the commissioner of finance, he or she shall determine the amount of tax due from such information as may be obtainable or on the basis of external indices, such as number of cigarettes purchases or sold, stock on hand, volume of sales by similar dealers and/or other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within ninety days of the giving of such notice, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the person liable for the tax has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance shall of his or her own motion redetermine such tax. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of this charter. After such hearing the tax appeals tribunal shall given notice of its decision to the person liable for the tax and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if instituted by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. Such proceeding shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed with interest and penalties thereon, if

any, shall have first been deposited with the commissioner of finance and an undertaking filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding.

HISTORICAL NOTE

Section amended chap 808/1992 § 75, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-11.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1631

CASE NOTES FROM FORMER SECTION

¶ 1. Provision of this section that requires full payment of a tax sought to be reviewed with interest and penalties prior to judicial review of the propriety of the determination after hearing does not constitute an unconstitutional deprivation of due process.-Matter of Sea Lar Trading Co. v. Michael, 94 A.D. 2d 309 [1983], modifying, 107 Misc. 2d 93 [1980].

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NYC Administrative Code 11-1311

Administrative Code of the City of New York

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§ 11-1311 Refunds.

a. In the manner provided in this subdivision the commissioner of finance shall refund, without interest, any tax, interest or penalty erroneously, illegally or unconstitutionally collected or paid. In addition, whenever any cigarettes upon which stamps have been affixed have been sold and shipped to a dealer outside the city for sale there or to any person in another state for use there, or have become unfit for use and consumption or unsalable, or have been destroyed, the dealer shall be entitled to a refund of the amount of tax paid, less the applicable commission, with respect to such cigarettes. In any event no refund shall be granted unless application to the commissioner of finance therefor is made within two years after the stamps were affixed to such cigarettes or the tax was paid, except if a person has consented in writing to an extension of the period for assessment of additional tax pursuant to subdivision c of section 11-1315 of this chapter, and such consent is given within the two-year period for making a refund application provided in this subdivision, the period for making a refund application shall not expire prior to six months after the expiration of the period within which an assessment could be made pursuant to such consent or any extension thereof. Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reasons therefor and give notice thereof to the applicant in writing. A person shall not be entitled to a hearing in connection with such application for a refund if such person has already had a hearing or had been given the opportunity of a hearing as provided in section 11-1310 of this chapter or has failed to avail himself or herself of the remedies therein provided. No refund shall be made of a tax, interest or penalty paid pursuant to a determination of the commissioner of finance as provided in section 11-1310 of this chapter, unless the tax appeals tribunal, after a hearing as in said section provided or the commissioner of finance, of his or her own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding, pursuant to article seventy-eight of the civil practice law and rules that such determination was erroneous, illegal, unconstitutional or otherwise improper, in which event a refund without interest shall be made as

provided upon the determination of such proceeding. Any determination of the commissioner of finance denying a refund pursuant to this subdivision shall be final and irrevocable unless the applicant for such refund, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund made as provided in this subdivision shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to maintain a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc, provided, however, that such proceeding is instituted within four months after such decision, and provided, further, in the case of an application by a person liable for the tax, that a final determination of tax due was not previously made, and that an undertaking shall first be filed by such person with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

b. If the commissioner of finance is satisfied that any dealer is entitled to a refund the commissioner shall issue to such dealer stamps of sufficient value to cover the refund or to make such refund.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 586/2006 § 1, eff. Aug. 16, 2006.

Subd. a amended chap 808/1992 § 76, eff. Oct. 1, 1992

DERIVATION

Formerly § D46-12.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1632

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NYC Administrative Code 11-1312

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§ 11-1312 Reserves.

In cases where the taxpayer has applied for a refund and has instituted proceedings under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on his or her application for refund or has deposited the amount of tax assessed in connection with proceedings under section 11-1310 of this chapter, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-13.0 added LL 60/1952 § 1

Administrative Code of the City of New York

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NYC Administrative Code 11-1313

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1313 Remedies exclusive.

The remedies provided by sections 11-1310 and 11-1311 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on an application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any legal or equitable action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1310 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 77, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-14.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1633

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Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1314 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax, penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce the payment of the same on behalf of the city in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax, interest or penalties might be satisfied and that any such tax, interest or penalty will not be paid when due, he or she may declare such tax, interest or penalty to be immediately due and payable and may issue a warrant immediately.

b. In addition to all other remedies for the collection of any taxes, penalties or interest due under the provisions of this chapter, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalties and interest and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the taxes, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the city sheriff shall be

entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c added chap 513/2002 § 32, eff. Sept. 17, 2002.

DERIVATION

Formerly § D46-15.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1634

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1315

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1315 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax, interest or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1.

Subd. d amended chap 513/2002 § 12 eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 78, eff. Oct. 1, 1992.

Subd. f added chap 513/2002 § 13 eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § D46-16.0 added LL 60/1952 § 1

Subs d, e added LL 41/1984 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1316

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1316 Seizure and sale of cigarettes. [Repealed]

HISTORICAL NOTE

Section repealed chap 765/1985 § 83

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-17.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1635

Repealed chap 765/1985 § 83

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1317

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1317 Penalties and interest.

a. Any person failing to pay a tax payable under this chapter when due shall be subject to a penalty of fifty per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

b. (1) In addition to any other penalty imposed by this section, the commissioner of finance may (a) impose a penalty of not more than one hundred dollars for each two hundred cigarettes or fraction thereof in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person and (b) impose a penalty of not more than two hundred dollars for each ten affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in excess of one hundred affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions in the possession or under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

(2) The penalties imposed by this paragraph may be imposed by the commissioner of finance in addition to any other penalty imposed by this section, but in lieu of the penalties imposed by subparagraph (a) of paragraph one of this subdivision: (a) not less than thirty dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes but less than or equal to five thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; (b) not less

than seventy-five dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of five thousand cigarettes but less than or equal to twenty thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; and (c) not less than one hundred dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of twenty thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

c. (1) The possession within the city of more than four hundred cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are subject to tax as provided by this chapter.

(2) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his or her employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

d. (1) If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to paragraph two of this subdivision, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. The interest imposed by this subdivision shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest may be enforced in the same manner as the tax imposed by this chapter.

(2) (A) The commissioner of finance shall set the rate of interest to be paid pursuant to paragraph one of this subdivision, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in subparagraph (B) of this paragraph but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(B) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the

month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

e. Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended chap 458/2006 § 1, eff. Aug. 16, 2006.

Subd. b amended chap 262/2000 § 10, eff. Nov. 14, 2000.

Subd. d par (2) amended chap 241/1989 § 19

Subd. d par (2) subpar (B) amended chap 63/2003 § 7, eff. May 19, 2003

and deemed in full force and effect on and after May 1, 2003. [See

§ 11-537 Note 1]

DERIVATION

Formerly § D46-18.0 added LL 60/1952 § 1

Amended chap 100/1963 § 1636

Amended chap 441/1966 § 11

Subs b, c, d amended chap 859/1968 § 3

Sub c amended chap 1010/1969 § 2

Sub b amended chap 219/1971 § 2

Sub a amended LL 2/1983 § 4

Section heading amended LL 2/1983 § 4

Sub g added LL 2/1983 § 5

Sub c amended chap 765/1985 § 38

Subs d, e, f repealed chap 765/1985 § 39

Sub d relettered chap 765/1985 § 39

(formerly sub g)

Sub d par 1 amended chap 765/1985 § 39

Sub e added chap 765/1985 § 39

CASE NOTES FROM FORMER SECTION

¶ 1. City had authority under state enabling legislation to impose price differential based upon the tar and nicotine content of cigarettes and separate classification of vending machines was reasonable.-People v. Cook, 34 N.Y. 2d 100, 356, N.Y.S. 2d 259 [1974].

¶ 2. Suspension of petitioner's cigarette dealers license and cigarette agency permit for seven days was vacated where petitioner's failure to affix the appropriate stamps or to affix them in an appropriate manner was apparently due to the malfunction of the stamp affixing machine and violations involved 85 cartons of cigarettes out of 5 million stamped by petitioner and petitioner had not failed to pay any taxes due to the city.-Rosenberg & Sons Tobacco & Confectioners Inc. v. Tishelman, 64 A.D. 2d 515 [1978].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1318

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1318 Disposition of revenues.

All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, except that, after the payment of refunds with respect to such tax, effective on and after July second, two thousand two, forty-six and one-half percent and, effective on and after April first, two thousand three, forty-six percent of such revenues (including taxes, interest and penalties) collected or received shall be paid to the state comptroller.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Section amended L.L. 10/2002 § 2, eff. July 1, 2002. [See Note]

DERIVATION

Formerly § D46-19.0 added LL 60/1952 § 1

NOTE

Provisions of L.L. 10/2002:

§ 3. Every dealer of cigarettes, including agents licensed to purchase and affix stamps, shall take a physical inventory of all cigarettes possessed in the city as of the close of business on July 1, 2002. In addition, every dealer who

is a licensed agent shall take a physical inventory of all unaffixed cigarette tax stamps possessed as of the close of business on such date. In the event that it is not possible to take a physical inventory of cigarettes in all vending machines that are located within the city, a dealer may take as many physical inventories of the contents of such machines as is possible with available personnel. For those machines that cannot be physically inventoried on July 1, 2002, cigarettes may be accounted for at one-half the normal fill capacities of such machines, as reflected in the individual inventory records maintained for such machines.

§ 4. Notwithstanding any other provision of law to the contrary, the tax due on cigarettes possessed in the city of New York, as of the close of business on July 1, 2002, by any person for sale solely attributable to the increase imposed by this local law, may be paid in two installments, due on the twentieth days of September 2002 and January 2003, subject to such terms and conditions as the department of finance may prescribe; provided, however, no less than 25 percent of each such tax due shall be paid by September 20, 2002.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1319

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 13 CIGARETTE TAX

§ 11-1319 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter two hundred thirty-five of the laws of nineteen hundred fifty-two, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § D46-20.0 added LL 60/1952 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1401

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1401 Definitions.

When used in this chapter the following terms shall mean or include:

1. "City." The city of New York.

2. "Commissioner of finance." The commissioner of finance of the city of New York.

3. "Comptroller." The comptroller of the city of New York.

4. "Consideration." The total price paid or agreed to be paid for the transfer of a taxicab license or interest therein, whether paid or agreed to be paid in money, property, or any other thing of value (including the cancellation or discharge of an indebtedness or obligation), without any deduction whatsoever.

5. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

6. "Taxi and limousine commission." The New York city taxi and limousine commission.

7. "Taxicab." Any motor vehicle carrying passengers for hire in the city, duly licensed as a taxicab by the taxi and limousine commission, and permitted to accept hails from passengers in the street.

8. "Taxicab license." A license issued by the taxi and limousine commission under section 19-504 of title nineteen of this code to operate a taxicab.

9. "Taxpayer." Any person subject to tax under this chapter.

10. "Transfer." Any transfer of interest, whether or not such interest constitutes title, or possession, or both, exchange or barter, rental, lease, or license to use, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

11. "Transferee." The person to whom a taxicab license or interest therein is transferred, in a transfer as defined in subdivision ten of this section.

12. "Transferor." The person who transfers a taxicab license or interest herein, in a transfer as defined in subdivision ten of this section.

13. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 13 added chap 808/1992 § 79, eff. Oct. 1, 1992

DERIVATION

Formerly § X46-1.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1402

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1402 Imposition of tax.

a. On and after July first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax on each transfer of a taxicab license or interest therein, at the rate of five percent of the consideration given for such transfer.

b. Where there is a transfer of the economic interest in a taxicab license or interest therein, effected by the transfer of shares of stock of a corporation which hold such taxicab license or interest therein or by the transfer of an interest or interests in a partnership or association which holds such taxicab license or interest therein, such transfer of shares of stock or of an interest or interests in a partnership or association shall be treated as a transfer of the taxicab license or interest therein, and shall be subject to the tax imposed by subdivision a of this section.

c. Notwithstanding any other provision of this chapter, the tax imposed hereby shall not apply to a transfer made pursuant to a bona fide written contract or agreement made and executed prior to July first, nineteen hundred eighty, provided such contract or agreement is registered with the taxi and limousine commission prior to July first, nineteen hundred eighty, and provided further that one or more payments were made pursuant to such contract or agreement on or before June twentieth, nineteen hundred eighty.

d. Where a taxicab or any other property is transferred to a transferee in conjunction with the transfer of a taxicab license or interest therein, the tax imposed by this section shall be computed on the total consideration for the transfer of such license or interest therein and the taxicab or other property so transferred, less the fair market value of such taxicab or other property.

e. The tax imposed by this chapter shall be in addition to any and all other taxes.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-2.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1403

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1403 Payment of tax.

The tax imposed by this chapter shall be paid by the transferee to the taxi and limousine commission, as agent of the commissioner of finance, at the time of approval of such transfer by the taxi and limousine commission, but in no event later than thirty days following the transfer. The transferor shall also be liable for the payment of such tax at such time in the event that the amount of tax due is not paid by the transferee. Notwithstanding any other provision of law to the contrary, no transfer of a taxicab license or interest therein shall be approved or effective until the tax imposed by this chapter has been paid. All moneys received as such payments by the taxi and limousine commission during any day shall be transmitted to the commissioner of finance at the close of business on such day or at such other time as the commissioner of finance may require.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-3.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1404

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1404 Returns.

a. A joint return shall be filed by both the transferee and the transferor. Such return shall be filed at the time of payment of any tax imposed hereunder, and such filing shall be accomplished by delivering the return to the taxi and limousine commission for transmittal to the commissioner of finance. The commissioner of finance shall prescribe the form of the return and the information which it shall contain. The return shall be signed under oath by both the transferee and the transferor. Where either the transferee or the transferor has failed to sign the return, it shall be accepted as a return, but the party who has failed to sign the return or file a separate return shall be subject to the penalties applicable to a person who has failed to file a return, and the period of limitations for assessment of tax or of additional tax shall not apply to such party.

b. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

c. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

d. If a return required by this chapter is not filed, or if a return, when filed, is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-4.0 added LL 34/1980 § 1

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NYC Administrative Code 11-1405

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1405 Exemptions.

a. The tax imposed under this chapter shall not be imposed on any transaction by or with the following:

1. The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer;

2. The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation where it is the purchaser, user or consumer;

3. The United Nations or other international organizations of which the United States of America is a member; and

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

b. The tax imposed by this chapter shall not apply to the transfer of a taxicab license or interest therein by means

of a lease, license or other rental arrangement, where the term of such lease, license or other rental arrangement (including the maximum period for which it can be extended or renewed) does not exceed six months.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-5.0 added LL 34/1980 § 1

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NYC Administrative Code 11-1406

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1406 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from external indices and such other information as may be obtainable. Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight thorough*28 one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact

business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 80, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-6.0 added LL 34/1980 § 1

FOOTNOTES

28

[Footnote 28]: * So in original.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1407

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1407 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reason therefor and give notice thereof to the taxpayer in writing. Such application may be made by the transferee or transferor who has actually paid the tax. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to review a decision of the tax appeals tribunal

sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, or penalty which had been determined to be due pursuant to the provisions of section 11-1406 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1406 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing, or on the commissioner's own motion, or, is*29 such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to be overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds, a, b, c amended chap 808/1992 § 81, eff. Oct. 1, 1992

DERIVATION

Formerly § X46-7.0 added LL 34/1980 § 1

FOOTNOTES

29

[Footnote 29]: * So in original.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1408

Administrative Code of the City of New York

Title 11 Taxation and Finance

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§ 11-1408 Reserves.

In cases where the transferee or transferor has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to the transferee or transferor on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decisions adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-8.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1409

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1409 Remedies exclusive.

The remedies provided by sectiions 11-1406 and 11-1407 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1406 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 82 eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-9.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1410

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1410 Proceedings to recover tax.

a. Whenever any transferee or transferor shall fail to pay any tax, penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such transferee or transferor subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied, and that any such tax or penalty will not be paid when due, the commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the transferee or transferor or other person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of

a court of record and for services in executing the warrant the sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk or any part of the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

d. Whenever, the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding subdivision, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

e. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. e added chap 513/2002 § 33, eff. Sept. 17, 2002.

DERIVATION

Formerly § X46-10.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1411

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1411 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding ninety days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the taxi and limousine commission, the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford returns, reports and other information to such taxi and limousine commission, tax commission or treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To prescribe the methods for determining the consideration subject to the tax, and if there is a transfer of a taxicab or other property in conjunction with the transfer of a taxicab license or interest therein, to prescribe rules and methods for determining the fair market value of such taxicab or other property;

6. To require any transferee or transferor to keep such records, and for such lengths of time as may be required for the proper administration of this chapter and to furnish such records to the commissioner of finance or the taxi and limousine commission upon request;

7. To assess, determine, revise and adjust the taxes imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-11.0 added LL 34/1980 § 1

Sub 2 amended LL 2/1983 § 24

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NYC Administrative Code 11-1412

Administrative Code of the City of New York

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CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1412 Administration of oaths and compelling testimony.

a. The commissioner of finance, the employees or agents duly designated by him or her, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended ch. 808/1992 § 83, eff. Oct. 1, 1992

DERIVATION

Formerly § X46-12.0 added LL 34/1980 § 1

Sub c repealed and added chap 765/1985 § 77

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1413

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1413 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax requird to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-1406 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion

of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid or

that information has not been supplied pursuant to the provisions of this chapter shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended ch. 241/1989 § 20

Subd. (g) par (2) amended chap 63/2003 § E8, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

DERIVATION

Formerly § X46-13.0 added LL 34/1980 § 1

Repealed and added LL 2/1983 § 25

Subs a, c, d, h amended chap 765/1985 § 78

Sub b pars 1, 4 amended chap 765/1985 § 78

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NYC Administrative Code 11-1414

Administrative Code of the City of New York

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CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1414 Returns to be secret.

a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the chairperson of the taxi and limousine commission, the tax appeals tribunal or any officer or employee of the department of finance or taxi and limousine commission or the tax appeals tribunal, to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to an action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a transferee or transferor or to the duly authorized representative of either of them of a certified copy of any return filed in connection with the tax imposed by this chapter; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto to the United States of America or any department thereof, the state of New York or any department thereof, the city of New York or any department thereof provided the same is required for official business; nor to prohibit the inspection for official business of such returns by the chairperson of the taxi and limousine commission, the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section

shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxapyer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended ch. 808/1992 § 84, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 5

Subd. c added ch. 714/1989 § 8

Subd. d added ch. 808/1992 § 85, eff. Oct. 1, 1992

DERIVATION

Formerly § X46-14.0 added LL 34/1980 § 1

Sub b amended chap 765/1985 § 79

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NYC Administrative Code 11-1415

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1415 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter, in any application made by such person, or in the records maintained by the taxi and limousine commission, or, if no return has been filed or application made or address found in the records of the taxi and limousine commission, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1.

Subd. d amended chap 513/2002 § 14 eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 86, eff. Oct. 1, 1992.

Subd. f added chap 513/2002 § 15 eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § X46-15.0 added LL 34/1980 § 1

Subs d, e added LL 41/1984 § 13

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1416

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1416 Construction and enforcement.

This chapter shall be construed and enforced in conformity with subdivision (j) of section twelve hundred one of the tax law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-16.0 added LL 34/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1417

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 14 TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1417 Disposition of revenues.

All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenue may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § X46-18.0 added LL 34/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1501

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1501 Definitions.

When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Coin operated amusement device." Any machine, contrivance, apparatus, booth or other device which is operated, played, or permitted to function by the insertion or deposit of any coin, currency, slug, token or thing of value, and which provides amusement, diversion or entertainment.

3. "Juke box or similar musical device." Any coin operated amusement device designed primarily to provide recorded music by electrical or mechanical means, or which, by such means, provides music, whether or not a portion of the device is on or off the premises where the music is heard and whether or not somebody starts the operation of the device after the coin, slug, token or thing of value is inserted in the device.

4. "Game." Any coin-operated amusement device whereby the player tests his skill or strength, or competes against himself or other persons, or chance, including but not limited to pinball machines; video ball machines or other electronic video games; machines whereby one tests one's driving, racing, flying, shooting or other skills; rifles and other devices for shooting at targets; skeeball; bowling games; poker roll, pokerino and similar games; pool or billiard games; and shuffleboard. The foregoing enumeration is illustrative and is not intended to in any way limit the kind of game within this definition.

5. "Digger device." Any coin-operated amusement device where, by the use of a crane, scoop, lever or other method, the player attempts to obtain a prize or other thing of value.

6. "Owner." Any person who maintains a coin operated amusement device, whether as title owner, conditional sales vendee, lessee, bailee or licensee.

7. "Maintain." To permit or authorize the placing or keeping of a coin operated amusement device on the premises of another person or on one's own premises where it will be available for use or operation.

8. "Return." Any return required to be filed as herein provided.

9. "City." The city of New York.

10. "Comptroller." The comptroller of the city of New York.

11. "Commissioner of finance." The commissioner of finance of the city of New York.

12. "Tax year." August first of any calendar year through July thirty-first of the following calendar year.

13. "Tax." The tax and the additional tax imposed by section 11-1502 of this chapter.

14. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 2 amended L.L. 63/1989 § 1

Subds. 4, 5 separately added L.L. 30/1986 § 1 and L.L. 70/1986 § 2 [See Note 1]

Subds. 6-12 separately renumbered L.L. 30/1986 § 1 and L.L. 70/1986 § 2. (formerly subds. 4-10) [See Note 1]

Subd. 13 added L.L. 63/1989 § 1

Subd. 14 added chap 808/1992 § 87, eff. Oct. 1, 1992

DERIVATION

Formerly § JJ46-1.0 added LL 79/1965 § 1

Subs 6-12 renumbered LL 30/1986 § 1 (formerly subs 4-10)

Subs 4, 5 added LL 30/1986 § 1

NOTE

1. Provisions of L.L. 70/1986 relating to these amendments:

Section one. Declaration of legislative findings. On October second, nineteen hundred eighty-six, a judgment was entered by a justice of the New York state supreme court which invalidated local law number twenty-four for the year nineteen hundred eighty-six on the ground that the requirements for notice of public hearing prior to mayoral approval of the measure set forth in former section 38b-1.0 of the administrative code of the city of New York were not met. Since the hearing held in connection with mayoral approval of local law number thirty for the year nineteen hundred eighty-six, relating to expanding coverage of the tax on coin-operated amusement devices, was similarly noticed, questions may be raised as to the validity of local law number thirty for such year. While the corporation counsel advises that the judgment invalidating local law number twenty-four for such year is before the appellate courts and that, in his view, the mayor properly approved local law number twenty-four for such year and all other local laws which were before the mayor at that time, the council has determined that to exercise utmost caution in order to protect the fiscal health of the city it is prudent at this time to re-enact the provisions of local law number thirty for such year so as to remove any uncertainty that may exist as to its status.

. . . . . .

Section 6. To the extent that this local law has application prior to September first, nineteen hundred eighty-six, the amendments to sections 11-1501, 11-1502, 11-1503 and 11-1505 of the administrative code of the city of New York shall be deemed amendments to former sections JJ46-1.0, JJ46-2.0, JJ46-3.0 and JJ46-5.0, respectively, of such code repealed by chapter nine hundred seven of the laws of nineteen hundred eighty-five. Section 7. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. Section 8. This local law shall take effect immediately and be retroactive to and deemed in full force and effect as of August first, nineteen hundred eighty-six and shall apply to taxable years commencing on or after August first, nineteen hundred eighty-six.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1502

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1502 Imposition of tax.

a. For the privilege of maintaining juke boxes or similar musical devices, or any other coin-operated amusement device, including but not limited to games of every kind, digger devices, booths providing live entertainment and moving picture and video devices, whether manually, mechanically, electrically or otherwise operated, within the city during each tax year commencing on or after August first, nineteen hundred eighty-nine, or any part thereof, every owner shall pay a tax for each such juke box or similiar musical device or any other coin-operated amusement device in the amount of twenty-five dollars and an additional tax for each such juke box or similar musical device or any other coin-operated amusement device in the amount of one hundred fifty dollars, or such lesser amounts as are provided in subdivision c of this section.

b. A person who allows an owner to maintain a coin operated amusement device which is subject to this tax on premises owned or occupied by such person shall, where such device does not bear the required stamp or other indicia prescribed by the commissioner of finance to show payment of the tax, be treated as and deemed an owner and maintainer of the device, and shall be subject to the tax.

c. If the first maintenance within the city of any coin operated amusement device subject to tax under this chapter occurs on or after February first and before May first in any tax year, the tax for that tax year shall be one-half of the tax hereinabove provided; and, if the first such maintenance occurs on or after May first in any tax year, the tax for that tax year shall be one-fourth of the tax hereinabove provided. For the purpose of this subdivision the first maintenance within the city of a replaced device, on which the tax was paid prior to its replacement, shall be deemed to be the first such maintenance of the device after its replacement.

d. Where a coin operated amusement device, with respect to which the tax has been paid, is replaced by another similar device, no additional tax shall be payable with respect to the replacement device during the period for which the tax has been paid. However, the tax shall be payable with respect to the replaced device if it is subsequently maintained within the city. Where the tax has been paid with respect to a device which has not been so replaced, a change of location, or of ownership, of such device shall not subject it to additional tax, provided returns are filed as required by subdivision a of section 11-1505, of this chapter.

e. The tax shall not apply to a coin operated amusement device when it is kept or displayed solely for purposes of sale, kept in a storage warehouse or kept in premises which are not open for business.

f. Notwithstanding any provision of law to the contrary, no tax shall be imposed pursuant to this chapter for any tax year beginning on or after August first, nineteen hundred ninety-seven.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 63/1989 § 2

Subd. a amended L.L. 70/1986 § 3

Subd. a amended L.L. 30/1986 § 2

Subd. f added L.L. 48/1997 § 1, eff. June 23, 1997.

DERIVATION

Formerly § JJ46-2.0 added LL 79/1965 § 1

Sub a amended LL 30/1986 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1503

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1503 Exemptions.

The tax imposed by this chapter shall not apply to the following:

a. The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions;

b. The United States of America, and any of its agencies and instrumentalities, insofar as they are immune from taxation;

c. The United Nations or other world-wide international organizations of which the United States of America is a member;

d. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inurs to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision; and

e. Nothing in this section shall exempt from tax under this chapter any owner of a juke box or similiar musical device or any other coin-operated amusement device subject to tax under this chapter despite the fact that it is

maintained on premises occupied by a person exempted from tax by this section or that any such exempt person is entitled to any part of the proceeds from the device.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. e amended L.L. 70/1986 § 4

Subd. e amended L.L. 30/1986 § 3

DERIVATION

Formerly § JJ46-3.0 added LL 79/1965 § 1

Sub b amended LL 39/1970 § 1

Sub e amended LL 30/1986 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1504

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1504 Records to be kept.

Every owner of a coin operated amusement device taxable under this chapter shall keep such records of such owner's business and in such form as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner of finance, or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-4.0 added LL 79/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1505

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1505 Returns.

a. On or before the twentieth day of August in each year, every owner of a coin-operated amusement device taxable under this chapter shall file a return with the commissioner of finance, on a form prescribed by the commissioner of finance, showing the number and type of juke boxes or similar musical devices or any other coin-operated amusement devices subject to tax under this chapter owned and/or being maintained by such person, and such other information as the commissioner of finance may require. The commissioner of finance may provide by regulation that returns be filed at other times, and upon such dates as the commissioner may specify, and may provide that a return be filed within a stated time after any such device is replaced, or moved from the premises where it has been located, or after any change in the ownership of such device.

b. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

c. In the event that any person files a return for any period subsequent to July first, nineteen hundred sixty-five, pursuant to the former title J of chapter forty-six of the code, the return shall be treated as a return filed pursuant to this section and any payment made with or pursuant to such return shall be deemed a payment under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 70/1986 § 5

Subd. a amended L.L. 30/1986 § 4

DERIVATION

Formerly § JJ46-5.0 added LL 79/1965 § 1

Sub a amended LL 30/1986 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1506

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1506 Payment of tax.

At the time of filing a return the owner shall pay to the commissioner of finance the tax imposed hereunder. Such tax shall be due and payable on the last day on which such return is required to be filed, regardless of whether a return is filed or whether the return which is filed correctly indicates the amount of tax due.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-6.0 added LL 79/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1507

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1507 Stamps.

The payment of the tax imposed by this chapter shall be evidenced by a suitable stamp or other indicia of payment in a form prescribed by the commissioner of finance, and every owner shall place and keep conspicuously posted on the device the stamp or other indicia denoting payment of the tax for the current year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-7.0 added LL 79/1965 § 1

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NYC Administrative Code 11-1508

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1508 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall first have been deposited with the commissioner of finance and an undertaking, issued by a surety

company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 88, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-8.0 added LL 79/1965 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1509

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1509 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied, the commissioner of finance shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if

application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner of finance, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-1508 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1508 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 89, eff. Oct. 1, 1992

DERIVATION

Formerly § JJ46-9.0 added LL 79/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1510

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1510 Remedies exclusive.

The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1508 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 90, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-10.0 added LL 79/1965 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-1511

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1511 Reserves.

In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules, to review a determination adverse to the taxpayer on the taxpayer's application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-11.0 added LL 79/1965 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1512

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1512 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties might be satisfied and that any such tax or penalty will not be paid when due, the commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff, commanding the city sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing

the warrant the city sheriff shall be entitled to the same fees which the city sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding paragraph, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferror*30 or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofor or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added cha 513/2002 § 34, eff. Sept. 17, 2002.

DERIVATION

Formerly § JJ46-12.0 added LL 79/1965 § 1

FOOTNOTES

30

[Footnote 30]: * So in original.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1513

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1513 General powers of the commissioner of finance.

In addition to all other powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to prescribe the form of blanks, reports and other records relating to the enforcement and administration of this chapter;

2. To extend, for cause shown, the time for filing any return for a period not exceeding sixty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the department of taxation and finance of the state of New York or the officials of any political subdivision of this state or the treasury department of the United States relative to any person; and to afford returns, reports and other information to such department of taxation and finance, officials or treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate the commissioner's functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To assess, reassess, determine, revise and readjust the taxes imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-13.0 added LL 79/1965 § 1

Sub 2 amended LL 2/1983 § 10

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1514

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1514 Administration of oaths and compelling testimony.

a. The commissioner of finance, the commissioner's employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and the city sheriff's duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 91, eff. Oct. 1, 1992

DERIVATION

Formerly § JJ46-14.0 added LL 79/1965 § 1

Sub c repealed and added chap 765/1985 § 47

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1515

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1515 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to a willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-1508 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion

of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid,

that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended ch. 241/89 § 21

Subd. (g) par (2) amended chap 63/2003 § E9, eff. May 19, 2003 and

deemed in full force and effect on and after May 1, 2003. [See

§ 11-537 Note 1]

DERIVATION

Formerly § JJ46-15.0 added LL 79/1965 § 1

Repealed and added LL 2/1983 § 11

Subs a, c, d, h amended chap 765/1985 § 48

Sub b pars 1, 4 amended chap 765/1985 § 49

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1516

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1516 Returns to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the tax appeals tribunal or any officer or employee of the city to divulge or make known in any manner any information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence so much of said returns or of facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return filed in connection with his or her tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city, or by the district attorney of any county within the city, of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter may be instituted. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office or employment in the city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 92, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 6

Subd. c added chap 714/1989 § 9

Subd. d added chap 808/1992 § 93, eff. Oct. 1, 1992

DERIVATION

Formerly § JJ46-16.0 added LL 79/1965 § 1

Sub a designated chap 765/1985 § 49

(formerly open par)

Sub b designated and amended chap 765/1985 § 49

(formerly second undesignated par)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1517

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1517 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing or such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fradulent*31 return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. This subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 808/1992 § 94, eff. Oct. 1, 1992

DERIVATION

Formerly § JJ46-17.0 added LL 79/1965 § 1

Subs d, e added LL 41/1984 § 5

FOOTNOTES

31

[Footnote 31]: * So in original. (Word misspelled.)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1518

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1518 Construction and enforcement.

This chapter shall be construed and enforced in conformity with subdivisions (c) and (l) of section twelve hundred one of the tax law.

HISTORICAL NOTE

Section amended L.L. 63/1889 § 3

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-18.0 added LL 79/1965 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1519

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 15 TAX ON COIN OPERATED AMUSEMENT DEVICES

§ 11-1519 Disposition of revenues.

All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § JJ46-20.0 added LL 79/1965 § 1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1601 Definitions.

When used in this chapter, the following terms shall mean and include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise and any combination of individuals or of the foregoing.

2. "Container." Any article, thing or contrivance made in whole or in part of rigid or semi-rigid plastic, including, but not limited to, barrels, baskets, bottles, boxes, cartons, carrying cases, crates, cups, cylinders, drums, jars, jugs, pails, pots, trays, tubs, tubes, tumblers, and vessels, intended for use in packing or packaging any product intended for sale:

(a) Metal containers and paperboard or fiber containers which have been impregnated, lined or coated with plastic or other materials shall be considered to be classified as metal containers and paperboard containers, respectively;

(b) Paperboard or fiber containers with fastenings, tops and/or bottoms made of plastic shall be classified as paperboard or fiber containers;

(c) Plastic caps that are easily, readily, usually, and customarily separated from the container before disposal shall not be considered part of the container.

3. "Recycled material." Component materials which have been derived from previously used material or from new or old scrap material.

4. "Taxable period." Such calendar period prescribed for filing returns by this chapter or by the commissioner of finance.

5. "Retail sale" or "sale at retail." A sale to any person for any purpose other than for resale as such or as a physical component part of tangible personal property.

6. "Sale." The sale or furnishing of a container by a seller or supplier to a retailer.

7. "Seller or supplier." Any person who sells containers to a retailer.

8. "Retailer." Any person who purchases containers (whether filled or unfilled) for the purpose of using them in connection with and as part of sales at retail or who receives them as containers of products intended for sale at retail.

9. "City." The city of New York.

10. "Commissioner of finance." The commissioner of finance of the city.

11. "Comptroller." The comptroller of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-1.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1602

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1602 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered;

1. To make, adopt and amend rules and regulations appropriate to the carrying chapter and the purposes thereof;

2. To extend, for cause shown, the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit penalties but not interest computed at the rate of six per cent per annum; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate the commissioner's functions hereunder to an assistant commissioner or deputy commissioner in the department of finance or to any employee or employees of the commissioner of finance;

5. To prescribe methods for determining the containers sold or supplied or purchased and to determine which are taxable and nontaxable;

6. To require sellers and suppliers and retailers within the city to keep detailed records with respect to containers bought, sold, used, manufactured or produced, and stock and production records with respect to such containers whether

or not subject to the tax imposed by this chapter, and to furnish any information with respect thereto upon request to the commissioner of finance;

7. To assess, determine, revise and readjust the taxes imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-13.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1603

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1603 Administration of oaths and compelling testimony.

a. The commissioner of finance or the commissioner's employees or agents duly designated and authorized by the commissioner shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the commissioner's duties hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance under this chapter.

c. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the commissioner of finance under this chapter shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

d. The officers who serve the summons or subpoena of the commissioner of finance and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and the city sheriff's duly appointed deputies or any officers or employees of the commissioner of finance, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-14.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1604

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1604 Imposition of tax.

1. On and after July first, nineteen hundred seventy-one, there is hereby imposed within the city and there shall be paid a tax upon every sale of a plastic container at the rate of two cents for each container sold.

2. A credit shall be allowed against the taxes imposed by this chapter of one cent for each taxable container if manufactured with a minimum of thirty percent of recycled material.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-2.0 added LL 43/1971 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Imposition of a tax only on containers made in whole or in part of rigid or semi-rigid plastic arbitarily discriminates against the plastic container industry in favor of the paper, fibre, glass and metal industries and contravenes principles of equal protection and due process of law and hence is invalid.-Society of Plastics Industry, Inc. v. City of N.Y., 326 N.Y.S. 2d 788 [1971].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1605

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1605 Presumptions and burden of proof.

For the purpose of proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all sales of plastic containers are taxable, and not entitled to any credit allowed against the taxes imposed hereby. Such presumptions shall prevail until the contrary is established and the burden of proving the contrary shall be upon the taxpayer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-3.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1606

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1606 Payment of the tax.

The tax imposed hereunder shall be paid by the seller or supplier. However, where the tax has not been paid on a sale by such seller or supplier, the retailer shall be liable for tax thereon upon purchasing the container. Should sellers and suppliers having no business situs in the city, who sell containers to retailers within the city, pay the tax, the retailer purchasing the containers shall not be liable for the tax.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-4.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1607

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1607 Records to be kept.

Every seller or supplier and every retailer shall keep records of all plastic containers taxed hereunder and of all purchases and sales thereof and of the taxes due and payable on the sale or on the purchase thereof, in such form as the commissioner of finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-5.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1608

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1608 Exemptions.

1. The following shall be exempt from the payment of the tax imposed by this chapter:

(a) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer;

(b) The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation where it is the purchaser, user or consumer;

(c) The United Nations or other international organizations of which the United States of America is a member; and

(d) Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

2. The following containers shall be exempt from the tax imposed by this chapter: a. Containers sold or

furnished containing products intended for use in manufacturing processes and not for final retail sale.

b. Containers used as receptacles for food, food products, beverages, dietary foods and health supplements, sold for human consumption but not including: (i) candy and confectionery, (ii) fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa) and (iv) beer, wine or other alcoholic beverages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-6.0 added LL 43/1971 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1609

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1609 Returns.

1. Every seller or supplier shall file with the commissioner of finance a return of containers sold and of the taxes due and payable thereon for the period from July first, nineteen hundred seventy-one until the last day of September, nineteen hundred seventy-one and thereafter for each of the four-monthly periods ending on the last day of January, May and September of each year.

2. Every retailer shall file with the commissioner of finance a return of containers purchased by such retailer from sellers or suppliers having no situs within the city and of the taxes due thereon for the same periods provided in subdivision one of this section.

3. The returns shall be filed within twenty days after the end of the periods covered thereby. The commissioner of finance may permit or require returns to be made for other periods and upon such dates as the commissioner may specify. If the commissioner of finance deems it necessary in order to insure the payment of the tax imposed by this chapter, the commissioner may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this subdivision and upon such dates as he or she may specify.

4. The forms of returns shall be prescribed by the commissioner of finance and shall contain such information as the commissioner may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

5. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face

the commissioner of finance shall take the necessary steps to enforce the filing of such a return or a corrected return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-7.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1610

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1610 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as volume of sales, inventories, purchases of containers, or of raw materials, production figures, and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after giving notice of such determination, shall apply to the commissioner of finance for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. After such hearing the commissioner of finance shall give notice of his or her determination to the person against whom the tax is assessed. The determination of the commissioner of finance shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such determination. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the applicant such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding,

in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-8.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1611

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1611 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitionally*32 collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the commissioner of finance, the commissioner shall state his or her reasons therefor in writing. Such application may be made by the seller or supplier or the retailer or other person who has actually paid the tax. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. An application for a refund or credit made as herein provided shall be deemed an application for revision of any tax, penalty or interest complained of. If the commissioner of finance, prior to any hearing held, initially denies the application for refund, the commissioner shall give notice of such determination of denial to the applicant. Such determination shall be final and irrevocable unless the applicant, within thirty days after the giving of notice of such determination, shall apply to the commissioner of finance for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. After such hearing the commissioner of finance shall give notice of his or her determination to the applicant, who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of the notice of such determination, and provided that a final determination of tax was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner shall pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-1610 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1609 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the commissioner of finance after a hearing or of the commissioner's own motion, or in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-9.0 added LL 43/1971 § 1

FOOTNOTES

32

[Footnote 32]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1612

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1612 Reserves.

In cases where the seller or supplier or the retailer has applied for a fund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-10.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1613

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1613 Remedies exclusive.

The remedies provided by sections 11-1610 and 11-1611 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if such taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1610 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-11.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1614

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1614 Proceedings to recover tax.

Whenever any seller or supplier or retailer or other person shall fail to pay any tax, penalty or interest imposed by this chapter as therein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such seller or supplier or retailer or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax, penalties or interest might be satisfied, and that any such tax, penalty or interest will not be paid when due, the commissioner of finance may declare such tax, penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the city sheriff to levy upon and sell the real and personal property of the seller or supplier or retailer or other person liable for the tax, which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner of finance the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant to docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon

judgments of a court of record, and for services in executing the warrant the city sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever a seller or supplier or the retailer shall make a sale, transfer, or assignment in bulk of any part of the whole of his or her fixtures, or of his or her stock of merchandise, or of stock or merchandise and of fixtures pertaining to the conduct or operation of business of the seller or supplier or the retailer, otherwise than in the ordinary course of trade and regular prosecution of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the proceeding paragraph, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 35, eff. Sept. 17, 2002.

DERIVATION

Formerly § F46-12.0 added LL 43/1971 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1615

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1615 Penalties and interest.

a. Any person failing to file a return or to pay any tax to the commissioner of finance within the time required by this chapter shall be subject to a penalty of five percent of the amount of tax due; plus interest at the rate of one percent of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the commissioner of finance if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percent per year. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

b. Any seller or supplier or any retailer or any officer of a corporate seller or supplier or retailer, failing to file a return as required by this chapter, or filing or causing to be filed or making or causing to be made or given or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this chapter which is willfully false, and any seller or supplier or any retailer or any officer of a corporate seller or supplier or retailer failing to keep the records required by subdivision six of section 11-1602 of this chapter, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment. It shall not be any defense to a prosecution under this subdivision that the failure to file a return or that the actions or failures to act mentioned in this subdivision was unintentional or not willful.

c. The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-15.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1616

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1616 Return to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, any officer or employee of the department of finance, any person engaged or retained on an independent contract basis or any person who, pursuant to this section is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner any information contained in or relating to any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or such taxpayer's duly authorized representative of a certified copy of any return filed in connection with such taxpayer's tax; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, the United States of America or any department thereof, to the state of New York or any department thereof, or to any agency or department of the city of New York, provided the same is requested for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. Any violation of subdivision a of this section shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the city he or she shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-16.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1617

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1617 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-17.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1618

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 16 TAX ON CONTAINERS

§ 11-1618 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter three hundred ninety-nine of the laws of nineteen hundred seventy-one, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F46-18.0 added LL 43/1971 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1701

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1701 Imposition of tax.

General. A tax is hereby imposed on the city taxable income of every city resident individual, estate and trust determined in accordance with the rates set forth in subdivision (a) of this section for taxable years beginning before two thousand twelve, and in accordance with the rates set forth in subdivision (b) of this section for taxable years beginning after two thousand eleven. Provided, however, that if, for any taxable year beginning after two thousand eleven, the rates set forth in such subdivision (b) are rendered inapplicable and the rates set forth in such subdivision (a) are rendered applicable, then the tax for such taxable year shall be at the rates provided under subparagraph (A) of paragraphs one, two and three of such subdivision (a).

Notwithstanding the foregoing sentences, for taxable years beginning after two thousand two and before two thousand six, a tax is hereby imposed on the city taxable income of every city resident individual, estate and trust determined in accordance with the rates set forth in subdivision (g) of this section and in accordance with the provisions of subdivision (h) of this section. During any taxable year beginning after two thousand two and before two thousand six, in which the tax imposed pursuant to this section is determined in accordance with subdivisions (g) and (h) of this section, the rates set forth in subdivisions (a) and (b) of this section shall be inapplicable, and the tax imposed pursuant to section 11-1704.1 of this chapter shall be suspended.

(a) Rate of tax. A tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand one and two thousand two and for taxable years beginning after two thousand five and before two thousand twelve:

[See tabular material in printed version]

(B) For taxable years beginning in two thousand:

[See tabular material in printed version]

(C) For taxable years beginning in nineteen hundred ninety-nine:

[See tabular material in printed version]

(D) For taxable years beginning after nineteen hundred ninety-six and before nineteen hundred ninety-nine:

[See tabular material in printed version]

(E) For taxable years beginning in nineteen hundred ninety-six:

[See tabular material in printed version]

(F) For taxable years beginning in nineteen hundred ninety-five:

[See tabular material in printed version]

(G) For taxable years beginning after nineteen hundred eighty-eight and before nineteen hundred ninety-five:

[See tabular material in printed version]

(H) For taxable years beginning in nineteen hundred eighty-eight:

[See tabular material in printed version]

(I) For taxable years beginning in nineteen hundred eighty-seven:

[See tabular material in printed version]

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand one and two thousand two and for taxable years beginning after two thousand five and before two thousand twelve:

[See tabular material in printed version]

(B) For taxable years beginning in two thousand:

[See tabular material in printed version]

(C) For taxable years beginning in nineteen hundred ninety-nine:

[See tabular material in printed version]

(D) For taxable years beginning after nineteen hundred ninety-six and before nineteen hundred ninety-nine:

[See tabular material in printed version]

(E) For taxable years beginning in nineteen hundred ninety-six:

[See tabular material in printed version]

(F) For taxable years beginning in nineteen hundred ninety-five:

[See tabular material in printed version]

(G) For taxable years beginning after nineteen hundred eighty-eight and before nineteen hundred ninety-five:

[See tabular material in printed version]

(H) For taxable years beginning in nineteen hundred eighty-eight:

[See tabular material in printed version]

(I) For taxable years beginning in nineteen hundred eighty-seven:

[See tabular material in printed version]

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 or a city resident head of a household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand one and two thousand two and for taxable years beginning after two thousand five and before two thousand twelve:

[See tabular material in printed version]

(B) For taxable years beginning in two thousand:

[See tabular material in printed version]

(C) For taxable years beginning in nineteen hundred ninety-nine:

[See tabular material in printed version]

(D) For taxable years beginning after nineteen hundred ninety-six and before nineteen hundred ninety-nine:

[See tabular material in printed version]

(E) For taxable years beginning in nineteen hundred ninety-six:

[See tabular material in printed version]

(F) For taxable years beginning in nineteen hundred ninety-five:

[See tabular material in printed version]

(G) For taxable years beginning after nineteen hundred eighty-eight and before nineteen hundred ninety-five:

[See tabular material in printed version]

(H) For taxable years beginning in nineteen hundred eighty-eight:

[See tabular material in printed version]

(I) For taxable years beginning in nineteen hundred eighty-seven:

[See tabular material in printed version]

(b) Rate of tax. A tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this title and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following table:

For taxable years beginning after two thousand eleven:

[See tabular material in printed version]

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following table:

For taxable years beginning after two thousand eleven:

[See tabular material in printed version]

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this title or a city resident head of a household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following table:

For taxable years beginning after two thousand eleven:

[See tabular material in printed version]

(c) Partners and partnerships. A partnership as such shall not be subject to tax under this chapter. Persons carrying on business as partners shall be liable for tax under this chapter only in their separate or individual capacities. As used in this chapter, the term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability company formed pursuant to section one hundred two-a of the banking law.

(d) Associations taxable as corporations. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this chapter.

(e) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this chapter (regardless of whether subject to federal and state income tax on unrelated business taxable income).

(f) Cross references. For definitions of city taxable income of:

(1) City resident individual, see section 11-1711.

(2) City resident estate or trust, see section 11-1718.

(g) Rate of tax. For taxable years beginning after two thousand two and before two thousand six, the tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this title and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

[See tabular material in printed version]

(B) For taxable years beginning in two thousand four:

[See tabular material in printed version]

(C) For taxable years beginning in two thousand three:

[See tabular material in printed version]

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

[See tabular material in printed version]

(B) For taxable years beginning in two thousand four:

[See tabular material in printed version]

(C) For taxable years beginning in two thousand three:

[See tabular material in printed version]

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this title or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

[See tabular material in printed version]

(B) For taxable years beginning in two thousand four:

[See tabular material in printed version]

(C) For taxable years beginning in two thousand three:

[See tabular material in printed version]

(h) Tax table benefit recapture. For taxable years beginning after two thousand two and before two thousand six, there is hereby imposed a supplemental tax, in addition to the tax imposed under the opening paragraph of this section, for the purpose of recapturing the benefit of the tax tables contained in subdivision (g) of this section. The supplemental tax shall be an amount equal to the sum of the tax table benefits in paragraphs one and two of this subdivision multiplied by their respective fractions in such paragraphs provided, however, that paragraph one of this subdivision shall not apply to taxpayers who are not subject to the second highest rate of tax.

(1) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subdivision (g) of this section not subject to the second highest rate of tax for the taxable year multiplied by such rate and (ii) the second highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subdivision (g) of this section.

(B) The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six.

(2) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subdivision (g) of this section not subject to the highest rate of tax for the taxable year multiplied by such rate and (ii) the highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subdivision (g) of this section less the sum of the tax table benefits in paragraph one of this subdivision.

(B) For such taxpayers with adjusted gross income over five hundred thousand dollars, the fraction is one. Provided, however, that the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax table in subdivision (g) of this section multiplied by the taxpayer's taxable income.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six.

HISTORICAL NOTE

Section amended chap 271/1991 § 25, eff. July 15, 1991

Section amended chap 345/1990 § 13, eff. June 30, 1990

Section amended chap 333/1987 § 82. [See Note below.]

Section renumbered and amended chap 639/1986 §§ 31, 32

(formerly § 11-1759)

Section repealed chap 639/1986 § 31

Section added chap 907/1985 § 1 (amendment by chap 666/1985 § 2 was to subdivision bracketed out of law by chap 333/1987 § 82)

Open par amended chap 525/2008 § 10, eff. Sept. 4, 2008.

Open par amended chap 636/2005 § 10, eff. Aug. 30, 2005.

Open par amended L.L. 41/2003 § 1, eff. June 30, 2003.

Open par amended chap 63/2003 § H5, eff. May 19, 2003.

Open par amended chap 118/2001 § LL 11, eff. Aug. 3, 2001.

Open par amended chap 406/1999 § V12, eff. Aug. 9, 1999.

Open par separately amended chap 389/1997 § A136 of § 1, eff. Aug. 7, 1997 and chap 496/1997 § 11, eff. Aug. 26, 1997

Open par amended chap 180/1995 § 18, eff. July 19, 1995

Open par amended chap 265/1993 § 12, eff. July 15, 1993

Open par amended L.L. 2/1992 eff. Jan. 3, 1992

Open par amended chap 241/1989 § 104

Second undesignated par added L.L. 41/2003 § 1, eff. June 30, 2003.

Subd. (a) amended chap 389/1997 § A136 of § 1, eff. Aug. 7, 1997.

Subd. (a) amended chap 389/1997 § A136 of § 1, eff. Aug. 7, 1997

Subd. (a) amended chap 57/1993 § 18, eff. Apr. 15, 1993.

Subd. (a) par (1) subpar (A) amended chap 636/2005 § 11, eff. Aug. 30, 2005.

Subd. (a) par (2) subpar (A) amended chap 525/2008 § 12, eff. Sept. 4, 2008.

Subd. (a) par (2) subpar (A) amended chap 636/2005 § 12, eff. Aug. 30, 2005.

Subd. (a) par (3) subpar (A) amended chap 525/2008 § 13, eff. Sept. 4, 2008.

Subd. (a) par (3) subpar (A) amended chap 636/2005 § 13, eff. Aug. 30, 2005.

Subd. (a) par (1) subpar (D) open clause amended (as subpar (A)) chap 170/1994 § 128, eff. June 9, 1994

Subd. (a) par (1) subpar (D) open clause amended (as subpar (A)) chap 827/1992 § 8, eff. Aug. 7, 1992

Subd. (a) par (1) subpar (E) open clause amended (as subpar (B)) chap 170/1994 § 129, eff. June 9, 1994

Subd. (a) par (1) subpar (E) open clause amended (as subpar (B)) chap 827/1992 § 8, eff. Aug. 7, 1992

Subd. (a) par (1) subpar (F) open clause amended (as subpar (C)) chap 170/1994 § 130, eff. June 9, 1994

Subd. (a) par (1) subpar (F) open clause amended (as subpar (C)) chap 827/1992 § 8, eff. Aug. 7, 1992

Subd. (a) par (1) subpar (G) open clause amended (as subpar (D)) chap 170/1994 § 131, eff. June 9, 1994

Subd. (a) par (1) subpar (G) open clause amended (as subpar (D)) chap 827/1992 § 8, eff. Aug. 7, 1992

Subd. (a) par (2) subpar (D) open clause amended (as subpar (A)) chap 170/1994 § 132, eff. June 9, 1994

Subd. (a) par (2) subpar (D) open clause amended (as subpar (A)) chap 827/1992 § 9, eff. Aug. 7, 1992

Subd. (a) par (2) subpar (E) open clause amended (as subpar (B)) chap 170/1994 § 133, eff. June 9, 1994

Subd. (a) par (2) subpar (E) open clause amended (as subpar (B)) chap 827/1992 § 9, eff. Aug. 7, 1992

Subd. (a) par (2) subpar (F) open clause amended (as subpar (C)) chap 170/1994 § 134, eff. June 9, 1994

Subd. (a) par (2) subpar (F) open clause amended (as subpar (C)) chap 827/1992 § 9, eff. Aug. 7, 1992

Subd. (a) par (2) subpar (G) open clause amended (as subpar (D)) chap 170/1994 § 135, eff. June 9, 1994

Subd. (a) par (2) subpar (G) open clause amended (as subpar (D)) chap 827/1992 § 9, eff. Aug. 7, 1992

Subd. (a) par (3) subpar (D) open clause amended (as subpar (A)) chap 170/1994 § 136, eff. June 9, 1994

Subd. (a) par (3) subpar (D) open clause amended (as subpar (A)) chap 827/1992 § 10, eff. Aug. 7, 1992

Subd. (a) par (3) subpar (E) open clause amended (as subpar (B)) chap 170/1994 § 137, eff. June 9, 1994

Subd. (a) par (3) subpar (E) open clause amended (as subpar (B)) chap 827/1992 § 10, eff. Aug. 7, 1992

Subd. (a) par (3) subpar (F) open clause amended (as subpar (C)) chap 170/1994 § 138, eff. June 9, 1994

Subd. (a) par (3) subpar (F) open clause amended (as subpar (C)) chap 827/1992 § 10, eff. Aug. 7, 1992

Subd. (a) par (3) subpar (G) open clause amended (as subpar (D)) chap 170/1994 § 139, eff. June 9, 1994

Subd. (a) par (3) subpar (G) open clause amended (as subpar (D)) chap 827/1992 § 10, eff. Aug. 7, 1992

Subd. (b) amended chap 525/2008 § 14, eff. Sept. 4, 2008.

Subd. (b) amended chap 636/2005 § 14, eff. Aug. 30, 2005.

Subd. (b) amended chap 63/2003 § H6, eff. May 19, 2003.

Subd. (b) amended chap 118/2001 § LL 12, eff. Aug. 3, 2001.

Subd. (b) amended chap 406/1999 § V13, eff. Aug. 9, 1999.

Subd. (b) amended chap 389/1997 § A316 of § 1, eff. Aug. 7, 1997

Subd. (b) as amended by chap 496/1997 § 12, eff. Aug. 26, 1997 was

repealed by chap 406/1999 §V14, eff. Aug. 9, 1999.

Subd. (b) amended chap 180/1995 § 19, eff. July 19, 1995

Subd. (b) amended chap 265/1993 § 13 eff. July 15, 1993

Subd. (b) amended chap 273/1991 § 13, eff. July 15, 1991

Subd. (b) amended chap 241/1989 § 105

Subd. (c) amended chap 248/1997 § 15, eff. July 21, 1997.

Subd. (c) amended chap 576/1994 § 66, eff. July 26, 1994

Subd. (g) added L.L. 41/2003 § 2, eff. June 30, 2003.

Subd. (h) added L.L. 41/2003 § 2, eff. June 30, 2003.

DERIVATION

Formerly § T46-101.0 added LL 36/1976 § 2

Sub d amended chap 70/1978 § 31

Sub a par 2 amended chap 29/1985 § 37

Sub a par 2 amended chap 666/1985 § 2

NOTE

Ch. 333/1987 provisions:

§ 174. If any provision of any section of this act or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and shall not affect or invalidate the remainder of any provision of any section of this act or the application of any part thereof to any other person, entity or circumstance and to this end the provisions of each section of this act are hereby declared to be severable.

§ 175. Notwithstanding the provisions of any local law imposing taxes pursuant to the authority of articles thirty, thirty-A or thirty-B of the tax law or article two-E of the general city law, no addition to tax imposed by such local law by reason of the applicability of subsection (c) of section six hundred eighty-five of the tax law or subdivision (e) of section 11-1785 of the administrative code of the city of New York shall be made for failure to pay estimated tax with respect to the portion of any underpayment created or increased by any provision of this act or of the Tax Reform and Reduction Act of 1987 for any period before April sixteenth, nineteen hundred eighty-eight.

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1701.2 Tax surcharge.

[Repealed]

HISTORICAL NOTE

Section repealed chap 333/1987 § 83

Section renumbered and amended chap 639/1986 §§ 31, 34 (formerly § 11-1763)

Section added (as § 11-1763) chap 907/1985 § 1

DERIVATION

Formerly § T46-101.4 added LL 35/1982 § 1

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1701.4 Separate tax relating to qualified higher education funds.

[Repealed]

HISTORICAL NOTE

Section repealed chap 333/1987 § 85

Section renumbered and amended chap 639/1986 §§ 31, 36 (formerly § 11-1762)

Section added (as § 11-1762) chap 907/1985 § 1

DERIVATION

Formerly § T46-101.3 added chap 70/1978 § 33

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1702 Rate of tax.

[Repealed]

HISTORICAL NOTE

Section repealed chap 333/1987 § 83

Section amended chap 639/1986 § 37

Section renumbered chap 639/1986 § 31 (formerly § 11-1764)

Section added (as § 11-1764) chap 907/1985 § 1

Subd. (a), (b) amended L.L. 43/1986 §§ 1, 2

Subd. (a), (b) amended L.L. 62/1985 §§ 1, 2

DERIVATION

Formerly § T46-102.0 added LL 36/1976 § 2

Sub a open par amended LL 96/1977 § 1

Sub b amended LL 96/1977 § 2

Sub a open par amended LL 42/1978 § 1

Sub b amended LL 42/1978 § 2

Sub a open par amended LL 89/1979 § 1

Sub b amended LL 89/1979 § 2

Sub a open par amended LL 44/1980 § 1

Sub b amended LL 44/1980 § 2

Sub a open par amended LL 71/1981 § 1

Sub b amended LL 71/1981 § 2

Sub a open par amended LL 39/1982 § 1

Sub b amended LL 39/1982 § 2

Sub a amended LL 34/1983 § 1

Sub b amended LL 34/1983 § 2

Sub a amended LL 54/1984 § 1

Sub b amended LL 54/1984 § 2

Sub a amended LL 62/1985 § 1

Sub b amended LL 62/1985 § 2

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1702 Minimum income tax.

In addition to any other tax imposed by this chapter, a tax is hereby imposed for each taxable year on the city minimum taxable income of every city resident individual, estate or trust at the rate of two and one-half percent of such city minimum taxable income for taxable years beginning before nineteen hundred ninety-one and after two thousand eleven and at the rate of two and eighty-five hundredths percent of such city minimum taxable income for taxable years beginning after nineteen hundred ninety and before two thousand twelve. The provisions of subdivisions (c), (d) and (e) of section 11-1701 of this title shall also apply for purposes of this tax.

HISTORICAL NOTE

Section amended chap 525/2008 § 15, eff. Sept. 4, 2008.

Section amended chap 636/2005 § 15, eff. Aug. 30, 2005.

Section amended chap 63/2003 § H7, eff. May 19, 2003.

Section amended chap 118/2001 § LL 13, eff. Aug. 3, 2001.

Section amended chap 406/1999 §V15, eff. Aug. 9, 1999.

Section amended chap 496/1997 § 13, eff. Aug. 26, 1997

Section amended chap 180/1995 § 20, eff. July 19, 1995

Section amended chap 265/1993 § 14 eff. July 15, 1993

Section amended L.L. 77/1991 § 1, eff. July 23, 1991

Section amended L.L. 64/1991 § 1, eff. July 17, 1991

Section renumbered and amended chap 333/1987 § 83 (formerly § 11-1701.1)

Section renumbered and amended chap 639/1986 §§ 31, 33 (formerly § 11-1760)

Section added (as § 11-1760) chap 907/1985 § 1

DERIVATION

Formerly § T46-101.1 added LL 36/1976 § 2

Amended chap 70/1978 § 32

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1703 Optional computation of tax for certain resident individuals.

[Repealed]

HISTORICAL NOTE

Section repealed chap 333/1987 § 83

Section renumbered chap 639/1986 § 31 (formerly § 11-1765)

Section added (as § 11-1765) chap 907/1985 § 1

Subds (a), (b), (c), (f) amended chap 639/1986 § 38

DERIVATION

Formerly § T46-103.0 added LL 36/1976 § 2

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1703 Separate tax on the ordinary income portion of lump sum distributions.

(a) Imposition of separate tax. In addition to any other tax imposed by this chapter, there is hereby imposed for each taxable year a separate tax on the ordinary income portion of a lump sum distribution of every city resident individual, estate and trust which has made an election of lump sum treatment under subsection (e) of section four hundred two of the internal revenue code. The recipient of a lump sum distribution shall be liable for the tax imposed by this section. The credits against tax under this chapter, except for the credit under section 11-1773, shall not be allowed against the tax imposed by this section.

(b) Cross reference. For computation of tax, see section 11-1724.

HISTORICAL NOTE

Section renumbered chap 333/1987 § 84. (former § 11-1701.3)

Section renumbered and amended chap 639/1986 §§ 31, 35 (formerly § 11-1761)

Section added (as § 11-1761) chap 907/1985 § 1

Subd. (a) amended chap 333/1987 § 84

DERIVATION

Formerly § T46-101.2 added chap 713/1977 § 5

Amended chap 607/1978 § 23

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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NYC Administrative Code 11-1704

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1704 Accounting periods and methods.

[Repealed]

HISTORICAL NOTE

Section repealed chap 333/1987 § 86

Section renumbered chap 639/1986 § 31 (formerly § 11-1766)

Section added (as § 11-1766) chap 907/1985 § 1

Subds (a), (b), (c), (d) amended chap 639/1986 §§ 39, 40

DERIVATION

Formerly § T46-104.0 added LL 36/1976 § 2

FOOTNOTES

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[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1704

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1704 Tax surcharge.

(a) In addition to the taxes imposed by sections 11-1701, 11-1702 and 11-1703, there is hereby imposed for each taxable year beginning after nineteen hundred eighty-ninety but before nineteen hundred ninety-nine, a tax surcharge on the city taxable income of every city resident individual, estate and trust.

(b) The tax surcharge imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax surcharge under this section on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

[See tabular material in printed version]

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

[See tabular material in printed version]

(2) Resident heads of households. The tax surcharge under this section on the city taxable income of every city resident head of household shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

[See tabular material in printed version]

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

[See tabular material in printed version]

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax surcharge under this section on the city taxable income of every city resident individual who is not a city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

[See tabular material in printed version]

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

[See tabular material in printed version]

(c) The tax surcharge imposed pursuant to this section shall be administered, collected and distributed by the commissioner of taxation and finance in the same manner as the taxes imposed pursuant to sections 11-1701, 11-1702 and 11-1703, and all of the provisions of this chapter, including sections 11-1706, 11-1721 and 11-1773, shall apply to the tax surcharge imposed by this section.

(d) (1) Notwithstanding subdivision (b) of this section, with respect to taxable years beginning in nineteen hundred ninety-three, nineteen hundred ninety-four, nineteen hundred ninety-five and nineteen hundred ninety-six, the mayor shall, by August first of nineteen hundred ninety-two, nineteen hundred ninety-four and nineteen hundred ninety-five, and by September fifteenth of nineteen hundred ninety-three, transmit to the commissioner of taxation and finance a certification setting forth the percentage of non-achievement regarding the combined police uniformed staffing level with respect to the fiscal year of the city ending on the immediately preceding June thirtieth, provided, however, that for the city fiscal year ending in nineteen hundred ninety-three the percentage of non-achievement shall be determined by the combined police uniformed staffing level existing on August thirtieth, nineteen hundred ninety-three, and further provided for all such fiscal years that the percentage of non-achievement shall be calculated according to the procedure specified in a memorandum of understanding relating to the New York city safe streets-safe city program and to the enactment of this subdivision dated February eleventh, nineteen hundred ninety-one, as amended, and executed by the governor, the temporary president of the state senate, the speaker of the state assembly, the minority leader of the state senate, the minority leader of the state assembly, the mayor and the speaker of the city council, any any*1 modification of such memorandum of understanding subsequently agreed upon by all such signatories in a single subsequent memorandum of understanding. If such percentage of non-achievement is equal to or exceeds twenty-five percent with respect to the fiscal year of the city of New York ending in nineteen hundred ninety-two, twenty percent with respect to the city fiscal year ending in nineteen hundred ninety-three or five percent with respect to the city fiscal years ending in nineteen hundred ninety-four and nineteen hundred ninety-five, then the rates of the tax surcharge imposed by this section for taxable years beginning in the calendar year beginning on January first next succeeding such August first or September fifteenth shall be the products of the rates set forth in subdivision (b) of this section and a percentage equal to the difference between one hundred percent and such percentage of nonachievement, such products computed to the nearest hundredth of a percent, and the dollar denominated amounts of

the tax surcharge set forth in subdivision(b) of this section shall be reduced conformably.

(2) Notwithstanding subdivision (b) of this section, with respect to the taxable year beginning in nineteen hundred ninety-eight, the mayor shall, by August first of nineteen hundred ninety-seven, transmit to the state commissioner of taxation and finance a certification setting forth the percentage of non-achievement regarding the police uniformed staffing level with respect to the fiscal year ending on the immediately preceding June thirtieth, provided, however, that such percentage of non-achievement shall be calculated according to the procedure specified in a new memorandum of understanding relating to the enactment of this paragraph dated no later than thirty days after such enactment, as executed by the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the mayor and the speaker of the city council and any modifications of such new memorandum of understanding subsequently agreed upon by all such signatories in a single subsequent memorandum of understanding. If such percentage of non-achievement exceeds two percent with respect to the fiscal year of the city ending in nineteen hundred ninety-seven, then the rates of the tax surcharge authorized by this section for the taxable years beginning in the calendar year beginning on January first, nineteen hundred ninety-eight shall be the products of the rates set forth in subdivision (b) of this section and a percentage equal to the difference between one hundred percent and the portion of the percentage of non-achievement that is in excess of two percent, such products computed to the nearest hundredth of a percent, and the dollar denominated amounts of the tax surcharge set forth in subdivision (b) of this section shall be reduced conformably.

(3) If the rates of the surcharge imposed by this section are modified pursuant to paragraph one or paragraph two of this subdivision, the state commissioner of taxation and finance shall promulgate regulations stating the modified rates.

(e) Notwithstanding anything in this section or section 11-1798 of this chapter to the contrary, of the total revenue (including interest and penalties) from the tax surcharge imposed by this section which the state comptroller is required to pay, after June thirtieth, nineteen hundred ninety-two, to the chief fiscal officer of the city for payment into the treasury of the city, one hundred ten million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-two, two hundred million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first nineteen hundred ninety-three, one hundred sixty-seven million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-four, and one hundred eighty-five million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-five, shall be credited to and deposited in the criminal justice account established within the general fund of the city for the implementation of the Safe Streets-Safe City program. The balance of such revenue shall be credited to the general fund of the city and shall be applied exclusively to or in aid or support of the city's provision of criminal justice and fire protection services.

(f) Notwithstanding anything in this article to the contrary, of the total revenue (including interest and penalties) from the tax surcharge imposed pursuant to the authority of this section which the state comptroller is required to pay to the chief fiscal officer of the city for payment into the treasury of the city, ninety million dollars thereof paid to such chief fiscal officer during the fiscal year of the city commencing during calendar year nineteen hundred ninety-six, and one hundred eighty-five million dollars thereof paid to such chief fiscal officer during the fiscal year of the city commencing during calendar year nineteen hundred ninety-seven, shall be credited to and deposited in a criminal justice account established by the city within its general fund. The balance of such revenue from such tax surcharge which the state comptroller is required to pay to such chief fiscal officer for payment into the treasury of the city for the taxable years beginning in the calendar years beginning on January first, nineteen hundred ninety-seven and January first, nineteen hundred ninety-eight shall be credited to the general fund of the city to be applied exclusively to or in aid or support of the city's provision of criminal justice and fire protection services; provided however, that, notwithstanding the foregoing, such balance shall be applied to implementation of the capital program for public schools within the city and a supplemental capital rehabilitation program for such schools, to the extent that such application is necessary for the timely implementation of such programs in accordance with the memorandum of understanding executed pursuant to paragraph two of subdivision (d) of this section and any modifications thereto.

HISTORICAL NOTE

Section amended chap 271/1991 § 26, eff. July 15, 1991. (Picks up L.L. 15/1991 amendments)

Section added L.L. 42/1990 § 1 eff. July 12, 1990

Subd. (a) amended chap 17/1997 § 8, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (a) amended L.L. 15/1991 § 1, eff. Feb. 25, 1991

Subd. (b) amended chap 57/1993 § 19, eff. Apr. 15, 1993

Subd. (b) par (1) open par amended chap 271/1991 § 14, eff. July 15, 1991

Subd. (b) par (1) subpar (A) open clause amended chap 170/1994 § 140, eff. June 9, 1994

Subd. (b) par (1) subpar (A) open clause amended chap 827/1992 § 11, eff. Aug. 7, 1992

Subd. (b) par (1) subpar (B) open par amended chap 17/1997 § 9, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (b) par (1) subpar (B) open clause amended chap 170/1994 § 141, eff. June 9, 1994

Subd. (b) par (1) subpar (B) open clause amended chap 827/1992 § 11, eff. Aug. 7, 1992

Subd. (b) par (1) subpar (B) amended L.L. 15/1991 § 2, eff. Feb. 25, 1991, (Note: amended as subpar (c), see chap 271/1991)

Subd. (b) par (2) subpar (A) open clause amended chap 170/1994 § 142, eff. June 9, 1994

Subd. (b) par (2) subpar (A) open clause amended chap 827/1992 § 12, eff. Aug. 7, 1992

Subd. (b) par (2) subpar (B) open par amended chap 17/1997 § 10, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (b) par (2) subpar (B) open clause amended chap 170/1994 § 143,

eff. June 9, 1994

Subd. (b) par (2) subpar (B) open clause amended chap 827/1992 § 12, eff. Aug. 7, 1992

Subd. (b) par (2) subpar (B) amended L.L. 15/1991 § 2, eff. Feb. 25, 1991, (Note: amended as subpar (c), see chap 271/1991)

Subd. (b) par (3) subpar (A) open clause amended chap 170/1994 § 144, eff. June 9, 1994

Subd. (b) par (3) subpar (A) open clause amended chap 827/1992 § 13, eff. Aug. 7, 1992

Subd. (b) par (3) subpar (B) open par amended chap 17/1997 § 11, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (b) par (3) subpar (B) open clause amended chap 170/1994 § 145, eff. June 9, 1994

Subd. (b) par (3) subpar (B) open clause amended chap 827/1992 § 13, eff. Aug. 7, 1992

Subd. (b) par (3) subpar (B) amended L.L. 15/1991 § 2, eff. Feb. 25, 1991. (Note: amended as subpar (c), see chap 271/1991)

Subd. (d) added L.L. 15/1991 § 3 eff. Feb. 25, 1991

Subd. (d) par (1) amended chap 186/1993 § 3 eff. June 30, 1993

Subd. (d) par (2) added chap 17/1997 § 12, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (d) par (3) amended chap 17/1997 § 13, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (d) par (3) renumbered (formerly par (2)) chap 17/1997 § 12, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

Subd. (e) added L.L. 15/1991 § 3 eff. Feb. 25, 1991

Subd. (f) added chap 17/1997 § 14, eff. Mar. 6, 1997 and retroactive to Jan. 1, 1997

FOOTNOTES

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[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

1

[Footnote 1]: * So in original. (second "any" inadvertently added).

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Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§11-1704.1 Additional tax.

(a)(1) In addition to any other taxes imposed by this chapter, there is hereby imposed for each taxable year beginning after nineteen hundred ninety but before two thousand twelve, an additional tax on the city taxable income of every city resident individual, estate and trust, to be calculated for each taxable year as follows: (i) for each taxable year beginning after nineteen hundred ninety but before nineteen hundred ninety-nine, at the rate of fourteen percent of the sum of the taxes for each such taxable year determined pursuant to section 11-1701 and section 11-1704 of this chapter; and (ii) for each taxable year beginning after nineteen hundred ninety-eight, at the rate of fourteen percent of the tax for such taxable year determined pursuant to such section 11-1701.

(2) Notwithstanding paragraph one of this subdivision, for each taxable year beginning after two thousand but before two thousand two, the additional tax shall be calculated as follows:

(i) Resident married individuals filing joint returns and resident surviving spouses. The additional tax under this section for each taxable year on the tax determined pursuant to section 11-1701 of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 and on the tax determined pursuant to section 11-1701 of every city resident surviving spouse shall be determined as follows: (A) If the tax determined pursuant to section 11-1701 is based on city taxable income equal to or less than $90,000, then the additional tax shall be 5.25% of such tax;

(B) If the tax determined pursuant to section 11-1701 is based on city taxable income over $90,000, then the additional tax shall be the sum of 5.25% of such tax on city taxable income up to and including $90,000 and 12.25% of such tax on city taxable income in excess of $90,000.

(ii) Resident heads of households. The additional tax under this section for each taxable year on the tax determined pursuant to section 11-1701 of every city resident head of a household shall be determined as follows: (A) If the tax determined pursuant to section 11-1701 is based on city taxable income equal to or less than $60,000, then the additional tax shall be 5.25% of such tax;

(B) If the tax determined pursuant to section 11-1701 is based on city taxable income over $60,000, then the additional tax shall be the sum of 5.25% of such tax on city taxable income up to and including $60,000 and 12.25% of such tax on city taxable income in excess of $60,000.

(iii) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The additional tax under this section for each taxable year on the tax determined pursuant to section 11-1701 of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 or a city resident head of a household or a city resident surviving spouse, and on the tax determined pursuant to section 11-1701 of every city resident estate and trust shall be determined as follows:

(A) If the tax determined pursuant to section 11-1701 is based on city taxable income equal to or less than $50,000, then the additional tax shall be 5.25% of such tax;

(B) If the tax determined pursuant to section 11-1701 is based on city taxable income over $50,000, then the additional tax shall be the sum of 5.25% of such tax on city taxable income up to and including $50,000 and 12.25% of such tax on city taxable income in excess of $50,000.

(b) The additional tax imposed pursuant to this section shall be administered, collected and distributed by the commissioner of taxation and finance in the same manner as the other taxes imposed pursuant to this chapter, and all of the provisions of this chapter, including sections 11-1706, 11-1721 and 11-1773, shall apply to the additional tax imposed by this section.

HISTORICAL NOTE

Section amended chap 265/1993 § 15 eff. July 15, 1993

Section amended L.L. 77/1991 § 2, eff. July 23, 1991

Section added L.L. 64/1991 § 2, eff. July 17, 1991

Subd. (a) amended L.L. 68/2000 § 1, eff. Jan. 1, 2001.

Subd. (a) amended chap 406/1999 § V16, eff. Aug. 9, 1999.

Subd. (a) amended chap 496/1997 § 14, eff. Aug. 26, 1997

Subd. (a) amended chap 180/1995 § 21, eff. July 19, 1995

Subd. (a) par (1) amended chap 525/2008 § 16, eff. Sept. 4, 2008.

Subd. (a) par (1) amended chap 636/2005 § 16, eff. Aug. 30, 2005.

Subd. (a) par (1) amended chap 63/2003 § H8, eff. May 19, 2003.

Subd. (a) par (1) amended chap 118/2001 § LL 14, eff. Aug. 3, 2001.

Subd. (a) par (2) amended L.L. 37/2001 § 1, eff. June 18, 2001.

FOOTNOTES

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[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1705 General provisions and definitions.

(a) Accounting periods and methods. (1) Accounting periods. A taxpayer's taxable year under this chapter shall be the same as his taxable year for federal income tax purposes.

(2) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of this chapter shall be similarly changed. If a taxable year of less than twelve months results from a change of a taxable year, the city standard deduction and the city exemptions shall be prorated under regulations of the tax commission.

(3) Accounting methods. A taxpayer's method of accounting under this chapter shall be the same as his method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, city taxable income shall be computed under such method as in the opinion of the tax commission clearly reflects income.

(4) Change of accounting methods. (A) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this chapter shall be similarly changed.

(B) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be

greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(C) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the tax commission.

(b) City resident and city nonresident defined. (1) City resident individual. A city resident individual means an individual:

(A) who is domiciled in this city, unless (i) the taxpayer maintains no permanent place of abode in this city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this city, or (ii) (I) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (II) during the period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse (unless the spouse is legally separated) and the taxpayer's minor children are not present in this city for more than ninety days, and (III) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section 11-1754, and which period is contained within the period of five hundred forty-eight consecutive days, the taxpayer is present in this city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that period of less than twelve months bears to five hundred forty-eight, or

(B) who is not domiciled in this city but maintains a permanent place of abode in this city and spends in the aggregate more than one hundred eighty-three days of the taxable year in this city, unless such individual is in active service in the armed forces of the United States.

(2) City nonresident individual. A city nonresident individual means an individual who is not a city resident.

(3) City resident estate or trust. A city resident estate or trust means:

(A) the estate of a decedent who at his death was domiciled in this city,

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this city, or

(C) a trust, or portion of a trust, consisting of the property of:

(i) a person domiciled in this city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(ii) a person domiciled in this city at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(4) City nonresident estate or trust. A city nonresident estate or trust means an estate or trust which is not a city resident estate or trust.

(5) Cross reference. For effect of a change of resident status, see section 11-1754.

(D) (i) Provided, however, a resident trust is not subject to tax under this article if all of the following conditions are satisfied:

(I) all the trustees are domiciled outside the city of New York;

(II) the entire corpus of the trusts, including real and tangible property, is located outside the city of New York; and

(III) all income and gains of the trust are derived from or connected with sources outside of the city of New York, determined as if the trust were a non-resident trust.

(ii) For purposes of item (II) of clause (i) of this subparagraph, intangible property shall be located in this city if one or more of the trustees are domiciled in the city of New York.

(iii) Provided further, that for the purposes of item (I) of clause (i) of this subparagraph, a trustee which is a banking corporation as defined in subdivision (a) of section 11-640 of this title and which is domiciled outside the city of New York at the time it becomes a trustee of the trust shall be deemed to continue to be a trustee domiciled outside the city of New York notwithstanding that it thereafter otherwise becomes a trustee domiciled in the city of New York by virtue of being acquired by, or becoming an office or branch of, a corporate trustee domiciled within the city of New York.

HISTORICAL NOTE

Section amended chap 333/1987 § 86-a

Section renumbered chap 639/1986 § 31 (formerly § 11-1767)

Section added (as § 11-1767) chap 907/1985 § 1

Subd. (a) par (2) amended chap 333/1987 § 87

Subd. (b) par (1) subpar (A) amended chap 57/2009 § 3 of part A-1, eff.

Apr. 7, 2009 and apply to taxable years beginning on or after Jan. 1,

2009.

Subd (b) par (1) subpar (B) clause (iii) amended (as Subd. (a)) chap

639/1986 § 41

Subd. (b) par (3) subpar (D) added chap 658/2003 § 2, eff. Oct. 7, 2003

and applying to tax years beginning on or after Jan. 1, 1996.

DERIVATION

Formerly § T46-105.0 added LL 36/1976 § 2

Sub a par 2 amended chap 225/1977 § 6

Sub a par 1 amended chap 675/1977 § 48

(Legislative findings, preserve jobs and benefits, chap 675/1977 § 1)

Sub a par 1 amended chap 790/1978 § 9

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1706 Credits against tax.

(a) Credit relating to net capital gain. For taxable years beginning in nineteen hundred eighty-seven, a credit against the tax imposed under section 11-1701 shall be allowed. The amount of the credit shall be one-half of one percent of net capital gain includible in city adjusted gross income for the taxable year. The credit allowed by this subdivision shall not exceed the tax imposed by section 11-1701 reduced by the credits permitted under section 11-1721 and subdivision (b) of this section.

(b) Household credit. (1) For taxable years beginning after nineteen hundred eighty-six, a credit against the city personal income tax imposed by section 11-1701 shall be allowed. The credit, computed as described in paragraph two of this subdivision, shall not exceed the tax imposed by section 11-1701, reduced by the credit permitted under section 11-1721.

(2) (A) For any individual who is not married nor the head of a household nor a surviving spouse, the amount of the credit shall be determined in accordance with the following table:

[See tabular material in printed version]

(B) For any husband and wife, head of household or surviving spouse, the amount of the credit shall be determined by multiplying the number of exemptions for which the taxpayer (or in the case of a husband and wife,

taxpayers) is entitled to a deduction for the taxable year for federal income tax purposes under subsections (b) and (c) of section one hundred fifty-one of the internal revenue code by the credit factor for the taxable year as specified in the following table:

[See tabular material in printed version]

(3) For purposes of this subsection:

(A) "Household gross income" shall mean the aggregate federal adjusted gross income of a household, as the term household is defined in subparagraph (B) of this paragraph, for the taxable year.

(B) "Household" means a husband and wife, a head of household, a surviving spouse, or an individual who is not married nor the head of a household nor a surviving spouse nor a taxpayer with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(C) "Household gross income of a husband and wife" shall be the aggregate of their federal adjusted gross incomes for the taxable year irrespective of whether joint or separate city income tax returns are filed. Provided, however, that a husband or wife who is required to file a separate city income tax return shall be permitted one-half the credit otherwise allowed his or her household, except as limited by paragraph one of this subdivision.

(D) "Household gross income" shall be computed in all cases as if each member of the household were a resident for the entire taxable year.

(E) If a taxpayer changes his status during his taxable year from resident to nonresident, or from nonresident to resident, the household credit shall be prorated according to the number of months in the period of residence. In the case of a husband and wife, if either or both changes his or her status from resident to nonresident or from nonresident to resident and separate returns are filed, the credit computed for the entire year shall be divided first as provided in subparagraph (C) of this paragraph and then prorated according to the number of months in the period of residence.

(c)* State48 school tax reduction credit. (1) For taxable years beginning after nineteen hundred ninety-seven, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subdivision, no credit shall be granted to an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(2) The amount of the credit under this paragraph shall be determined based upon the taxpayer's income as defined in subparagraph (ii) of paragraph (b) of subdivision four of section four hundred twenty-five of the real property tax law. For purposes of this paragraph, any taxpayer under subparagraphs (A) and (B) of this paragraph with income of more than two hundred fifty thousand dollars shall not receive a credit.

Beginning in the two thousand ten tax year and each tax year thereafter, the "more than two hundred fifty thousand dollar" income limitation shall be adjusted by applying the inflation factor set forth herein, and rounding each result to the nearest multiple of one hundred dollars. The department shall establish the income limitation to be associated with each subsequent tax year by applying the inflation factor set forth herein to the figures that define the income limitation that were applicable to the preceding tax year, as determined pursuant to this subdivision, and rounding each result to the nearest multiple of one hundred dollars. Such determination shall be made no later than March first, two thousand ten and each year thereafter.

For purposes of this paragraph, the "inflation factor" shall be determined in accordance with the provisions set

forth in subdivision fifteen of section one hundred seventy-eight of the tax law.

(A) Married individuals filing joint returns and surviving spouses. In the case of a husband and wife who make a single return jointly and of a surviving spouse:

For taxable years beginning:	The credit shall be:
in 2001-2005	$125
in 2006	$230
in 2007-2008	$290
in 2009 and after	$125

(B) All others. In the case of an unmarried individual, a head of a household or a married individual filing a separate return:

For taxable years beginning:	The credit shall be:
in 2001-2005	$ 62.50
in 2006	$115
in 2007-2008	$145
in 2009 and after	$ 62.50

(3) Reserved.

(4) Husband and wife who make a joint return. If a husband and wife make a single return jointly, the credit under this subdivision shall be determined under paragraph two of this subdivision, if either of them has attained the age of sixty-five on or before the close of the taxable year.

(5) Part-year residents. If a taxpayer changes status during the taxable year from resident to nonresident, or from nonresident to resident, the state school tax reduction credit shall be prorated according to the number of months in the period of residence.

(c)* Credit49 for unincorporated business taxes paid. (1) A city resident individual, estate or trust whose city adjusted gross income includes income, gain, loss or deductions from one or more unincorporated businesses conducted by such city resident individual, estate or trust that are subject to the tax imposed by chapter five of this title, or a distributive share of income, gain, loss and deductions of, or guaranteed payments from, one or more partnerships that are subject to the tax imposed by such chapter, shall be allowed a credit as provided in paragraph two of this subdivision against the tax otherwise due under sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this chapter.

(2) (A) Subject to the limitation set forth in subparagraph (B) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall be determined as follows:

(i) For taxable years beginning on or after January first, nineteen hundred ninety-seven:

(I) If the city taxable income is forty-two thousand dollars or less, the credit shall be sixty-five percent of the amount determined in paragraph three of this subdivision.

(II) If the city taxable income is greater than forty-two thousand dollars but not greater than one hundred forty-two thousand dollars, the amount of the credit shall be a percentage of the amount determined in paragraph three of this subdivision, such percentage to be determined by subtracting from sixty-five percent, one-tenth of a percentage point (.001) for every increment of two hundred dollars, or fractional part thereof, of city taxable income in excess of forty-two thousand dollars.

(III) If the city taxable income is greater than one hundred forty-two thousand dollars, the credit shall be fifteen percent of the amount determined in paragraph three of this subdivision.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall not exceed the sum of the taxes that would otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this chapter on such taxpayer for such taxable year after the allowance of any other credits allowed by this section or section 11-1721 of this chapter.

(3) Subject to the provisions of subparagraph (C) of this paragraph, the amount determined in this paragraph is the sum of:

(A) for each unincorporated business conducted by the taxpayer, the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending with the taxable year of the taxpayer and paid by the unincorporated business; and

(B) for each unincorporated business in which the taxpayer is a partner, the product of:

(i)*50 the sum of (I) the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under subdivisions (j) and (m) of section 11-503 of this title for its taxable year ending within or with the taxable year of the partner, but, in the case of any credit taken under subdivision (m) of such section, not including any amount of such credit that is or was treated as an overpayment of tax of such unincorporated business; and

(i)**51 the sum of (I) the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under subdivision (j) of section 11-503 of this title for its taxable year ending within or with the taxable year of the partner; and

(ii) a fraction, the numerator of which is the net total of the partner's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total (as separately determined for each partner) is greater than zero.

(C) For a taxpayer that changes its status from a city resident to a city nonresident or from a city nonresident to a city resident during the taxable year:

(i) the amount determined in subparagraph (A) of this paragraph shall be, with respect to each unincorporated business conducted by the taxpayer, the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending with the taxable year of the taxpayer and paid by the unincorporated business, multiplied by a fraction, the numerator of which is that portion of the income, gain, loss and deductions of the unincorporated business included in the taxpayer's adjusted gross income for the portion of the taxable year during which the taxpayer was a city resident, and the denominator of which is the total, for such taxable year, of the income, gain, loss and deductions of the unincorporated business, and

(ii) the amount determined in clause (ii) of subparagraph (B) of this paragraph shall be a fraction, the numerator of which is that portion of the taxpayer's net total distributive share of income, gain, loss and deductions of, and that portion of guaranteed payments from, the unincorporated business included in the taxpayer's city adjusted gross income for the portion of the taxable year during which the taxpayer was a city resident, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business, for whom or which such net total (as separately determined for

each partner) is greater than zero.

(4) For purposes of subdivision (c) of section 11-1902 of this title, in determining the amount of tax that a nonresident would be required to pay if such nonresident were a resident of the city and subject to the tax on personal income of residents, the credit allowed by this subdivision shall be taken into account.

(d) Earned income tax credit. (1) For taxable years beginning after two thousand three, a credit against the city personal income tax shall be allowed, equal to five percent of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year.

(2) In the case of a resident taxpayer, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year reduced by the credits permitted by this chapter. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the state comptroller, subject to a certificate of the commissioner of the state department of taxation and finance, shall pay as an overpayment, without interest, the amount of such excess.

(3) If a taxpayer changes his or her status during the taxable year from city resident to city nonresident, or from city nonresident to city resident, the credit determined under this subdivision shall be limited to the amount determined by multiplying the amount of such credit by a fraction, the numerator of which is such taxpayer's city adjusted gross income, for the period of residence, and the denominator of which is such taxpayer's city adjusted gross income determined as if he or she were a city resident for the entire taxable year. City adjusted gross income shall be adjusted as provided in section 11-1754 of this chapter. The credit as so limited shall be applied as provided in paragraph two of this subdivision.

(4) Subject to the provisions of paragraph three of this subdivision, in the case of a husband and wife who file a joint return, but who are required to determine their city personal income taxes separately, the credit authorized pursuant to this subdivision may be applied against the tax of either or divided between them as they may elect. In the case of a husband and wife who are not required to file a federal return, the credit under this subsection shall be allowed only if such taxpayers file a joint city personal income tax return.

HISTORICAL NOTE

Section added chap 333/1987 § 88

Subd. (b) par (2) amended chap 170/1994 § 146, eff. June 9, 1994

Subd. (b) par (2) amended chap 57/1993 § 20, eff. Apr. 15, 1993

Subd. (b) par (2) amended chap 827/1992 § 14, eff. Aug. 7, 1992

Subd. (b) par (2) amended chap 345/1990 § 14, eff. June 30, 1990

Subd. (c) added (laid out first) chap 389/1997 § A137 of § 1, eff. Aug. 7, 1997 and applying to taxable years beginning after Dec. 31, 1996

Subd. (c) (laid out first) par (1) amended chap 56/1998 § A6 of § 1, eff. Apr. 28, 1998 and applying to taxable years beginning after Dec. 31, 1997.

Subd. (c) (laid out first) par (2) amended chap 57/2008 § R2, eff. Apr.

23, 2008.

Subd. (c) (laid out first) par (2) designated and amended (former pars (2), (3)) chap 57/2007 § 7 of Part D-1 of § 1, eff. Apr. 9, 2007.

Subd. (c) (laid out first) par (2) amended chap 109/2006 § F4 of § 1, eff. June 23, 2006.

Subd. (c) (laid out first) par (2) amended chap 56/1998 § A6 of § 1, eff. Apr. 28, 1998 and applying to taxable years beginning after Dec. 31, 1997.

Subd. (c) (laid out first) par (2) subpars (A), (B) amended chap 57/2009 § M5, eff. Apr. 7, 2009.

Subd. (c) (laid out first) par (3) amended chap 109/2006 § F4 of § 1, eff. June 23, 2006.

Subd. (c) (laid out first) par (3) amended chap 56/1998 § A6 of § 1, eff. Apr. 28, 1998 and apply to taxable years beginning after Dec. 31, 1997.

Subd. (c) (laid out first) par (4) added chap 56/1998 § A7 of § 1, eff. Apr. 28, 1998 and applying to taxable years beginning after Dec. 31, 1997.

Subd. (c) (laid out first) par (5) renumbered (formerly par (4)) chap 56/1998 § A7 of § 1, eff. Apr. 28, 1998 and applying to taxable years beginning after Dec. 31, 1997.

Subd. (c) added (laid out second) chap 481/1997 § 5, approved Aug. 26, 1997 and deemed in effect on and after Jan. 1, 1997

Subd. (c) (laid out second) par (3) subpar (B) clause (i) amended L.L. 2/2005 § 3, eff. Jan. 3, 2005 and expiring Dec. 31, 2011 with special provisions. [See § 11-604 Note 1]

Subd. (d) added L.L. 39/2004 § 1, eff. Aug. 20, 2004 as per chap 60/2004 §§ V5, 6. [See Note 1]

NOTE

1. Provisions of Chap 60/2004:

Part V

. . . . . .

§ 5. Notwithstanding any inconsistent provision of section 2 of local law number 39 of the city of New York for the year 2004, such local law shall take effect upon the effective date of this act. [The effective date of Part V of Chap 60/2004 is Aug. 20, 2004.] Notwithstanding any inconsistent provision of section 2 of local law number 40 of the city of New York for the year 2004, such local law shall take effect upon the effective date of this act. [The effective date of Part V of Chap 60/2004 is Aug. 20, 2004.]

§ 6. This act shall take effect immediately, [Aug. 20, 2004] provided that no local law adopted by a city having a population of one million or more pursuant to section one of this act [Section one of Part V adds § 467-e to the real property tax law-Rebate for owners or tenant-stockholders of one, two or three family residences or residential property held in the condominium or cooperative form of ownership in a city having a population of one million or more.] may provide for a rebate of real property taxes for any fiscal year of such city that begins on or after July 1, 2006, and provided further that any actions, including but not limited to enactment of local laws or promulgation of rules, taken to effectuate the purposes of any section of this act before the date when this act shall have become law shall be deemed valid as of the effective date of this act.

FOOTNOTES

17

[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

48

[Footnote 48]: * There are two subdivisions c.

49

[Footnote 49]: * There are two subdivisions c.

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[Footnote 50]: ** This clause (i) effective until Dec. 31, 2011 when it expires per L.L. 2/2005 § 6 (as amended L.L. 24/2006 § 1).

51

[Footnote 51]: ** This clause (i) effective Jan. 1, 2012 when amendment by L.L. 2/2005 § 3 expires.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1707

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 1 GENERAL*17

§ 11-1707 Meaning of terms.

(a) General. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required but such meaning shall be subject to the exceptions or modifications prescribed in this chapter or by statute. Any reference in this chapter to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred eighty-six (unless a reference to the internal revenue code of nineteen hundred fifty-four is clearly intended), and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time for the taxable year, as included and quoted in the appendices (including any supplements and additions thereto) to this chapter. (Such quotation of the aforesaid laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the internal revenue code or of any other law of the United States in such appendices shall not necessarily mean that it is applicable or has relevance to this chapter).

(b) Marital or other status. An individual's marital or other status under section 11-1701 and section 11-1714 shall be the same as his marital or other status for purposes of establishing the applicable federal income tax rates.

(c) "City" and "this city" as used in this chapter means the city of New York; "tax commission" as used in this chapter means the tax commission of the state of New York; and "state" or "this state" as used in this chapter means the

state of New York.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 31 (formerly § 11-1768)

Section added (as § 11-1768) chap 907/1985 § 1

Subds. (a), (b) amended chap 333/1987 § 89

DERIVATION

Formerly § T46-107.0 added LL 36/1976 § 2

FOOTNOTES

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[Footnote 17]: * Note; substance of original Subchapters 1-7 §§ 11-1701-11-1757 was repealed by Chap 639/1986 §§ 31, 43, 77, 78, 93, 101. The derivation of these sections were §§ T46-1.0-T46-100 added L.L. 23/1966 § 1 with amendments by L.L. 53/1966, L.L. 20/1967, L.L. 38/1967, L.L. 43/1968, L.L. 94/1968, L.L. 62/1969, L.L. 63/1969, L.L. 22/1970, L.L. 44/1971, L.L. 81/1972, L.L. 22/1973, L.L. 73/1973, L.L. 76/1973, L.L. 22/1974, L.L. 40/1975, L.L. 61/1975, L.L. 36/1976.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1711

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1711 City taxable income of a city resident individual.

(a) General. The city taxable income of a city resident individual shall be his city adjusted gross income less his city deduction and city exemptions, as determined under this chapter.

(b) Husband and wife.

(1) If the federal taxable income of husband or wife, both of whom are residents, is determined on a separate federal return, their city taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife, both of whom are residents, is determined on a joint federal return, their city taxable income shall be determined jointly.

(3) If neither husband or wife, both of whom are residents, files a federal return:

(A) their tax shall be determined on their joint city taxable income, or

(B) separate taxes may be determined on their separate city taxable incomes if they both so elect.

(4) If either husband or wife is a resident and the other is a nonresident, a separate tax shall be determined on the city taxable income of the resident spouse on a separate form unless such husband and wife determine their federal

taxable income jointly and both elect to determine their joint city taxable income as if both were residents.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1769)

Section added (as § 11-1769) chap 907/1985 § 1

Subds. (a), (b) amended chap 333/1987 § 90

DERIVATION

Formerly § T46-111.0 added LL 36/1976 § 2

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1712

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1712 City adjusted gross income of a city resident individual.

(a) General. The city adjusted gross income of a city resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income: (1) Interest income on obligations of any state other than this state, or of a political subdivision of any other such state unless created by compact or agreement to which this state is a party, to the extent not properly includible in federal adjusted gross income;

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes. (A) General. Income taxes imposed by this state or any other taxing jurisdiciton, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax.

(B) Shareholders of S corporations. In the case of a shareholder of an S corporation, with respect to taxes imposed upon or payable by the corporation, the term "income taxes" in subparagraph (A) of this paragraph shall also include the taxes imposed under articles nine-A and thirty-two of the tax law, regardless of the measure of such tax, but shall not otherwise include taxes imposed by this or any other state of the United States, or any political subdivision of

this or any other state, or the District of Columbia.

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter, to the extent deductible in determining federal adjusted gross income.

(5) Expenses paid or incurred during the taxable year for: (i) the production or collection of income which is exempt from tax under this chapter, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this chapter, to the extent that such expenses and premiums are deductible in determining federal adjusted gross income.

(6) In the case of a taxpayer who has exercised the election permitted by subdivision (g) or (h) of this section, the amount or amounts required by said subdivisions to be added to federal adjusted gross income.

(7) In the case of a taxpayer who is a shareholder of a corporation organized under article fifteen or authorized to do business in this state under article fifteen-A of the business corporation law, for the taxpayer's taxable years beginning before nineteen hundred eighty-eight, the amount which is deductible by such corporation under paragraph one, two or three of subsection (a) of section four hundred four of the internal revenue code for its taxable year ending in or with such taxpayer's taxable year for contributions paid on behalf of such taxpayer minus the lesser of fifteen thousand dollars or fifteen percent of the earned income derived by such taxpayers from such corporation during such taxpayer's taxable year. In the case of a taxpayer on whose behalf contributions are paid under more than one plan to which this paragraph applies or under a plan, contributions to which on his behalf are subject to the limitations provided in section four hundred four (e) of the internal revenue code, this paragraph shall apply with respect to the aggregate of the contributions paid on his behalf under all such plans.

(8) Repealed.

(9) Repealed.

(10) The amount required to be added to federal adjusted gross income pursuant to subdivision (i) of this section.

(11) Repealed.

(12) Reserved.

(13) Repealed.

(14) Repealed.

(15) The amount allowed as an exclusion or deduction for the special additional mortgage recording taxes imposed by subdivision one-a of section two hundred fifty-three of the tax law in determining federal adjusted gross income for such taxable year.

(16) Unless the credit allowed pursuant to subsection (f) of section six hundred six of the tax law is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease in such loss, for federal income tax purposes, from the sale or other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of such law was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of such law which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid.

(17) The amount required to be added to federal adjusted gross income pursuant to subdivision (r) of this section.

(18) In the case of a shareholder of an S corporation: (A) where the election provided for in subsection (a) of section six hundred sixty of the tax law is in effect with respect to such corporation, an amount equal to his pro rata share of the corporation's reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amount of reductions for taxes determined under subdivision (s) of this section.

(19) In the case of a shareholder of an S corporation: (A) where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made with respect to such corporation, any item of loss or deduction of the corporation included in federal gross income pursuant to section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amounts of loss or deduction determined under subdivision (s) of this section.

(20) S corporation distributions to the extent not included in federal gross income for the taxable year because of the application of section thirteen hundred sixty-eight, subsection (e) of section thirteen hundred seventy-one or subsection (c) of section thirteen hundred seventy-nine of the internal revenue code which represent income not previously subject to tax under this chapter because the election provided for in subsection (a) of section six hundred sixty of the tax law had not been made. Any such distribution treated in the manner described in paragraph two of subsection (b) of section thirteen hundred sixty-eight of the internal revenue code for federal income tax purposes shall be treated as ordinary income for purposes of this chapter.

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter s of chapter one of the internal revenue code for any taxable year of such corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, and in the case of a corporation taxable under article thirty-two of the tax law, after December thirty-first, nineteen hundred ninety-six, the amount required to be added to federal adjusted gross income pursuant to subdivision (n) of this section.

(22) The amounts required to be added to federal adjusted gross income pursuant to subdivision (q) of this section.

(23) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer claimed as a deduction in computing its federal adjusted gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(24) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer would have been required to include in the computation of its federal adjusted gross income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(25) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty first*,5 nineteen hundred eighty-one, except with respect to property

subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code.

(26)**6 The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the code or subdivision nineteen of section twenty-five hundred seventy-five of the education law.

26-a. The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

(27) Upon the disposition of property to which paragraph twenty-six of subdivision (c) of this section applies, the amount, if any, by which the aggregate of the modifications described in such paragraph twenty-six attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-five of this subdivision attributable to such property.

(28) Repealed.

(29) When gain from the sale or other disposition of property is included in federal gross income, the amount of reduction in the basis of such property attributable to credit for solar and wind energy systems pursuant to paragraph nine of subsection (g) of section six hundred six of the tax law; but for taxable years beginning before nineteen hundred eighty-seven, if such gain affects the determination of a net capital gain for federal income tax purposes, forty percent of such amount.

(30) Repealed.

(31)*7 The amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

(32) The amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the code.

(33) Real property taxes paid on qualified agricultural property and deducted in determining federal adjusted gross income, to the extent of the amount of the agricultural property tax credit allowed under subsection (n) or (i) of section six hundred six of the tax law.

(34) The amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code.

(35) The amount of any federal deduction for taxes imposed under article twenty-three of the tax law.

(c) Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes; such interest income shall include the amount received as dividends from a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, which has been designated as the amount of such interest income in a written notice to shareholders not later than sixty days

following the close of its taxable year; provided that, at the close of each quarter of the taxable year of such regulated investment company, at least fifty percent of the value of its total assets, as defined in subsection (c) of section eight hundred fifty-one of the internal revenue code, consists of obligations of the United States and its possessions. The aggregate amount so designated by the regulated investment company for its taxable year shall not exceed the amount determined by multiplying the total distributions paid by such regulated investment company to its shareholders with respect to that taxable year (attributable to income earned in that year), including any such distributions paid after the close of the taxable year, as described in section eight hundred fifty-five of the internal revenue code, by the ratio that the interest income received in that taxable year on obligations of the United States and its possessions, after reduction for the deductions and expenses directly or indirectly attributable thereto, bears to the investment company taxable income of such regulated investment company for such taxable year, determined without regard to subparagraph (D) of paragraph two of subsection (b) of section eight hundred fifty-two of the internal revenue code;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) (i) Pensions to officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes;

(ii)*8 Pensions to officers and employees of the United States of America, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of any one of the foregoing, to the extent includible in gross income for federal income tax purposes;

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subdivision, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments attributable to personal services performed by such individual prior to his or her retirement from employment, which arise: (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes. However, the term "pensions and annuities" shall also include distributions received by an individual who has attained the age of fifty-nine and one-half from an individual retirement account or an individual retirement annuity, as defined in section four hundred eight of the internal revenue code, and distributions received by an individual who has attained the age of fifty-nine and one-half from self-employed individual and owner-employee retirement plans which qualify under section four hundred one of the internal revenue code, whether or not the payments are periodic in nature. Nevertheless, the term "pensions and annuities" shall not include any lump sum distribution, as defined in subparagraph (A) of paragraph four of subsection (e) of section four hundred two of the internal revenue code and taxed under section six hundred three of the tax law. Where a husband and wife file a joint city personal income tax return, the modification provided for in this paragraph shall be computed as if they were filing separate city personal income tax returns. Where a payment would otherwise come within the meaning of the term "pensions and annuities" as set forth in this paragraph except that such individual is deceased, such payment shall, nevertheless, be treated as a pension or annuity for purposes of this paragraph if such payment is received by such individual's beneficiary.

(3-b) (i) Disability income included in federal gross income, to the extent that such disability income would have been excluded from federal gross income pursuant to the provisions of subsection (d) of section one hundred five of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-three as they were in effect immediately prior to the repeal of such subsection. Notwithstanding the foregoing, the sum of disability income excluded pursuant to this paragraph, and pension and annuity income excluded pursuant to paragraph three-a of this subdivision, shall not exceed twenty thousand dollars.

(ii) Notwithstanding subdivision (f) of this section, if a husband and wife determine their federal income tax on a joint return but are required to determine their city income taxes separately, the amounts of exclusion allowed under

subparagraph (i) of this paragraph shall be determined in the same joint manner as such amounts would have been determined under the provisions of paragraph five of subsection (d) of section one hundred five of the internal revenue code as such provisions were in effect immediately prior to the repeal of such subsection, but shall be attributed for city income tax purposes to the spouse who would have been required to report any such amount as income if the spouses had determined their federal income taxes separately.

(iii) Where a husband and wife file a joint city income tax return, the twenty thousand dollar limitation provided in subparagraph (i) of this paragraph shall be applied as if they were filing separate city income tax returns.

(3-c) Social security benefits to the extent includible in gross income for federal income tax purposes pursuant to section eighty-six of the internal revenue code.

(4) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for New York state income tax purposes than for federal income tax purposes on the last day of the last taxable year for which article sixteen of the tax law imposes tax, that does not exceed such difference in basis.

(5) The amount necessary to prevent the taxation under this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxable under article sixteen of the tax law to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(6) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such obligations on securities but includible in gross income for federal income tax purposes; and

(7) The amount of any refund or credit for overpayment of income taxes imposed by this city, any other taxing jurisdiction, or any taxes imposed by article twenty-three of the tax law to the extent properly included in gross income for federal income tax purposes.

(8) Compensation received for active service in the armed forces of the United States on or after October first, nineteen hundred sixty-one, and prior to September first, nineteen hundred sixty-two; provided, however, that the amount of such compensation to be deducted shall not exceed one hundred dollars for each month of the taxable year, subsequent to September, nineteen hundred sixty-one, during any part of which month the taxpayer was engaged in such service. For the purposes of this paragraph, the words "active service in the armed forces of the United States" shall mean active duty (other than for training) in the army, navy (including the marine corps), air force or coast guard of the United States as defined in title ten of the United States Code.

(8-a) Compensation and bonuses received for active service in the armed forces of the United States while a prisoner of war or missing in action during the hostilities in Vietnam, to the extent includible in gross income for federal income tax purposes.

(9) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such interest on indebtedness is not deductible in determining federal adjusted gross income and is attributable to a trade or business carried on by the taxpayer.

(10) Ordinary and necessary expenses paid or incurred during the taxable year for: (i) the production or collection of income which is subject to tax under this chapter but exempt from federal income tax, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are attributable to a trade or business carried on by the taxpayer.

(11) In the case of a taxpayer who has exercised the election permitted by subdivision (g) or (h) of this section, the amount or amounts required by said subdivisions to be subtracted from federal adjusted gross income.

(12) The amount necessary to prevent the taxation of amounts properly included in New York adjusted gross income in prior taxable years in accordance with paragraph seven of subdivision (b) of this section.

(13) The amount required to be subtracted from federal adjusted gross income pursuant to subdivision (i) of this section.

(14) The amount that may be subtracted from federal adjusted gross income pursuant to subdivision (j) of this section.

(15) That portion of wages or salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code.

(16) Repealed.

(17) Repealed.

(18) Repealed.

(19) The amount which may be subtracted from federal adjusted gross income pursuant to subdivision (r) of this section.

(20) The amounts which may be subtracted from federal adjusted gross income pursuant to subdivision (o) of this section.

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter s of chapter one of the internal revenue code for any taxable year of such corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, and in the case of a corporation taxable under article thirty-two of the tax law, after December thirty-first, nineteen hundred ninety-six, the amounts required to be subtracted from federal adjusted gross income pursuant to subdivision (n) of this section.

(22) In the case of a shareholder of an S corporation: (A) where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made with respect to such corporation, any item of income of the corporation included in federal gross income pursuant to section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amounts of income determined under subdivision (s) of this section.

(23) The amounts which may be subtracted from federal adjusted gross income pursuant to subdivision (p) of this section.

(24) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which is included in the taxpayer's federal adjusted gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(25) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection

(f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer could have excluded from federal adjusted gross income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(26) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, an amount with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code equal to the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(27) Reserved.

(28) Upon the disposition of property to which paragraph twenty-six of this subdivision applies, the amount, if any, by which the aggregate of the modifications described in paragraph twenty-five of subdivision (b) of this section attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-six of this subdivision attributable to such property.

(29) Deduction for two-earner married couples. (A) For the taxable year beginning in nineteen hundred eighty-seven, in the case of a husband and wife who each have qualified earned income and who have filed a joint return under subdivision (b) of section 11-1751 for the taxable year, an amount equal to ten percent of the lesser of:

(i) thirty thousand dollars or

(ii) the qualified earned income of the spouse with the lower qualified earned income for such taxable year.

(B) For purposes of this paragraph, eligibility for the deduction provided for herein and the term qualified earned income shall be determined in the manner such eligibility and such qualified earned income would have been determined pursuant to the provisions of section two hundred twenty-one of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-six as they were in effect immediately prior to the repeal of such section. Provided, however, the determination of such qualified earned income shall be made with regard only to the items therein included in city adjusted gross income, with such adjusted gross income determined without regard to this paragraph, and only with regard to the deductions and exclusions which are of the type properly allowable to or chargeable against such qualified earned income in such taxable year.

(30) The amount received by any person as an accelerated payment or payments of part or all of the death benefit or special surrender value under a life insurance policy as a result of any of the diagnoses specified in subparagraph (A) or (B) of paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, and the amount received by any person as a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, to the extent includible in gross income for federal income tax purposes.

(31) Repealed.

(32) The portion of the fees paid during the taxable year by a taxpayer who is a resident of a continuing care retirement community, issued a certificate of authority pursuant to article forty-six of the public health law, attributable to the cost of providing long term care benefits pursuant to a continuing care contract. The portion of the fees so attributable shall be determined in accordance with regulations promulgated by the superintendent of insurance. The deduction may not exceed the limitation that would be applicable to the taxpayer for the taxable year, with respect to

eligible long term care premiums, determined under paragraph (10) of subsection (d) of section 213 of the internal revenue code.

(33) Distributions, to the extent includible in adjusted gross income for federal income tax purposes, made to the taxpayer because of his or her status as a victim of Nazi persecution, as defined in P.L. 103-286, or as a spouse or a descendant in need of such victim.

(34) Items of income, to the extent includible in gross income for federal income tax purposes, attributable to, derived from or in any way related to assets stolen from, hidden from or otherwise lost to a victim of Nazi persecution, as defined in P.L. 103-286, immediately prior to, during and immediately after World War II, including, but not limited to interest on the proceeds receivable as insurance under policies issued to a victim of Nazi persecution, as defined in P.L. 103-286, by European insurance companies immediately prior to and during World War II. Provided, however, this subtraction from federal adjusted income does not apply to assets acquired with such assets or with the proceeds from the sale of such assets. Provided, further, this paragraph is only applicable to a taxpayer who was the first recipient of such assets after their recovery and who is a victim of Nazi persecution, as defined in P.L. 103-286, or a spouse or a descendant of such victim.

(35) Repealed.

(d) Modification for city fiduciary adjustment. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the taxpayer's share, as beneficiary of an estate or trust, of the city fiduciary adjustment determined under section 11-1719.

(e) Modifications of partners and shareholders of S corporations. (1) Partners and shareholders of S corporations which are not New York C corporations. The amounts of modifications required to be made under this section by a partner or by a shareholder of an S corporation (other than an S corporation which is a New York C corporation), which relate to partnership or S corporation items of income, gain, loss or deduction shall be determined under section 11-1717 and, in the case of a partner of a partnership doing an insurance business as members of the New York insurance exchange described in section six thousand two hundred one of the insurance law, under section 11-1717.1 of this chapter.

(2) Shareholders of S corporations which are New York C corporations. In the case of a shareholder of an S corporation which is a New York C corporation, the modifications under this section which relate to the corporation's items of income, loss and deduction shall not apply, except for the modifications provided under paragraph nineteen of subdivision (b) and paragraph twenty-two of subdivision (c) of this section.

(3) New York S termination year. In the case of a New York S termination year, the amounts of the modifications required under this section which relate to the S corporation's items of income, loss, deduction and reductions for taxes (as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code) shall be adjusted in the same manner that the S corporation's items are adjusted under subdivision (s) of this section.

(f) Husband and wife. If husband and wife determine their federal income tax on a joint return but are required to determine their city income taxes separately, they shall determine their city adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Optional modifications. Subject to the conditions provided in paragraphs three and four of this subdivision, at the election of the taxpayer there shall also be subtracted from federal adjusted gross income either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of such items shall be subtracted with respect to any one item of property, and except that a subtraction of the item set forth in such paragraph two may not be taken with respect to taxable years commencing on or after January first, nineteen hundred eighty-nine.

(1) Depreciation with respect to any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such modification shall be allowed only upon condition that any depreciation or amortization allowed with respect to the same property in determining federal adjusted gross income shall be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section. The total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property described in paragraph three of this subdivision shall not exceed its cost or other basis and, with respect to property described in paragraph four of this subdivision, which is used in a business carried on both within and without the state shall not exceed its cost or other basis multiplied by a percentage of the excess of the taxpayer's business income over its business deductions allocated to this state for the first year such depreciation is deducted. Such percentage shall be determined by apportionment and allocation under regulations of the tax commission.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such modification shall be allowed only on condition that, with respect to property described in paragraph four of this subdivision, which is used in a business carried on both within and without the state the deduction shall not exceed the expenditures multiplied by a percentage of the excess of the taxpayer's business income over its business deductions allocated to this state for the first year such expenditures are deducted. Such percentage shall be determined by apportionment and allocation under regulations of the tax commission, and for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, shall be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate part of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, the modification allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a modification shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in his or her return for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section 11-1783.

(3) For purposes of this paragraph, such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business: (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three, or (C) acquired,

constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subdivision (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (A), (B) or (C) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a modification under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a modification under paragraph one of this subdivision shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(4) For purposes of this paragraph, such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business. The modifications provided for in paragraph one of this subdivision shall be allowed only with respect to tangible property which is: (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-seven, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-eight or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-eight, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-eight, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-seven, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-eight, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-eight, and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subdivision (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-eight. A taxpayer shall be allowed a deduction under clause (A), (B) or (C) of the preceding sentence of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred seventy, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter binding on the taxpayer. The modification provided for in paragraph two of this subdivision shall be allowed only with respect to tangible property : (A) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the

taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three. Provided, however, a modification under paragraph one of this subdivision shall be allowed with respect to property described in this paragrpah only on condition that such property shall be principally used by the taxpayer in the production of goods by manufacturing; processing; assemblying; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commerical fishing. For purposes of the preceding sentence, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under subdivision (h) of this section may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing, in which event, a deduction shall not be allowed under such subdivision (h). However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a modification under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a modification under paragraph one of this subdivision shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(5) If the modifications allowable for any taxable year pursuant to this subdivision exceed the taxpayer's city adjusted gross income, determined without the allowance of such modifications, the excess may be carried over to the following taxable year or years and may be subtracted from federal adjusted gross income for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the modifications so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal adjusted gross income the amount of the difference between such adjusted bases.

(h) Optional modification for waste treatment facility expenditures. For taxable years commencing prior to January first, nineteen hundred eighty-nine, at the election of the taxpayer, there shall also be subtracted from federal adjusted gross income expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1) (A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization, or stabilization of industrial waste (as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) Such modifications shall be allowed only:

(A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-five, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the commissioner of environmental conservation or his or her designated representative, in the same manner as provided for in section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with the provisions of such environmental conservation law, the state sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(C) on condition that for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes for such expenditures or for depreciation or amortization of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, be added to federal adjusted gross income pursuant to paragraph five of subdivision (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate amount of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income, and

(D) where the election provided for in subdivision (g) of this section has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been allowed as a modification as provided herein and if within ten years from the end of the taxable year in which such modification was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-1783.

(B) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the tax commission may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-1783.

(C) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year in respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to section 19-0309 of the environmental conservation law, the tax commission may recompute the tax for the year or years for which the facility is not or was not in compliance with the applicable provisions of the environmental conservation law, the state sanitary code or codes, rules, regulations, permits or orders issued pursuant thereto, and for which a modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-1783.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to this paragraph, such modification shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of federal

adjusted gross income for such taxable year.

(i) In the case of mines, oil and gas wells and other natural deposits, any allowance for percentage depletion pursuant to section six hundred thirteen or section six hundred thirteen A of the internal revenue code shall be added to federal adjusted gross income. However, with respect to the property as to which such addition to federal adjusted gross income is required, an allowance for depletion shall be subtracted from federal adjusted gross income in the amount that would be deductible under section six hundred eleven of such code if the deduction for an allowance for depletion were computed without reference to such section six hundred thirteen or section six hundred thirteen A. With respect to the computation of depletion pursuant to this subdivision, the basis for such computation shall be the basis for state income tax purposes provided for in subsection (i) of section six hundred twelve of the tax law. The portion of any gain from the sale or other disposition of such property having a higher adjusted basis for city income tax purposes than for federal income tax purposes, that does not exceed such difference in basis, shall be subtracted from federal adjusted gross income.

(j) Modification for nonpublic school tuition. (1) General. An individual shall be entitled to subtract from his or her federal adjusted gross income an amount shown in the table set forth in this paragraph for his or her city adjusted gross income for the taxable year, computed without the benefit of this modification, multiplied by the number of his or her dependents, not exceeding three, attending a nonpublic school on a full-time basis for at least four months during the regular school year for the education of such dependent in grades one through twelve, provided such individual is allowed an exemption under section 11-1716 for such dependent. Provided, further, that the modification under this paragraph may be taken only if such individual has paid at least fifty dollars for each such dependent in tuition to such nonpublic school for such education of such dependent. No taxpayer shall be entitled to the modification provided for in this paragraph if he or she claims a tuition reimbursement payment pursuant to article twelve-A of the education law.

If city adjusted gross income is:	The amount allowable for each dependent is:
Less than $9,000	$1,000
9,000-10,999	850
11,000-12,999	700
13,000-14,999	550
15,000-16,999	400
17,000-18,999	250
19,000-20,999	150
21,000-22,999	125
23,000-24,999	100
25,000 and over	0

(2) Husband and wife. In determining the applicable city adjusted gross income of a husband and wife for purposes of the table set forth in paragraph one of this subdivision, the city adjusted gross income of a husband and wife shall be the aggregate of their city adjusted gross incomes for the taxable year, determined without the benefit of the modification provided for in this subdivision, and the number of dependents with respect to which this modification may be claimed shall be no more than three in the aggregate.

(3) Definitions. (A) "Tuition," as used in this subdivision, shall mean the amount actually paid during the taxable year by the taxpayer for the enrollment of a dependent during the regular school year at a nonpublic school.

(B) "Nonpublic school," as used in this subdivision, shall mean any non-profit elementary or secondary school in the state of New York, other than a public school, which: (i) is providing instruction in accordance with article seventeen and section thirty-two hundred four of the education law, (ii) has not been found to be in violation of title VI of the civil rights act of nineteen hundred sixty-four, 78 Stat. 252, 42 U.S.C. 2000(d) and (iii) which is entitled to a tax exemption under sections five hundred one (a) and five hundred one (c) (3) of the federal internal revenue code of nineteen hundred fifty-four, as amended. The commissioner of education shall furnish to the tax commission by February first of each year, a certified list of nonpublic schools which comply with clause (i) of this subparagraph for the preceding calendar year and shall provide such other assistance with respect to whether nonpublic schools come within clause (i) as the tax commission may require.

(C) "Regular school year," as used in this subdivision, shall mean the months of the taxable year exclusive of July and August.

(4) Additional information. Any claim for a modification under this subdivision shall be accompained by such information as the tax commission may require.

(k) Repealed.

(l) Repealed.

(m) Reserved.

(n) Where gain or loss is recognized for federal income tax purposes upon the disposition of stock or indebtedness of a corporation electing under subchapter s of chapter one of the internal revenue code:

(1) There shall be added to federal adjusted gross income the amount of increase in basis with respect to such stock or indebtedness pursuant to subsection (a) of section thirteen hundred seventy-six of the internal revenue code as such section was in effect for taxable years beginning before January first, nineteen hundred eighty-three and subparagraphs (A) and (B) of paragraph one of subsection (a) of section thirteen hundred sixty-seven of such code, for each taxable year of the corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, and in the case of a corporation taxable under article thirty-two of the tax law, after December thirty-first, nineteen hundred ninety-six, for which the election provided for in subsection (a) of section six hundred sixty of the tax law was not in effect, and

(2) There shall be subtracted from federal adjusted gross income: (A) the amount of reduction in basis with respect to such stock or indebtedness pursuant to subsection (b) of section thirteen hundred seventy-six of the internal revenue code as such section was in effect for taxable years beginning before January first, nineteen hundred eighty-three and subparagraphs (B) and (C) of paragraph two of subsection (a) of section thirteen hundred sixty-seven of such code, for each taxable year of the corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, and in the case of a corporation taxable under article thirty-two of the tax law, after December thirty-first, nineteen hundred ninety-six, for which the election provided for in subsection (a) of section six hundred sixty of the tax law was not in effect and

(B) the amount of any modifications to federal gross income with respect to such stock pursuant to paragraph twenty-one of subdivision (b) of this section.

(o) Modifications for new business investment gains and certain new business investments.

1. For purposes of this subdivision, the following definitions shall apply:

(A) "New business investment gain" means gain from the sale of a new business investment issued to the taxpayer before January first, nineteen hundred eighty-eight, if:

(i) such new business investment is, in the hands of the person selling the same (whether or not the taxpayer), a capital asset as defined in section twelve hundred twenty-one of the internal revenue code of nineteen hundred fifty-four, as amended, and

(ii) such new business investment was held by such person for the period specified in paragraph two of this subdivision.

(B) "New business" means a corporation or partnership organized or formed under the laws of any state which:

(i) adopts a plan on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, to conduct a new business within the meaning and intent of this section and to issue new business investments, as defined in this subdivision, and

(ii) is, at the date of adoption of such plan, subject to taxation (whether or not any amount is owing) under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six of article nine of the tax law, or under article nine-a of the tax law or article twenty-three of the tax law, or would have been subject to tax under article twenty-three of such law (as such article was in effect on January first, nineteen hundred eighty) if such article were still in effect, and the first taxable period for which such new business became subject to such taxation commenced on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, and such first taxable period includes the date of adoption of such plan; if not so subject to taxation, the new business must be subject to taxation under such sections or articles for the first time within one year from the date of adoption of such plan, and

(iii) is conducted (or will be conducted, as evidenced by such plan) whereby at least ninety percent of the assets (valued at original cost) are located and employed in this state and eighty percent of the employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of the tax law and, in addition, in the case of a partnership, excluding partners) are principally employed in this state during each taxable period, or part thereof, as required by clause (iv) of this subparagraph, and

(iv) within ninety days after adoption of such plan, or, if a return is required, as part of such return, under such article nine, article nine-a or article twenty-three, whichever is sooner, shall file a new business certificate with the tax commission attesting to whether it meets, if subject to taxation under such articles, or intends to meet, if not so subject, all of the conditions stated in clauses (i), (ii) and (iii) of this subparagraph within the time set forth therein. Thereafter, during the first four taxable years of such new business, along with, and as part of, any return required under such articles, such new business shall make and file a new business certificate for the period covered by such return attesting to whether it has met the conditions specified in this subparagraph during the taxable period covered by such return. If no return is required under such articles, such certificate shall be filed annually on or before the fifteenth day of March which shall cover the twelve consecutive calendar month period ending on the last day of December immediately preceding such March fifteenth. If such new business fails to meet such conditions specified in this subparagraph, it shall, in addition, give notice of this fact, within the time prescribed by the tax commission, to the holders of its "new business investments." The tax commission shall prescribe the form and content of such new business certification and may require a new business to file such certificate for periods (even if no return is filed or required, but for this section) covering up to eight years from the date of adoption of such plan, as in its discretion, it deems the same necessary for the enforcement of this section, and

(v) Special rules:

(1) For any taxable period, in order to constitute a new business, a business enterprise must have derived more than sixty percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities.

(2) A new business does not include: (i) any new business of which twenty-five percent or more of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is owned, directly or

indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine of the tax law, or under article nine-a, thirty-two or thirty-three of the tax law or (ii) any new business substantially similar in operation and in ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such section, such article, article twenty-three of the tax law or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includible under article twenty-two of such tax law whereby the intent and purpose of this section would be evaded.

(C) "New business investment" means and includes the following investments issued before January first, nineteen hundred eighty-eight by a new business pursuant to a plan described in clause (i) of subparagraph (B) of this paragraph for money or other property (other than stock or securities) on or before the expiration of the third taxable year of such new business (excluding any short period immediately preceding such taxable year because the new business was not in existence for an entire taxable year) or forty-two months from the adoption of such plan, whichever is sooner: (i) original issuance capital stock as part of a new issue, (ii) other original issuance securities of a new issue of a like nature as stocks which are designed as a means of investment and issued for the purpose of financing corporate enterprises and providing for a distribution of rights in such enterprises, (iii) debt obligations such as bonds and debentures for a term of at least one year, whether secured or unsecured, and (iv) certificates and other instruments representing proprietary interests, whether limited or otherwise, in and assumption of general liabilities, whether limited or otherwise, of a partnership enterprise.

2. A taxpayer may subtract from his federal adjusted gross income a portion of an amount constituting a new business investment gain, as follows:

[See tabular material in printed version]

3. Where, within six months of the realization of a new business investment gain allowable as the basis of a modification under paragraph two of this subdivision, such modification is equal to less than one hundred percent of the portion of the gain includible in federal adjusted gross income and the taxpayer purchases a new business investment which is then held for a period of at least six months, the taxpayer may subtract from his or her federal adjusted gross income ten percent (but not an amount that will reduce the portion of such gain included in his or her New York income below zero) of the amount of such gain where the purchase price of the new business investment is equal to or greater than the proceeds of the sale giving rise to such gain. Where the purchase price of the new business investment is less than an amount equal to the proceeds of such sale, the modification allowable under this paragraph shall be equal to ten percent of an amount equal to the product of: (A) the amount of the gain and (B) a fraction the numerator of which is the purchase price of the new investment and the denominator of which is an amount equal to the proceeds of such sale. The modification allowable under this paragraph may be utilized, at the option of the taxpayer, with respect to the taxable year in which the new business investment gain is realized or the year containing the last day of the six-month retention period described in this paragraph.

4. The tax commission may prescribe such rules and regulations as may be necessary to carry out the purposes of this subdivision.

(p) New business investment deferral. For taxable years beginning before January first, nineteen hundred eighty-eight, at the option of the taxpayer, there may be subtracted from federal adjusted gross income a reinvested amount of long-term capital gain realized in a taxable year from the sale of a capital asset, as such term is defined in section twelve hundred twenty-one of the internal revenue code, which is not a new business investment. A reinvested amount of long-term capital gain shall mean an amount which bears the same ratio to the long-term capital gain realized from the sale of a capital asset which was includible in New York adjusted gross income as that portion of the sale proceeds which is reinvested, within one year from date of sale, in a New York new business bears to the total sale proceeds. For the purposes of this subdivision, a New York new business is a business enterprise which: (1) has been a taxpayer under article nine-A, twenty-two, thirty-two or thirty-three of the tax law for no more than three taxable years

(including short taxable years), (2) over fifty percent of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is not owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine of the tax law, or under article nine-A, thirty-two or thirty-three of the tax law, (3) is not substantially similar in operation or ownership, directly or indirectly, to a business entity (or entities) taxable, or previously taxable, under such sections, such articles, article twenty-three of the tax law or which would have been subject to tax under article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includible under article twenty-two of the tax law whereby the intent and purpose of this subdivision would be evaded, (4) locates and employs at least ninety percent of its assets in the state. (5) employs principally in the state eighty percent of its employees (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of section two hundred ten of the tax law and, in addition, in the case of a partnership, excluding partners), and (6) derives less than forty percent of its gross income from dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), annuities and (7) reports at least twenty-five hundred dollars in gross income in any taxable year. The reinvested amount must qualify as a capital asset as defined pursuant to section twelve hundred twenty-one of the internal revenue code and must be retained by the taxpayer for at least twelve months. The modification allowable under this subdivision shall be utilized with respect to the taxable year in which the twelve month retention period ends.

(q) An amount deferred under subdivision (p) hereof shall be added to federal adjusted gross income when the reinvestment in the New York new business which qualified a taxpayer for such deferral is sold.

(r) In the case of a sale or other disposition of property acquired from a decedent and valued by the executor of the estate of such decedent for the purposes of the tax under article twenty-six of the tax law (i) pursuant to paragraph two of subsection (b) of section nine hundred fifty-four of the tax law, or (ii) pursuant to section nine hundred fifty-four-a of the tax law, where such estate was insufficient to require the filing of a federal estate tax return, the amount necessary to properly reflect the gain or loss from such sale or other disposition which would have been realized under this chapter, had, in the case of clause (i) of this subdivision, a federal estate tax return been filed similarly valuing such property pursuant to section two thousand thirty-two of the internal revenue code, or in the case of clause (ii) of this subdivision, pursuant to section two thousand thirty-two-A of such code.

(s) New York S termination year. (1) General. In the case of a New York S termination year, the amount of any item of S corporation income, loss and deduction included in the shareholder's federal adjusted gross income and any reductions for taxes (as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code) shall be adjusted in accordance with the treatment provided in paragraph two or three of this subdivision.

(2) Pro rata allocation. Unless paragraph three of this subdivision applies, an equal portion of each S corporation item shall be assigned to each day of the S corporation's taxable year for federal income tax purposes. The portion of each such item thereby assigned to the S short year shall be treated as an item of a New York S corporation, and the portion of each such item thereby assigned to the C short year shall be treated as an item of an S corporation which is a New York C corporation.

(3) Normal tax accounting. The portion of each S corporation item assigned to the S short year and the C short year shall be determined using normal tax accounting rules if:

(A) there is a sale or exchange of fifty percent or more of the stock in such corporation during the New York S termination year or

(B) the corporation so elects, as provided in subparagraph (B) of paragraph two of subsection (s) of section six hundred twelve of the tax law.

(t) Related members expense add back and income exclusion.

(1) Definitions. (A) Related member or members. For purposes of this subdivision, the term related member or members means a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under this title.

(B) Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the state commissioner of taxation and finance, and includes amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing city adjusted gross income, a taxpayer must add back royalty payments to a related member during the taxable year to the extent deductible in calculating federal taxable income.

(B) The add back of royalty payments shall not be required if and to the extent that such payments meet either of the following conditions:

(i) the related member during the same taxable year directly or indirectly paid or incurred the amount to a person or entity that is not a related member, and such transaction was done for a valid business and the payments are made at arm's length;

(ii) the royalty payments are paid or incurred to a related member organized under the laws of a country other than the United States, are subject to a comprehensive income tax treaty between such country and the United States, and are taxed in such country at a tax rate at least equal to that imposed by this state.

(3) Royalty income exclusions. (A)*47 For the purpose of computing city adjusted gross income, a taxpayer shall be allowed to deduct royalty payments directly or indirectly received from a related member during the taxable year to the extent included in the taxpayer's federal taxable income unless such royalty payments would not be required to be added back under paragraph two of this subdivision or other similar provision in this title.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1770)

Section added (as § 11-1770) chap 907/1985 § 1

Subd. (b) par (3) amended chap 166/1991 § 5, eff. June 12, 1991 and applying Dec. 31, 1990

Subd. (b) par (3) subpar (B) amended chap 389/1997 § A58 of § 1, eff. Aug. 7, 1997 and applying to taxable years beginning after Dec. 31, 1996

Subd. (b) par (4) amended chap 406/1990 § 5 eff. July 10, 1990

Subd. (b) par (7) amended chap 333/1987 § 91

Subd. (b) par (8) repealed chap 333/1987 § 92

Subd. (b) pars (9), (11), repealed chap 333/1987 § 93

Subd. (b) par (13) separately repealed chap 333/1987 § 93 and chap 265/1987 § 9

Subd. (b) par (13) renumbered chap 639/1986 § 45 (formerly par (15))

Subd. (b) par (14) repealed chap 333/1987 § 94

Subd. (b) par (15) amended chap 638/1986 § 15. (as par (16)) [See Note 2]

Subd. (b) par (15) renumbered chap 639/1986 § 45 (formerly par (16))

Subd. (b) par (16) amended chap 333/1987 § 95

Subd. (b) par (16) amended chap 638/1986 § 15. (as par (17))

Subd. (b) par (16) renumbered chap 639/1986 § 45 (formerly par (17))

Subd. (b) par (17) renumbered and amended chap 639/1986 §§ 45, 46 (formerly par (18))

Subd. (b) par (18) renumbered chap 639/1986 § 45 (formerly par (19))

Subd. (b) par (18) subpar (B) amended chap 639/1986 § 47

Subd. (b) par (18) subpar (A) amended chap 333/1987 § 96

Subd. (b) par (18) subpar (B) amended chap 190/1990 § 22 eff. May 25, 1990 applying to taxable years beginning after 1989

Subd. (b) par (19) renumbered chap 639/1986 § 45 (formerly par (20))

Subd. (b) par (19) subpar (A) amended chap 333/1987 § 97

Subd. (b) par (19) subpar (B) amended chap 190/1990 § 22 eff. May 25, 1990 applying to taxable years beginning after 1989

Subd. (b) par (19) subpar (B) amended chap 639/1986 § 48.

Subd. (b) par (20) renumbered chap 639/1986 § 45 (formerly par (21))

Subd. (b) par (21) amended chap 389/1997 § A62 of § 1, eff. Aug. 7, 1997 and applying to taxable years beginning after Dec. 31, 1996

Subd. (b) par (21) amended chap 333/1987 § 98

Subd. (b) par (21) renumbered and amended chap 639/1986 §§ 45, 49 (formerly par (22))

Subd. (b) par (22) renumbered and amended chap 639/1986 §§ 45, 49 (formerly par (23))

Subd. (b) par (23) renumbered chap 639/1986 § 45 (formerly par (24))

Subd. (b) par (24) renumbered chap 639/1986 § 45 (formerly par (25))

Subd. (b) par (25) amended chap 170/1994 § 48, eff. June 9, 1994

Subd. (b) par (25) amended chap 333/1987 § 99

Subd. (b) par (25) renumbered chap 639/1986 § 45 (formerly par (26))

Subd. (b) par (26) amended chap 681/1992 § 8, eff. July 31, 1992

Subd. (b) par (26) amended chap 114/1989 § 8

Subd. (b) par (26) amended chap 783/1988 § 4, [See Note 4]

Subd. (b) par (26) added chap 782/1988 § 5 [See Note 3]

Subd. (b) par (26-a) added chap 312/1997 § 4, eff. July 29, 1997 and applying to taxable years beginning after Jan. 1, 1997

Subd. (b) par (27) amended chap 333/1987 § 100

Subd. (b) par (27) renumbered and amended chap 639/1986 §§45, 49 (formerly par (28))

Subd. (b) par (28) repealed chap 760/1992 § 80, eff. July 31, 1992

Subd. (b) par (28) separately added chap 333/1987 § 101 and L.L. 37/1987 § 1

Subd. (b) par (29) added chap 265/1987 § 10

Subd. (b) par (30) repealed chap 407/1999 § M17, eff. Aug. 9, 1999 and applying to taxable years beginning on and after Jan. 1, 1997 as per chap 63/2000 § H1, eff. May 15, 2000 and deemed in effect Aug. 9, 1999.

Subd. (b) par (30) added chap 61/1989 § 359

Subd. (b) par (31) added chap 421/1991 § 4, eff. July 19, 1991 and expires as per chap 782/1988 § 8

Subd. (b) par (32) amended chap 531/1994 § 4, eff. July 26, 1994

Subd. (b) par (32) added chap 374/1993 § 8 eff. July 21, 1993

Subd. (b) par (33) added chap 309/1996 § 216, eff. July 13, 1996 and applying to taxable years beginning on or after Jan. 1, 1997

Subd. (b) par (34) added chap 57/2008 Part HH-1 § 10, eff. Apr. 23, 2008 and applying to taxable years beginning on or after Jan. 1, 2008.

Subd. (b) par (34) repealed chap 686/2003 § M25, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. (b) par (34) added chap 63/2003 § N5, eff. May 19, 2003.

Subd. (b) par (35) added chap 25/2009 § C20, eff. May 7, 2009. [See § 11-1718 Note 1]

Subd. (c) par (1) amended chap 760/1992 § 81, eff. July 31, 1992 applying to taxable years ending on and after this date

Subd. (c) par (1) amended chap 333/1987 § 103

Subd. (c) par (3) amended chap 664/1989 § 2 [See Note 1]. Expires at an undetermined date.

Subd. (c) par (3-a) amended chap 760/1992 § 82, eff. July 31, 1992

Subd. (c) par (3-b) subpars (i), (ii) amended chap 333/1987 § 104

Subd. (c) par (4) amended chap 333/1987 § 105

Subd. (c) par (5) amended chap 639/1986 § 50

Subd. (c) par (7) amended chap 25/2009 § C21, eff. May 7, 2009. [See § 11-1718 Note 1]

Subd. (c) par (9) amended chap 406/1990 § 6, eff. July 10, 1990

Subd. (c) par (9) amended chap 639/1986 § 50

Subd. (c) par (10) amended chap 639/1986 § 50

Subd. (c) par (16) repealed chap 333/1987 § 106

Subd. (c) par (17) repealed chap 333/1987 § 107

Subd. (c) par (18) repealed chap 333/1987 § 108

Subd. (c) par (18) amended chap 639/1986 § 50

Subd. (c) par (19) amended chap 333/1987 § 109

Subd. (c) par (19) amended chap 639/1986 § 50

Subd. (c) par (20) renumbered chap 639/1986 § 51 (formerly par (21))

Subd. (c) par (21) amended chap 389/1997 § A63 of § 1, eff. Aug. 7, 1997 and applying to taxable years beginning after Dec. 31, 1996

Subd. (c) par (21) amended chap 333/1987 § 110

Subd. (c) par (21) renumbered and amended chap 639/1986 §§ 51, 52 (formerly par (22))

Subd. (c) par (22) renumbered chap 639/1986 § 51 (formerly par (20))

Subd. (c) par (22) subpar (A) amended chap 333/1987 § 111

Subd. (c) par (22) subpar (B) amended chap 190/1990 § 22 eff. May 25, 1990 and applying to taxable years beginning after 1989

Subd. (c) par (22) subpar (B) amended chap 639/1986 § 53

Subd. (c) par (23) added chap 639/1986 § 54

Subd. (c) par (24) renumbered chap 639/1986 § 51 (formerly par (23))

Subd. (c) par (25) renumbered chap 639/1986 § 51 (formerly par (24))

Subd. (c) par (26) amended chap 170/1994 § 49, eff. June 9, 1994

Subd. (c) par (26) amended chap 333/1987 § 112

Subd. (c) par (26) renumbered chap 639/1986 § 51 (formerly par (25))

Subd. (c) par (28) amended chap 333/1987 § 113

Subd. (c) par (28) renumbered and amended chap 639/1986 §§ 51, 55 (formerly par (27))

Subd. (c) par (29) added chap 333/1987 § 114

Subd. (c) par (30) amended chap 638/1993 § 5, eff. Aug. 4, 1993

Subd. (c) par (30) added chap 428/1991 § 9, eff. July 19, 1991

Subd. (c) par (31) repealed chap 63/2000 § E10, eff. Jan. 1, 2002.

Subd. (c) par (31) amended chap 42/1997 § 4, eff. Apr. 17, 1997 and deemed in force for taxable years beginning Jan. 1, 1996

Subd. (c) par (31) added chap 81/1995 § 100, eff. Jan. 1, 1996

Subd. (c) par (32) added chap 659/1997 § 68, eff. Sept. 24, 1997 and applying to taxable years beginning on or after Jan. 1, 1998

Subd. (c) pars (33), (34) added chap 56/1998 § A90 of § 1, eff. Apr. 28, 1998 and applying to taxable years beginning on and after Jan. 1, 1995.

Subd. (c) par (35) repealed chap 63/2005 § E24 of § 1, eff. Apr. 12, 2005. Par (35) created a nursing home assessment deduction. § E24 of § 1 repealed § C23 of § 1 of chap 58/2005 which added par (35). The provision was transfered to Tax Law § 606 subd. (hh).

Subd. (c) par (35) added chap 58/2005 § C23 of § 1, eff. Apr. 12, 2005 and applying to taxable years beginning on and after Jan. 1, 2005.

Subd. (d) amended chap 639/1986 § 56

Subd. (e) amended chap 333/1987 § 115

Subd. (e) amended chap 639/1986 § 56

Subd. (e) par (3) added chap 760/1992 § 83, eff. July 31, 1992

Subd. (f) amended chap 166/1991 § 6, eff. June 12, 1991

Subd. (f) amended chap 333/1987 § 116

Subd. (g) open par amended chap 333/1987 § 117

Subd. (g) par (2) amended chap 639/1986 § 57

Subd. (g) par (6) amended chap 333/1987 § 118

Subd. (h) open par amended chap 333/1987 § 119

Subd. (h) par (3) amended chap 639/1986 § 58

Subd. (i) amended chap 333/1987 § 120

Subd. (j) par (1) amended chap 639/1986 § 59

Subds. (k), (l) repealed chap 333/1987 § 121

Subd. (n) amended chap 389/1997 § A64 of § 1, eff. Aug. 7, 1997 and applying to taxable years beginning after Dec. 31, 1996

Subd. (n) relettered chap 639/1986 § 60 (formerly subd. (m))

Subd. (o) relettered chap 639/1986 § 60 (formerly subd. (n))

Subd. (o) par 1 subpar (A) open par amended chap 333/1987 § 122

Subd. (o) par 1 subpar (A) clause (ii) amended chap 333/1987 § 123

Subd. (o) par 1 subpar (A) clause (iii) amended out of law chap 333/1987 § 123

Subd. (o) par 1 subpar (B) clauses (i), (ii) amended chap 333/1987 § 124

Subd. (o) par 1 subpar (C) amended chap 333/1987 § 125

Subd. (o) par 2 amended chap 333/1987 § 126

Subd. (p) amended chap 333/1987 § 127

Subd. (p) relettered chap 639/1986 § 60 (formerly subd. (o))

Subd. (q) amended chap 333/1987 § 128

Subd. (q) relettered and amended chap 639/1986 §§ 60, 62 (formerly subd. (p))

Subd. (r) relettered chap 639/1986 § 60 (formerly subd. (q))

Subd. (s) amended chap 760/1992 § 84, eff. July 31, 1992

Subd. (s) amended chap 190/1990 § 23 eff. May 25, 1990 applying to taxable years beginning after 1989

Subd. (s) relettered chap 639/1986 § 60 (formerly subd. (r))

Subd. (t) added chap 686/2003 § M26, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subd. (t) repealed chap 407/1999 § M18, eff. Aug. 9, 1999 and applying to taxable years beginning on and after Jan. 1, 2000.

Subd. (t) added chap 61/1989 § 360.

DERIVATION

Formerly § T46-112.0 added LL 36/1976 § 2

Sub b par 12 repealed chap 713/1977 § 6

Sub c par 15 added chap 33/1978 § 8

Sub b par 14 added chap 70/1978 § 34

Sub c pars 15, 16 added chap 70/1978 § 35

Sub k added chap 70/1978 § 36

Sub l added chap 70/1978 § 37

Sub e amended chap 480/1978 § 22

Sub b par 15 added chap 729/1978 § 9

Sub c pars 16, 17 renumbered chap 729/1978 § 10 (formerly pars 15, 16 added chap 70/1978 § 35)

Sub b pars 16, 17 added chap 788/1978 § 35

Sub k par 1 amended chap 25/1979 § 3

Sub k par 3 subpar D item iii amended chap 25/1979 § 4

Sub k par 6 added chap 83/1981 § 2

Sub c par 19 added chap 103/1981 § 4

Sub n added chap 103/1981 § 5

Subs o, p added chap 103/1981 § 9

Sub b par 23 added chap 103/1981 § 10

Sub c par 21 added chap 103/1981 § 11

Sub b pars 19, 20, 21, 22 added chap 103/1981 § 33

Sub c pars 20, 22 added chap 103/1981 § 34

Sub m added chap 103/1981 § 35

Sub b par 17 amended chap 103/1981 § 37

Sub b par 11 amended chap 103/1981 § 47

Sub c par 4 amended chap 103/1981 § 48

Sub g par 6 amended chap 103/1981 § 49

Sub i amended chap 103/1981 § 50

Sub b par 18 added chap 103/1981 § 56

Sub c par 18 added chap 103/1981 § 57

Sub q added chap 103/1981 § 58

Sub c par 3-a added chap 103/1981 § 61

Sub b par 21 amended chap 1043/1981 § 41

Sub b par 23 amended chap 1043/1981 § 42

Sub c par 3-a amended chap 1043/1981 § 43

Sub c par 20 amended chap 1043/1981 § 44

Sub n par 1 subpar B clauses ii, iv amended chap 1043/1981 § 45

Sub n par 1 subpar B clause v subclause 2 amended chap 1043/1981 § 46

Sub n par 2 amended chap 1043/1981 § 47

Sub n par 3 amended chap 1043/1981 § 48

Sub o amended chap 1043/1981 § 49

Sub p amended chap 1043/1981 § 50

Sub b pars 24, 25, 26 added chap 55/1982 § 38

Sub c pars 23, 24, 25 added chap 55/1982 § 39

Sub b par 27 added chap 547/1982 § 6

Sub c par 26 added chap 547/1982 § 7

Sub b pars 24, 25, 26 amended chap 15/1983 § 118

Sub b par 28 added chap 15/1983 § 119

Sub c pars 23, 24, 25 amended chap 15/1983 § 120

Sub c par 27 added chap 15/1983 § 121

Sub b pars 7, 8, 9 amended chap 648/1983 § 8

Sub c par 3-b added chap 71/1984 § 3

Sub f amended chap 71/1984 § 4

Sub b pars 19, 20, 21, 22 amended chap 606/1984 § 30

Sub c pars 20, 22 amended chap 606/1984 § 31

Sub e amended chap 606/1984 §32

Sub m amended chap 606/1984 § 33

Sub r added chap 606/1984 § 34

Sub c par 3-c renumbered chap 961/1984 § 2

(formerly par 3-b)

Sub c par 3-b added chap 961/1984 § 2

Sub b pars 24, 25, 26 amended chap 43/1985 § 20

Sub c pars 23, 24, 25 amended chap 43/1985 § 21

Sub b par 27 repealed chap 306/1985 § 13

Sub c par 26 repealed chap 306/1985 § 14

Sub b pars 16, 17 amended chap 638/1986 § 14

Sub e amended chap 639/1986 § 25

NOTE

1. Provisions of ch. 664/1989

§ 3. This act shall take effect immediately [July 21, 1989] and shall apply to federal pension benefits received in taxable years beginning on or after January 1, 1989, provided, however, that in the event the federal public salary act of 1939 or federal law, decisional or legislative, no longer requires that federal and state pension benefits be treated equally for purposes for the tax imposed by article 22 of the tax law and the tax authorized pursuant to the authority of article 30 of such law, then the amendments made by sections one and two of this act shall be of no further force and effect except as to federal pension benefits received in taxable years ending prior to the date such change in federal law becomes effective.

2. Provisions of ch. 638/1986

§ 18. By July first, nineteen hundred eighty-seven and by each subsequent July first, the tax commission shall submit to the director of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee a statistical report on the mortgage recording tax credit provided for under subdivision seventeen of section two hundred ten of the tax law, for taxable years beginning in the calendar year two years previous

to the due date of such report. Such report shall include but shall not be limited to the following information, presented in aggregate and by major industry group:

(i) the number of taxpayers claiming such credit, and the amount claimed;

(ii) the number of taxpayers using such credit, and the amount used;

(iii) the number of taxpayers claiming credits carried over from previous taxable years, and the amount so carried over;

(iv) the number of taxpayers carrying credits over to the next taxable year, and the amount so carried over;

(v) the number of taxpayers treating the credit as an overpayment of tax, and the amount of credit treated as an overpayment; and

(vi) the entire net income and the amount of tax before credits of taxpayers claiming such mortgage recording tax credit.

In preparing such report, the tax commissioner shall ensure that the statistics are classified in a manner consistent with the secrecy requirements of section two hundred eleven of the tax law.

3. Provisions of ch. 782/1988

§ 8. This act shall take effect January first, nineteen hundred eighty-nine, provided however, that in no event shall this act take effect earlier than the beginning of the first full calendar year quarter following forty-five days after the internal revenue service rules that the employee contributions picked up under this act are not includible in the gross income of the employee until distributed or made available to the employee; and this act shall remain in full force and effect only so long as such treatment of employee contributions is authorized pursuant to the provisions of the Internal Revenue Code.

FISCAL NOTE.-This bill would amend section five hundred seventeen of the Retirement and Social Security Law by adding a new subdivision f and section six hundred thirteen of the Retirement and Social Security Law by adding a new subdivision d. These new subdivisions would require participating employers to pick up, within the meaning of section 414(h) of the Internal Revenue Code, the 3% contributions required of members whose date of membership in a public retirement system is on or after July 1, 1976. The pick-up of contributions shall be made by a reduction in each affected employee's salary by an amount equal to the employee's required contributions. The picked-up contributions would not be includable in the gross income for income tax purposes but shall be deemed employee salary for all other purposes. Contributions made before the effective date of this act would not be affected.

These new subdivisions also contain a provision for a salary reduction agreement under section 403(b) of the Internal Revenue Code for employees who, in lieu of joining a public retirement system, elected an optional retirement program.

It is estimated that the additional cost to employers for this benefit will be negligible.

The source of this Fiscal Note is the Assembly Ways and Means Committee.

4. Provisions of ch. 783/1988

§ 11. This act shall take effect on the same date and in the same manner as such chapter of the laws of nineteen hundred eighty-eight takes effect.

FISCAL NOTE.-This bill would amend a chapter of the laws of nineteen hundred eighty-eight as proposed in

Senate bill number 9273, which proposed chapter would require employers participating in a public retirement system to pick up, within the meaning of section 414(h) of the Internal Revenue Code, the 3% contributions required of persons whose date of membership in such a system is on or after July 1, 1976.

This chapter amendment would (i) make certain technical changes, for example, eliminating duplicative language; (ii) make certain changes under the tax law and related provisions, for example, clarifying that the picked up portion of wages remains subject to withholding; and (iii) expand the number of retirement system members covered by Senate bill number 9273.

It is estimated that the cost of these provisions will be negligible.

The source of this Fiscal Note is the Senate Rules Committee.

CASE NOTES

¶ 1. Department of Finance must disclose information taken from real property tax returns pursuant to the Freedom of Information Law (FOIL, Public Officers Law Art 6). "Secrecy" provisions of §11-2115 do not prohibit disclosure because the state legislature amended this section (L 1989, ch. 714 § 10) to provide that it shall be deemed a state statute for purposes of Public Officers Law § 87(2)(a). Brownstone Publishers v. New York City Dept. of Finance, 150 AD2d 185, 75 NY2d 791, 167 AD2d 166 [1991].

¶ 2. §11-1712(c)(3) provisions which tax federal pension benefits but exempt state and local pension benefits is discriminatory, and unconstitutional. The city is enjoined from collecting personal income taxes on federal pensions received in 1986, 1987 and 1988 and must refund the payments received during that period provided the taxpayer appropriately objected to payment at that time. Duffy v. Wetzler, 148 Misc. 2d 459.

¶ 3. In Davis v. Michigan (489 US 803) the United States Supreme Court rules that state's could not exempt from taxation state employee pensions and tax federal employee pensions. The case does not apply retroactively and federal employees are not entitled to refunds of taxes paid as if they were overpayments. Duffy v. Wetzler, 174 AD2d 253 [1992].

¶ 4. The US Supreme Court in Davis v. Michigan (489 US 803) invalidated Michigan's income taxation system which exempted state employee pensions from taxation but allowed taxes on other pensions including federal retirees. NYS and NYC laws were similar to Michigan's and were amended to exempt federal retirees from taxation. This court rules that this must be applied retroactively, Duffy v. Wetzler 174 AD2d 253, however, on the issue of remedy federal due process did not mandate refunds if state law provided recourse. The state of New York decided to pay full refunds plus interest for pre-1989 income taxes paid by federal pensioners. The issues affected by remitter by the US Supreme Court are academic. Duffy v. Wetzler, 207 AD2d 375 [1995].

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

5

[Footnote 5]: * So in original. ("thirty first" s.b. "thirty-first").

6

[Footnote 6]: ** Certain amendments expire pursuant to chap 782/1988 and chap 783/1988.
7

[Footnote 7]: * Expires as per chap 782/1988 § 8.
8

[Footnote 8]: * This subparagraph expires when federal law no longer requires federal and state pension benefits be treated equally.
47

[Footnote 47]: * Editor's note: (A) designation erroneously added before paragraph.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1713

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1713 City deduction of a resident individual.

The city deduction of a city resident individual shall be his or her city standard deduction unless such resident individual elects to deduct his or her city itemized deduction under the conditions set forth in section 11-1715.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1771)

Section added (as § 11-1771) chap 907/1985 § 1

DERIVATION

Formerly § T46-113.0 added LL 36/1976 § 2

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1714

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1714 City standard deduction of a city resident individual.

(a) Unmarried individual. For taxable years beginning after nineteen hundred ninety-six, the city standard deduction of a city resident individual who is not married nor the head of a household nor a surviving spouse nor an individual whose federal exemption amount is zero shall be seven thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be seven thousand four hundred dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be six thousand six hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be six thousand dollars.

(b) Husband and wife filing jointly and surviving spouse. For taxable years beginning after nineteen hundred ninety-six, the city standard deduction of a husband and wife whose city taxable income is determined jointly or a surviving spouse shall be thirteen thousand dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be twelve thousand three hundred fifty dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be ten thousand eight hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be nine thousand five hundred dollars.

(c) Head of household. For taxable years beginning after nineteen hundred ninety-six, the city standard deduction of an individual who is a head of household shall be ten thousand five hundred dollars; for taxable years

beginning in nineteen hundred ninety-six, such standard deduction shall be ten thousand dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be eight thousand one hundred fifty dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be seven thousand dollars.

(d) Married individuals filing separately. For taxable years beginning after nineteen hundred ninety-six, the city standard deduction of a married individual filing a separate return shall be six thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be six thousand one hundred seventy-five dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be five thousand four hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be four thousand seven hundred fifty dollars.

(e) Standard deduction of a dependent individual. For taxable years beginning after nineteen hundred ninety-six, the city standard deduction of a city resident individual whose federal exemption amount is zero shall be three thousand dollars; for taxable years beginning in nineteen hundred ninety-six, such standard deduction shall be two thousand nine hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-six, such standard deduction shall be two thousand eight hundred dollars.

HISTORICAL NOTE

Section amended chap 170/1994 § 147, eff. June 9, 1994

Section amended chap 57/1993 § 21 eff. Apr. 15, 1993

Section amended chap 55/1992 § 15, eff. Apr. 10, 1992

Section amended chap 166/1991 § 144, eff. June 12, 1991

Section amended chap 190/1990 § 158 eff. May 25, 1990

Section amended chap 333/1987 § 129

Section renumbered chap 639/1986 § 43 (formerly § 11-1772)

Section added (as § 11-1772) chap 907/1985 § 1

DERIVATION

Formerly § T46-114.0 added LL 36/1976 § 2

Amended chap 70/1978 § 38

Amended chap 1043/1981 § 51

Amended chap 29/1985 § 38

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1715

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1715 City itemized deduction of a city resident individual.

(a) General. If federal taxable income of a city resident individual is determined by itemizing deductions from his federal adjusted gross income, such resident individual may elect to deduct his city itemized deduction in lieu of his city standard deduction. The city itemized deduction of a city resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications specified in this section, except as provided for under subdivision (f) of this section.

(b) Husband and wife.

(1) A husband and wife, both of whom are required to file returns under this chapter, shall be allowed city itemized deductions only if both elect to take city itemized deductions.

(2) The total of the city itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose city taxable incomes are required to be determined separately, shall be divided between them as if their federal taxable incomes had been determined separately.

(c) Modifications reducing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) income taxes imposed by this city or any other taxing jurisdiction, except city earnings taxes on nonresidents that are imposed upon and paid by taxpayers for taxable years beginning after December thirty-first, nineteen hundred seventy and before January first, two thousand, pursuant to the authority of section twenty-five-m of the general city law, to the extent that the amount of such tax exceeds the tax computed as if the rates were one-fourth of one percent of wages subject to tax and three-eighths of one percent of net earnings from self-employment subject to tax; (2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for: (i) the production or collection of income which is exempt from tax under this chapter, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this chapter, to the extent that such expenses and premiums are deductible in determining federal taxable income.

(4) premiums paid for long-term care insurance to the extent that such premiums are deductible in determining federal taxable income.

(5) Reserved.

(6) in the case of a shareholder of an S corporation:

(A) where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made, S corporation items of deduction included in federal itemized deductions, and

(B) in the case of a New York S termination year, the portion of such items assigned to the period beginning on the day the election ceases to be effective, as determined under subdivision (s) of section 11-1712.

(7) Repealed.

(d) Modifications increasing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be increased by:

(1) Reserved.

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such interest on indebtedness is not deductible for federal income tax purposes and is not subtracted from federal adjusted gross income pursuant to paragraph nine of subdivision (c) of section 11-1712; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for: (i) the production or collection of income which is subject to tax under this chapter but exempt from federal income tax, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are not subtracted from federal adjusted gross income pursuant to paragraph ten of subdivision (c) of section 11-1712.

(4) allowable college tuition expenses, as defined in paragraph two of subsection (t) of section six hundred six of the tax law, multiplied by the applicable percentage. Such applicable percentage shall be twenty-five percent for taxable years beginning in two thousand one, fifty percent for taxable years beginning in two thousand two, seventy-five percent for taxable years beginning in two thousand three and one hundred percent for taxable years beginning after two thousand three. Provided, however, no deduction shall be allowed under this paragraph to a taxpayer who claims the credit provided under subsection (t) of section six hundred six of the tax law.

(e) Modification of partners and shareholders of S corporations. (1) Partners and shareholders of S corporations which are not New York C corporations. The amounts of modifications under subdivision (c) or under paragraph two or three of subdivision (d) required to be made by a partner or by a shareholder of an S corporation (other than an S corporation which is a New York C corporation), with respect to items of deduction of a partnership or S corporation shall be determined under section 11-1717.

(2) Shareholders of S corporations which are New York C corporations. In the case of a shareholder of an S corporation which is a New York C corporation, the modifications under this section which relate to the corporation's items of deduction shall not apply, except for the modification provided under paragraph six of subdivision (c).

(3) New York S termination year. In the case of a New York S termination year, the amounts of the modifications required under this section which relate to the S corporation's items of deduction shall be adjusted in the same manner that the S corporation's items are adjusted under subdivision (s) of section 11-1712.

(f) The city itemized deduction otherwise allowable under this section shall be reduced by the sum of the amounts determined under paragraphs one, two and three of this subdivision.

(1) An amount equal to the city itemized deduction otherwise allowable under subdivision (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction,

(A) in the case of an unmarried individual or married individual filing a separate return, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars;

(B) in the case of a married individual filing a joint return or a surviving spouse, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over two hundred thousand dollars and the denominator of which is fifty thousand dollars;

(C) in the case of a head of household, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over one hundred fifty thousand dollars and the denominator of which is fifty thousand dollars.

(2) An amount equal to the city itemized deduction of an individual otherwise allowable under subdivision (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over four hundred seventy-five thousand dollars and the denominator of which is fifty thousand dollars.

(3) With respect to an individual whose city adjusted gross income is over one million dollars, an amount equal to the city itemized deduction of an individual otherwise allowable under subdivision (a) of this section, except the portion of the deduction attributable to any charitable contribution allowed under section one hundred seventy of the internal revenue code, multiplied by fifty percent, for taxable years beginning after two thousand eight.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1773)

Section added (as § 11-1773) chap 907/1985 § 1

Subd. (a) amended chap 333/1987 § 130

Subd. (b) par (1) amended chap 639/1986 § 64

Subd. (b) par (2) amended chap 333/1987 § 131

Subd. (c) par (1) amended chap 497/1997 § 3, eff. Aug. 26, 1997

Subd. (c) par (2) amended chap 406/1990 § 7 eff. July 10, 1990

Subd. (c) par (2) amended chap 639/1986 § 65

Subd. (c) par (3) amended chap 333/1987 § 132

Subd. (c) par (3) amended chap 639/1986 § 65

Subd. (c) par (4) added chap 42/1997 § 6, eff. Apr. 17, 1997 and deemed in force for taxable years beginning Jan. 1, 1996

Subd. (c) par (6) renumbered chap 639/1986 § 66 (formerly par (4))

Subd. (c) par (6) subpar (B) amended chap 190/1990 § 24, eff. May 25, 1990 applying to taxable years beginning after 1989

Subd. (c) par (6) subpar (B) amended chap 639/1986 § 66

Subd. (c) par (7) repealed chap 407/1999 § M19, eff. Aug. 9, 1999 and applying to taxable years beginning on or after Jan. 1, 1997 as per chap 63/2000 § H1, eff. May 15, 2000 and deemed in effect Aug. 9, 1999.

Subd. (c) par (7) added chap 61/1989 § 361

Subd. (d) par (2) amended chap 406/1990 § 8 eff. July 10, 1990

Subd. (d) par (2) amended chap 639/1986 § 67

Subd. (d) par (3) amended chap 639/1986 § 67

Subd. (d) par (4) added chap 85/2002 § N2, eff. May 29, 2002 and applying to taxable years beginning on or after Jan. 1, 2001.

Subd. (e) amended chap 760/1992 § 85, eff. July 31, 1992

Subd. (e) amended chap 639/1986 § 68

Subd. (f) amended chap 57/2009 § 3 of Part W-1, eff. Apr. 7, 2009. [See Note 1]

Subd. (f) added chap 333/1987 § 133

DERIVATION

Formerly § T46-115.0 added LL 36/1976 § 2

Sub c par 4 repealed chap 70/1978 § 39

Sub c par 4 added chap 606/1984 § 35

Sub e amended chap 606/1984 § 36

NOTE

1. Provisions of chap 57/2009 Part W-1:

. . . . . .

§ 5. Notwithstanding the provisions of subsection (c) of section 685 of the tax law or subdivision (c) of section 11-1785 of the administrative code of the city of New York, no addition to tax as a result of an underpayment of estimated tax that is attributable to the amendments made by sections one, two and three of this act shall be imposed with respect to any installment the due date for the payment of which is prior to 45 days after the date this act shall have become a law. § 6. Notwithstanding any provision of law to the contrary, the commissioner of taxation and finance is authorized to prescribe by regulations the method of determining the amount to be deducted and withheld from wages on account of taxes imposed by or pursuant to the authority of article 22 of the tax law in taxable years beginning in 2009 in connection with the implementation of section one of this act. The commissioner of taxation and finance may adjust the withholding tables in regard to taxable years beginning in 2009 to account for the provisions of this act. In prescribing any such regulations, the commissioner of taxation and finance may adopt rules on an emergency basis notwithstanding anything to the contrary in section 202 of the state administrative procedure act. In carrying out his duties and responsibilities under this section, the commissioner of taxation and finance may accompany any such rule making procedure with a similar procedure with respect to the taxes required to be deducted and withheld by local laws imposing taxes pursuant to the authority of articles 30, 30-A and 30-B of the tax law that take effect and become applicable in taxable years beginning in 2009, the provisions of any other law in relation to such a procedure to the contrary not- withstanding. § 7. This act shall take effect immediately.

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1716

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1716 City exemptions of a city resident individual.

(a) General. For taxable years beginning after nineteen hundred eighty-seven, a city resident individual shall be allowed a city exemption of one thousand dollars for each exemption for which such resident individual is entitled to a deduction for the taxable year under subsection (c) of section one hundred fifty-one of the internal revenue code; and for taxable years beginning in nineteen hundred eighty-seven, a city resident individual other than a taxpayer whose federal exemption amount is zero shall be allowed a city exemption of nine hundred dollars for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and wife. If the city income taxes of a husband and wife are required to be separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to the city exemptions under subdivision (a) of this section to which each would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

HISTORICAL NOTE

Section amended chap 333/1987 § 134

Section renumbered chap 639/1986 § 43 (formerly § 11-1774)

Section added (as § 11-1774) chap 907/1985 § 1

Subd. (b) amended chap 760/1992 § 86, eff. July 31, 1992

DERIVATION

Formerly § T46-116.0 added LL 36/1976 § 2

Amended chap 70/1978 § 40

Amended chap 103/1981 § 67

Sub a amended LL 29/1985 § 39

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1717

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1717 Resident partners and shareholders of S corporations.

(a) Partner's and shareholder's modifications. In determining city adjusted gross income and city taxable income of a city resident partner or a city resident shareholder of an S corporation (other than an S corporation which is a New York C corporation), any modification described in subdivision (b), (c) or (d) of section 11-1712, or subdivision (c) of section 11-1715 or paragraph two or three of subdivision (d) of such section, which relates to an item of partnership or S corporation income, gain, loss or deduction shall be made in accordance with the partner's distributive share or the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with his or her share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally. In the case of a New York S termination year, his or her pro rata share of any such item shall be determined under subdivision (s) of section 11-1712.

(b) Character of items. Each item of partnership and S corporation income, gain, loss, or deduction shall have the same character for a partner or shareholder under this subchapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if realized directly from the source from which realized by the partnership or S corporation or incurred in the same manner as incurred by the partnership or S corporation.

(c) City tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1775)

Section added (as § 11-1775) chap 907/1985 § 1

Subd. (a) amended chap 190/1990 § 25, eff. May 25, 1990 and

applying to taxable years beginning after 1989

Subd. (a) amended chap 639/1986 § 69

Subd. (c) amended chap 639/1986 § 69

DERIVATION

Formerly § T46-117.0 added LL 36/1976 § 2

Section heading amended chap 606/1984 § 37

Subs a, b amended chap 606/1984 § 37

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1717.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1717.1 Residents; special provisions.

Notwithstanding any other provisions of this chapter, the city adjusted gross income and the city taxable income of a resident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, shall not include any item of income, gain, loss or deduction of such business, which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes. Provided however, such individual's city adjusted gross income shall include his or her distributive or pro rata share of the allocated entire net income as determined by such business under sections fifteen hundred three and fifteen hundred four of the tax law. In the event such allocated entire net income is a loss, there shall not be subtracted from federal adjusted gross income in computing city adjusted gross income such individual's distributive share of such loss.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1776)

Section added (as § 11-1776) chap 907/1985 § 1

DERIVATION

Formerly § T46-117.1 added chap 480/1978 § 23

(Legislative intent, insurance exchange, chap 480/1978 § 36)

Amended chap 639/1986 § 26

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1718

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1718 City taxable income of a city resident estate or trust.

The city taxable income of a city resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications: (1) Repealed.

(2) There shall be subtracted the modifications described in paragraphs four and five of subdivision (c) of section 11-1712, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(3) There shall be added or subtracted (as the case may be) the share of the estate or trust in the city fiduciary adjustment determined under section 11-1719.

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-nine, thirty-four and thirty-five of subdivision (b) and in paragraphs eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of section 11-1712 of this subchapter.

(4) There shall be added or subtracted (as the case may be) the modifications described in paragraphs six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-seven,

twenty-eight, twenty-nine, thirty-four and thirty-five of subdivision (b) and in paragraphs eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of section 11-1712 of this subchapter.

(5) In the case of a trust, there shall be added the amount of any includible gain, reduced by any deductions properly allocable thereto, upon which tax is imposed for the taxable year pursuant to section six hundred forty-four of the internal revenue code.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1777)

Section added (as § 11-1777) chap 907/1985 § 1

Subd. (1) repealed chap 333/1987 § 135

Subds. (2), (3) amended chap 639/1986 § 70

Subd. (4) (laid out first) amended chap 25/2009 § C22, eff. May 7, 2009. [See Note 1]

Subd. (4) (laid out first) amended chap 57/2008 Part HH-1 § 11, eff. Apr. 23, 2008 and applying to taxable years beginning on or after Jan. 1, 2008 and the amendments made by chap 57/2008 Part HH-1 § 11, shall expire as such subdivision expires.

Subd. (4) (laid out second) amended chap 25/2009 § C22, eff. May 7, 2009. [See Note 1] Note: This amendment is incorporated here because it survives the expiration of chap 782/1988. [See Note 1]

Subd. (4) (laid out second) amended chap 57/2008 Part HH-1 § 12, eff. upon expiration of Subd. (4) (laid out first).

Subd. (4) amended chap 760/1992 § 87, eff. July 31, 1992 and does not affect the expiration provisions of chap 782/1988

Subd. (4) amended chap 782/1988 § 6

Subd. (4) separately amended ch. 333/1987 § 136 and chap 265/1987 § 11

Subd. (4) amended chap 639/1986 § 70

Subd. (4) amended chap 306/1985 § 15

Subd. (5) added chap 384/1988 § 8

Subd. (5) repealed chap 333/1987 § 136-a

Subd. (5) amended chap 639/1986 § 70

DERIVATION

Formerly § T46-118.0 added LL 36/1976 § 2

Sub 4 amended chap 33/1978 § 9

Sub 5 repealed chap 70/1978 § 41

Sub 5 added chap 70/1978 § 42

Sub 4 amended chap 424/1978 § 3

Sub 5 amended chap 729/1978 § 11

Sub 4 amended chap 103/1981 § 59

Sub 4 amended chap 1043/1981 § 52

Sub 4 amended chap 55/1982 § 40

Sub 4 amended chap 547/1982 § 8

Sub 4 amended chap 15/1983 § 122

Sub 4 amended chap 306/1985 § 15

NOTE

1. Provisions of chap 25/2009:

Section 1. Legislative findings and declaration of purpose. 1. Mass transportation services in the metropolitan commuter transportation district ("MTA district") are essential to meeting the basic mobility and economic needs of the citizens of the MTA district, the state and the region. The contributions of such mass transportation services are also essential to addressing fundamental environmental policy and social needs of the state's residents.

2. The metropolitan transportation authority must continue to function as the primary provider of reasonably priced, safe and reliable mass transportation services in the MTA district.

3. It is of vital importance to the ability of the metropolitan transportation authority to meet the continued need for mobility and for the economic health of the MTA district that additional dedicated sources of reliable funding be made promptly available.

4. Such funding is needed to ensure the continuation of reasonable fares and provide for the continuation of the capital program of the authority to ensure the ongoing rehabilitation, improvement and expansion of the mass transit system.

5. It is the intent of the governor and legislature to continue to fund the capital program of the metropolitan transportation authority as well as other transportation needs of the state including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities on a multi-year basis.

6. It is the intent of the governor and the legislature to address the capital needs of the department of transportation including highways and bridges, non-MTA transit, passenger and freight rail and aviation and port facilities at the same time and for the same duration as the next MTA capital program. The governor and the legislature request that the department of transportation begin the development of such a program immediately and provide the legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multi-year capital program by October 1, 2009.

§ 2. This act enacts into law major components of legislation relating to the metropolitan transportation authority and the metropolitan commuter transportation district. Each component is wholly contained within a Part identified as Parts A through H. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

. . . . . .

PART C

. . . . . .

§ 23. This act shall take effect immediately; provided however that:

. . . . . .

(e) the amendments to subdivision 4 of § 11-1718 of the administrative code of the city of New York made by section twenty-two of this act shall survive the expiration and reversion of such subdivision as provided in section 8 of chapter 782 of the laws of 1988, as amended.

. . . . . .

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein. § 4. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through H of this act shall be as specifically set forth in the last section of such Parts.

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1719

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1719 Share of a resident estate, trust or beneficiary in city fiduciary adjustment.

(a) General. An adjustment shall be made in determining city taxable income of a city resident estate or trust under section 11-1718, or city adjusted gross income of a city resident beneficiary of any estate or trust under subdivision (d) of section 11-1712, in the amount of the share of each in the city fiduciary adjustment as determined in this section.

(b) Definition. The city fiduciary adjustment shall be the net amount of the modifications described in section 11-1712 (including subdivision (d) if the estate or trust is a beneficiary of another estate or trust), and in subdivision (c) and paragraphs two and three of subdivision (d) of section 11-1715, which relate to items of income, gain, loss or deduction of an estate or trust. The net amount of such modifications shall not include:

(1) Any modification described in paragraphs one and two of subdivision (b) and paragraphs one, two, four, five, six, and seven of subdivision (c) of section 11-1712 with respect to any amount which, pursuant to the terms of the governing instrument, is paid or permanently set aside for a charitable purpose during the taxable year, and

(2) Any modification described in paragraph four or five of subdivision (c) of section 11-1712, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(c) Shares of city fiduciary adjustment.

(1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the city fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(2) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the city fiduciary adjustment shall be in proportion to his or her share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the city fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate attribution of modifications. The tax commission may by regulation establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable. Such method may be used by the fiduciary in his or her discretion whenever the allocation of the fiduciary adjustment pursuant to subdivision (c) of this section would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1778)

Section added (as § 11-1778) chap 907/1985 § 1

Subds. (a), (b) amended chap 639/1986 § 71

DERIVATION

Formerly § T46-119.0 added LL 36/1976 § 2

Sub b par 3 repealed chap 70/1978 § 41

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1721

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1721 Credit to trust beneficiary receiving accumulation distribution.

(a) General. A city resident beneficiary of a trust whose city adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section six hundred sixty-five of the internal revenue code, shall be allowed a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax paid by the trust under this chapter or under title T of chapter forty-six of this code, as it was in effect prior to September first, nineteen hundred eighty-six, for any preceding taxable year which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in section six hundred sixty-six of the internal revenue code.

(b) Limitation. The credit under this section shall not reduce the tax otherwise due from the beneficiary under this chapter to an amount less than would have been due if the accumulation distribution or his or her part thereof were excluded from his or her city adjusted gross income.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1779)

Section added (as § 11-1779) chap 907/1985 § 1

Subds. (a), (b) amended chap 639/1986 § 72

DERIVATION

Formerly § T46-121.0 added LL 36/1976 § 2

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1722

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1722 City minimum taxable income of city resident individual.

(a) The city minimum taxable income of a city resident individual, estate or trust shall be the sum of the items of tax preference, as described in subdivision (b) of this section, reduced (but not below zero) by the aggregate of the following:

(1) the applicable specific deduction described in subdivision (c) of this section;

(2) the subtraction for New York state tax determined under paragraph two of subsection (a) of section six hundred twenty-two of the tax law; and

(3) to the extent that the sum of the items of tax preference exceeds the applicable specific deduction described in subdivision (c) of this section plus the tax described in paragraph two above, the amount of any net operating loss of the taxpayer, as determined for federal income tax purposes, which remains as a net operating loss carryover to a succeeding taxable year. In such case, however, the amount of such net operating loss used to reduce the sum of the items of tax preference shall be treated as an item of tax preference in the next succeeding taxable years, in order of time, in which such net operating loss carryover reduces federal taxable income.

(b) For purposes of this chapter, the term "items of tax preference" shall mean the federal items of tax preference, as defined in section fifty-seven of the internal revenue code, of a city resident individual, estate or trust (but

only to the extent apportioned to such estate or trust under such code), as the case may be, for the taxable year, with the modifications specified in this subdivision and adjusted as provided for in subdivision (e) of this section.

(1) The federal items of tax preference with respect to depletion shall be excluded from the computation of items of tax preference.

(2) Except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the federal item of tax preference with respect to the accelerated cost recovery deduction shall be excluded from the computation of items of tax preference.

(3) In the case of a shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made with respect to such corporation, the federal items of tax preference of the corporation shall be excluded from the computation of items of tax preference.

(4) The federal item of tax preference with respect to tax exempt interest shall be excluded from the computation of items of tax preference.

(c) Specific deduction.

(1) City resident individuals. Five thousand dollars for individuals or married persons filing joint returns and twenty-five hundred dollars for married individuals filing separate returns.

(2) City resident estates or trusts. An amount, not to exceed five thousand dollars, which bears the same ratio to five thousand dollars as the items of tax preference of such estate or trust computed under subdivision (b) of this section bear to the sum of the items of tax preference of such estate or trust computed under the laws of the United States for the taxable year, with the modifications described in such subdivision (b), but without regard to any apportionment of the items of tax preference between such estate or trust and the beneficiaries thereof under such laws of the United States.

(d) Disallowance of credits. The credits against tax under this chapter, except for the credit under section 11-1773, shall not be allowed as a credit against the tax imposed by section 11-1702.

(e) The items of tax preference determined under subdivision (b) of this section shall be adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's tax determined under section six hundred one of the tax law for any taxable year.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 43 (formerly § 11-1780)

Section added (as § 11-1780) chap 907/1985 § 1

Subd. (a) par (2) amended chap 333/1987 § 137

Subd. (a) par (2) amended chap 639/1986 § 73

Subd. (b) open par amended chap 333/1987 § 138

Subd. (b) pars (1), (2), (4), (5) repealed chap 333/1987 § 139. (Repealed

pars (1), (2), (5) were amended by chap 639/1986 § 74)

Subd. (b) pars (1), (2) renumbered chap 333/1987 § 139 (former pars (3), (6))

Subd. (b) par (3) renumbered and amended chap 333/1987 § 140 (former par 7 added chap 341/1986 § 3)

Subd. (b) par (4) added chap 333/1987 § 140

Subd. (b) par (7) amended out of law chap 333/1987 § 140 (former par (7) added chap 638/1986 § 17)

Subd. (d) amended chap 333/1987 § 141

Subd. (d) amended chap 639/1986 § 75

Subd. (e) added chap 333/1987 § 142

DERIVATION

Formerly § T46-122.0 added LL 36/1976 § 2

Sub b par 5 added chap 669/1980 § 2

Sub b par 4 amended chap 103/1981 § 46

Sub b par 6 added chap 55/1982 § 41

Sub b par 6 amended chap 15/1983 § 123

Sub b par 6 amended chap 43/1985 § 22

Sub b par 7 added chap 341/1986 § 2

Sub b par 7 added chap 638/1986 § 16

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1724

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 2 RESIDENTS*4

§ 11-1724 Computation of separate tax on the ordinary income portion of lump sum distributions received by city resident individuals, estates and trusts.

(a) Amount of separate tax. The amount of tax imposed under section 11-1703 for any taxable year, with respect to the ordinary income portion of a lump sum distribution received by a city resident individual, estate or trust is an amount equal to five times the tax which would be imposed by section 11-1701 at the rate set forth in paragraph three of subdivision (a) or (b), whichever may be applicable, if the recipient of such lump sum distribution were an individual referred to in such subdivision and the city taxable income were an amount equal to one-fifth of the excess of:

(1) the total taxable amount of the lump sum distribution for the taxable year, over

(2) the minimum distribution allowance.

(b) Minimum distribution allowance. For purposes of this section, the minimum distribution allowance shall be that which is calculated according to subparagraph (C) of paragraph one of subsection (e) of section four hundred two of the internal revenue code.

(c) Multiple distributions and distributions of annuity contracts. For purposes of this section, the rules concerning multiple distributions and distributions of annuity contracts as specified by paragraph two of subsection (e) of section four hundred two of the internal revenue code shall be applicable, except that references to "paragraph (1)

(A)" shall be deemed to be references to this section, and except that only lump sum distributions (or portions thereof) and distributions of annuity contracts subject to tax under this chapter shall be included, and except that references to the secretary shall be deemed to be references to the tax commission.

(d) Definitions and special rules. For purposes of this section, the following provisions shall apply, to the extent applicable to the taxpayer's federal tax on lump sum distributions: (1) the definitions and special rules as specified in paragraph four of subsection (e) of section four hundred two of the internal revenue code; and (2) the special rules relating to (A) individuals who have attained the age of fifty before January first, nineteen hundred eighty-six and (B) capital gains, as specified in paragraphs three, four, five and six of subsection (h) of section eleven hundred twenty-two of the tax reform act of nineteen hundred eighty-six as enacted by public law 99-514, but (i) in the event that paragraph three of such subsection is applicable, clause (ii) of subparagraph (B) of such paragraph shall be applied using a rate of one and seventy-two hundredths percent, and (ii) in the event that paragraph five of such subsection is applicable, the words "five" and "one-fifth" in subdivision (a) of this section shall be read as "ten" and "one-tenth", respectively, and subdivision (a) of this section shall be applied by using the rate of tax specified in subdivision (a) of section 11-1702 as such subdivision was in effect for taxable years beginning in nineteen hundred eighty-six.

HISTORICAL NOTE

Section amended chap 333/1987 § 143

Section renumbered chap 639/1986 § 43 (formerly § 11-1781)

Section added (as § 11-1781) chap 907/1985 § 1

Subds. (a), (b) amended chap 639/1986 § 76

Subd. (d) amended chap 760/1992 § 88, eff. July 31, 1992

Subd. (d) amended chap 639/1986 § 76

DERIVATION

Formerly § T46-124.0 added chap 607/1978 § 24

FOOTNOTES

4

[Footnote 4]: * Subchapter 2 added by chap 907/1985 § 1 was repealed and these sections were renumbered into subchapter 2, former §§ 11-1769-11-1781.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1751

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1751 Returns and liabilities.

(a) General. On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this chapter shall be made and filed by or for every city resident individual, estate or trust required to file a New York state personal income tax (including a minimum income tax and separate tax on the ordinary income portion of lump sum distributions) return for the taxable year.

(b) Husband and wife. (1) If the New York state personal income tax liability of husband and wife is determined on a separate return, their city personal income tax liabilities and returns shall be separate.

(2) If the New York state personal income tax liabilities of husband and wife (other than a husband and wife described in paragraph three) are determined on a joint return, they shall file a joint city personal income tax return, and their tax liabilities shall be joint and several except as provided in paragraph five of this subdivision, section 11-1755 of this chapter and subsection (e) of section six hundred eighty-five of the tax law.

(3) If either husband or wife is a city resident and the other is a city nonresident, and their New York state personal income tax liabilities are determined on a joint return:

(A) they may elect to file a joint city personal income tax return as if both were residents, in which case their city personal income tax liabilities shall be joint and several except as provided in paragraph five of this subdivision,

section 11-1755 of this chapter and subsection (e) of section six hundred eighty-five of the tax law, or

(B) the resident spouse may elect to file a separate city personal income tax return, in which case his city personal income tax liability shall be determined as if he were filing a separate New York state personal income tax return.

(4) Repealed.

(5) If a joint return has been made under this subdivision for a taxable year and only one spouse is liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or an amount of a default in repayment of a guaranteed student, state university or city university loan of which the state commissioner of taxation and finance has been notified pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax law, as the case may be, then an overpayment and interest thereon shall be credited against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan, unless the spouse not liable for such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan demands, on a declaration made in accordance with regulations or instructions prescribed by the state commissioner of taxation and finance, that the portion of the overpayment and interest attributable to such spouse not be credited against the past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan owed by the other spouse. Upon such demand, the state commissioner of taxation and finance shall determine the amount of the overpayment attributable to each spouse in accordance with regulations prescribed by the state commissioner of taxation and finance and credit only that portion of the overpayment and interest thereon attributable to the spouse liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan. Such demand may be filed (A) with the return of the spouse not liable for past-due support or past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or default in repayment of a guaranteed student, state university, or city university loan or (B) with the commissioner of taxation and finance within ten days after notification is provided such spouse by the commissioner of taxation and finance pursuant to subdivision seven of section one hundred seventy-one-c, subdivision six of section one hundred seventy-one-d, subdivision seven of section one hundred seventy-one-e, subdivision seven of section one hundred seventy-one-f or subdivision six of section one hundred seventy-one-l of the New York state tax law.

(6) The state commissioner of taxation and finance shall clearly alert married taxpayers, on all appropriate publications and instructions, that their liability for tax will be joint and several if they file joint income tax returns. The state commissioner of taxation and finance shall include notice of an individual's right to relief from joint and several liability pursuant to section six hundred fifty-four of the tax law in the disclosure of rights statement required by section three thousand four of the tax law and in any notice regarding collection of tax due with respect to a liability on a joint return.

(c) Decedents. The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(d) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property),

or by his or her duly authorized agent.

(e) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(h) Tax a debt. Any tax under this chapter, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the city of New York.

(i) Cross reference. For provisions as to information returns by partnerships, employers and other persons, see section 11-1758.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 78 (formerly § 11-1782)

Section added (as § 11-1782) chap 907/1985 § 1

Subd. (a) amended chap 333/1987 § 144

Subd. (a) amended chap 639/1986 § 79

Subd. (b) amended chap 686/1989 § 12

Subd. (b) amended chap 333/1987 § 145

Subd. (b) par (2) amended chap 407/1999 § QQ14, eff. Aug. 9, 1999 and applying to taxable years beginning on and after Jan. 1, 1999.

Subd. (b) par (3) subpar (A) amended chap 407/1999 § QQ14, eff. Aug. 9, 1999 and applying to taxable years beginning on and after Jan. 1, 1999.

Subd. (b) par (4) repealed chap 407/1999 § QQ15, eff. Aug. 9, 1999 and applying to taxable years beginning on and after Jan. 1, 1999.

Subd. (b) par (5) amended chap 60/2004 § R20 eff. Aug. 20, 2004.

Subd. (b) par (5) amended chap 55/1992 § 95, eff. Apr. 10, 1992

Subd. (b) par (6) added chap 407/1999 § QQ16, eff. Aug. 9, 1999 and applying to taxable years beginning on and after Jan. 1, 1999.

Subd. (b) par (6) subpar (A) amended chap 639/1986 § 80

Subd. (h) relettered and amended chap 639/1986 § 81 (formerly subd. (g))

Subd. (i) amended chap 639/1986 § 82

DERIVATION

Formerly § T46-151.0 added LL 36/1976 § 2

Sub a amended chap 70/1978 § 43

Sub a amended chap 607/1978 § 25

Sub b par 5 subpar B amended chap 545/1982 § 13

Sub b par 5 subpar B amended chap 546/1982 § 13

Sub b par 6 amended chap 546/1982 § 14

Sub b par 5 subpar B amended chap 559/1984 § 10

Sub b par 6 subpar ii amended chap 559/1984 § 11

Sub b par 6 amended chap 65/1985 § 134

Sub b par 5 subpar B amended chap 638/1985 § 10

Sub b par 6 subpar B amended chap 638/1985 § 11

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1752

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1752 Time and place for filing returns and paying tax.

(a) Except as provided in subdivision (b) of this section, a person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner of taxation and finance on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The commissioner shall prescribe by regulation the place for filing any return, statement, or other document required pursuant to this chapter and for payment of any tax.

(b) The commissioner of taxation and finance may allow individuals who have income only from wages, salaries, tips and like remuneration for services performed as an employee, interest, dividends and unemployment compensation to elect to have the commissioner compute the tax due. To provide for expeditious and uniform administration of the tax computations which involve numerous variables, the commissioner may further qualify, with regard to period of residency, deductions, credits, exemptions, amount and character of gross income, and any other appropriate factors relative to calculation of tax, those individuals who may elect to have their taxes computed by the commissioner. Any such election shall be made on the form prescribed by the commissioner for this purpose. If a qualified taxpayer elects to have the commissioner compute the tax, the amount determined by the commissioner shall be paid (i) within ten days from the date of the issuance of a notice and demand therefor or (ii) on the date fixed for filing such return (determined without regard to any extension of time for filing), whichever is later.

HISTORICAL NOTE

Section amended chap 770/1992 § 14, eff. Aug. 7, 1992.

Section renumbered and amended chap 639/1986 §§ 78, 83

(formerly § 11-1783)

Section added (as § 11-1783) chap 907/1985 § 1

DERIVATION

Formerly § T46-152.0 added LL 36/1976 § 2

Amended chap 65/1985 § 135

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

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***** Current through December 2009 ****

NYC Administrative Code 11-1753

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1753 Signing of returns and other documents.

(a) General. Any return, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the tax commission. The fact that an individual's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by such individual.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 78 (formerly § 11-1784)

Section added (as § 11-1784) chap 907/1985 § 1

Subds. (a), (c) amended chap 639/1986 § 84

DERIVATION

Formerly § T46-153.0 added LL 36/1976 § 2

Subs a, c amended chap 65/1985 § 136

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

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NYC Administrative Code 11-1754

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1754 Change of resident status.

(a) General. If an individual changes his or her status during his or her taxable year from city resident to city nonresident, or from city nonresident to city resident, such individual shall file one return as a resident for the portion of the year during which he or she is a city resident, and a return under chapter nineteen of this title, for the portion of the year during which he or she is a city nonresident, subject to such exceptions as the tax commission may prescribe by regulation.

(b) City taxable income and city minimum taxable income as city resident. The city taxable income and city minimum taxable income for the portion of the year during which he or she is a city resident shall be determined, except as provided in subdivision (c), as if his or her taxable year for federal income tax purposes were limited to the period of his or her city resident status.

(c) Special accruals.

(1) If an individual changes his or her status from city resident to city nonresident, he or she shall, regardless of his or her method of accounting, accrue to the period of residence any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for city income tax purposes for the portion of the taxable year prior to the change of status or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable

modifications described in sections 11-1712 and 11-1715 as if such accrued items were includible or allowable for federal income tax purposes.

(2) If an individual changes his or her status from city nonresident to city resident, he or she shall, regardless of his or her method of accounting, accrue to the period of nonresidence any items of income, gain, loss or deduction accruing prior to the change of status, other than items derived from or connected with New York state sources, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for federal income tax purposes for the portion of the taxable year prior to the change of status or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections 11-1712 and 11-1715 as if such accrued items were includible or allowable for federal income tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subdivision shall be taken into account in determining city adjusted gross income or the city itemized deduction for any subsequent taxable period.

(4) The accruals under this subdivision shall not be required if the individual files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the inclusion of amounts accruable under this subdivision in city adjusted gross income for one or more subsequent taxable years as if the individual had not changed his or her resident status.

(5) The foregoing provisions of this section shall apply if an individual changes his status from a city resident to city nonresident or from a city nonresident to a city resident during a taxable year, or at the beginning of a taxable year, as a result of a change of domicile or as a result of becoming a city resident or city nonresident based on the definition contained in subparagraph (B) of paragraph one of subdivision (b) of section 11-1705 of this chapter.

(6) Except as hereinafter provided, where an individual who is a member of a partnership or shareholder of an S corporation changes status from city resident to city nonresident, or from city nonresident to city resident, the portion of the distributive or pro rata share of income, gain and loss (less deductions attributable thereto) from a partnership or S corporation shall be allocated to the resident and nonresident periods of the partner or shareholder on a proportionate basis throughout the taxable year of the partnership or S corporation. In such event, the portion of the distributive or pro rata share allocated to the period of residency shall be determined based on the number of days of residency within the reporting period of the partnership or S corporation over the total number of days in the reporting period of the partnership or S corporation. Provided, however, that the commissioner may require, or the individual may elect, to accrue to the period of residence, and the period of nonresidence, the portion of the distributive or pro rata share of partnership or S corporation income, gain and loss (less deductions attributable thereto) accruing during the individual's respective resident and nonresident periods in a manner that reflects the date of accrual of said income, gain and loss by the partnership or S corporation.

(7) Except as hereinafter provided, where an individual who is a beneficiary of an estate or trust changes status from city resident to city nonresident, or from city nonresident to city resident, the portion of any estate or trust income credited, distributable, payable or required to be distributed to such beneficiary shall be allocated to the resident and nonresident periods of the beneficiary on a proportionate basis throughout the taxable year of the estate or trust. In such event, the portion of such estate or trust income allocated to the period of residency shall be determined based on the number of days of residency within the reporting period of the estate or trust. Provided, however, that the commissioner may require, or the beneficiary may elect, to accrue to the period of residence, and the period of nonresidence, the portion of such estate or trust income accruing during the beneficiary's respective resident and nonresident periods in a manner that reflects the date of accrual of said estate or trust income by the estate or trust.

(d) City minimum tax. Where two returns are required under this section, the total of the taxes due thereon shall not be less than would be due if the city taxable incomes reportable on the two returns were included in one return.

(e) Proration. Where a return is required under this section, the city personal exemptions allowable under section

11-1716 shall be prorated, under regulations of the tax commission, to reflect the portions of the entire taxable year during which the individual was a resident.

(f) Standard deduction. Where a return is required under this section, the city standard deduction allowable on such return shall be the amount allowed pursuant to the provisions of section 11-1714, prorated according to the period covered by the return.

(g) Trusts. If the status of a trust changes during its taxable year from city resident to city nonresident, or from city nonresident to city resident, the fiduciary shall file one return as a city resident trust for the portion of the year during which the trust is a city resident trust, and one return under chapter nineteen of this title for the portion of the year during which the trust is a city nonresident trust, subject to such exceptions as the tax commission may prescribe by regulations. The provisions of subdivisions (b), (c), (d) and (e) of this section shall apply for the purposes of this subdivision, except to the extent that any of such provisions may be inconsistent with the provisions of section 11-1718, and except that the term "individual" shall be read as "trust", the term "city adjusted gross income" shall be read as "city taxable income", reference to "gain" shall include any modification for includible gain under subdivision five of section 11-1718, and the phrase "personal exemptions allowable under section 11-1716" shall be read as "city exemptions allowable under section 11-1718."

(h) Lump sum distributions. If the status of a taxpayer changes from city resident to city nonresident, or from city nonresident to city resident, the taxpayer shall, regardless of his or her method of accounting, accrue the total taxable amount of a lump sum distribution accruing prior to the change of status, if the ordinary income portion thereof is not otherwise subject to tax under section 11-1703 for the portion of the taxable year prior to the change in status or for a prior taxable year. No ordinary income portion of a lump sum distribution the total taxable amount of which is accrued under this subdivision shall be subject to tax under section 11-1703 for any subsequent taxable period. The accrual under this subdivision shall not be required if the taxpayer files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the payment of tax under section 11-1703, with respect to such amount accruable under this subdivision, for a subsequent taxable year as if the taxpayer had not changed its resident status.

(i) Deduction for two-earner married couples. Where a return is required under this section, the amount of deduction under paragraph twenty-nine of subdivision (c) of section 11-1712 shall be equal to ten percent of the lesser of:

(1) thirty thousand dollars, pro rated according to the period covered by the return or

(2) the qualified earned income of the spouse with the lower qualified earned income for the period covered by the return.

HISTORICAL NOTE

Section amended chap 712/2004 §4, eff. Nov. 16, 2004 and shall apply

to taxable years beginning on or after Jan. 1, 2004.

Section renumbered chap 639/1986 § 78 (formerly § 11-1785)

Section added (as § 11-1785) chap 907/1985 § 1

Subd. (b) amended chap 333/1987 § 146

Subd. (c) pars (1), (2) amended chap 639/1986 § 85

Subds. (e), (f) amended chap 639/1986 § 85

Subd. (g) amended chap 384/1988 § 9

Subd. (g) amended chap 639/1986 § 85

Subd. (h) relettered and amended chap 333/1987 § 146 (formerly subd. i as amended chap 639/1986 § 85, previous subd. (h) amended out of law chap 333/1987 § 146, was amended chap 639/1986 § 85

Subd. (i) added chap 333/1987 § 147

DERIVATION

Formerly § T46-154.0 added LL 36/1976 § 2

Sub f par 1 amended chap 70/1978 § 44

Sub a amended chap 70/1978 § 44

Sub i added chap 607/1978 § 26

Sub f par 1 amended chap 103/1981 § 65

Sub f amended chap 29/1985 § 40

CASE NOTES

¶ 1. A New York City resident won a $10 million lottery prize, which was payable in installments over a 20-year period. The taxpayer then moved outside of the City, to Yonkers. He argued that lottery installments he received after his move to Yonkers could not be considered income accrued while he was a City resident. However, the court held that when a taxpayer changes status from a City resident to a nonresident, the taxpayer's final City income tax return is subject to the accrual provisions of Section 11-1754. Thus, even if the taxpayer had previously reported income on a cash basis rather than on an accrual basis, the taxpayer was required to pay taxes as an accrual basis taxpayer all income (including the lottery installment) that accrued prior to the move to Yonkers. Blanco v.. Commissioner of Taxation and Finance, 723 N.Y.S.2d 558 (App.Div. 3d Dept. 2001).

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1755

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1755 Relief from joint and several liability on joint return.

(a) General. The provisions of section six thousand fifteen of the internal revenue code applicable to the liability of individuals who file joint income tax returns shall apply to the same extent as if such section of such code were contained in and made part of this section, except to the extent that any provision of such section is either inconsistent with or not relevant to this chapter and except as modified in subdivision (b) of this section, or with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this chapter.

(b) Modifications. Section six thousand fifteen of the internal revenue code shall be read as modified by this subdivision.

(1) "Secretary" shall be read as "state commissioner of taxation and finance".

(2) "Internal revenue service" shall be read as "department of taxation and finance".

(3) "Tax court" shall be read as "division of tax appeals".

(4) In the heading of subsection (a) and in clause (ii) of subparagraph (A) of paragraph three of subsection (c), the phrase "section 6013(d)(3)" shall be read as "paragraphs two and three of subdivision (b) of section 11-1751 of this chapter".

(5) In paragraph three of subsection (b), the phrase "section 6662(d)(2)(A)" shall be read as "subdivision (p) of section 11-1785 of this chapter".

(6) In subparagraph (B) of paragraph two of subsection (d), the phrase "section 1 or 55" shall be read as "section 11-1701 or 11-1702 of this chapter".

(7) In clause (i) of subparagraph (B) of paragraph one of subsection (e), the phrase "section 6851 or 6861" shall be read as "section 11-1794 of this chapter" and "section 7485" shall be read as "subdivision (c) of section 11-1790 of this chapter".

(8) In paragraph two of subsection (e), the phrase "section 6502" shall be read as "section one hundred seventy-four-a of the tax law and section 11-1792 of this chapter".

(9) In subparagraph (A) of paragraph three of subsection (e), the phrase "section 6512(b), 7121, or 7122" shall be read as "subdivision fifteenth, eighteenth, eighteenth-a or eighteenth-d of section one hundred seventy-one of the tax law and subdivision (b) of section 11-1789 of this chapter".

(10) The following provisions of such section six thousand fifteen shall be disregarded: (A) The phrase "notwithstanding the provisions of section 7421(a)" contained in clause (ii) of subparagraph (B) of paragraph one of subsection (e); and (B) subparagraph (C) of paragraph three of subsection (e).

(c) Federal determination. If an individual is relieved of a federal income tax liability pursuant to subsection (b) of section six thousand fifteen of the internal revenue code, there shall be a rebuttable presumption that such individual shall also be entitled to equivalent relief from liability under this section, to the extent that such individual has an understatement of tax under this chapter for the same taxable year that is attributable to the same erroneous item or items to which the individual's federal income tax liability was attributable.

HISTORICAL NOTE

Section added chap 407/1999 § QQ17, eff. Aug. 9, 1999 and applying to

taxable years beginning on and after Jan. 1, 1999.

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

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NYC Administrative Code 11-1757

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1757 Extensions of time.

(a) General. The commissioner of taxation and finance may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, statement, or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States or who intends to claim nonresident status pursuant to clause (ii) of subparagraph (A) of paragraph one of subdivision (b) of section 11-1705, no such extension for filing any return, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the tax commission may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the tax commission may require.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 78 (formerly § 11-1788)

Section added (as § 11-1788) chap 907/1985 § 1

Subd. (a) amended chap 760/1992 § 89, eff. July 31, 1992

Subd. (a) amended chap 639/1986 § 87

DERIVATION

Formerly § T46-157.0 added LL 36/1976 § 2

Sub a amended chap 675/1977 § 49

Sub a amended chap 65/1985 § 138

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1758

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1758 Requirements concerning returns, notices, records and statements.

(a) General. The tax commission may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commission may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commission may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) Identifying numbers. (1) When required by regulations prescribed by the tax commission:

(A) Inclusion in returns. Any person required under the authority of this chapter to make a return, statement, or other document shall include in such return, statement or other document such identifying number as may be prescribed for securing proper identification of such person.

(B) Furnishing number to other persons. Any person with respect to whom a return, statement or other document is required under the authority of this chapter to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his or her proper identification.

(C) Furnishing number of another person. Any person required under the authority of this chapter to make a return, statement, or other document with respect to another person shall request from such other person, and shall

include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(2) Limitation.

(A) Except as provided in subparagraph (B), a return of any person with respect to his or her liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of subparagraphs (B) and (C) of paragraph one of this subdivision as a return, statement or other document with respect to another person.

(B) For purposes of subparagraphs (B) and (C) of paragraph one of this subdivision, a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(3) Requirement of information. For purposes of this section, the tax commission is authorized to require such information as may be necessary to assign an identifying number to any person.

(c) Partnerships and S corporations.

(1) Partnerships. Every partnership having a city resident partner shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commission may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year except that the due date for the return of a partnership consisting entirely of nonresident aliens shall be the date prescribed for the filing of its federal partnership return for the taxable year. For purposes of this paragraph, "taxable year" means a year or a period which would be a taxable year of the partnership if it were subject to tax under this chapter.

(2) S corporations. Every S corporation for which the election provided for in subsection (a) of section six hundred sixty of the tax law is in effect shall make a return setting forth all items of income, loss and deduction and such other pertinent information as the tax commission may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the third month following the close of each taxable year.

(d) Information at source. The tax commission may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this chapter. Such returns may be required of any persons, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(e) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualification as such to the tax commission, as may be required by regulation.

(f) Repealed.

(g) Requirements applicable to tax return preparer.

(1) Signature of tax return preparer. Any individual who is a tax return preparer and prepares any return or claim for refund, shall sign such return or claim for refund in accordance with regulations or instructions prescribed by the commissioner of taxation and finance.

(2) Furnishing identifying numbers. Any return or claim for refund which is prepared by a tax return preparer shall include the identifying number of the preparer required by paragraph one of this subdivision to sign such return or claim for refund. In addition, where such individual preparer is an employee of an employer which is a tax return preparer with respect to such return or claim for refund, or where such preparer is a partner in a partnership which is a tax return preparer with respect to such return or claim for refund, then such return or claim for refund shall also include the identifying number of such employer or partnership. Such identifying numbers shall be as prescribed by the commissioner of taxation and finance in order to secure the proper identification of such individual preparer, partnership of employer. The responsibility for the inclusion of such identifying numbers shall be as set forth in paragraph two of subdivision (t) of section 11-1785.

(3) Furnishing copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund shall furnish a completed copy of such return or claim for refund to the taxpayer not later than the time such return or claim for refund is presented for such taxpayer's signature.

(4) Copy or list to be retained by tax return preparer. Any person who is a tax return preparer with respect to any return or claim for refund shall for a three year retention period described in paragraph nine of this subdivision:

(A) retain a completed copy of such return or claim for refund, or retain, on a list, the name and identification number of the taxpayer for whom such return or claim was prepared, and

(B) make such copy or list available for inspection upon request by the commissioner of taxation and finance.

(5) Tax return preparer defined. For purposes of this chapter, the term "tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation any return or claim for refund. The preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund. Where an employer and one or more employees of such employer are tax return preparers with respect to the same return or claim for refund, or where a partnershp and one or more partners in such partnership are tax return preparers with respect to the same return or claim for refund, for purposes of paragraphs three and four of this subdivision, such employer or such partnership shall be deemed to be the sole tax return preparer. A person shall not be a "tax return preparer" merely because such person-

(A) furnishes typing, reproducing, or other mechanical assis- tance,

(B) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed, or

(C) prepares as a fiduciary a return or claim for refund for any person.

(6) Person defined. For purposes of this subdivision, the term "person" includes an individual, corporation (including a dissolved corporation) or partnership.

(7) Return defined. For purposes of this subdivision, the term "return" shall mean any return required under this chapter.

(8) Claim for refund defined. For purposes of this subdivision, the term "claim for refund" shall mean a claim for refund of or credit against any tax imposed under this chapter, and shall include any claim for refund of any credit treated as an overpayment of tax under this chapter.

(9) Retention period defined. For purposes of this subdivision, the term "retention period" shall mean:

(A) in the case of a tax return, the period ending the later of three years after the due date of such return (without regard to extensions) or three years after the date such return was presented to the taxpayer for such taxpayer's

signature, and

(B) in the case of a claim for refund, the period ending three years after such claim for refund was presented to the taxpayer for such taxpayer's signature.

(10) Mandatory electronic filing by certain tax return preparers. (A) (i) If a tax return preparer prepared more than two hundred original returns during the calendar year beginning on January first, two thousand five, and if, in the calendar year beginning on January first, two thousand six, such tax return preparer prepares one or more authorized returns using tax software, then, for such calendar year two thousand six and for each subsequent calendar year thereafter, all authorized returns prepared by such tax return preparer shall be filed electronically, in accordance with instructions prescribed by the commissioner of taxation and finance.

(ii) If a tax return preparer prepared more than one hundred original returns during any calendar year beginning on or after January first, two thousand six, and if, in any succeeding calendar year such tax return preparer prepares one or more authorized returns using tax software, then, for such succeeding calendar year and for each subsequent calendar year thereafter, all authorized returns prepared by such tax return preparer shall be filed electronically, in accordance with instructions prescribed by the commissioner of taxation and finance.

(B) For purposes of this paragraph:

(i) "Electronic" means computer technology; provided, however, that the commissioner of taxation and finance may, in instructions, provide that use of barcode technology will also satisfy the mandatory electronic filing requirements of this section.

(ii) "Authorized return" means any return required under this article which the commissioner of taxation and finance has authorized to be filed electronically.

(iii) "Original return" means a return required under this article that is filed, without regard to extensions, during the calendar year for which that return is required to be filed.

(iv) "Tax software" means any computer software program intended for tax return preparation purposes.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 78 (formerly § 11-1789)

Section added (as § 11-1789) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 88

Subd. (b) par (1) subpars (A), (B), (C) amended chap 639/1986 § 89

Subd. (c) par (1) amended chap 639/1986 § 90

Subd. (d) amended chap 639/1986 § 91

Subd. (f) repealed chap 333/1987 § 148

Subd. (g) added chap 664/1990 § 6 eff. July 22, 1990 applying to returns

on and after April 15, 1991

Subd. (g) par (10) added chap 61/2005 § Q3 of § 1, eff. Apr. 12, 2005

and deemed to have been in full force and effect on and after Apr.

1, 2005.

DERIVATION

Formerly § T46-158.0 added LL 36/1976 § 2

Sub f amended chap 648/1983 § 9

Sub d amended chap 935/1983 § 33

Sub c amended chap 606/1984 § 38

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1759

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1759 Report of federal changes, corrections or disallowances.

If the amount of a taxpayer's federal taxable income, federal items of tax preference, total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust reported on his federal income tax return for any taxable year, or the amount of any claim of right adjustment, is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes is changed or corrected by such service or authority or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation, or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this section. Any taxpayer filing an amended federal income tax return and any employer filing an amended federal return of income tax withheld shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having a resident partner or having any income derived from New York sources, and a corporation with respect to which the taxable year of such change, correction, disallowance or amendment is a

year with respect to which the election provided for in subsection (a) of section six hundred sixty of the tax law is in effect, and (ii) the term "federal income tax return" shall include the returns of income required under sections six thousand thirty-one and six thousand thirty-seven of the internal revenue code. In the case of such a corporation, such report shall also include any change or correction of the taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code. Reports made under this section by a partnership or corporation shall indicate the portion of the change in each item of income, gain, loss or deduction (and, in the case of a corporation, of each change in, or disallowance of a claim for credit or refund of, a tax referred to in the preceding sentence) allocable to each partner or shareholder and shall set forth such identifying information with respect to such partner or shareholder as may be prescribed by the commissioner.

HISTORICAL NOTE

Section amended chap 577/1997 § 44, eff. Sept. 10, 1997

Section amended chap 190/1990 § 52 eff. May 25, 1990 applying on or

after July 1, 1990

Section amended chap 384/1988 § 10

Section amended chap 333/1987 § 149

Section renumbered and amended chap 639/1986 §§ 78, 92 (formerly

§ 11-1790)

Section added (as § 11-1790) chap 907/1985 § 1

DERIVATION

Formerly § T46-159.0 added LL 36/1976 § 2

Amended chap 607/1978 § 27

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1761

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1761 Change of election.

Any election expressly authorized by this chapter may be changed on such terms and conditions as the tax commission may prescribe by regulation.

HISTORICAL NOTE

Section renumbered and amended chap 639/1986 §§ 78, 92 (formerly § 11-1791)

Section added (as § 11-1791) chap 907/1985 § 1

DERIVATION

Formerly § T46-160.0 added LL 36/1976 § 2

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1762

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 3 RETURNS AND PAYMENT OF TAX*12

§ 11-1762 Computation of tax where taxpayer restores substantial amount held under claim of right.

(a) General. If:

(1) an item was included in city adjusted gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item, and

(2) for the current taxable year the provisions of paragraph five of subsection (a) of section thirteen hundred forty-one of the internal revenue code apply to such item, then the tax imposed by this chapter for the taxable year shall be an amount equal to

(3) the tax for the taxable year computed without regard to this section, minus

(4) the decrease in tax under this chapter for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from city adjusted gross income for such prior taxable year (or years).

(b) Special rules. If the decrease in tax ascertained under paragraph four of subdivision (a) of this section exceeds the tax imposed by this chapter for the taxable year, such excess shall be considered a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

HISTORICAL NOTE

Section added chap 577/1997 § 45, eff. Sept. 10, 1997 and applying to

items of claim of right income repaid in taxable years beginning after

1996

FOOTNOTES

12

[Footnote 12]: * Subchapter heading amended chap 639/1986 § 77, sections added by chap 907/1985 were repealed by chap 639/1986 §§ 43, 77, 78. Present sections were renumbered into this subchapter, former §§ 11-1782-11-1791.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1771

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1771 Requirement of withholding tax from wages.

(a) General. (1) Every employer maintaining an office or transacting business within this city or state and making payment on and after January first, nineteen hundred seventy-seven of any wages taxable under this chapter, or under section two of chapter eight hundred eighty-two of the laws of nineteen hundred seventy-five, as amended by chapter eight hundred eighty-six of the laws of nineteen hundred seventy-five, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this chapter or such section two resulting from the inclusion in the employee's city adjusted gross income of his or her wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the tax commission, with due regard to the city withholding exemptions of the employee and the sum of any credits allowable against his or her tax. The section shall not apply to payments by the United States for service in the armed forces of the United States so long as the right to require deduction and withholding of tax from such payments is prohibited by the laws of the United States. Service in the armed forces of the United States shall have the same meaning as when used in a comparable context in the laws of the United States relating to withholding of city income taxes.

(2) The tax commission may provide, by regulations, for withholding:

(A) from remuneration for services performed by an employee for his or her employer which does not constitute

wages, and

(B) from any other type of payment, with respect to which the tax commission finds that withholding would be appropriate under the provisions of this chapter, if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the tax commission may by regulations provide. For purposes of this chapter, remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(3) The tax commission shall provide by regulation for an exemption from withholding for: (i) employees under eighteen years of age, (ii) employees under twenty-five years of age who are full-time students and (iii) employees over sixty-five years of age, provided such employees had no income tax liability in the prior year and can reasonably anticipate none in the current year.

(b)* Extension38 of withholding to certain periodic payments and gambling winnings.

(1) For purposes of this chapter, any payment subject to withholding, within the meaning of paragraph two of this subdivision, shall be treated as if it were wages paid by an employer to an employee.

(2) Payments subject to withholding. For purposes of paragraph one of this subdivision, a payment subject to withholding means:

(A) Any supplemental unemployment compensation benefit paid to an individual to the extent includible in such individual's city adjusted gross income.

(B) Any member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the administrative code of the city of New York or subdivision nineteen of section twenty-five hundred seventy-five of the education law.

(C) Any payment of an annuity to an individual to the extent includible in such individual's city adjusted gross income, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect.

(D) Any payment of winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars and such proceeds are payable pursuant to a prize claim made by an individual who was a resident of the city at the time of the selection of the prize winning lottery ticket.

(E) Repealed.

(F) Any amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

(G) Any amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the code.

(3) Additional provisions applicable to this subdivision.

(A) Request for annuity withholding. A request that an annuity be subject to withholding under this chapter shall be made by the payee in writing to the person making the annuity payments. Such a request may, notwithstanding any provision of law to the contrary, be terminated by furnishing to the person making the payments a written statement of

termination. Such a request for withholding or statement of termination shall take effect in such manner as the commissioner of taxation and finance shall prescribe.

(B) Withholding on lottery winnings upon change of residence. If a payee of lottery winnings subject to the provisions of subparagraph (D) of paragraph two of this subdivision changes status from resident to nonresident, withholding in accordance with such subparagraph shall constitute other security acceptable to the commissioner of taxation and finance within the meaning of paragraph four of subdivision (c) of section 11-1754, unless such payee elects, in such manner as the commissioner of taxation and finance shall prescribe, to apply the provisions of paragraph one of such subdivision (c) to the proceeds, in which case withholding under this subdivision shall no longer apply to such proceeds.

(C) Proceeds. For purposes of subparagraphs (D) and (E) of paragraph two of this subdivision, proceeds from a wager shall be determined by reducing the amount received by the amount of the wager.

(D) Taxes withheld at maximum rate. The tax withheld on any payment subject to withholding under subparagraph (D) or (E) of paragraph two of this subdivision shall be withheld at the highest rate of tax on city taxable income, without any allowance for deductions or exemptions, in effect under this chapter for the taxable year in which the payment is made.

(E) Determination of residence. For purposes of applying the provisions of subparagraphs (D) and (E) of paragraph two of this subdivision, any payor of proceeds shall determine the residence of the payee of such proceeds in accordance with regulations or instructions of the commissioner of taxation and finance or, in the absence of any such regulations or instructions, in accordance with the address of the payee required under the provisions of paragraph six of subsection (q) of section thirty-four hundred two of the internal revenue code.

(b)* Extension41 of withholding to unemployment compensation benefits, annuity payments, and lottery winnings.

(1) For purposes of this chapter:

(A) any supplemental unemployment compensation benefit paid to an individual to the extent includible in such individual's city adjusted gross income,

(B) any payment of an annuity to an individual to the extent includible in such individual's city adjusted gross income, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any periodic payment (but only where such payment is part of a series of payments extending over a period greater than one year), of lottery winnings by the division of the lottery, if at the time the payment is made a request that such lottery winnings be subject to withholding under this chapter is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(D) any member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

(2) Request for withholding. A request that an annuity be subject to withholding under this chapter shall be made by the payee in writing to the person making the annuity payments, and a request that lottery winnings be subject to withholding under this chapter shall be made by the payee in writing to the division of the lottery, in the manner prescribed by the commissioner of taxation and finance.

A request that an annuity be subject to withholding may, notwithstanding any provision of law to the contrary, be

terminated by furnishing to the person making the payments a written statement of termination. A request that lottery winnings be subject to withholding under this chapter shall not be revocable while the payee is a nonresident, and shall constitute other security acceptable to the tax commission within the meaning of paragraph four of subdivision (c) of section 11-1754 of this chapter. Such a request for withholding or statement of termination shall take effect in such manner as the commissioner of taxation and finance shall provide by regulation.

(c) Withholding exemptions. For purposes of this section:

(1) The number of city withholding exemptions which an employee receiving wages taxable under this chapter may claim shall not exceed the number of city exemptions allowed pursuant to the provisions of section 11-1716 and such additional city withholding exemptions as may be prescribed by regulations or instructions of the commissioner of taxation and finance, taking into account the applicable standard deduction and such other factors as he finds appropriate.

(2) The amount of each city withholding exemption shall be the amount of the city exemption allowed pursuant to the provisions of section 11-1716.

(3) Withholding exemption certificate. An employee shall be required to file with his employer a withholding exemption certificate in accordance with regulations or instructions prescribed by the commissioner of taxation and finance.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 93 (formerly § 11-1792)

Section added (as § 11-1792) chap 907/1985 § 1

Subd. (a) pars (1), (2) amended chap 639/1986 § 94

Subd. (b) (laid out first) amended chap 61/1989 § 199

Subd. (b) (laid out first) amended chap 783/1988 § 9

Subd. (b) (laid out first) amended chap 639/1986 § 95

Subd. (b) (laid out first) par (1) amended chap 760/1992 § 90 eff. July 31, 1992

Subd. (b) (laid out first) par (2) subpar (B) amended chap 681/1992 § 13 eff. July 31, 1992

Subd. (b) (laid out first) par (2) subpar (B) amended chap 746/1990 § 7 eff. Sept. 5, 1990

Subd. (b) (laid out first) par (2) subpar (B) amended chap 114/1989 § 13

Subd. (b) (laid out first) par (2) subpar (E) repealed chap 528/1993 § 2 eff. July 26, 1993

Subd. (b) (laid out first) par (2) subpar (F) added chap 421/1991 § 9 eff.

July 19, 1991

Subd. (b) (laid out first) par (2) subpar (G) amended chap 531/1994 § 9,

eff. July 26, 1994

Subd. (b) (laid out first) par (2) subpar (G) added chap 374/1993 § 13

eff. July 21, 1993

Subd. (b) (laid out second) amended chap 230/1987 § 2. The amendment

by chap 61/1989 § 200 expired and was repealed

Subd. (b) (laid out second) par (1) subpar (D) added chap 312/1997 § 9

Subd. (c) par (1) amended chap 333/1987 § 150

Subd. (c) par (2) amended chap 333/1987 § 151

Subd. (c) par (2) amended chap 639/1986 § 96

Subd. (c) par (3) added chap 333/1987 § 152

DERIVATION

Formerly § T46-171.0 added LL 36/1976 § 2

Sub a par 1 amended chap 59/1977 § 14

Sub c par 1 amended chap 59/1977 § 15

Sub c par 1 amended chap 153/1977 § 5

Sub c par 2 amended chap 70/1978 § 45

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

38

[Footnote 38]: * There are 2 subdivisions (b).

41

[Footnote 41]: * There are 2 subdivisions (b).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1772

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1772 Information statement for employee.

Every employer required to deduct and withhold tax under this chapter from the wages of an employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the tax commission showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the tax commission shall prescribe. The written statement required herein may be furnished to such employee in an electronic format.

HISTORICAL NOTE

Section amended L.L. 31/2008 § 1, eff. July 29, 2008.

Section renumbered and amended chap 639/1986 §§ 93, 97 (formerly

§ 11-1793)

Section added (as § 11-1793) chap 907/1985 § 1

DERIVATION

Formerly § T46-172.0 added LL 36/1976 § 2

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1773

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1773 Credit for tax withheld.

Wages upon which tax is required to be withheld shall be taxable under this chapter as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid to the tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

For a taxable year of less than twelve months, the credit shall be made under regulations of the tax commission.

HISTORICAL NOTE

Section renumbered and amended chap 639/1986 §§ 93, 97 (formerly § 11-1794)

Section added (as § 11-1794) chap 907/1985 § 1

DERIVATION

Formerly § T46-173.0 added LL 36/1976 § 2

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1774

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1774 Employer's return and payment of withheld taxes.

(a) General. Every employer required to deduct and withhold tax under this chapter shall file a withholding return and pay over to the tax commission or to a depository designated by the tax commission, the taxes so required to be deducted and withheld, as hereafter prescribed.

(1) If, after having made a payroll, an employer has been required to deduct and withhold, but has not paid over, a cumulative aggregate amount of seven hundred dollars or more of tax during a calendar quarter, such employer shall file a return and pay over the tax. If an employer was required to remit a cumulative aggregate amount of less than fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the fifth business day following the date of making such a payroll. If an employer was required to remit a cumulative aggregate amount more than or equal to fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the third business day following the date of making such a payroll. In the case of an "educational organization" as defined in paragraph two of subsection (a) of section nine of the tax law or a "health care provider" as defined in paragraph four of subsection (a) of section nine of the tax law, the tax shall be paid over on or before the fifth business day following the date of making such a payroll.

(2) If, at the close of any calendar quarter, an employer has been required to deduct and withhold, but has not paid over, a cumulative aggregate amount of less than seven hundred dollars of tax during such calendar quarter, such

employer shall pay over the tax with the quarterly combined withholding, wage reporting and unemployment insurance return required to be filed for such quarter by paragraph four of this subdivision, on or before the last date prescribed by such paragraph for filing such return.

(3) If an employer makes more than one payroll per week, then such employer shall determine the applicability of the rules described in paragraphs one and two of this subdivision measured by the last payroll made within the week by such employer; provided, however, that in any week in which the end of a quarter occurs between the making of payrolls by an employer, any tax required to be deducted and withheld in a payroll or payrolls made during such week prior to or on the end of the quarter shall be paid over. If an employer was required to remit a cumulative aggregate amount of less than fifteen thousand dollars in withholding tax during the calendar year preceding the previous calendar year, the tax shall be paid over on or before the fifth business day following the date of making the last payroll in such quarter. If an employer was required to remit a cumulative aggregate amount more than or equal to fifteen thousand dollars in withholding tax during the calendar year preceding the previous calendar year, the tax shall be paid over on or before the third business day following the date of making the last payroll in such quarter. In the case of an "educational organization" as defined in paragraph two of subsection (a) of section nine of the tax law or a "health care provider" as defined in paragraph four of subsection (a) of section nine of the tax law, the tax shall be paid over on or before the fifth business day following the date of making such a payroll. For purposes of this paragraph, the term "week" shall mean the period Sunday through Saturday.

(4) (A) All employers described in paragraph one of subdivision (a) of section 11-1771, including those whose wages paid are not sufficient to require the withholding of tax from the wages of any of their employees, all employers required to provide the wage reporting information for the employees described in subdivision one of section one hundred seventy-one-a of the tax law, and all employers liable for unemployment insurance contributions or for payments in lieu of such contributions pursuant to article eighteen of the labor law, shall file a quarterly combined withholding, wage reporting and unemployment insurance return with the department of taxation and finance detailing the preceding calendar quarter's withholding tax transactions, such quarter's wage reporting information, such quarter's unemployment insurance contributions, and such other related information as the commissioner of taxation and finance or the commissioner of labor, as applicable, may prescribe. In addition, the return covering the last calendar quarter of each year shall also include withholding reconciliation information for such calendar year. Such returns shall be filed no later than the last day of the month following the last day of each calendar quarter; provided, however, that an employer may provide the wage reporting information covering the last calendar quarter of each year, and the withholding reconciliation information for such year no later than February twenty-eighth of the succeeding year.

(B) An employer shall, at the time prescribed by subparagraph (A) of this paragraph for filing each quarterly combined withholding, wage reporting and unemployment insurance return, pay over, in a single remittance, the unemployment insurance contributions and aggregate withholding taxes required to be paid over with such return. Notwithstanding any provision of law to the contrary, an overpayment of unemployment insurance contributions or of aggregate withholding taxes made by an employer with the quarterly combined withholding, wage reporting and unemployment insurance return for a calendar quarter may be only credited by such employer against such employer's liability for unemployment insurance contributions or aggregate withholding taxes, respectively.

(5) The tax commission may, if it believes such action necessary for the protection of the revenues, require any employer to make such return and pay to it the tax deducted and withheld at any time, or from time to time.

(6) "Aggregate amount" as used in paragraphs one, two and three of this subdivision means the aggregate of the aggregate amounts of New York state personal income tax, city personal income tax on residents and city earnings tax on nonresidents authorized pursuant to article two-E of the general city law required to be deducted and withheld.

(b) Deposit in trust for tax commission. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required in this section, the tax commission may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank

approved by the tax commission, in a separate account, in trust for and payable to the tax commission, and to keep the amount of such tax in such account until payment over to the tax commission. Such notice shall remain in effect until a notice of cancellation is served by the tax commission.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 93 (formerly § 11-1795)

Section added (as § 11-1795) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 98

Subd. a pars (1)-(4) repealed and added chap 166/1991 § 122, eff.

Jan. 1, 1992

Subd. (a) pars (2), (4) amended chap 477/1998 § 15, eff. Jan. 1, 1999.

Subd. a pars (5), (6) repealed chap 166/1991 § 122, eff. Jan. 1, 1992

Subd. a par (5) renumbered chap 166/1991 § 122, eff. Jan. 1, 1992

(formerly par (7))

Subd. a par (6) renumbered and amended chap 166/1991 §§ 122, 123,

eff. Jan. 1, 1992. (formerly par (8))

DERIVATION

Formerly § T46-174.0 added LL 36/1976 § 2

Sub a pars 2, 3 amended chap 103/1981 § 103

Sub a pars 5, 6, 7 renumbered chap 103/1981 § 104

(formerly pars 4, 5, 6)

Sub a par 4 added chap 103/1981 § 104

Sub a par 1 amended chap 621/1982 § 3

Sub a par 2 amended chap 621/1982 § 4

Sub a pars 2-8 renumbered chap 301/1984 § 6

(formerly pars 1-7)

Sub a par 1 added chap 301/1984 § 6

Sub a par 2 amended chap 301/1984 § 7

Sub a par 3 amended chap 301/1984 § 8

Sub a par 8 amended chap 301/1984 § 9

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1775

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1775 Employer's liability for withheld taxes.

Every employer required to deduct and withhold tax under this chapter is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the tax commission, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this chapter shall be held to be a special fund in trust for the tax commission. No employee shall have any right of action against his or her employer in respect to any moneys deducted and withheld from his or her wages and paid over to the tax commission in compliance or in intended compliance with this chapter.

HISTORICAL NOTE

Section renumbered and amended chap 639/1986 §§ 93, 99 (formerly § 11-1796)

Section added (as § 11-1796) chap 907/1985 § 1

DERIVATION

Formerly § T46-175.0 added LL 36/1976 § 2

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

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NYC Administrative Code 11-1776

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1776 Employer's failure to withhold.

If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 93 (formerly § 11-1797)

Section added (as § 11-1797) chap 907/1985 § 1

DERIVATION

Formerly § T46-176.0 added LL 36/1976 § 2

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1777

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1777 Designation of third parties to perform acts required of employers.

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the tax commission, under regulations promulgated by it, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this chapter and as the tax commission may specify. Except as may be otherwise prescribed by the tax commission, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

HISTORICAL NOTE

Section renumbered and amended chap 639/1986 §§ 93, 99 (formerly § 11-1798)

Section added (as § 11-1798) chap 907/1985 § 1

DERIVATION

Formerly § T46-177.0 added LL 36/1976 § 2

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

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NYC Administrative Code 11-1778

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 4 WITHHOLDING OF TAX*14

§ 11-1778 Liability of third parties paying or providing for wages.

(a) Direct payment by third party. If a lender, surety or other person, who is not an employer with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety or other person shall be liable for the amount of taxes (together with interest) required to be deducted and withheld from such wages by the employer.

(b) Funds supplied to employer by third parties. If a lender, surety or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this chapter to be deducted and withheld by such employer from such wages, such lender, surety or other person shall be liable for the amount of the taxes (together with interest) which are not paid over to the tax commission by such employer with respect to such wages. However, the liability of such lender, surety or other person shall be limited to an amount equal to twenty-five percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment. Any amounts paid to the tax commission pursuant to this section shall be credited against the liability of the employer.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 93 (formerly § 11-1799)

Section added (as § 11-1799) chap 907/1985 § 1

Subd. (b) amended chap 639/1986 § 100

DERIVATION

Formerly § T46-178.0 added LL 36/1976 § 2

FOOTNOTES

14

[Footnote 14]: * Former §§ 11-1728-11-1735 added by chap 907/1985 § 1 were repealed chap 639/1986 § 93. Present sections were renumbered into this subchapter, former §§ 11-1792-11-1799.

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NYC Administrative Code 11-1781

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1781 Notice of deficiency.

(a) General. If upon examination of a taxpayer's return under this chapter the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this chapter, the tax commission is authorized to estimate the taxpayer's city taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his or her last known address in or out of this state. If a husband and wife are jointly liable for tax, a notice of deficiency may be a single joint notice, except that if the tax commission has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be mailed to each spouse at his or her last known address in or out of this state. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment. After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax commission a petition under section 11-1789. If the notice of deficiency is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-1794, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the tax commission, until the decision of the tax commission has become final. For exception in the case of judicial review of the decision of the tax commission, see subdivision (c) of section 11-1790.

(d) Exceptions for mathematical errors. If a mathematical error appears on a return (including an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax), the tax commission shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1787 (limiting credits or refunds after petition to the tax commission), or subdivision (b) of section 11-1789 (authorizing the filing of a petition with the tax commission based on a notice of deficiency) nor shall such assessment or collection be prohibited by the provisions of subdivision (c) of this section.

(e) Exceptions where federal changes, corrections or disallowances are not reported. (1) If the taxpayer or employer fails to comply with section 11-1759, instead of the mode and time of assessment provided for in subdivision (b) of this section, the tax commission may assess a deficiency based upon such federal change, correction or disallowance by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change, correction or disallowance or an amended return, where such return was required by section 11-1759, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1787 (limiting credits or refunds after petition to the tax commission), or subdivision (b) of section 11-1789 (authorizing the filing of a petition with the tax commission based on a notice of deficiency), nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If a husband and wife are jointly liable for tax, a notice of additional tax due may be a single joint notice, except that if the tax commission has been notified by either spouse that separate residences have been established, then, in lieu of the joint notice, a duplicate original of the joint notice shall be mailed to each spouse at his or her last known address in or out of this state. If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions. The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the tax commission.

(g) Deficiency defined. For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (i) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by such taxpayer or by the tax commission), and less (ii) the amounts previously assessed (or collected without assessment) as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax or the credit for withholding tax; and a rebate means so much of an abatement, credit, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1800)

Section added (as § 11-1800) chap 907/1985 § 1

Subds. (a), (b), (c), (d) amended chap 639/1986 § 102

Subd. (e) par (1) amended chap 333/1987 § 153

Subd. (e) par (1) amended chap 639/1986 § 103

Subd. (e) par (2) amended chap 639/1986 § 103

Subd. (g) amended chap 639/1986 § 104

DERIVATION

Formerly § T46-181.0 added LL 36/1976 § 2

Sub e par 1 amended chap 607/1978 § 28

Sub e par 1 amended chap 55/1982 § 42

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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Administrative Code of the City of New York

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NYC Administrative Code 11-1782

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1782 Assessment.

(a) Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the tax commission shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section 11-1781 if no petition to the tax commission is filed, or if a petition is filed, then upon the date when a decision of the tax commission establishing the amount of the deficiency becomes final. If an amended return or report filed pursuant to section 11-1759 concedes the accuracy of a federal change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-1783. If a notice of additional tax due, as prescribed in subdivision (e) of section 11-1781, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section 11-1759, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers. If the mode or time for the assessment of any tax under this chapter (including interest, additions to tax and assessable penalties) is not otherwise provided for, the tax commission may establish the same by regulations.

(c) Estimated income tax. No unpaid amount of estimated tax shall be assessed.

(d) Supplemental assessment. The tax commission may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 11-1781 where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference. For assessment in case of jeopardy, see section 11-1794.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1801)

Section added (as § 11-1801) chap 907/1985 § 1

Subds. (a), (b), (d), (e) amended chap 639/1986 § 105

DERIVATION

Formerly § T46-182.0 added LL 36/1976 § 2

Sub c amended chap 65/1985 § 139

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1783

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1783 Limitations on assessment.

(a) General. Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

(b) Time return deemed filed.

(1) Early return. For purposes of this section a return of income tax, except withholding tax, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(2) Return of withholding tax. For purposes of this section, if a return of withholding tax for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be deemed to be filed on April fifteenth of such succeeding calendar year.

(c) Exceptions.

(1) Assessment at any time. The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax, or

(C) the taxpayer or employer fails to comply with section 11-1759.

(2) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the tax commission and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of federal changes, corrections or disallowances. If the taxpayer or employer complies with section 11-1759, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to net operating loss carryback. If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment. If a return is required for a decedent or for a decedent's estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d) of this section.

(7) Report on use of certain property. Under the circumstances described in paragraph two of subdivision (g) of section 11-1712, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility, air pollution control facility or eligible business facility. Under the circumstances described in paragraph three of subdivision (h) of section 11-1712 or in paragraph five of subsection (c) of section seven hundred one of the tax law, the tax may be assessed within three years after filing of the return containing the information required by such paragraph, or, if a certificate of compliance in respect to an air pollution control facility shall be revoked, within three years after the tax commission shall receive notice of such revocation from the taxpayer or as required by section 19-0309 of the environmental conservation law, whichever notice is received earlier.

(d) Omission of income, item of tax preference, total taxable amount or ordinary income portion of a lump sum distribution on return. The tax may be assessed at any time within six years after the return was filed if:

(1) an individual omits from his city adjusted gross income, the sum of his items of tax preference, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of twenty-five percent of the amount of city adjusted gross income, the sum of the items of tax preference or the total taxable amount or ordinary income portion of a lump sum distribution stated in the return, or

(2) an estate or trust omits from its city adjusted gross income, the sum of its items of tax preference, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in

excess of twenty-five percent of the amount stated in the return of city adjusted gross income, or the sum of the items of tax preference, or the total taxable amount or ordinary income portion of a lump sum distribution, respectively. For purposes of this paragraph, city adjusted gross income means New York adjusted gross income as determined under paragraph four of subsection (e) of section six hundred one of the tax law.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of the item of income, tax preference, the total taxable amount or ordinary income portion of a lump sum distribution.

(e) Suspension of running of period of limitation. The running of the period of limitations on assessment or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the tax commission is prohibited under subdivision (c) of section 11-1781 from making the assessment or from collecting by levy.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1802)

Section added (as § 11-1802) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 106

Subd. (c) par (1) amended chap 639/1986 § 107

Subd. (c) par (1) subpar (c) amended chap 333/1987 § 154

Subd. (c) par (3) amended chap 333/1987 § 154

Subd. (c) par (3) amended chap 639/1986 § 107

Sub. (c) pars (7), (8) amended chap 639/1986 § 107

Subd. (d) amended chap 170/1994 § 288, eff. June 9, 1994 and shall apply

to taxable years beginning after 1993

Subd. (d) amended chap 384/1988 § 11

Subd. (d) amended chap 333/1987 § 155

Subd. (d) par (2) amended chap 639/1986 § 108

Subd. (e) amended chap 639/1986 § 109

DERIVATION

Formerly § T46-183.0 added LL 36/1976 § 2

Sub d amended chap 70/1978 § 46

Sub c par 1 subpar C amended chap 607/1978 § 29

Sub c par 3 amended chap 607/1978 § 30

Sub d amended chap 607/1978 § 31

Sub c par 1 subpar C amended chap 55/1982 § 43

Sub c par 3 amended chap 55/1982 § 44

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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NYC Administrative Code 11-1784

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1784 Interest on underpayment.

(a) General. If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to section 11-1797 of this subchapter, or if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(b) Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax.

(c) Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the tax commission for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning

immediately after such thirtieth day and ending with the date of notice and demand.

(e) Tax reduced by carryback. If the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as income tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax. Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within twenty-one calendar days from the date of the notice and demand therefor under subdivision (b) of section 11-1792 of this title (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment within specified period after notice and demand. If notice and demand is made for payment of any amount under subdivision (b) of section 11-1792 of this title, and if such amount is paid within twenty-one calendar days (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars) after the date of such notice and demand, interest under this sectiuon on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(i) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected, at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(j) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of taxation and finance, shall bear interest at the underpayment rate set by such commissioner pursuant to section 11-1797 of this subchapter, or if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(k) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101. (former § 11-1803)

Section added (as § 11-1803) chap 907/1985 § 1

Subd. (a) amended chap 57/2009 § 31 of Subpart D of Part V-1, eff. Apr.

7, 2009.

Subd. (a) amended chap 61/1989 § 141

Subd. (a) amended chap 85/2002 § R34, eff. Apr. 1, 2003 and applying

to interest due on or after such date.

Subd. (a) amended chap 639/1986 § 110

Subd. (c) amended chap 639/1986 § 110

Subd. (d) renumbered chap 61/1989 § 149. (former subd. (e))

Subd. (e) renumbered chap 61/1989 § 149. (former subd. (f))

Subd. (f) renumbered chap 61/1989 § 149. (former subd. (g) amended chap 639/1986 § 110)

Subd. (g) amended chap 577/1997 § 32, eff. Sept. 10, 1997 and applying to any notice and demand given after Mar. 31, 1997

Subd. (g) renumbered chap 61/1989 § 149. (former subd. (h) amended chap 639/1986 § 110)

Subd. (h) amended chap 577/1997 § 32, eff. Sept. 10, 1997 and applying to any notice and demand given after Mar. 31, 1997

Subd. (h) renumbered chap 61/1989 § 149. (former subd. (k) amended chap 639/1986 § 110)

Subd. (i) repealed chap 61/1989 § 149

Subd. (i) amended chap 639/1986 § 110

Subd. (i) renumbered chap 61/1989 § 149. (former subd. (l))

Subd. (j) amended chap 57/2009 § 31 of Subpart D of Part V-1, eff. Apr. 7, 2009.

Subd. (j) amended chap 85/2002 § R34, eff. Apr. 1, 2003 and applying to interest due on or after such date.

Subd. (j) repealed chap 61/1989 § 149

Subd. (j) amended chap 639/1986 § 110

Subd. (j) renumbered chap 61/1989 § 149. (former subd. (m) amended chap 61/1989 § 141 amended chap 639/1986 § 110)

Subd. (k) renumbered chap 61/1989 § 149. (former subd. (n))

DERIVATION

Formerly § T46-184.0 added LL 36/1976 § 2

Sub d repealed chap 15/1983 § 124

Sub f amended chap 15/1983 § 125

Sub b amended chap 65/1985 § 140

FOOTNOTES

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[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1785

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1785 Additions to tax and civil penalties.

(a) (1) Failure to file tax return. (A) In case of failure to file a tax return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax hereunder shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amounts shown as tax on any return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for

payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including an assessment made pursuant to subdivision (a) of section 11-1782 of this title) within twenty-one calendar days of the date of a notice and demand therefor (ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions. (A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of such paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence. (1) If any part of a deficiency is due to negligence or intentional disregard of this chapter or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the de- ficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph one of this subdivision) an amount equal to fifty percent of the interest payable under section 11-1784 with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph, for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code, respectively, and the payee fails to include any portion of such payment in city adjusted gross income, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under this subdivision by reason of the preceding sentence, the amount of the penalty imposed by paragraph one of this subdivision shall be five percent of the portion of the underpayment which is attributable to the failure described in the preceding sentence.

(c) Failure by individual to pay estimated income tax. (1) Addition to the tax. Except as otherwise provided in this subdivision and subdivision (d) of this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this chapter for the taxable year an amount determined by applying the underpayment rate established under section 11-1797 of this subchapter, or if no rate is set, at the rate of seven and one-half percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

(2) Amount of underpayment. For purposes of paragraph one of this subdivision, the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(3) Required installment. (A) Except as provided in paragraph four of this subdivision, the amount of any required installment shall be twenty-five percent of the required annual payment.

(B) The required annual payment is the lesser of

(i) ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year), or

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. Provided, however, that the tax shown on such return for taxable years beginning in two thousand eight shall be calculated as if paragraph three of subdivision (f) of section 11-1715 of this chapter was in effect for taxable years beginning in two thousand eight.

Clause (ii) of this subparagraph shall not apply if the preceding taxable year was not a taxable year of twelve months or if the individual did not file a return for such preceding taxable year.

(C) Limitation on use of preceding year's tax.

(i) General. If the city adjusted gross income shown on the return of the individual for the preceding taxable year exceeds one hundred fifty thousand dollars, clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "one hundred ten percent" for "one hundred percent".

(ii) Separate returns. In the case of a husband and wife who file separate returns pursuant to subdivision (b) of section 11-1751 for the taxable year for which the amount of the installment is being determined, clause (i) of this subparagraph shall be applied by substituting "seventy-five thousand dollars" for "one hundred fifty thousand dollars".

(4) Annualized income installment. (A) In general. In the case of any required installment, if the individual establishes that the annualized income installment determined under subparagraph (B) of this paragraph is less than the amount determined under paragraph three of this subdivision, the annualized income installment shall be the required installment. Any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph three of this subdivision by the amount of such reduction, and by increasing successive required installments as necessary to effect full recapture.

(B) Determination of annualized income installment. In the case of any required installment, the annualized income installment is the excess, if any, of an amount equal to the applicable percentage of the tax for the taxable year

computed by placing on an annualized basis the taxable income and minimum taxable income for months in the taxable year ending before the due date for the installment, over the aggregate amount of any prior required installments for the taxable year. The applicable percentage of the tax shall be twenty-two and one-half percent in the case of the first installment, forty-five percent in the case of the second installment, sixty-seven and one-half percent in the case of the third installment and ninety percent in the case of the fourth installment, and shall be computed without regard to any increase in the rates applicable to the taxable year unless such increase was enacted at least thirty days prior to the due date of the installment.

(5) Definitions and special rules. (A) Definition of the term tax and application of credits against tax. For purposes of this subdivision and subdivision (d) of this section, the term "tax" means the tax imposed under this chapter minus the credits against tax allowed under this chapter, other than the credit under section 11-1773, relating to tax withheld on wages. The credit allowed under section 11-1773 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(B) Special rule where return filed on or before January thirty-first. If, on or before January thirty-first of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under pargraph one of this subdivision with respect to any underpayment of the fourth required installment for the taxable year.

(C) Special rules for farmers and fishermen. For purposes of this subdivision, if an individual is a farmer or fisherman for any taxable year there shall be only one required installment for the taxable year, due on January fifteenth of the following taxable year in an amount equal to the required annual payment determined under paragraph three of this subdivision by substituting sixty-six and two-thirds percent for ninety percent and without regard to subparagraph (C) of paragraph three of this subdivision. Subparagraph (B) of this paragraph shall be applied by substituting March first for January thirty-first and by treating the required installment under this subparagraph as the fourth required installment. An individual is a farmer or fisherman for any taxable year if the individual's federal gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total federal gross income from all sources for the taxable year or if such individual's federal gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total federal gross income from all sources shown on such return.

(D) Fiscal years. In applying this subdivision to a taxable year beginning on any date other than January first, there shall be substituted, for the months specified in this subdivision, the months which correspond thereto.

(E) Short taxable year. This subdivision shall be applied to taxable years of less than twelve months in accordance with regulations prescribed by the tax commission.

(F) Joint estimated tax of husband and wife. A husband and wife may make the required annual payment determined under paragraph three of this subdivision as if they were one taxpayer, in which case the liability under paragraph one of this subdivision with respect to the estimated tax shall be joint and several. No such joint payment may be made if husband and wife are separated under a decree of divorce or separate maintenance, or if they have different taxable years. If a joint payment is made but husband and wife determine their taxes under this chapter separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(6) Trusts and certain estates. (A) General. This subdivision shall apply to any trust or estate except as provided in subparagraphs (B) and (C) of this paragraph.

(B) Exception for estates and certain trusts. This subdivision shall not apply with respect to any taxable year

ending before the date two years after the date of the decedent's death to (i) the estate of such decedent or (ii) any trust all of which was treated (under subpart E of part 1 of subchapter J of chapter one of the internal revenue code) as owned by the decedent and to which the residue of the decedent's estate will pass under his will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration).

(C) Special rule for annualizations. In the case of any estate or trust, subparagraph (B) of paragraph four of this subdivision shall be applied by substituting "ending before the date one month before the due date for the installment" for "ending before the due date for the installment".

(D) In the case of a trust, the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust. Any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and for purposes of this subdivision, the amount so treated shall not be treated as a payment of estimated tax made by the trust, but shall be treated as a payment of estimated tax made by such beneficiary on the January fifteenth following the end of the trust's taxable year.

(E) An election under subparagraph (D) of this paragraph shall be made on or before the sixty-fifth day after the close of the taxable year and in such manner as the commissioner of taxation and finance may prescribe.

(F) Extension to last year of estate.-In the case of a taxable year reasonably expected to be the last taxable year of an estate, any reference in subparagraph (D) of this paragraph to a trust shall be treated as including a reference to an estate, and the fiduciary of the estate shall be treated as the trustee.

(d) Exceptions to addition to tax for failure to pay estimated income tax.

(1) Where tax is small amount. No addition to tax shall be imposed under subdivision (c) of this section for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 11-1773, is less than three hundred dollars.

(2) Where no tax liability for preceding taxable year. No addition to tax shall be imposed under subdivision (c) of this section for any taxable year if the preceding taxable year was a taxable year of twelve months, the individual did not have any liability for tax under this chapter for the preceding taxable year and throughout the preceding taxable year the individual was a resident of this city or a nonresident who had city adjusted gross income.

(3) Installment due on or after individual's death. No addition to tax shall be imposed under subdivision (c) of this section with respect to any installment due on or after the individual's death.

(4) Waiver in certain cases. (A) In general. No addition to tax shall be imposed under subdivision (c) of this section with respect to any underpayment to the extent the tax commission determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals. No addition to tax shall be imposed under subdivision (c) of this section with respect to any underpayment if the tax commission determines that in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year the taxpayer retired after having attained age sixty-two or became disabled, and that such underpayment was due to reasonable cause and not to willful neglect.

(e) Deficiency due to fraud. (1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency.

(2) There shall be added to the tax (in addition to the amount determined under paragraph one of this subdivision) an amount equal to fifty percent of the interest payable under section 11-1784 with respect to the portion of

the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The addition to tax under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (a) or (b) of this section.

(4) In the case of a joint return under section 11-1751, this subdivision shall not apply with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

(f) Non-willful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this chapter or the payment thereof, shall fail to make a return and pay a tax withheld by him or her at the time required by or under the provisions of section 11-1774, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subdivision (a) of this section, and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The tax commission shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this chapter for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this chapter who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subdivision (b) or (e) of this section shall be imposed for any offense to which this subsection applies. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subdivision.

(h) Failure to file certain information returns. (1) Except as otherwise provided in this paragraph, in case of each failure to file a statement of a payment to another person, required under authority of subdivision (d) of section 11-1758 (relating to information at source, including the duplicate statement of tax withheld on wages) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the tax commission and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of fifty dollars for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed ten thousand dollars.

(2) If any partnership or S corporation required to file a return or report under subdivision (c) of section 11-1758 or under section 11-1759 for any taxable year fails to file such return or report at the time prescribed therefor (determined with regard to any extension of time for filing), or files a return or report which fails to show the information required under such subdivision (c) or section 11-1759, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the partnership or S corporation a penalty for each month (or fraction thereof) during which such failure continues (but not to exceed five months). The amount of such penalty for any month is the product of fifty dollars, multiplied by the number of partners in the partnership or shareholders in the S corporation during any part of the taxable year who were subject to tax under this chapter during any part of such taxable year.

(3) Repealed.

(i) Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the tax commission. The tax commission shall have the

power, in its discretion, to waive, reduce or compromise any penalty under this subdivision.

(j) Fraudulent statement or failure to furnish statement to employee. In addition to any criminal penalties provided by law, any person required under the provisions of section 11-1772 to furnish a statement to an employee, who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 11-1772, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this chapter of fifty dollars.

(k) Failure to supply identifying numbers. If any person who is required by regulations prescribed under subdivision (b) of section 11-1758:

(1) to include his or her identifying number in any return, statement, or other document;

(2) to furnish his or her identifying number to another person; or

(3) to include in any return, statement or other document made with respect to another person the identifying number of such other person, fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty of five dollars for each such failure described in paragraph one of this subdivision and fifty dollars for each such failure described in paragraph two of this subdivision, and this paragraph, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed ten thousand dollars; except that for failure to include his or her own identification number in any return, statement or other document, such penalty shall not be imposed unless such person shall have failed to supply his or her identification number to the tax commission within thirty days after demand therefor.

(l) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this chapter to income tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-1781, this subdivision shall not apply to:

(1) any addition to tax under subdivision (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c);

(3) any penalty under subdivision (h) and any additional penalty under subdivision (i); and

(4) any penalties under subdivisions (j), (k), (q), (r), (s) and (t).

(m) Determination of deficiency. For purposes of subdivisions (b) and (e) of this section, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(n) Person defined. For purposes of subdivisions (g), (i), (o), (q) and (r) of this section, the term person includes an individual, corporation, partnership or limited liability company or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, or a member, manager or employee of a limited liability company, who as such officer, employee, manager or member is under a duty to perform the act in respect of which the violation occurs.

(o) Failure to make deposits of taxes. In case of failure by any person required by this chapter, or by regulations of the tax commission under this chapter, to deposit on the date prescribed therefor any amount of tax imposed by this chapter in a depository authorized pursuant to subdivision (a) of section 11-1792 to receive such deposits, unless it is

shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed on such person a penalty of five percent of the amount of the underpayment. For purposes of this subdivision the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof, deposited on or before the date prescribed therefor.

(p) Substantial understatement of liability. If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or two thousand dollars. For purposes of the preceding sentence, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return reduced by any rebate (within the meaning of subdivision (g) of section 11-1781). The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The tax commission may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(q) Frivolous tax returns. If any individual files what purports to be a return of any tax imposed by this chapter but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect; and such conduct is due to a position which is frivolous, or an intent (which appears on the purported return) to delay or impede the administration of this chapter, then such individual shall pay a penalty not exceeding five hundred dollars. This penalty shall be in addition to any other penalty provided by law.

(r) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding one thousand dollars.

(2) For purposes of paragraph one of this subdivision, the term "procures" includes ordering (or otherwise causing) a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision or control.

(3) For purposes of paragraph one of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

(s) False information with respect to withholding. In addition to any criminal penalty provided by law, if any individual makes a statement under section 11-1771 which results in a decrease in the amounts deducted and withheld under this chapter, and as of the time such statement was made, there was no reasonable basis for such statement, such individual shall pay a penalty of five hundred dollars for such statement. The tax commission shall waive the penalty imposed under this subdivision if the taxes imposed with respect to the individual under this chapter for the taxable year

are equal to or less than the sum of the credits against such taxes allowed by this chapter, and the payments of estimated tax which are considered payments on account of such taxes.

(t) Failure of tax return preparer to conform to certain requirements.-(1) Failure to sign return or claim for refund. Any individual who is a tax return preparer with respect to any return or claim for refund, who is required pursuant to paragraph one of subdivision (g) of section 11-1758 to sign such return or claim for refund, and who fails to comply with such requirement with respect to such return or claim for refund, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(2) Failure to furnish identifying number. If any identifying number required to be included on any return or claim for refund pursuant to paragraph two of subdivision (g) of section 11-1758 is not so included, the person who is the tax return preparer with respect to such return or claim for refund shall be subject to a penalty of fifty dollars with respect to such return or claim for refund unless it is shown that such failure is due to reasonable cause and not willful neglect. For purposes of this paragraph, where an employer and one or more employees of such employer are tax return preparers with respect to the same return or claim for refund or where a partnership and one or more partners in such partnership are tax return preparers with respect to the same return or claim for refund, such employer or such partnership shall be deemed to be the sole tax return preparer with respect to such return or claim for refund. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(3) Failure to furnish copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph three of subdivision (g) of section 11-1758 to furnish a copy of such return or claim for refund to the taxpayer, and who fails to comply with such provision with respect to such return or claim for refund shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(4) Failure to retain copy or list. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph four of subdivision (g) of section 11-1758 to: (i) retain a copy of such return or claim for refund or retain on a list the name and taxpayer identifying number of the taxpayer for whom such return or claim for refund was prepared and (ii) make such copy or list available for inspection upon request by the commissioner of taxation and finance, and who fails to comply with the retention requirement or who complies with the retention requirement but fails to comply with such request by the commissioner, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to any calendar year shall not exceed twenty-five thousand dollars.

(5) Failure to electronically file. If a tax return preparer is required to file returns electronically pursuant to paragraph ten of subdivision (g) of § 11-1758, and such preparer fails to file one or more of such returns electronically, then such preparer shall be subject to a penalty of fifty dollars for each such failure to electronically file a return, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. For purposes of this paragraph, reasonable cause shall include, but not be limited to, a taxpayer's election not to electronically file his or her return.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1804)

Section added (as § 11-1804) chap 907/1985 § 1

Subd. (a) par (1)amended chap 639/1986 § 111

Subd. (a) par (2)amended chap 639/1986 § 111

Subd. (a) par (3) amended chap 577/1997 § 33, eff. Sept. 10, 1997 and applying to any notice and demand given after Mar. 31, 1997

Subd. (a) par (3)amended chap 639/1986 § 111

Subd. (b) pars (1), (2) amended chap 639/1986 § 112

Subd. (b) par (3) amended chap 333/1987 § 156

Subd. (c) par (1) amended chap 57/2009 § 32 of Subpart D of Part V-1, eff. Apr. 7, 2009.

Subd. (c) par (1) amended chap 85/2002 § R35, eff. Apr. 1, 2003 and applying to interest due on or after such date.

Subd. (c) par (1) amended chap 61/1989 § 142 [See Note 1]

Subd. (c) par (1) amended chap 639/1986 § 113

Subd. (c) par (3) amended chap 55/1992 § 48, eff. Apr. 10, 1992, and applying to taxable years beginning after Dec. 31, 1991

Subd. (c) par (3) amended chap 333/1987, § 157

Subd. (c) par (3) subpar (B) clause (ii) amended chap 57/2009, § 4 of Part W-1, eff. Apr. 7, 2009. [See § 11-1715 Note 1]

Subd. (c) par (3) subpar (C) added chap 170/1994 § 153, eff. June 9, 1994. [See Note 2]

Subd. (c) par (3) subpars (C)-(F) repealed chap 170/1994 § 153, eff. June 9, 1994 [See Note 2]

Subd. (c) par (4) subpar (B) amended chap 333/1987 § 157

Subd. (c) par (5) subpar (A) amended chap 639/1986 § 114

Subd. (c) par (5) subpar (C) amended chap 55/1992 § 49, eff. Apr. 10, 1992 and applying to taxable years beginning after Dec. 31, 1991

Subd. (c) par (5) subpar (C) amended chap 246/1993 § 2, eff. July 6, 1993 and applying to taxable years beginning after 1992

Subd. (c) par (5) subpar (C) amended chap 333/1987 § 157

Subd. (c) par (5) subpar (F) amended chap 333/1987 § 158

Subd. (c) par (6) amended chap 55/1992 § 50, eff. Apr. 10, 1992 and applying to taxable years beginning after Dec. 31, 1991

Subd. (c) par (6) added chap 333/1987 § 159.

Subd. (c) par (6) subpar (C) amended chap 170/1994 § 154, eff. June 9, 1994 [See Note 2]

Subd. (d) par (1) amended chap 335/1998 § 1, eff. July 14, 1998 and applying to taxable years beginning on and after Jan. 1, 1999.

Subd. (d) par (1) amended chap 639/1986 § 115

Subd. (e) pars (2), (4) amended chap 639/1986 § 116

Subds. (f), (g), (h) amended chap 639/1986 § 117

Subd. (h) par (2) amended chap 190/1990 § 53, eff. May 25, 1990 and applying on and after July 1, 1990

Subd. (h) par (3) repealed chap 333/1987 § 160

Subds. (i), (j), (k), (l) amended chap 639/1986 § 117

Subd. (l) par (4) amended chap 664/1990 § 7, eff. July 22, 1990 and applying to returns on and after April 15, 1991

Subd. (n) amended chap 576/1994 § 67, eff. July 26, 1994

Subds. (o), (p), (q) amended chap 639/1986 § 117

Subd. (r) par (1) amended chap 639/1986 § 118

Subd. (s) amended chap 639/1986 § 119

Subd. (t) added chap 664/1990 § 8, eff. July 22, 1990 and applying to returns on and after April 15, 1991

Subd. (t) par (5) added chap 61/2005 § Q4 of § 1, eff. Apr. 12, 2005 and deemed to have been in full force and effect on and after Apr. 1, 2005.

DERIVATION

Formerly § T46-185.0 added LL 36/1976 § 2

Sub h amended chap 935/1983 § 34

Subs j, k amended chap 935/1983 § 35

Sub p added chap 935/1983 § 36

Sub c amended chap 285/1984 § 6

Subs h, l amended chap 606/1984 § 39

(Special provision chap 606/1984 § 41)

Sub a pars 1, 4 amended chap 65/1985 § 91

Sub b amended chap 65/1985 § 92

Sub e amended chap 65/1985 § 93

Sub h amended chap 65/1985 § 94

Sub k amended chap 65/1985 § 95

Sub l amended chap 65/1985 § 96

Sub n amended chap 65/1985 § 97

Sub p added chap 65/1985 § 98

Sub q added chap 65/1985 § 99

Sub r added chap 65/1985 § 100

Sub s added chap 65/1985 § 101

Subs c, d, i amended chap 65/1985 § 141

Sub p amended chap 765/1985 § 28

NOTE

1. Provisions of 61/1989

§ 363. Notwithstanding the provisions of subsection (c) of section 685 or subsection (c) of section 1085 of the tax law or subdivision (c) of section 11-1785 of the administrative code of the city of New York, no addition to tax shall be made with respect to the portion of any underpayment of an installment of estimated tax due prior to the date this act shall have become a law, which was created or increased by any provision of this act.

§ 364. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. it is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

Provided, more specifically, if the exemption from tax provided by subdivision 6 of section 424 of the tax law, as added by section seventy-two of this act, shall be declared unconstitutional such judgment of invalidity shall not result in the extension of the exemption to out of state distributors who are brewers, but shall, as of the date such judicial decision becomes final and no longer subject to judicial review, result only in the denial of such exemption to all distributors who are brewers.

2. Provisions of ch. 170/1994 §§ 33, 155:

§ 33. Notwithstanding any provision of law to the contrary, no addition to tax shall be imposed for failure to pay the estimated tax:

(a) under subsection (e) of section 1085 of the tax law, with respect to any underpayment of a required installment due prior to September 15, 1994, to the extent such underpayment was created or increased by section thirty of this act, if the amount of the first installment due on or after September 15, 1994 is increased by the amount of such underpayment, or

(b) under subsection (c) of section 685 or subsection (c) of section 1085 of the tax law or subdivision (c) of section 11-1785 of the administrative code of the city of New York, with respect to any underpayment of estimated tax to the extent such underpayment was created or increased by the enactment of section 13223 of the federal revenue reconciliation act of 1993, P.L. 103-66 (relating to market accounting methods for dealers in securities), with respect to taxable years ending before April 1, 1994.

§ 155. Notwithstanding any provision of law to the contrary, no addition to tax shall be imposed for failure to pay the estimated tax under subsection (c) of section 685 of the tax law or subdivision (c) of section 11-1785 of the administrative code of the city of New York, with respect to any underpayment of a required installment due prior to September 15, 1994, to the extent such underpayment was created or increased by section one hundred fifty-one or one hundred fifty-three of this act, if the amount of the first installment due on or after September 15, 1994 is increased by the amount of such underpayment.

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1786

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1786 Overpayment.

(a) General. The state commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter or by chapter nineteen of this title on the person who made the overpayment or any other tax imposed on such person pursuant to the authority of the tax law or any other law if such tax is administered by the state commissioner of taxation and finance, against any liability in respect of any tax imposed on such person by the tax law and, as provided in sections one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and one hundred seventy-one-l of the tax law, against past-due support, against a past-due legally enforceable debt, against a city of New York tax warrant judgment debt and against the amount of a default in repayment of a guaranteed student, state university or city university loan. The balance shall be refunded by the state comptroller out of the proceeds of the tax retained by him or her for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the state commissioner of taxation and finance approved by the state comptroller. The state comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the state commissioner of taxation and finance.

(b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 11-1771, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Overpayment by a deceased person. Notwithstanding section thirteen hundred ten of the surrogate's court procedure act, any overpayment by a decedent not in excess of one thousand dollars may be refunded to the decedent's surviving spouse unless the return for the decedent was filed by his or her executor or admin- istrator.

(e) Credits against estimated tax. The tax commission may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(f) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as income tax, such amount shall be considered an overpayment.

(g) Assessment and collection after limitation period. If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(h) Cross reference. For provision barring application of article fifty-two of the civil practice law and rules to any amount to be refunded or credited to a taxpayer, see section seven of the tax law.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1805)

Section added (as § 11-1805) chap 907/1985 § 1

Subd. (a) amended chap 60/2004 § R21, eff. Aug. 20, 2004.

Subd. (a) amended chap 55/1992 § 96, eff. Apr. 10, 1992

Subd. (a) amended chap 639/1986 § 120

Subds. (c), (h) amended chap 639/1986 § 120

DERIVATION

Formerly § T46-186.0 added LL 36/1976 § 2

Sub a amended chap 545/1982 § 14

Sub a amended chap 545/1982 § 15

Sub a amended chap 559/1984 § 12

Sub e amended chap 65/1985 § 142

Sub a amended chap 638/1985 § 12

Sub h amended chap 639/1986 § 27

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1787

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1787 Limitations on credit or refund.

(a) General. Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement. If an agreement under the provisions of paragraph two of subdivision (c) of section 11-1783 (extending the period for assessment of income tax) is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) of this section if a claim had been filed on the date the agreement was executed.

(c) Notice of federal change or correction. A claim for credit or refund of any overpayment of tax attributable to a federal change or correction required to be reported pursuant to section 11-1759 shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of taxation and finance. If the report or amended return required by section 11-1759 is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Overpayment attributable to net operating loss carryback. A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due (including extensions thereof) for the taxable year of the loss, or within the period prescribed in subdivision (b) of this section in respect of such taxable year, or within the period prescribed in subdivision (c) of this section, where applicable, in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section 11-1790, after the expiration of the applicable period of limitation specified in this chapter, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(f) Effect of petition to tax commission. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-1781 and if the taxpayer files a timely petition with the tax commission under section 11-1789, it may determine that the taxpayer has made an overpayment for such year (whether or not it also determines a deficiency for such a year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(1) as to overpayments determined by a decision of the tax commission which has become final; and

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax commission which has become final; and

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(g) Limit on amount of credit or refund. The amount of overpayment determined under subdivision (f) of this section shall, when the decision of the tax commission has become final, be credited or refunded in accordance with subdivision (a) of section 11-1786 and shall not exceed the amount of tax which the tax commission determines as part of its decision was paid:

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the tax commission finds that there is an overpayment.

(h) Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid income tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him or her on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(j) Return and payment of withholding tax. Notwithstanding subdivision (h) of this section, for purposes of this section with respect to any withholding tax:

(1) if a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed on April fifteenth of such succeeding calendar year; and

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

(k) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (e) of section 11-1786.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1806)

Section added (as § 11-1806) chap 907/1985 § 1

Subd. (b) amended chap 639/1986 § 121

Subd. (c) amended chap 61/1989 § 160

Subd. (c) amended chap 333/1987 § 161

Subd. (c) amended chap 639/1986 § 121

Subds. (e), (f), (g), (k) amended chap 639/1986 § 121

DERIVATION

Formerly § T46-187.0 added LL 36/1976 § 2

Sub c amended chap 607/1978 § 32

Sub d amended chap 548/1981 § 12

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1788 Interest on overpayment.

(a) General. Notwithstanding the provisions of section sixteen of the state finance law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of taxation and finance pursuant to section 11-1797, or if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken;

(2) from the date of the overpayment to a date (to be determined by the commissioner of taxation and finance) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) Late and amended returns and claims for credit or refund. Notwithstanding paragraph one or two of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return (determined with regard to extensions), or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(4) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of taxation and finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provision of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund on an overpayment.

(5) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax, payment of estimated tax, and credit for income tax withholding. The provisions of subdivisions (h) and (i) of section 11-1787 applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Income tax refund within forty-five days of claim for overpayment. If any overpayment of tax imposed by this chapter is credited or refunded within forty-five days after the last date prescribed (or permitted by extension of time) for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within forty-five days after an amended return was filed claiming such overpayment or within forty-five days after a claim for credit or refund was filed on which such overpayment was claimed, or within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of the tax law, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed (or permitted by extension of time) for the filing of the return of tax for such year shall be considered as filed on such last day.

(d) Refund of income tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision (c) of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) No interest until return in processible form.

(1) For purposes of subdivisions (a) and (c) of this section, a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph one of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information (whether on the return or on required attachments) to permit the mathematical verification of tax liability shown on the return.

(f) Overpayment credited against past-due support, or against a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or defaulted guaranteed student, state university or city university loans. If interest is payable pursuant to this section on that portion of an overpayment of tax imposed by this chapter which is certified by the state commissioner of taxation and finance to the state comptroller as the amount to be credited against past-due support, or against a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or the amount of a default in repayment of a guaranteed student, state university or city university loan, as the case may be, pursuant to the provisions of section one hundred seventy-one-c, section one hundred seventy-one-d, section one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax law, such portion of such an overpayment shall cease to bear interest on the date of such certification.

(g) Cross-reference. For provision with respect to interest after failure to file notice of federal change under section 11-1759, see subdivision (c) of section 11-1787.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1807)

Section added (as § 11-1807) chap 907/1985 § 1

Subd. (a) amended chap 61/1989 § 143. (picks up chap 61/1989 § 161 amendment)

Subd. (a) open par amended chap 85/2002 § R36, eff. Apr. 1, 2003 and applying to interest due on or after such date.

Subd. (a) amended chap 639/1986 § 122

Subd. (a) par 3 amended chap 61/1989 § 161

Subd. (a) par 4 added chap 61/1989 § 162

Subd. (a) par 5 so designated and amended chap 61/1989 § 162 (former subd. (a) closing paragraph)

Subd. (b) amended chap 170/1994 § 292, eff. June 9, 1994 and shall apply to taxable years beginning after 1993

Subd. (b) amended chap 639/1986 § 122

Subd. (c) amended chap 170/1994 § 293, eff. June 9, 1994 and shall apply to taxable years beginning after 1993

Subd. (c) amended chap 686/1989 § 13

Subd. (c) amended chap 61/1989 § 163

Subd. (c) amended chap 639/1986 § 122

Subds. (d), (e) amended chap 639/1986 § 122

Subd. (f) amended chap 60/2004 § R22, eff. Aug. 20, 2004.

Subd. (f) amended chap 55/1992 § 97, eff. Apr. 10, 1992

Subd. (f) amended chap 639/1986 § 122

Subd. (g) amended chap 61/1989 § 164

Subd. (g) amended chap 639/1986 § 122

DERIVATION

Formerly § T46-188.0 added LL 36/1976 § 2

Sub f relettered chap 545/1982 § 16

(formerly sub e)

Sub e added chap 545/1982 § 16

Sub a amended chap 15/1983 § 126

Sub d amended chap 15/1983 § 127

Subs f, g relettered chap 15/1983 § 128

(formerly subs e, f)

Sub e added chap 15/1983 § 128

Sub f amended chap 559/1984 § 13

Sub f amended chap 638/1985 § 13

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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NYC Administrative Code 11-1789

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SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1789 Petition to tax commission.

(a) General. The form of a petition to the tax commission, and further proceedings before the tax commission in any case initiated by the filing of a petition, shall be governed by such rules as the tax commission shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by one or more members of the tax commission, or by a hearing officer designated by the tax commission to take evidence and report to the tax commission. The tax commissioners shall, acting as a body, jointly decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his or her last known address, and such notice shall set forth the tax commission's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

(b) Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-1781, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (g) of section 11-1787.

(c) Petition for refund. A taxpayer may file a petition with the tax commission for the amounts asserted in a claim for refund if:

(1) the taxpayer has filed a timely claim for refund with the tax commission,

(2) the taxpayer has not previously filed with the tax commission a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section 11-1787, and

(3) either: (A) six months have expired since the claim was filed, or (B) the tax commission has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the tax commission. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) Assertion of deficiency after filing petition.

(1) Petition for redetermination of deficiency. If a taxpayer files with the tax commission, a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section 11-1785, if claim therefor is asserted at or before the hearing under rules of the tax commission.

(2) Petition for refund. If the taxpayer files with the tax commission a petition for credit or refund for a taxable year, the tax commission may:

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax commission, and within the period in which an assessment would be timely under section 11-1783, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax commission.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the tax commission under this subdivision.

(4) Restriction on further notices of deficiency. If the taxpayer files a petition with the tax commission under this section, no notice of deficiency under section 11-1781 may thereafter be issued by the tax commission for the same taxable year, except in case of fraud or with respect to a change or correction required to be reported under section 11-1759.

(e) Burden of proof. In any case before the tax commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the tax commission:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction required to be reported under section 11-1759, and of which change or correction the tax commission had no notice at the time it mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subdivision (q) or (r) of section 11-1785.

(f) Evidence of related federal determination. Evidence of a federal determination relating to issues raised in a case before the tax commission under this section shall be admissible, under rules established by the tax commission.

(g) Jurisdiction over other years. The tax commission shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1808)

Section added (as § 11-1808) chap 907/1985 § 1

Subd. (b) amended chap 639/1986 § 123

Subd. (c) par (2) amended chap 639/1986 § 124

Subd. (d) par (1) amended chap 639/1986 § 125

Subd. (d) par (2) subpar (A) amended chap 639/1986 § 126

Subd. (d) par (4) amended chap 333/1987 § 162

Subd. (d) par (4) amended chap 639/1986 § 127

Subd. (e) amended chap 639/1986 § 128

Subd. (e) par (3) amended chap 333/1987 § 162

DERIVATION

Formerly § T46-189.0 added LL 36/1976 § 2

Sub d par 4 amended chap 607/1978 § 33

Sub e par 3 amended chap 607/1978 § 34

Sub e amended chap 65/1985 § 102

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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NYC Administrative Code 11-1790

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SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1790 Review of tax commission decision.

(a) General. A decision of the tax commission shall be subject to judicial review at the instance of any taxpayer effected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the state. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer.

(b) Judicial review exclusive remedy of taxpayer. The review of a decision of the tax commission provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the tax commission may assess a deficiency after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the deficiency, has deposited with the tax commission the amount of the deficiency, or has filed with the tax commission a bond (which may be a jeopardy bond under subdivision (h) of section 11-1794) in the amount of the portion of the deficiency (including interest and other amounts) in respect of which the application for review is made and all costs and charges which may accrue against him or her in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of

the deficiency (including interest and other amounts) as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the tax commission is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review. If the amount of a deficiency determined by the tax commission is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of tax commission decision. A decision of the tax commission shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax commission of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the tax commission shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1809)

Section added (as § 11-1809) chap 907/1985 § 1

Subds. (b), (c) amended chap 639/1986 § 129

DERIVATION

Formerly § T46-190.0 added LL 36/1976 § 2

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1791 Mailing rules; holidays; miscellaneous.

(a) (1) Timely mailing. If any return, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulations of the tax commission.

(2)(A) Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section

seventy-five hundred two of the Internal Revenue Code and any reference in paragraph one of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the Internal Revenue Code by a designated delivery service. If the commissioner of taxation and finance finds that any delivery service designated by such secretary is inadequate for the needs of the state, such commissioner may withdraw such designation for purposes of this article. Such commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the Internal Revenue Code for purposes of this article, or may withdraw any such designation if such commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by such commissioner and any reference in paragraph one of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the Internal Revenue Code by a delivery service designated by the commissioner.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of taxation and finance pursuant to the same criteria used by the secretary for such designation pursuant to section seventy-five hundred two of the Internal Revenue Code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subdivision. If such commissioner finds that any equivalent of registered or certified mail designated by such secretary or such commissioner is inadequate for the needs of the state, such commissioner may withdraw such designation for purposes of this article.

(b) Last known address. For purposes of this chapter, a taxpayer's last known address shall be the address given in the last return filed by such taxpayer, unless subsequent to the filing of such return the taxpayer shall have notified the tax commission of a change of address.

(c) Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

(d) Certificate; unfiled return. For purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

(e) Attorney general; jurisdiction. The attorney general shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses arising under article thirty-seven of the tax law with respect to the tax imposed under this chapter.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1810)

Section added (as § 11-1810) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 130

Subd. (a) par (1) designated chap 577/1997 § 34, eff. Sept. 10, 1997

formerly open par of subd. (a)

Subd. (a) par (2) added chap 577/1997 § 34, eff. Sept. 10, 1997

Subds. (c), (d), (e) amended chap 639/1986 § 130

DERIVATION

Formerly § T46-191.0 added LL 36/1976 § 2

Section heading amended chap 65/1985 § 104

Subs d, e added chap 65/1985 § 105

Sub a amended chap 65/1985 § 143

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1792 Collection, levy and liens.

(a) Collection procedures. The taxes imposed by this chapter shall be collected by the tax commission, and it may establish the mode or time for the collection of any amount due it under this chapter if not otherwise specified. The tax commission shall, upon request, give a receipt for any sum collected under this chapter. The tax commission may authorize banks or trust companies which are depositaries or financial agents of the state to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the tax commission may prescribe; and the tax commission shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the tax com- mission.

(b) Notice and demand for tax. The tax commission shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the tax commission determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand. If any person liable under this chapter for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within twenty-one calendar days after notice and demand therefor is given to such person under subdivision (b) of this section (ten business days if the amount for

which such notice and demand is made equals or exceeds one hundred thousand dollars), the commissioner of taxation and finance may within six years after the date of such assessment issue a warrant under such commissioner's official seal directed to the sheriff of any county of the state, or to any officer or employee of the department of taxation and finance, commanding him or her to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to such commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of the warrant. If such commissioner finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by such commissioner and upon failure or refusal to pay such tax or other amount such commissioner may issue a warrant without regard to the twenty-one day period (or ten-day period if applicable) provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision (c) of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a lien upon the title to and interest in real, personal and other property of the taxpayer. Such lien shall not apply to personal property unless such warrant is filed in the department of state.

(e) Judgment. When a warrant has been filed with the county clerk the tax commission shall, in the right of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution. The sheriff or officer or employee shall thereupon proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. An officer or employee of the department of taxation and finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not a resident. Where a notice and demand under subdivision (b) of this section shall have been given to a taxpayer who is not then a resident, and it appears to the tax commission that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident, the tax commission may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of taxation and finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his or her last known address, subject to the rules for mailing provided in subdivision (a) of section 11-1781. Such warrant shall command the officer or employee to proceed in Albany county, and he or she shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the tax commission may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The tax commission may also, in its discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the tax commission shall deem proper and sufficient.

(h) Action by state for recovery of taxes. Action may be brought by the attorney general at the instance of the tax commission in the name of the city or both to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced.

(i) Release of lien. The tax commission, if it finds that the interests of the city will not thereby be jeopardized,

and upon such conditions as it may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1811)

Section added (as § 11-1811) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 131

Subd. (c) amended chap 577/1997 § 35, eff. Sept. 10, 1997 and applying

to any notice and demand given after Mar. 31, 1997

Subd. (c) amended chap 639/1986 § 131

Subd. (g) amended chap 639/1986 § 131

DERIVATION

Formerly § T46-192.0 added LL 36/1976 § 2

Subs d, f amended chap 65/1985 § 103

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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NYC Administrative Code 11-1793

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SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1793 Transferees.

(a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes donee, heir, legatee, devisee and distributee.

(b) Exceptions.

(1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the tax commission in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) or the immediately preceding paragraph of this subdivision for the assessment of the liability, the tax commission and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of

the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-1787. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-1787 on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-1787 shall be increased by the period from the date of such expiration to the date of the agreement.

(c) Deceased transferor. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if he or she had lived.

(d) Evidence. Notwithstanding the provisions of subdivision (e) of section 11-1797 the tax commission shall use its powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-1789 for rule as to burden of proof.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1812)

Section added (as § 11-1812) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 132

Subd. (b) par (2) amended chap 639/1986 § 133

Subd. (d) amended chap 639/1986 § 134

DERIVATION

Formerly § T46-193.0 added LL 36/1976 § 2

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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NYC Administrative Code 11-1794

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SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1794 Jeopardy assessment.

(a) Authority for making. If the tax commission believes that the assessment or collection of a deficiency will be jeopardized by delay, it shall, notwithstanding the provisions of sections 11-1781 and 11-1796, immediately assess such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the tax commission for the payment thereof.

(b) Notice of deficiency. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 11-1781, then the tax commission shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of tax commission. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the tax commission. The tax commission may, at any time before rendering its decision, abate such assessment, or any unpaid portion thereof, to the extent that it believes the assessment to be excessive in amount. The tax commission may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of tax commission. If the jeopardy assessment is made after the decision of the tax commission is rendered, such assessment may be made only in respect of the deficiency determined by the tax

commission in its decision.

(e) Expiration of right to assess. A jeopardy assessment may not be made after the decision of the tax commission has become final or after the taxpayer has made an application for review of the decision of the tax commission.

(f) Collection of unpaid amounts. When a petition has been filed with the tax commission and when the amount which should have been assessed has been determined by a decision of the tax commission which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the tax commission, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-1786 without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the tax commission.

(g) Abatement if jeopardy does not exist. The tax commission may abate the jeopardy assessment if it finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax commission in respect of the deficiency has been rendered or, if no petition is filed with the tax commission, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection. The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the tax commission, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section 11-1781 is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to tax commission. If the bond is given before the taxpayer has filed his or her petition under section 11-1789, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the tax commission which has become final. If the tax commission determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax commission is rendered.

(j) Stay of sale of seized property pending tax commission decision. Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-1789 for filing a petition with the tax commission, and

(2) if a petition is filed with the tax commission (whether before or after the making of such jeopardy

assessment), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision (a) of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the tax commission determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest. For the purpose of subdivision (a) of section 11-1784, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year. If the tax commission finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the city personal income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the tax commission made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the tax commission, as provided in subdivision (1), the tax commission may reopen such taxable period each time the taxpayer is found by the tax commission to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the tax commission may be reopened by the taxpayer if he or she files with the tax commission a true and accurate return of taxable income and credits allowed under this chapter for such taxable period, together with such other information as the tax commission may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the tax commission. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the tax commission, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any city personal income taxes for prior years.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1813)

Section added (as § 11-1813) chap 907/1985 § 1

Subds. (a), (b), (f), (h), (i) amended chap 639/1986 § 135

Subd. (j) par (1) amended chap 639/1986 § 136

Subd. (k) amended chap 639/1986 § 137

Subd. (m) amended chap 639/1986 § 137

DERIVATION

Formerly § T46-194.0 added LL 36/1976 § 2

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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Administrative Code of the City of New York

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NYC Administrative Code 11-1795

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1795 Criminal penalties; cross-reference.

For criminal penalties, see article thirty-seven of the tax law.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1814)

Section added (as § 11-1814) chap 907/1985 § 1

DERIVATION

Formerly § T46-195.0 added LL 36/1976 § 2

Repealed and added chap 65/1985 § 106

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

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Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1796 Income taxes of members of armed forces and victims of certain terrorist attacks.

(a) Time to be disregarded. In the case of an individual serving in the armed forces of the United States, or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized inside or outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization inside or outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter, in respect of the city personal income tax liability (including any interest, penalty, or addition to the tax) of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of income tax (except withholding tax);

(B) payment of any income tax (except withholding tax) or any installment thereof or of any other liability in respect thereof;

(C) filing a petition with the tax commission for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the tax commission;

(D) allowance of a credit or refund of city personal income tax; (E) filing a claim for credit or refund of city personal income tax;

(F) assessment of city personal income tax;

(G) giving or making any notice or demand for the payment of any city personal income tax, or with respect to any liability to the city in respect of such income tax;

(H) collection, by the tax commission, by levy or otherwise of the amount of any liability in respect of such income tax;

(I) bringing suit by the city, the state, or any officer, on their behalf, in respect of any liability in respect of such income tax; and

(J) any other act required or permitted under this chapter or specified in regulations prescribed under this section by the tax commission.

(2) The amount of any credit or refund.

(b) Special rule for overpayments. (1) Subdivision (a) of this section shall not apply for purposes of determining the amount of interest on any overpayment of tax.

(2) If an individual is entitled to the benefits of subdivision (a) of this section with respect to any return, amended return, or claim for credit or refund, and such return, amended return or claim is timely filed (determined after the application of such subdivision), paragraph three of subdivision (a) and subdivision (c) of section 11-1788 of this title shall not apply.

(c) Action taken before ascertainment of right to benefits. The assessment or collection of the tax imposed by this chapter or of any liability in respect of such tax, or any action or proceeding by or on behalf of the city in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subdivision (a) of this section.

(d) Members of armed forces dying in action. In the case of any person who dies while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day so served in a combat zone, and no returns shall be required in behalf of such person or his or her estate for such year; and the tax for any such taxable year which is unpaid at the date of death, including interest, additions to tax and penalties, if any, shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to the surviving spouse.

(e) Treatment of individuals performing Desert Shield services. (1) Any individual who performed Desert Shield services shall be entitled to the benefits of subdivisions (a) and (b) of this section in the same manner as if such services were services referred to in subdivision (a) of this section.

(2) For purposes of this subdivision, the term "Desert Shield services" means any services in the armed forces of the United States or in support of such armed forces if

(A) such services are performed in the area designated by the president of the United States as the "Persian Gulf

Desert Shield area", and

(B) such services are performed during the period beginning on August second, nineteen hundred ninety, and ending on the date on which any portion of the area referred to in subparagraph (A) of this paragraph is designated by the president as a combat zone pursuant to section one hundred twelve of the internal revenue code.

(f) Relief for personnel under hostile fire. For purposes of this section, members of the armed forces of the United States who perform military service in an area outside an area designated by the president of the United States by executive order as a "combat zone", which service is in direct support of military operations in such zone and is performed under conditions which qualify such members for hostile fire pay, as authorized under subdivision (a) of section nine of the federal uniformed services pay act of nineteen hundred sixty-three, shall, during the period of such qualifying service, be deemed to have served in such combat zone.

(g) Application to spouse. The provisions of subdivisions (a), (b), (c), (e) and (f) of this section shall apply to the spouse of any individual entitled to the benefits of subdivision (a) of this section; provided, however, that such subdivisions shall not apply for any spouse for any taxable year beginning more than two years after the date designated under section one hundred twelve of the internal revenue code as the date of termination of combatant activities in a combat zone.

(h) Individuals dying as a result of certain attacks. (1) General. In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply:

(A) with respect to the taxable year in which falls the date of death; and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury referred to in paragraph three of this subdivision were incurred.

(2) Taxation of certain benefits. Paragraph one of this subdivision shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts determined by the United States secretary of the treasury to be taxable pursuant to paragraph 692(d)(3) of the internal revenue code.

(3) Specified terrorist victim. For purposes of this subdivision, the term "specified terrorist victim" means any decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on September eleventh, two thousand one, provided, however, such term shall not include any individual identified by the attorney general of the United States to have been a participant or conspirator in any such attack or a representative of such an individual.

HISTORICAL NOTE

Section heading amended chap 85/2002 § Q3, eff. May 29, 2002 and

applying to taxable years ending before, on or after Sept. 11, 2001.

[See Note]

Section renumbered and amended chap 639/1986 §§ 101, 138 (formerly

§ 11-1815)

Section added (as § 11-1815) chap 907/1985 § 1

Subd. (a) par (2) amended chap 467/1991 §20 eff. July 19, 1991

Subd. (b) added chap 467/1991 § 21, eff. July 19, 1991

Subds. (c), (d) relettered chap 467/19912 § 21, eff. July 19, 1991

(formerly subds. (b), (c))

Subds. (e), (f), (g) added ch. 467/1991 § 21, eff. July 19, 1991

Subd. (h) added chap 85/2002 § Q4, eff. May 29, 2002 and applying to

taxable years ending before, on or after Sept. 11, 2001. [See Note]

DERIVATION

Formerly § T46-196.0 added LL 36/1976 § 2

Sub c amended chap 225/1977 § 7

NOTE

Provisions of chap 85/2002 § Q5:

§ 5. (a) Notwithstanding any other provision of the law to the contrary, with respect to an estate of a specified terrorist victim dying on or after September 11, 2001, but before January 1, 2002:

(1) Subsection (h) of section 696 of the tax law, as added by section two of this act, shall not apply to the tax imposed by article 26 of the tax law on the estate of a specified terrorist victim;

(2) The reference in subsection (a) of section 951 of the tax law to "with all amendments enacted on or before July twenty-second, nineteen hundred ninety-eight" shall be read as "with all amendments enacted on or before July twenty-second, nineteen hundred ninety-eight, and all amendments enacted by the federal Victims of Terrorism Tax Relief Act of 2001 (P.L. 107-134) insofar as that Act relates to the estate of a specified terrorist victim"; and

(3) Subsection (d) of section 2011, contained in section 2 of chapter 1013 of the laws of 1962 amending the tax law relating to the imposition of a tax on the transfer of estates of certain decedents, as added to such chapter by section 140 of chapter 190 of the laws of 1990, shall not apply to the estate of a specified terrorist victim.

(b) For purposes of this section, the term "specified terrorist victim" means any decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on September 11, 2001, provided, however, such term shall not include any individual identified by the attorney general of the United States to have been a participant or conspirator in any such attack or a represenative of such an individual.

FOOTNOTES

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[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1797

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1797 General powers of tax commission.

(a) General. The tax commission shall administer and enforce the tax imposed by this chapter and it is authorized to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of this chapter.

(b) Examination of books and witnesses. (1) The tax commission for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

(2) The tax commission may take any action under paragraph one of this subdivision to inquire into the commission of any offense connected with the administration or enforcement of this chapter, provided, however, that notwithstanding the provisions of section 11-1774 no such action shall be taken after a referral by the department or the tax commission to the attorney general, a district attorney or any other prosecutorial agency is in effect.

(c) Abatement authority. The tax commission, of its own motion, may abate any small unpaid balance of an

assessment of city personal income tax, or any liability in respect thereof, if the tax commission determines under uniform rules prescribed by it that the administration and collection costs involved would not warrant collection of the amount due. It may also abate, of its own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority. Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.

(e) Secrecy requirement and penalties for violation. (1) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, any officer or employee of the department of taxation and finance, any person engaged or retained by such department on an independent contract basis, any depositary to which any return may be delivered as provided in subdivision (h) or (i) of this section, any officer or employee of such depositary, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the tax commission in an action or proceeding under the provisions of this chapter, the tax law or in any other action or proceeding involving the collection of a tax due under this chapter or such tax law to which the city, state or the tax commission is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The tax commission may, nevertheless, publish a copy or a summary of any decision rendered after the hearing required under section 11-1789.

(3) Nothing herein shall be construed to prohibit the delivery by the state commissioner of taxation and finance to the county clerk of a county within the city of New York of a mailing list of individuals to whom income tax forms are mailed by the state commissioner of taxation and finance for the sole purpose of compiling a list of prospective jurors as provided in article sixteen of the judiciary law. Provided, however, such delivery shall only be made pursuant to an order of the chief administrator of the courts, appointed pursuant to section two hundred ten of such law. No such order may be issued unless such chief administrator is satisfied that such mailing list is needed to compile a proper list of prospective jurors for the county for which such order is sought and that, in view of the responsibilities imposed by the various laws of the state on the department of taxation and finance, it is reasonable to require the state commissioner of taxation and finance to furnish such list. Such order shall provide that such list shall be used for the sole purpose of compiling a list of prospective jurors and that such county clerk shall take all necessary steps to insure that the list is kept confidential and that there is no unauthorized use or disclosure of such list. Furthermore, nothing herein shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state or city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance, the corporation counsel or the attorney general or has been instituted, or the inspection of the reports or returns required under this chapter by the comptroller or duly designated

officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a taxpayer under this chapter, or the furnishing to the state department of social services of the amount of an overpayment of tax and interest thereon certified to the comptroller to be credited against past-due support pursuant to section one hundred seventy-one-c of the tax law and of the name and social security number of the taxpayer who made such overpayment or the furnishing to the New York state higher education services corporation of the amount of an overpayment of tax and interest thereon certified to the comptroller to be credited against the amount of a default in repayment of a guaranteed student loan pursuant to section one hundred seventy-one-d of the tax law and of the name and social security number of the taxpayer who made such overpayment or the furnishing to the state university of New York or the city university of New York or the attorney general on behalf of such state or city university the amount of an overpayment of tax and interest thereon certified to the comptroller to be credited against the amount of a default in repayment of a state university loan or city university loan pursuant to section one hundred seventy-one-e of the tax law and of the name and social security number of the taxpayer who made such overpayment, or the disclosing to a state agency, pursuant to section one hundred seventy-one-f of the tax law, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a past-due legally enforceable debt owed to such agency and of the name and social security number of the taxpayer who made such overpayment, or the disclosing to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-l of the tax law, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a city of New York tax warrant judgment debt and of the name and social security number of the taxpayer who made such overpayment. Reports and returns shall be preserved for three years and thereafter until the state commissioner of taxation and finance orders them to be destroyed.

(3-a) Notwithstanding the provisions of paragraph one of this subdivision, the state commissioner of taxation and finance or the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in subdivision (t) of section 11-1712 of this chapter, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the state commissioner of taxation and finance under this chapter or the New York state tax law or the commissioner of finance under this title.

(4) (A) Any officer or employee of the state, who willfully violates the provisions of this subdivision shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

(B) Cross-reference: For criminal penalties, see article thirty-seven of the tax law.

(f) Cooperation with the United States and other states. Notwithstanding the provisions of subdivision (e) of this section, the tax commission may permit the secretary of the treasury of the United States or his or her delegates, or the proper tax officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect any return filed under this chapter, or may furnish to such officer or his or her authorized representative an abstract of any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or his or her representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this chapter and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the commissioner of internal revenue or his or her authorized representative such returns filed under this chapter and other tax information, as he or she may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury of the United States or his or her delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegates. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

(g) Cooperation with the cities of the state of New York. Notwithstanding the provisions of subdivision (e) of this section, the tax commission may permit the proper city officer of any city of the state of New York imposing a personal income tax upon the incomes of residents, or an unincorporated business income tax, or an earnings tax on nonresidents, or the authorized representative of any such officer, to inspect any return filed under this chapter, or may furnish to such officer or his or her authorized representative an abstract of any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or his or her representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this chapter and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or the legal representative of such city such returns filed under this chapter and other tax information, as he or she may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his or her delegate, provided the local law of such city grants substantially similar powers to such city officer or his or her delegate. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

(h) Withholding returns. Notwithstanding the provisions of subdivision (e) of this section the tax commission in its discretion, when making deposits, pursuant to section 11-1798, of taxes withheld by employers, may deliver to the depositary the withholding returns filed by such employers as provided in section 11-1774, for the purpose of insuring that all money so deposited shall be correctly credited to taxpayers' accounts.

(i) Filing returns and making payments to depository banks. Notwithstanding the provisions of subdivision (e) of this section, the tax commission, in its discretion, may require or permit any or all individuals, estates or trusts liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the tax commission and to file reports and returns with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section 11-1798.

(j) (1) Authority to set interest rates. The commissioner of taxation and finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this subchapter, but if no such rates of interest are set, such overpayment rate shall be deemed to be set at six percent per annum and the underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such rates shall be the rates prescribed by paragraphs two and four of this subdivision, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) Rates of interest. (A) Overpayment rate. The overpayment rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five and one-half percentage points.

(3) Federal short-term rate. For the purposes of this subdivision: (A) The federal short-term rate for any

month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clauses (ii) and (iii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for individual estimated tax. In determining the addition to tax under subdivision (c) of section 11-1785 for failure to pay estimated tax for any taxable year, the federal short-term rate which applies during the third month following the taxable year shall also apply during the first fifteen days of the fourth month following such taxable year.

(iii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Notwithstanding the provisions of paragraph two of this subdivision to the contrary, in the case of interest payable by an employer with respect to income taxes required to be withheld and paid over by him or her pursuant to the provisions of subchapter four of this chapter and with respect to interest payable to an employer pursuant to subdivision (c) of section 11-1786, the rates of interest prescribed by this section shall be the overpayment and underpayment rates of interest prescribed in paragraph two of subsection (e) of section one thousand ninety-six of the tax law.

(5) In computing the amount of any interest required to be paid under this article by the commissioner of taxation and finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision (c) of section 11-1785.

(6) Publication of interest rates. The commissioner of taxation and finance shall cause to be published in the section for miscellaneous notices in the state register, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(7) Cross-reference. For provisions relating to the power of the commissioner of taxation and finance to abate small amounts of interest, see subdivision (c) of this section.

(k) Disclosure of collection activities with respect to joint return. Notwithstanding the provisions of subdivision (e) of this section, if any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the commissioner of taxation and finance shall disclose in writing to the individual making the request whether such commissioner has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of expiration of time within which to issue a warrant under subdivision (c) of section 11-1792 of this title or within which to collect such tax by execution and levy or by court proceeding.

(l) Disclosure of certain information where more than one person is subject to penalty. If the commissioner of taxation and finance determines that a person is liable for a penalty under subdivision (g) of section 11-1785 of this title

with respect to any failure, upon request in writing of such person, such commissioner shall disclose in writing to such person (1) the name of any other person whom such commissioner has determined to be liable for such penalty with respect to such failure, and (2) whether such commissioner has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

HISTORICAL NOTE

Section renumbered chap 639/1986 § 101 (formerly § 11-1816)

Section added (as § 11-1816) chap 907/1985 § 1

Subds. (a), (b), (d) amended chap 639/1986 § 139

Subd. (e) pars (1), (2) amended chap 639/1986 § 140

Subd. (e) par (3) amended chap 60/2004 § R23, eff. Aug. 20, 2004.

Subd. (e) par (3) amended chap 55/1992 § 98, eff. Apr. 10, 1992

Subd. (e) par (3) amended chap 639/1986 § 140

Subd. (e) par (3-a) added chap 686/2003 § M27, eff. Oct. 21, 2003 and applying to taxable years beginning on or after Jan. 1, 2003.

Subds. (f), (g), (h), (i) amended chap 639/1986 § 141

Subd. (j) amended chap 61/1989 § 144

Subd. (j) par (1) amended chap 57/2009 § 33 of Subpart D of Part V-1, eff. Apr. 7, 2009.

Subd. (j) par (1) amended chap 62/2003 § 5 of Part M3 effective as per Note 2.

Subd. (j) par (1) amended chap 85/2002 § R37, eff. Apr. 1, 2003. [See Note 1]

Subd. (j) par (1) amended chap 639/1986 § 142

Subd. (j) par (2) amended chap 85/2002 § R37, eff. Apr. 1, 2003. [See Note 1]

Subd. (j) par (2) amended chap 190/1990 § 47 eff. October 1, 1990

Subd. (j) par (2) subpar (B) amended chap 57/2009, § 34 of Subpart D of Part V-1, eff. Apr. 7, 2009.

Subd. (j) par (3) amended chap 639/1986 § 142

Subd. (j) par (4) added chap 639/1986 § 143

Subd. (k) added chap 577/1997 § 36, eff. Sept. 10, 1997 and applying to

requests made after Sept. 10, 1997

Subd. (l) added chap 577/1997 § 37, eff. Sept. 10, 1997

DERIVATION

Formerly § T46-197.0 added LL 36/1976 § 2

Sub j amended chap 788/1978 § 41

Sub j amended chap 103/1981 § 110

Sub e amended chap 527/1981 § 3

Sub j par 2 amended chap 1043/1981 § 53

Sub j par 3 amended chap 1043/1981 § 54

Sub e amended chap 545/1982 § 17

Sub j par 4 added chap 15/1983 § 129

Sub e amended chap 559/1984 § 14

Sub e amended chap 65/1985 § 107

(Special provision, joint audits, chap 65/1985 § 108)

Sub i amended chap 65/1985 § 144

Sub e par 3 amended chap 638/1985 § 14

Sub b par 1 designated chap 765/1985 § 29

(formerly open par)

Sub b par 2 added chap 765/1985 § 29

Sub e par 3 amended chap 639/1986 § 28

NOTE 1. Provisions of chap 85/2002 § R38: § 38. This act shall take effect immediately [Approved May 29, 2002], provided however, that: (a) Sections five through thirty-seven of this act shall take effect April 1, 2003, and shall apply to the interest chargeable or due on taxes or on any other amounts, or any portion thereof, which remain or become due or overpaid on or after April 1, 2003; provided however that: (1) the interest rates set pursuant to subsection (j) of section 697 and subsection (e) of section 1096 of the tax law, as such subsections existed prior to amendment by sections nine, ten and eleven of this act, and pursuant to subdivision (j) of section 11-1797 of the administrative code of the city of New York, as such subdivision existed prior to amendment by section thirty-seven of this act, and the interest rates to be paid under subparagraph (ii) of paragraph 1 and paragraph 2 of subdivision (a) of section 1145 of the tax law, as such provisions existed prior to amendment by section twelve of this act, shall apply up to, and including March 31, 2003, to the interest chargeable or due on taxes or on other amounts for which interest rates

are set under this act; and (2) any rules or regulations necessary to implement the provisions of sections five through thirty-seven of this act may be promulgated and any procedures, forms or instructions necessary for such implementation may be issued on or after the date this act shall have become a law; (b) The commissioner of taxation and finance is authorized to promulgate regulations on an emergency basis pursuant to subdivision 6 of section 202 of the state administrative procedure act, in order to implement the provisions of sections one through four of this act; and (c) The amendments to paragraph (a) of subdivision 8 of section 2807-j of the public health law made by section twenty-seven of this act shall not affect the expiration of such section and shall be deemed to expire therewith. 2. Chapter 62/2003 [A2106-B] was vetoed May 14, 2003 overridden May 15, 2003 and generally effective on that date. Part M3 § 5 is effective as per part M3 § 6: § 6. This act shall take effect on the first day of the calendar quarter which begins at least 60 days after the date this act shall have become a law and shall apply to interest allowable and due on refunds or any other amounts, or any portion thereof, which remain or become overpaid on or after the effective date of this act. Provided, however, that interest rates applicable prior to the effective date of this act will apply up to and including the last day of the quarter before which this act takes effect, to interest allowable or due on refunds or other amounts for which interest rates are set under this act. Provided, further, that any rules or regulations necessary to implement the provisions of this act may be promulgated and any procedures, forms, or instructions necessary for such implementation may be issued on or after the date this act shall have become a law.

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1798

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1798 Deposit and disposition of revenues.

All revenue collected by the state commissioner of taxation and finance from the taxes imposed pursuant to this chapter or chapter nineteen of this title shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for the city. Such deposits shall be kept in trust and separate and apart from all other moneys in the possession of the comptroller. The state comptroller shall require adequate security from all such depositories of such revenue collected by the state commissioner of taxation and finance. The state comptroller shall retain in his or her hands such amounts as the commissioner of taxation and finance may determine to be necessary for refunds in respect to the taxes imposed by this chapter and such chapter nineteen and for reasonable costs of the state commissioner of taxation and finance in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under this chapter and such chapter nineteen and except further that he shall pay to a non-obligated spouse that amount of overpayment of tax imposed pursuant to the authority of article thirty of the New York state tax law or former article two-E of the general city law and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of the New York state tax law and which is certified to him by the commissioner of taxation and finance as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of the New York state tax law, and he shall deduct a like amount which he shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of

social services, the state university of New York, the city university of New York, the higher education services corporation, or to the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment and, with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of the tax law and paid to the city of New York, the comptroller shall collect a like amount from the city of New York. The state comptroller, after reserving such refund fund and such costs shall, on or before the fifteenth day of each month, pay to the chief fiscal officer of the city the balance of such taxes collected, to be paid into the treasury of the city to the credit of the general fund except that he shall pay to the state department of social services that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him by the state commissioner of taxation and finance as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of the New York state tax law and except that he shall pay to the New York state higher education services corporation that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him by the state commissioner of taxation and finance as the amount to be credited against the amount of defaults in repayment of guaranteed student loans pursuant to subdivision five of section one hundred seventy-one-d of the New York state tax law and except that he shall pay to the state university of New York or the city university of New York, respectively, that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him by the state commissioner of taxation and finance as the amount to be credited against the amount of defaults in repayment of state university or city university loans pursuant to subdivision six of section one hundred seventy-one-e of the New York state tax law, and except further that, notwithstanding any other provision of law, he shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him by the state commissioner of taxation and finance as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of the New York state tax law, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of the tax law, and except further that he shall pay to the city of New York that amount of overpayments of tax imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him by the state commissioner of taxation and finance as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of the New York state tax law. The amount deducted for administering, collecting and distributing such taxes during such monthly period shall be paid by the state comptroller into the general fund of the state treasury to the credit of the state purposes fund therein. The first payment to such chief fiscal officer shall be made on or before March fifteenth, nineteen hundred seventy-six, which payment shall represent the balance of revenue after provision for refund and such reasonable costs, with respect to taxes collected from January first, nineteen hundred seventy-six through February twenty-ninth, nineteen hundred seventy-six. Subsequent payments shall be made on or before April fifteenth, nineteen hundred seventy-six and on or before the fifteenth day of each succeeding month thereafter, and shall represent the balance of revenue with respect to taxes collected the preceding calendar month. The amounts so payable shall be certified to the state comptroller by the state commissioner of taxation and finance or his or her delegate, either of whom shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such chief fiscal officer is more or less than the amount then due such city, the amount of overpayment or underpayment shall be certified to the state comptroller by the state commissioner of taxation and finance or his or her delegate, either of whom shall not be held liable for any inaccuracy in such certificate. The amount of overpayment or underpayment shall be so certified to the state comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments by the state comptroller to such chief fiscal officer shall be adjusted by subtracting the amount of any such overpayment from, or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the state comptroller and the state commissioner of taxation and finance shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

HISTORICAL NOTE

Section amended chap 60/2004 § R24, eff. Aug. 20, 2004.

Section renumbered and amended chap 639/1986 §§ 101, 144 (formerly § 11-1817)

Section added (as § 11-1817) chap 907/1985 § 1

Section amended chap 81/1995 § 181 eff. Sept. 1, 1995

Section amended chap 55/1992 § 99, eff. Apr. 10, 1992

Section amended chap 686/1989 § 14

DERIVATION

Formerly § T46-198.0 added LL 36/1976 § 2

FOOTNOTES

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[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1799

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1799 Transition provisions. Standard deduction.

HISTORICAL NOTE

Section repealed chap 190/1990 § 159 eff. May 25, 1990

Section added chap 333/1987 § 163

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1800

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1800 Enforcement with other taxes.

(a) If there is assessed a tax under this chapter and there is also assessed a tax or taxes against the same taxpayer pursuant to article twenty-two of the tax law or under chapter nineteen of this title and if the tax commission takes action under such article twenty-two or under such chapter nineteen with respect to the enforcement and collection of the tax or taxes assessed under such articles and/or chapter, the tax commission shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of this chapter.

(b) Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two of the tax law and this city income tax.

(c) Whenever the tax commission takes any action with respect to a deficiency of income tax under article twenty-two of such law or under chapter nineteen of this title, other than the action set forth in subdivision (a) of this section, it may in its discretion accompany such action with a similar action under such city income tax.

HISTORICAL NOTE

Section renumbered chap 333/1987 § 163 (formerly § 11-1799)

Section renumbered (as § 11-1799) chap 639/1986 § 101 (formerly § 11-1818)

Section added (as § 11-1818) chap 907/1985 § 1

Subd. (a) amended chap 639/1986 § 145

DERIVATION

Formerly § T46-199.0 added LL 36/1976 § 2

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1801

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1801 Administration, collection and review.

(a) Except as otherwise provided in this chapter, any tax imposed by this chapter shall be administered and collected by the tax commission in the same manner as the tax imposed by article twenty-two of the tax law is administered and collected by such commission. Whenever there is joint collection of state and city personal income taxes, it shall be deemed that such collections shall represent proportionately the applicable state and city personal income taxes in determining the amount to be remitted to the city.

(b) The tax commission, in its discretion, may require or permit any or all persons liable for any tax imposed by this chapter to make payments on account of estimated tax and payment of any tax, penalty or interest to such banks, banking houses or trust companies designated by the tax commission and to file returns with such banks, banking houses or trust companies, as agent of the tax commission, in lieu of paying a tax imposed by this chapter directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies which are designated by the comptroller as depositories of the state.

(c) Notwithstanding any other provisions of this chapter, the tax commission may require:

(1) the filing of any or all of the following:

(A) a combined return which, in addition to the return provided for in section 11-1751, may also include any or

both of the returns required to be filed by a resident individual of New York state pursuant to the provisions of section six hundred fifty-one of the tax law and which may be required to be filed by such individual pursuant to chapter nineteen of this title and

(B) a combined employer's return which, in addition to the employer's return provided for by this chapter, may also include any or both of the employer's returns required to be filed by the same employer pursuant to the provisions of section six hundred seventy-four of such law and required to be filed by such employer pursuant to such chapter nineteen of this title and

(2) where a combined return or employer's return is required, and with respect to the payment of estimated tax, the tax commission may also require the payment to it of a single amount which shall equal the total of the amounts which would have been required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of article twenty-two of such tax law, and the provisions of this chapter as if no combined return or employer's return were required.

HISTORICAL NOTE

Section renumbered chap 333/1987 § 163 (formerly § 11-1800)

Section renumbered (as § 11-1800) and amended chap 639/1986 §§ 101,

146 (formerly § 11-1819)

Section added (as § 11-1819) chap 907/1985 § 1

DERIVATION

Formerly § T46-200.0 added LL 36/1976 § 2

Sub c amended chap 65/1985 § 145

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1802

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 17 CITY PERSONAL INCOME TAX ON RESIDENTS

SUBCHAPTER 5 PROCEDURE AND ADMINISTRATION*15

§ 11-1802 Construction.

This chapter shall be construed and enforced in conformity with article thirty of the tax law, as added to such law by chapter eight hundred eighty-one of the laws of nineteen hundred seventy-five, pursuant to which article it is enacted.

HISTORICAL NOTE

Section renumbered chap 333/1987 § 163 (formerly § 11-1801)

Section renumbered (as § 11-1801) and amended chap 639/1986 §§ 101,

146 (formerly § 11-1820)

Section added (as § 11-1820) chap 907/1985 § 1

DERIVATION

Formerly § T46-201.0 added LL 36/1976 § 2

FOOTNOTES

15

[Footnote 15]: * Former §§ 11-1736-11-1755 added by chap 907/1985 § 1 were repealed chap 639/1986 § 101. Present sections were renumbered into this subchapter, former §§ 11-1800-11-1820.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1901

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1901 Meaning of terms.

As used in this chapter, the following terms shall mean and include:

(a) " Commissioner" means the commissioner of finance of the city except that with respect to taxes imposed for any taxable year beginning on or after January first, nineteen hundred seventy-six, such term shall mean state tax commission.

(b) "Payroll period" and "employer" mean the same as payroll period and employer as defined in subsections (b) and (d) of section thirty-four hundred one of the internal revenue code, and "employee" shall also include all those included as employees in subsection (c) of such section of such code.

(c) "Commissioner of finance" means the commissioner of finance of the city.

(d) "This state" means the state of New York.

(e) "Wages" means wages as defined in subsection (a) of section thirty-four hundred one of the internal revenue code, except that (1) wages shall not include payments for active service as a member of the armed forces of the United States and shall not include, in the case of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the

insurance law, any item of income, gain, loss or deduction of such business which is such individual's distributive or pro rata share for federal income tax purposes or which such individual is required to take into account separately for federal income tax purposes, and (2) wages shall include (i) the amount of member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the code or subdivision nineteen of section twenty-five hundred seventy-five of the education law, (ii) the amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law, (iii) the amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of title twelve of the code, and (iv) the amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

(f) "Net earnings from self-employment" means the same as net earnings from self-employment as defined in subsection (a) of section fourteen hundred two of the internal revenue code, except that the deduction for wages and salaries paid or incurred for the taxable year which is not allowed pursuant to section two hundred eighty C of such code shall be allowed, and except that an estate or trust shall be deemed to have net earnings from self-employment determined in the same manner as if it were an individual subject to the tax on self-employment income imposed by section fourteen hundred one of the internal revenue code diminished by: (1) the amount of any deduction allowed by subsection (c) of section six hundred forty-two of the internal revenue code and (2) the deductions allowed by sections six hundred fifty-one and six hundred sixty-one of said code to the extent that they represent distributions or payments to a resident of the city. However, "trade or business" as used in subsection (a) of section fourteen hundred two of such code shall mean the same as trade or business as defined in subsection (c) of section fourteen hundred two of such code, except that paragraphs four, five and six of such subsection shall not apply in determining net earnings from self-employment taxable under this chapter. Provided, however, in the case of a nonresident individual or partner of a partnership doing an insurance business described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes shall not be considered to be "net earnings from self-employment".

(g) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(h) Resident individual. A resident individual means an individual:

(1) who is domiciled in the city, unless (A) he or she maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B) (i) within any period of five hundred forty-eight consecutive days he or she is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days he or she is not present in the city for more than ninety days and does not maintain a permanent place of abode in the city at which his or her spouse (unless such spouse is legally separated) or minor children are present for more than ninety days, and (iii) during any period of less than twelve months which would be treated as a separate taxable period pursuant to section 11-1919 of this chapter, and which period is contained within such period of five hundred forty-eight consecutive days, he or she is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in such period of less than twelve months bears to five hundred forty-eight, or

(2) who is not domiciled in the city but maintains a permanent place of abode in the city and spends in the aggregate more than one hundred eighty-three days of the taxable year in the city, unless such individual is in active service in the armed forces of the United States.

(i) Nonresident individual. A nonresident individual means an individual who is not a resident.

(j) Resident estate or trust. A resident estate or trust means:

(1) the estate of a decedent who at his or her death was domiciled in the city,

(2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his or her death was domiciled in the city, or

(3) a trust, or portion of a trust, consisting of the property of:

(A) a person domiciled in the city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(B) a person domiciled in the city at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(k) Nonresident estate or trust. A nonresident estate or trust means an estate or trust which is not a resident.

(l) Unless a different meaning is clearly required, any terms used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal taxes but such meaning shall be subject to the exceptions or modifications prescribed in or pursuant to article two-E of the general city law or by the laws of this state. Any reference in this chapter to the internal revenue code, the internal revenue code of nineteen hundred eighty-six or to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred eighty-six (unless a reference to the internal revenue code of nineteen hundred fifty-four is clearly intended), and amendments thereto, and other provisions of the laws of the United States relating to federal taxes, as the same are included in the appendix and supplement to the appendix to this chapter. (The quotation of the aforesaid laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this chapter).

(m) With respect to any taxable year beginning in nineteen hundred seventy, until and including the thirty-first day of December, nineteen hundred seventy-one, "administrator" shall be read as "state tax commission"; "administrative agencies of the city" shall be read as "administrative agencies of the state"; "depositories or financial agents of the city" shall be read as "depositories or financial agents of the state"; "officers or employees of the department of finance of the city" shall be read as "officers or employees of the state department of taxation and finance"; in sections 11-1934, 11-1936, 11-1939, and 11-1942 of this chapter (except for the last sentence thereof) of this chapter "city" shall be read as "state"; "corporation counsel or other appropriate officer of the city" or "corporation counsel of the city" shall be read as "state attorney general"; and the words "it" or "its" shall apply instead of the pronouns used where the reference is to tax commission. Provided, however, with respect to declarations of estimated tax and payments of such tax and the withholding tax requirements, until and including the thirty-first day of December, nineteen hundred seventy-one, any such terms shall be so read with respect to any taxable year or other period beginning in nineteen hundred seventy-one. (Subds. e and f amended, ch. 639/86, § 147. Subd. j amended, ch. 639/86, § 148.)

(n) The term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited

liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (b) amended chap 333/1987 § 164

Subd. (e) amended chap 312/1997 § 5, eff. July 29, 1997 and applying

to taxable years beginning on or after Jan. 1, 1997

Subd. (e) amended chap 531/1994 § 5, eff. July 26, 1994

Subd. (e) amended chap 374/1993 § 9 eff. July 21, 1993

Subd. (e) amended chap 681/1992 § 9 eff. July 31, 1992

Subd. (e) amended chap 421/1991 § 5 eff. July 19, 1991

Subd. (e) amended chap 746/1990 § 3 eff. September 5, 1990

Subd. (e) amended chap 114/1989 § 9

Subd. (e) amended chap 783/1988 § 5

Subd. (e) amended chap 782/1988 § 7

Subd. (e) amended chap 333/1987 § 164

Subds. (f), (l) amended chap 333/1987 § 164

Subd. (n) amended chap 248/1997 § 16, eff. July 21, 1997.

Subd. (n) added chap 576/1994 § 68, eff. July 26, 1994

DERIVATION

Formerly § U46-1.0 added LL 24/1966 § 1

Sub e amended LL 39/1967 § 1

Sub a amended LL 21/1970 § 1

Sub m added LL 21/1970 § 3

Sub a amended LL 44/1971 § 8

Sub m amended LL 44/1971 § 9

Sub a amended LL 61/1975 § 5

Sub h par 2 amended chap 225/1977 § 8

Sub h par 1 amended chap 675/1977 § 50

Sub f amended chap 33/1978 § 10

Sub e amended chap 480/1978 § 24

Sub f amended chap 480/1978 § 25

Sub h par 1 amended chap 790/1978 § 10

Subs e, f amended chap 805/1984 § 110

Subs e, f amended chap 639/1986 § 29

Sub j amended chap 639/1986 § 30

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1902

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1902 Persons subject to tax.

(a) Imposition of tax. (1) A tax is hereby imposed for each taxable year ending on or after July first, nineteen hundred sixty-six and on or before December thirty-first, nineteen hundred seventy and for each taxable year beginning after December thirty-first, nineteen hundred ninety-nine, on the wages earned and net earnings from self-employment, within the city, of every nonresident individual, estate and trust which shall comprise:

(i) A tax at the rate of one-fourth of one per cent on all wages.

(ii) A tax at the rate of three-eighths of one per cent on all net earnings from self-employment.

(2) For each taxable year beginning on or after January first, nineteen hundred seventy-one and ending on or before December thirty-first, nineteen hundred ninety-nine, a tax is hereby imposed on the wages earned, and net earnings from self-employment, within the city, of every nonresident individual, estate and trust which shall comprise:

(i) A tax at the rate of forty-five hundredths of one per cent on all wages.

(ii) A tax at the rate of sixty-five hundredths of one per cent on all net earnings from self-employment.

(3) For each taxable year beginning in nineteen hundred seventy and ending in nineteen hundred seventy-one, two tentative taxes shall be computed, the first as provided in paragraph one of this subdivision and the second as

provided in paragraph two of this subdivision, and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred seventy and the number of days in nineteen hundred seventy-one, respectively, bears to the number of days in the entire taxable year.

(4) For each taxable year beginning in nineteen hundred ninety-nine and ending in two thousand, two tentative taxes shall be computed, the first as provided in paragraph two of this subdivision and the second as provided in paragraph one of this subdivision, and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred ninety-nine and the number of days in two thousand, respectively, bears to the number of days in the entire taxable year.

(b) Exclusion. (1) In computing the amount of wages and net earnings from self-employment taxable under subdivision (a) of this section, there shall be allowed an exclusion against the total of wages and net earnings from self-employment in accordance with the following table:

[See tabular material in printed version]

(2) The exclusion allowable shall be applied pro rata against wages and net earnings from self-employment.

(3) For taxable periods of less than one year, the exclusion allowable shall be prorated pursuant to regulations of the commissioner.

(c) Limitation. In no event shall a taxpayer be subject to the tax under this chapter in an amount greater than such taxpayer would be required to pay if such taxpayer were a resident of the city and subject to a tax on personal income of residents of the city adopted by the city pursuant to authority granted by the general city law or the tax law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) amended chap 497/1997 § 4, eff. Aug. 26, 1997

Subd. (a) amended chap 179/1995 § 3, eff. July 19, 1995

Subd. (a) amended chap 648/1993 § 3, eff. Aug. 4, 1993

Subd. (a) amended chap 273/1991 § 15, eff. July 15, 1991

Subd. (a) amended chap 271/1991 § 27, eff. July 15, 1991

Subd. (a) amended chap 345/1990 § 15 eff. June 30, 1990

Subd. (a) amended chap 241/1989 § 106

Subd. (a) amended chap 333/1987 § 165

Subd. (a) amended L.L. 43/1986 § 3

DERIVATION

Formerly § U46-2.0 added LL 24/1966 § 1

Amended LL 44/1971 § 10

Sub a amended LL 81/1972 § 2

Sub a amended LL 73/1973 § 2

Sub a amended LL 22/1974 § 2

Sub a amended LL 40/1975 § 2

Sub c amended LL 61/1975 § 4

Sub a amended LL 3/1977 § 1

Sub a amended LL 97/1977 § 1

Sub a amended LL 42/1978 § 3

Sub a amended LL 89/1979 § 3

Sub a amended LL 44/1980 § 3

Sub a amended LL 71/1981 § 3

Sub a amended LL 39/1982 § 3

Sub a amended LL 34/1983 § 3

Sub a amended LL 54/1984 § 3

Sub a amended LL 62/1985 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1903

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1903 Taxable years to which tax imposed by this chapter applies; tax for taxable years beginning prior to and ending after July first, nineteen hundred sixty-six.

(a) General. The tax imposed by this chapter is imposed for each taxable year beginning with taxable years ending on or after July first, nineteen hundred sixty-six.

(b) Alternate methods for determining tax for taxable years ending on or after July first, nineteen hundred sixty-six. (1) The tax for any taxable year ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven, shall be the same part of the tax which would have been imposed had this chapter been in effect for the entire taxable year as the number of months (or major portions thereof) of the taxable year occurring after July first, nineteen hundred sixty-six is of the number of months (or major portions thereof) in the taxable year.

(2) (i) In lieu of the method of computation of tax prescribed in paragraph one of this subdivision, if the taxpayer maintains adequate records for any taxable year ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven, the tax for such taxable year, at the election of the taxpayer, may be computed on the basis of the wages which the taxpayer would have reported had he or she filed a federal income tax return for a taxable year beginning July first, nineteen hundred sixty-six, and ending with the close of such taxable year ending on or before June thirtieth, nineteen hundred sixty-seven, and the net earnings from self-employment which the taxpayer would have reported for federal income tax purposes had he or she filed a self-employment tax return for a

taxable year beginning July first, nineteen hundred sixty-six and ending with the close of such taxable year ending on or before June thirtieth, nineteen hundred sixty-seven.

(ii) For purposes of this paragraph, the exclusions allowable under section 11-1902 of this subchapter shall be reduced by a fraction, the numerator of which is the number of months (or major portions thereof) of the taxable year occurring before July first, nineteen hundred sixty-six, and the denominator of which is the number of months (or major portions thereof) in the taxable year. Except as provided in this paragraph, the tax for such period ending on or before June thirtieth, nineteen hundred sixty-seven, shall be computed in accordance with the other provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-3.0 added LL 24/1966 § 1

Sub b amended LL 39/1967 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1904

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1904 Allocation to the city.

(a) General. If net earnings from self-employment are derived from services performed, or from sources, within and without the city, there shall be allocated to the city a fair and equitable portion of such earnings.

(b) Allocation of net earnings from self-employment.

(1) Place of business. If a taxpayer has no regular place of business outside the city all of his or her net earnings from self-employment shall be allocated to the city.

(2) Allocation by taxpayer's books. The portion of net earnings from self-employment allocable to the city may be determined from the books and records of a taxpayer's trade or business, if the methods used in keeping such books and the accuracy thereof are approved by the commissioner as fairly and equitably reflecting net earnings from selfemployment within the city.

(3) Allocation by formula. If paragraph two of this subdivision does not apply to the taxpayer, the portion of net earnings from self-employment allocable to the city shall be determined by multiplying (A) net earnings from self-employment within and without the city, by (B) the average of the following three percentages:

(i) Property percentage. The percentage computed by dividing (A) the average of the value, at the beginning and

end of the taxable year, of real and tangible personal property connected with net earnings from self-employment and located within the city, by (B) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the net earnings from selfemployment and located both within and without the city. For this purpose, real property shall include real property whether owned or rented.

(ii) Payroll percentage. The percentage computed by dividing (A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the net earnings from self-employment derived from a trade or business carried on within the city, by (B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the net earnings from self-employment derived from a trade or business carried on both within and without the city.

(iii) Gross income percentage. The percentage computed by dividing (A) the gross sales or charges for services performed by or through an agency located within the city, by (B) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices or other agencies of the trade or business from which a taxpayer is deriving net earnings from self-employment, situated within the city.

(c) Other allocation methods. The portion of net earnings from self-employment allocable to the city shall be determined in accordance with rules and regulations of the commissioner if it shall appear to the commissioner that the net earnings from self-employment are not fairly and equitably reflected under the provisions of subdivision (b) of this section.

(d) Special rules for real estate. Income and deductions from the rental of real property and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subdivision (b) or (c) of this section, but shall be considered as entirely derived from or connected with the place in which such property is located.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-4.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1905

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1905 Accounting periods and methods.

(a) Accounting periods. A taxpayer's taxable year under this chapter shall be the same as his or her taxable year for federal income tax purposes.

(b) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his or her taxable year for purposes of this chapter shall be similarly changed. If a taxable period of less than twelve months results from a change of taxable year, the exclusion allowable under section 11-1902 of this subchapter shall be prorated under regulations of the commissioner.

(c) Accounting methods. A taxpayer's method of accounting under this chapter shall be the same as his or her method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, net earnings from self-employment within the city shall be computed under such method as in the opinion of the commissioner clearly reflects net earnings from self-employment within the city.

(d) Change of accounting methods. (1) If a taxpayer's method of accounting is changed for federal income tax purposes, his or her method of accounting for purposes of this chapter shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be

greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, beginning after July first, nineteen hundred sixty-six, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-5.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1908

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1908 Withholding of tax on wages.

On or after the first payroll period beginning August twenty-seventh, nineteen hundred sixty-six, every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this chapter shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this chapter. The method of determining the amount to be withheld shall be prescribed by regulations of the commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-8.0 added LL 24/1966 § 1

Sub a repealed LL 39/1967 § 3

Sub b undesignated and amended LL 39/1967 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1909

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1909 Withholding of tax on wages for taxable periods commencing on or after January first, nineteen hundred seventy-six.

The provisions contained in sections 11-1908, 11-1910, 11-1911, 11-1912, 11-1913 and 11-1914 of this subchapter shall not be applicable to taxes imposed for taxable periods commencing on or after January first, nineteen hundred seventy-six provided however, with respect to such periods, the provisions contained in part V of article twenty-two of the tax law shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section except where inconsistent with the provisions of article two-E of the general city law, except that the term "aggregate amount" contained in paragraphs one, two and three of subsection (a) of section six hundred seventy-four of the tax law shall mean the aggregate amounts of New York state personal income tax, city earnings tax on nonresidents and city personal income tax on residents authorized pursuant to article thirty of the tax law required to be deducted and withheld and provided, however, that the provisions of such paragraphs shall not be applicable to employer's returns required to be filed with respect to taxes required to be deducted and withheld during the calendar year nineteen hundred seventy-six, but such returns shall be required to be filed with the tax commission at the times and in the manner provided for in subdivision (a) of section 11-1912 of this chapter, except the term "commission" in such subdivision shall be read as "tax commission." This section shall not apply to payments by the United States for service in the armed forces of the United States so long as the right to require deduction and withholding of tax from such payments is prohibited by the laws of the United States. Service in the armed forces of the United States shall have the same meaning as when used in a comparable context in the laws of the United States relating to withholding of city

income taxes.

HISTORICAL NOTE

Section amended chap 166/1991 § 124, eff. Jan. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-8.1 added LL 61/1975 § 8

Amended chap 59/1977 § 16

Amended chap 301/1984 § 10

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1910

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1910 Information statement for employee.

Every employer required to deduct and withhold tax under this chapter from the wages of an employee, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the commissioner showing the total amount of wages paid by the employer to the employee, the amount of wages paid for services performed within the city, the amount deducted and withheld as tax, and such other information as the commissioner may prescribe. The written statement required herein may be furnished to such employee in an electronic format.

HISTORICAL NOTE

Section amended L.L. 31/2008 § 2, eff. July 29, 2008.

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-9.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1911

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1911 Credit for tax withheld.

Wages upon which tax is required to be withheld shall be taxable under this chapter as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid on behalf of the employee from whom withheld, and such employee shall be credited with having paid that amount of tax in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-10.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1912

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1912 Employer's return and payment of withheld taxes.

(a) General. On or after the first payroll period beginning August twenty-seventh, nineteen hundred sixty-six, every employer required to deduct and withhold tax under this chapter shall, for each calendar month, on or before the fifteenth day of the month following the close of such calendar month file a withholding return as prescribed by the commissioner and pay over to the commissioner or to the depository designated by the commissioner, the taxes so required to be deducted and withheld, except that for the month of December in any year the returns shall be filed and the taxes paid on or before January thirty-first of the succeeding year. Where the aggregate amount required to be deducted and withheld by any employer under this chapter and under chapter seventeen of this title is less than twenty-five dollars in a calendar month and the aggregate of such taxes for the semi-annual period ending on June thirtieth and December thirty-first can reasonably be expected to be less than one hundred fifty dollars, the commissioner may, by regulation, permit an employer to file a return on or before July thirty-first for the semi-annual period ending on June thirtieth and on or before January thirty-first for the semi-annual period ending on December thirty-first. The commissioner may, if he or she believes such action necessary for the protection of the revenues, require any employer to make a return and pay to him or her the tax deducted and withheld at any time, or from time to time. Where the amount of wages paid by an employer is not sufficient under this chapter and under chapter seventeen of this title to require the withholding of tax from the wages of any of his or her employees, the commissioner may, by regulation, permit such employer to file an annual return on or before February twenty-eighth of the following calendar year.

(b) Combined returns. The commissioner may by regulation provide for the filing of one return which shall include the return required to be filed under this section, together with the employer's return required to be filed under chapter seventeen of this title.

(c) Deposit in trust for city. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required in this section, the commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the commissioner, in a separate account, in trust for the city and payable to the commissioner, and to keep the amount of such tax in such account until payment over to the commissioner. Such notice shall remain in effect until a notice of cancellation is served by the commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-11.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1913

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1913 Employer's liability for withheld taxes.

Every employer required to deduct and withhold the tax under this chapter is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the commissioner, and any additions to tax, penalties and interest with respect thereto shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this chapter shall be held to be a special fund in trust for the city. No employee shall have any right of action against his or her employer in respect to any monies deducted and withheld from his or her wages and paid over to the commissioner in compliance or in intended compliance with this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-12.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1914

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1914 Employer's failure to withhold.

If an employer fails to deduct and withhold the tax, as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-13.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1915

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 1 GENERAL

§ 11-1915 Combined returns, employer's returns and payments.

The state tax commission may require:

(1) The filing of any or all of the following:

(A) A combined return which in addition to the return provided for in this chapter may also include returns required to be filed under a law authorized by article thirty of the tax law and under article twenty-two of the tax law.

(B) A combined employer's return which in addition to the employer's return provided for by this chapter may also include employer's returns required to be filed under a law authorized by article thirty of the tax law and under article twenty-two of the tax law.

(2) Where a combined return or employer's return is required, and with respect to the payment of estimated tax, the state tax commission may also require payment of a single amount which shall be the total of the amounts (total taxes less any credits or refunds) required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of this chapter, a law authorized by article thirty of the tax law and pursuant to the provisions of article twenty-two of the tax law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-14.0 added LL 61/1975 § 7

Sub 2 amended chap 682/1976 § 4

Amended chap 65/1985 § 147

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1916

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1916 Returns and payment of tax.

(a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, every person subject to the tax shall make and file a return and any balance of the tax shown due on the face of such return shall be paid therewith. The commissioner may, by regulation, provide for the filing of returns and payment of the tax at such other times as he or she deems necessary for the proper enforcement of this chapter. The commissioner may also provide by regulation that any return otherwise required to be made and filed under this chapter by any nonresident individual need not be made and filed if such nonresident individual had, during the taxable year to which the return would relate, no net earnings from self-employment within the city. Any regulation allowing such waiver of return may provide for additional limitations on and conditions and prerequisites to the privilege of not filing a return.

(b) Decedents. The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(c) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), or by his or her duly authorized agent.

(d) Estates and trust. The return for an estate trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) Cross reference. For provisions as to information returns by partnerships, employers and other persons, see section 11-1921 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (b) repealed chap 333/1987 § 166

Subds. (b)-(f) relettered ch. 333/1987 § 166

(former subds. (c)-(g))

DERIVATION

Formerly § U46-21.0 added LL 24/1966 § 1

Sub a amended LL 21/1967 § 1

Subs c-g relettered chap 682/1976 § 5

(formerly subs b-f)

Sub b added chap 682/1976 § 5

Sub b closing par amended chap 545/1982 § 18

Sub b closing par amended chap 559/1984 § 15

Sub b closing par amended chap 638/1985 § 15

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1917

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1917 Time and place for filing returns and paying tax.

A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The commissioner shall prescribe by regulation the place for filing any return, statement, or other document required pursuant to this chapter and for payment of any tax.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-22.0 added LL 24/1966 § 1

Amended chap 65/1985 § 148

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1918

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1918 Signing of returns and other documents.

(a) General. Any return, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by such individual.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-23.0 added LL 24/1966 § 1

Subs a, c amended chap 65/1985 § 149

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1919

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1919 Change of residence status during year.

(a) General. If an individual changes his or her status during his or her taxable year from resident to nonresident, or from nonresident to resident, he or she shall file a return as a nonresident for the portion of the year during which he or she is a nonresident if he or she is subject to the tax imposed by this chapter or, if not subject to such tax, an information return for the portion of the year during which he or she is a nonresident, subject to such exceptions as the commissioner may prescribe by regulation. Such information return shall be due at the same time as the return required by chapter seventeen of this title for the portion of the year during which such individual is a resident.

(b) City taxable wages and net earnings from self-employment for portion of year individual is a nonresident. The city taxable wages and net earnings from self-employment for the portion of the year during which he or she is a nonresident shall be determined, except as provided in subdivision (c) of this section, under this chapter as if his or her taxable year for federal income tax purposes were limited to the period of his or her nonresident status.

(c) Special accruals. (1) If an individual changes his or her status from resident to nonresident, he or she shall, regardless of his or her method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for city earnings tax purposes for such portion of the taxable year for a prior taxable year. The amounts of such accrued items shall be determined as if such accrued items were includible or allowable for federal self-employment tax purposes.

(2) If an individual changes his or her status from nonresident to resident, he or she shall, regardless of his or her method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for federal self-employment tax purposes for such portion of the taxable year or for prior taxable year. The amounts of such accrued items shall be determined if such accrued items were includible or allowable for federal self-employment tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subdivision shall be taken into account in determining city adjusted wages earned, or net earnings from self-employment, within the city, for any subsequent taxable period.

(4) Where an individual changes his or her status from resident to nonresident, the accruals under this subdivision shall not be required if the individual files with the commissioner a bond or other security acceptable to the commissioner, conditioned upon the inclusion of amounts accruable under this subdivision in city adjusted gross income under chapter seventeen of this title for one or more subsequent taxable years as if the individual has not changed his or her resident status. In such event, the tax under this chapter shall not apply to such amounts.

(d) Prorations. Where an individual changes his or her status during his or her taxable year from resident to nonresident or from nonresident to resident, the exclusion allowable under subdivision (b) of section 11-1902 of this chapter shall be prorated, under regulations of the commissioner, to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-23.1 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1920

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1920 Extension of time.

(a) General. The commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, statement, or other document required pursuant to this chapter, on such terms and conditions as he or she may require. Except for a taxpayer who is outside the United States or who intends to claim nonresident status pursuant to subparagraphs (i), (ii) and (iii) of paragraph one of subdivision (h) of section 111901 of this chapter, no such extension for filing any return, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the commissioner may require.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-24.0 added LL 24/1966 § 1

Sub a amended chap 675/1977 § 51

Sub a amended chap 65/1985 § 150

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1921

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1921 Requirements concerning returns, notices, records and statements.

(a) General. The commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the commissioner may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) Partnerships. Every partnership doing business in the city and having no partners who are residents shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the commissioner may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subdivision, "taxable year" means year or period which would be a taxable year of the partnership if it were subject to tax under this chapter.

(c) Information at source. The commissioner may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this chapter. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations,

remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualifications as such to the commissioner, as may be required by regulation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-25.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1922

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 2 RETURNS AND PAYMENT OF TAX

§ 11-1922 Report of change in federal or New York state taxable income.

If the amount of a taxpayer's federal or New York state taxable income or self-employment income reported on his or her federal or New York state tax return for any taxable year is changed or corrected by the United States internal revenue service or the New York state commissioner of taxation and finance or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or New York state or if a taxpayer, pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section or if a taxpayer, pursuant to subdivision (f) of section six hundred eighty-one of the tax law executes a notice of waiver of the restrictions provided in subdivision (c) of said section, or if any tax on self-employment income in addition to that shown on his or her return is assessed, the taxpayer shall report such change or correction in federal or New York state taxable income or such execution of such notice of waiver or such assessment and the changes or corrections of his or her federal or New York state taxable income or self-employment income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver or the making of such assessment as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal or New York state income or self-employment income tax return shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having any

income derived from city sources, and (ii) the term "federal income tax return" shall include the returns of income required under section six thousand thirty-one of the internal revenue code. Reports made under this section by a partnership shall indicate the portion of the change in each item of income, gain, loss or deduction allocable to each partner and shall set forth such identifying information with respect to such partner as may be prescribed by the commissioner.

HISTORICAL NOTE

Section amended chap 190/1990 § 54, eff. May 25, 1990 applying

on and after July 1, 1990

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-26.0 added LL 24/1966 § 1

Amended LL 63/1969 § 31

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Administrative Code of the City of New York

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NYC Administrative Code 11-1923

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1923 Notice of deficiency.

(a) General. If upon examination of a taxpayer's return under this chapter the commissioner determines that there is a deficiency of tax, he or she may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a return required under this chapter, the commissioner is authorized to estimate the taxpayer's wages and net earnings from self-employment or the wages from which taxes are required to be deducted and withheld and the tax thereon, from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at such taxpayer's last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to or her last know address in or out of the city, unless the commissioner has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment. The notice of deficiency shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice.

(c) Restrictions on collection and levy. No notice and demand for payment of an assessment of a deficiency in tax made by a notice of deficiency and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-1937 of this subchapter, until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the commissioner, until the decision of the commissioner has become final. After a petition has been filed the restriction provided herein

shall not apply to such part of the deficiency as is not contested by the petition. For exception in the case of judicial review of the decision of the commissioner, see subdivision (c) of section 11-1932 of this subchapter.

(d) Exceptions for mathematical errors. If a mathematical error appears on a return (including an overstatement of the credit for tax withheld at the source or of the amount paid as estimated tax), the commissioner shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1929 of this subchapter (limiting credits or refunds after petition to the commissioner), or subdivision (b) of section 11-1931 of this subchapter (authorizing the filing of a petition with the commissioner based on a notice of deficiency) nor shall collection of such assessment be prohibited by the provisions of subdivision (c) of this section.

(e) Exception where change in federal or New York state taxable income is not reported (1) If the taxpayer fails to comply with section 11-1922 of this chapter in not reporting a change or correction increasing his or her federal or New York state taxable income or self-employment income as reported on such taxpayer's federal or New York state tax return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver or an assessment described in such section, instead of the mode and time of assessment and collection provided for in subdivision (b) of this section, the commissioner may assess a deficiency based upon such changed or corrected federal or New York state taxable income or self-employment income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed and subject to collection procedures on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-1922 of this chapter is filed accompanied by a statement showing wherein such federal or New York state determination of such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1929 of this subchapter (limiting credits or refunds after petition to the commissioner), or subdivision (b) of section 11-1931 of this subchapter (authorizing the filing of a petition with the commissioner based on a notice of deficiency), nor shall the collection of such assessment be prohibited by the provisions of subdivision (c) of this section.

If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, unless the commissioner has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions. The taxpayer shall at any time have the right to waive the mailing of a notice of deficiency or restriction on collection of the whole or any part of the deficiency, or both, by a signed notice in writing filed with the commissioner.

(g) Deficiency defined. For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (1) the amount shown as the tax upon the taxpayer's return (whether the return was made or the tax computed by the taxpayer or by the commissioner), and less, (2) the amounts previously assessed (or collected without assessment) as a deficiency and plus (3) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax or the credit for withholding tax; and a rebate means so much of an abatement, refund or other repayment (whether or not erroneous) made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

(h) Cross reference. For provisions permitting a notice of deficiency under chapter seventeen of this title to be treated as a notice of deficiency under this chapter and permitting a notice of deficiency or a payment for which credit or refund is sought under chapter seventeen of this title to be treated as though made under this chapter where the

taxpayer has filed a petition under such chapter seventeen for either a redetermination of deficiency or for credit or refund, see subdivision (h) of section 11-1736 of this title and subdivision (h) of section 11-1744 of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-31.0 added LL 24/1966 § 1

Sub e par 1 amended LL 63/1969 § 32

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1924

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1924 Assessment.

(a) Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return (including any amended return showing an increase of tax). In the case of a return properly filed without computation of tax, the tax computed by the commissioner shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date on which it is mailed. If an amended return or report filed pursuant to section 11-1922 of this chapter concedes the accuracy of a federal or New York state adjustment, change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-1925 of this subchapter. If a notice of additional tax due, as prescribed in subdivision (e) of section 11-1923 of this subchapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-1922 of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers. If the mode or time for the assessment of any tax under this chapter (including

interest, additions to tax and assessable penalties) is not otherwise provided for, the commissioner may establish the same by regulations.

(d) Supplemental assessment. The commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 11-1923 of this subchapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference. For assessment in case of jeopardy, see section 11-1937 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-32.0 added LL 24/1966 § 1

Sub a amended LL 63/1969 § 33

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1925

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1925 Limitations on assessment.

(a) General. Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed).

(b) Exceptions. (1) Assessment at any time. The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax, or

(C) the taxpayer fails to comply with section 11-1922 of this chapter in not reporting a change or correction increasing his or her federal or New York state taxable income or self-employment income as reported on the taxpayer's federal or New York state tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting an assessment or a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, or in not filing an amended return.

(2) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be

extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal or New York state income. If the taxpayer shall, pursuant to section 11-1922 of this chapter, report a change or correction or file an amended return increasing the taxpayer's federal or New York state taxable income or earnings from self-employment or report an assessment or a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment (if not deemed to have been made upon the filing of the report or amended return) may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax on earnings attributable to such federal or New York state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(5) Request for prompt assessment. If a return is required for a decedent or for the decedent's estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (c) of this section.

(c) Omission of income on return. The tax may be assessed at any time within six years after the return was filed if a taxpayer omits from a return an amount properly includible therein which is in excess of twenty-five per centum of the amount of the gross income derived by the taxpayer from any trade or business.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of such item.

(d) Suspension of running of period of limitation. The running of the period of limitations on or collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner is prohibited under subdivision (c) of section 11-1923 of this subchapter collecting by levy or proceeding in court.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-33.0 added LL 24/1966 § 1

Sub b par 1 subpar C amended LL 63/1969 § 34

Sub b par 3 amended LL 63/1969 § 35

Administrative Code of the City of New York

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NYC Administrative Code 11-1926

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1926 Interest on underpayment.

(a) General. If any amount of tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the appropriate rates prescribed for underpayments of tax under chapter seventeen of this title shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. If the time for filing a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(c) Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter (including any extension of time) and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) No interest on interest. No interest under this chapter shall be imposed on any interest provided by this chapter.

(e) Suspension of interest on deficiencies. If a waiver of restrictions on collection of an assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner for payment of such assessed deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency

for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax. Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section 11-1934 of this subchapter, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment prior to notice of deficiency. If, prior to the mailing to the taxpayer of a notice of deficiency under subdivision (b) of section 11-1923 of this subchapter, the commissioner mails to the taxpayer a notice of proposed increase of tax and within thirty days after the date of the notice of proposed increase the taxpayer pays all amounts shown on the notice to be due to the commissioner, no interest under this section on the amount so paid shall be imposed for the period after the date of such notice of proposed increase.

(i) Payment within ninety days after notice of deficiency. If a notice of deficiency under section 11-1923 of this subchapter is mailed to the taxpayer, and the total amount specified in such notice is paid on or before the ninetieth day after the date of mailing, interest under this section shall not be imposed for the period after the date of the notice.

(j) Payment within ten days after notice and demand. If notice and demand is made for payment of any amount under subdivision (b) of section 11-1934 of this subchapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(k) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(l) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the rate of six per centum per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(m) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-34.0 added LL 24/1966 § 1

Sub a amended chap 103/1981 § 111

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NYC Administrative Code 11-1927

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1927 Additions to tax and civil penalties.

(a) Failure to file tax return. In case of failure to file a tax return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of this chapter or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency.

(c) Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate of six per centum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of underpayment shall be the excess of the amount

of the installment which would be required to be paid if the estimated tax were equal to seventy percent of the tax attributable to net earnings from self employment shown on the tax return for the taxable year (or if no return was filed, of the tax so attributable for such year) over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(d) Exception to addition for underpayment of estimated tax. The addition to tax under subdivision (c) of this section with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

(A) The tax attributable to net earnings from self-employment shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to seventy percent of the tax so attributable for the taxable year computed by placing on an annualized basis the taxable net earnings from self-employment for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable net earnings from self-employment shall be placed on an annualized basis by:

(i) multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the taxable net earnings from self-employment for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) deducting from such amount the proper proportion of the exclusion allowable for the taxable year by subdivision (b) of section 11-1902 of this chapter; or

(2) An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable net earnings from self-employment for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) Deficiency due to fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subdivision (a) or (b) of this section.

(f) Non-willful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this chapter or the payment thereof, shall fail to make a return and pay a tax withheld by him or her at the time required by or under provisions of section 11-1912 of this chapter, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subdivision (a) of this section, and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The commissioner shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this chapter for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this chapter who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other

penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subdivision (b) or (e) of this section shall be imposed for any offense to which this subdivision applies.

(h) Failure to file certain information returns. In case of each failure to file a statement of a payment to another person, required under authority of subdivision (c) of section 11-1921 of this chapter (relating to information at source, including the duplicate statement of tax withheld on wages) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of one dollar for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed one thousand dollars.

(i) Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this chapter, shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the commissioner. The commissioner shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(j) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this chapter to tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-1923 of this subchapter, this subdivision shall not apply to:

(1) any addition to tax under subdivision (a) except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c); and

(3) any additional penalty under subdivision (i).

(k) Determination of deficiency. For purposes of subdivisions (b) and (e), the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(l) Person defined. For purposes of subdivisions (g) and (i), the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-35.0 added LL 24/1966 § 1

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NYC Administrative Code 11-1928

Administrative Code of the City of New York

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CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1928 Overpayment.

(a) General. The commissioner, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter or by another chapter or chapters of this title on the person who made the overpayment, and the balance shall be refunded. Any refund under this section shall be made only upon the filing of a return.

(b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 11-1908 of this chapter, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Credits against estimated tax. The commissioner may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(e) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

(f) Assessment and collection after limitation period. If any amount of tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(g) Notwithstanding any provision of law in article fifty-two of the civil practice law and rules to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of the department of finance, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-36.0 added LL 24/1966 § 1

Sub g added LL 76/1973 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1929

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1929 Limitations on credit or refund.

(a) General. Claim for credit or refund of an overpayment of tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement. If an agreement under the provisions of paragraph two of subdivision (b) of section 11-1925 of this subchapter (extending the period for assessment of tax) is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) if a claim had been filed on the date the agreement was

executed.

(c) Notice of change or correction of federal or New York state income. If a taxpayer is required by section 11-1922 of this chapter to report a change or correction in federal or New York state taxable income or self-employment income reported on his or her federal or New York state tax return, or to report an assessment or a change or correction which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, or to file an amended return with the commissioner, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner. If the report or amended return required by section 11-1922 of this chapter is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal or New York state change, correction or items amended on the taxpayer's amended federal or New York state income tax or self-employment tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision (e) of this section or subdivision (d) of section 11-1932 of this subchapter after the expiration of the applicable period of limitation specified in this chapter unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(e) Effect of petition to commissioner. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-1923 of this subchapter and if the taxpayer files a timely petition with the commissioner under section 11-1931 of this subchapter, the commissioner may determine that the taxpayer has made an overpayment for such year (whether or not the commissioner also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(1) as to overpayments determined by a decision of the commissioner which has become final;

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the commissioner which has become final;

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(f) Limit on amount of credit or refund. The amount of overpayment determined under subdivision (e) of this section shall, when the decision of the commissioner has become final, be credited or refunded in accordance with subdivision (a) of section 11-1928 of this subchapter and shall not exceed the amount of tax which the commissioner determines as part of his or her decision was paid:

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim has been filed (whether or not filed) stating the grounds upon which the commissioner finds that there is an overpayment.

(g) Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(h) Prepaid tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its

payment, any tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated tax for a taxable year shall be deemed to have been paid by the taxpayer on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(i) Return and payment of withholding tax. Notwithstanding subdivision (g) of this section, for purposes of this section with respect to any withholding tax:

(1) if a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed on April fifteenth of such succeeding calendar year; and

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

(j) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section 11-1928 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-37.0 added LL 24/1966 § 1

Sub c amended LL 63/1969 § 36

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1930

Administrative Code of the City of New York

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SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1930 Interest on overpayment.

(a) General. Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the appropriate rates prescribed for overpayments of tax under chapter seventeen of this title upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date (to be determined by the commissioner) preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax, payment of estimated tax, and credit for tax withholding. The provisions of subdivisions (g), (h) and (i) of section 11-1929 of this subchapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Refund within three months of due date of tax. If any overpayment of tax imposed by this chapter is refunded within three months after the last date prescribed (or permitted by extension of time) for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on such overpayment.

(d) Cross-reference. For provision terminating interest after failure to file notice of federal or New York state change under section 11-1922 of this chapter, see subdivision (c) of 11-1929 of this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-38.0 added LL 24/1966 § 1

Sub d amended LL 63/1969 § 37

Sub a amended chap 103/1981 § 112

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1931

Administrative Code of the City of New York

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CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1931 Petition to commissioner.

(a) General. The form of a petition to the commissioner, and further proceedings before the commissioner in any case initiated by the filing of a petition, shall be governed by such rules as the commissioner shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by the commissioner, or by a hearing officer designated by the commissioner to take evidence and report to the commissioner. The commissioner shall decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his or her last known address and such notice shall set forth the commissioner's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer. Any portion of an assessment of a deficiency disallowed by the commissioner's decision, shall be forthwith abated, or if paid, credited or refunded to the taxpayer without the making of a claim therefor.

(b) Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-1923 of this subchapter, the taxpayer may file a petition with the commissioner for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (f) of section 11-1929 of this subchapter.

(c) Petition for refund. A taxpayer may file a petition with the commissioner for the amounts asserted in a claim

for refund if:

(1) the taxpayer has filed a timely claim for refund with the commissioner,

(2) the taxpayer has not previously filed with the commissioner a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (e) of section 11-1929 of this subchapter, and

(3) either: (A) six months have expired since the claim was filed, or (B) the commissioner has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such a two-year period it has been extended by written agreement between the taxpayer and the commissioner. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) Assertion and assessment of deficiency after filing petition.

(1) Petition for redetermination of deficiency. If a taxpayer files with the commissioner a petition for redetermination of a deficiency, the commissioner shall have power to determine and assess a greater deficiency than asserted in the notice of deficiency and to determine and assess any addition to tax or penalty provided in section 11-1927 of this subchapter, if claim therefor is asserted at or before the hearing and within the period in which an assessment would be timely under section 11-1925 of this subchapter under the rules of the commissioner.

(2) Petition for refund. If the taxpayer files with the commissioner a petition for credit or refund for a taxable year, the commissioner may:

(A) determine and assess a deficiency for such year as to any amount of deficiency claim (which shall be an assessment) for which is asserted at or before the hearing under rules of the commissioner, and within the period in which an assessment would be timely under section 11-1925 of this subchapter, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the commissioner.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner under this subdivision.

(4) Restriction on further notices of deficiency. If the taxpayer files a petition with the commissioner under this section, no notice of deficiency under section 11-1923 of this subchapter may thereafter be issued by the commissioner for the same taxable year, except in case of fraud or with respect to a change or correction in federal or New York state taxable income or self-employment income required to be reported under section 11-1922 of this chapter.

(e) Burden of proof. In any case before the commissioner under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer (except where the petitioner's liability arises by reason of section 11-1936 of this subchapter), but not to show that the taxpayer was liable for the tax; and

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of

a change or correction of federal or New York state taxable income or self-employment income required to be reported under section 11-1922 of this chapter, and of which change or correction the commissioner had no notice at the time he or she mailed the notice of deficiency.

(f) Evidence of related federal determination. Evidence of a federal determination relating to issues raised in a case before the commissioner under this section shall be admissible, under rules established by the commissioner.

(g) Jurisdiction over other years. The commissioner shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-39.0 added LL 24/1966 § 1

Sub d par 4 amended LL 63/1969 § 38

Sub e par 3 amended LL 63/1969 § 39

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1932

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1932 Review of commissioner's decision.

(a) General. A decision of the commissioner shall be subject to judicial review for error, illegality or unconstitutionality at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer.

(b) Judicial review exclusive remedy of taxpayer. The review of a decision of the commissioner provided by this section shall be exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) Collection pending review; review bond. Irrespective of any restrictions on the collection of assessments for deficiencies, the commissioner may collect by levy or, otherwise any assessment of a deficiency after the expiration of the period specified in subdivision (a) of this section, nothwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the assessed deficiency, has deposited with the commissioner the amount of the assessed deficiency, or has filed with the commissioner a bond (which may be a jeopardy bond under subdivision (h) of section 11-1937 of this subchapter) in the amount of the portion of the assessed deficiency (including interest and other amounts) in respect of which the application for review is made with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the assessed deficiency (including interest and other

amounts) as finally determined. If as a result of a waiver of the restrictions on the collection of a deficiency any part of the amount determined by the commissioner is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced. A similar bond for all costs and charges which may accrue against the taxpayer in the prosecution of such judicial review proceeding must be filed with the commissioner before any such proceeding is instituted.

(d) Credit, refund or abatement after review. If the amount of a deficiency assessed and determined by the commissioner is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of commissioner's decision. A decision of the commissioner shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the commissioner of a decision in accordance with the mandate of the court on review. Notwithstanding the foregoing, for the purpose of making an application for review, the decision of the commissioner shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-40.0 added LL 24/1966 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1933

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1933 Mailing rules; holidays.

(a) Timely mailing. If any claim, statement, notice, petition, or other document (including to the extent authorized by the commissioner, a return or declaration of estimated tax) required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by the United States mail to the commissioner, bureau, office, officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the commissioner, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulations of the commissioner.

(b) Last known address. For purposes of this chapter, a taxpayer's last known address shall be the address given in the last return filed by the taxpayer, unless subsequent to the filing of such return the taxpayer shall have notified the commissioner of a change of address.

(c) Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-41.0 added LL 24/1966 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-1934

Administrative Code of the City of New York

Title 11 Taxation and Finance

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SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1934 Collection, levy and liens.

(a) Collection procedures. The taxes imposed by this chapter shall be collected by the commissioner, and he or she may establish the mode or time for the collection of any amount due the commissioner under this chapter if not otherwise specified. The commissioner shall, upon request, give a receipt for any sum collected under this chapter. The commissioner may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner may prescribe; and the commissioner shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner.

(b) Notice and demand for tax. The commissioner shall as soon as practicable and, in the case of an assessment the collection of which is restricted by the provisions of subdivision (c) of section 11-1923 of this subchapter, as soon as practicable after the expiration of such restrictions give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the commissioner determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date (including any date fixed by extension) prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand. If any person liable under this chapter for the payment of any

tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten days after notice and demand therefor is given to such person under subdivision (b) of this section, the commissioner may within six years after the date of the expiration of the period of restriction on the collection of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance of the city, commanding the sheriff or such officer or employee to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner finds that the collection of tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner and upon failure or refusal to pay such tax or other amount the commissioner may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision (c) of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) Judgment. When a warrant has been filed with the county clerk the commissioner shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution. The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for such sheriff's services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance of the city may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not then a resident. Where a notice and demand under subdivision (b) shall have been given to a taxpayer who is not then a resident of this state, and it appears to the commissioner that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the commissioner may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of finance of the city a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his or her last known address, subject to the rules for mailing provided in subdivision (a) of section 11-1933 of this subchapter. Such warrant shall command the officer or employee to proceed in the city, and such officer or employee shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure where and by which a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner may also, in his or her discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not then residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the commissioner shall deem proper and sufficient.

(h) Action by the city for recovery of taxes. Action may be brought by the corporation counsel or other appropriate officer of the city at the insistance of the commissioner to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced. The period during which collection of any assessment is prohibited by subdivision (c) of section 11-1923 of this subchapter, shall be added to such six years.

(i) Release of lien. The commissioner, if he or she finds that the interest of the city will not thereby be jeopardized, and upon such conditions as may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-42.0 added LL 24/1966 § 1

Administrative Code of the City of New York

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NYC Administrative Code 11-1935

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Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1935 Transferees.

(a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due to the city under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee; and also includes a person liable for the amount of any tax, additions to tax, penalty or interest under the provisions of section 11-1936 of this subchapter.

(b) Exceptions. (1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) of this section or paragraph one of this subdivision for the assessment of the liability, the commissioner and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the

period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-1929 of this subchapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-1929 of this subchapter on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-1929 of this subchapter shall be increased by the period from the date of such expiration to the date of the agreement.

(c) Deceased transferor. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if he or she had lived.

(d) Evidence. Notwithstanding the provisions of section 11-1942 of this subchapter, the commissioner shall use his or her powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-1931 of this subchapter for rule as to burden of proof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-43.0 added LL 24/1966 § 1

Administrative Code of the City of New York

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NYC Administrative Code 11-1936

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Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1936 Liability of bulk transferees.

Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee, that it owes any tax pursuant to this chapter, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether or not any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give the notice to the commissioner required by this section, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the

payment to the city of any such taxes, theretofore or thereafter determined to be due to the city from the seller, transferor or assignor and such liability may be assessed and enforced in the same manner as the liability for tax is imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-43.1 added LL 24/1966 § 1

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NYC Administrative Code 11-1937

Administrative Code of the City of New York

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SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1937 Jeopardy determination or assessment.

(a) Authority for making. If the commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he or she shall, notwithstanding the provisions of sections 11-1923 and 11-1939 of this subchapter, immediately assess and/or proceed to collect such deficiency (together with all interest, penalties and additions to tax provided for by law), and notice and demand shall be made by the commissioner for the payment thereof.

(b) Notice of deficiency. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 11-1923 of this subchapter, then the commissioner shall mail a notice under such section within sixty days after making of the assessment.

(c) Amount assessable before decision of commissioner. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has therefor filed a petition with the commissioner. The commissioner may, at any time before rendering his or her decision, abate such assessment or any unpaid portion thereof, to the extent that he or she believes the assessment to be excessive in amount. The commissioner may in his or her decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of commissioner. If the jeopardy assessment of determination of jeopardy

is made after the decision of the commissioner is rendered, such assessment or determination may be made only in respect of the deficiency determined by the commissioner in his or her decision.

(e) Expiration of right to assess. A jeopardy determination may not be made after the decision of the commissioner has become final or after the taxpayer has made an application for review of the decision of the commissioner.

(f) Collection of unpaid amounts. When a petition has been filed with the commissioner and when the amount which should have been assessed has been determined by a decision of the commissioner which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-1928 of this subchapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the commissioner.

(g) Abatement if jeopardy does not exist. The commissioner may abate the jeopardy determination if he or she finds that jeopardy does not exist. Such abatement may not be made after a decision of the commissioner in respect of the deficiency has been rendered or, if no petition is filed with the commissioner, after the expiration of the period for filing such petition. The period of limitation on the making of a levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated has not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy determination until the expiration of the tenth day after the day on which such jeopardy determination is abated.

(h) Bond to stay collection. The collection of the whole or any amount of any assessment determined to be in jeopardy may be stayed by filing with the commissioner, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond, the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond and, if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section 11-1923 of this subchapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to commissioner. If the bond is given before the taxpayer has filed his or her petition under section 11-1931 of this subchapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the commissioner which has become final. If the commissioner determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the commissioner is rendered.

(j) Stay of sale of seized property pending commissioner's decision. Where a jeopardy assessment or a determination of jeopardy is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-1931 of this subchapter for filing a petition with the commissioner, and

(2) if a petition is filed with the commissioner (whether before or after the making of such jeopardy assessment or determination), prior to the expiration of the period during which the collection of the deficiency assessed would be prohibited if subdivision (a) of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the commissioner determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest. For the purpose of subdivision (a) of section 11-1926 of this subchapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year. If the commissioner finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the commissioner made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the commissioner as provided in subdivision (1), the commissioner may reopen such taxable period each time the taxpayer is found by the commissioner to have received wages or net earnings from self-employment, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner may be reopened by the taxpayer if he or she files with the commissioner a true and accurate return of taxable wages and net earnings from self-employment under this chapter for such taxable period, together with such other information as the commissioner may by regulation prescribe.

(n) Furnishing of bond where taxable year is closed by the commissioner. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes for prior years.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-44.0 added LL 24/1966 § 1

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NYC Administrative Code 11-1938

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1938 Criminal penalties.

(a) Attempt to evade tax. Any individual, corporation or partnership or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the commissioner thereunder, shall fail to pay the tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under the provisions of this chapter, or who, with like intent, shall make, render, sign or certify any false or fraudulent return, declaration or statement, or shall supply any false or fraudulent information, or who shall fail to comply with the provisions of subdivision (b) of section 11-1912 of this chapter after the service of a notice by the commissioner thereunder, shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed five thousand dollars or be imprisoned not to exceed one year, or both, at the discretion of the court.

(b) Limitations. Notwithstanding the provisions of section 30.10 of the criminal procedure law or of any other law of this state, a prosecution for any offense under this section may be commenced at any time not later than three years after the commission of such offense provided that, if such offense is the failure to do an act required by or under any provision of this chapter to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date.

(c) Willful failure to withhold. Any individual, corporation or partnership or any officer or employee of any corporation (including a dissolved corporation), or member or employee of any partnership, who willfully fails to

collect or pay over any withholding tax as required, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five thousand dollars or imprisoned not to exceed one year, or both.

(d) Two or more charges. In the prosecution of offenses under this section, if there are two or more charges against any person or corporation, involving a violation or violations of any provision or provisions of this chapter, whether for the same or different taxable years, instead of returning several indictments or filing several informations, all of such charges may be joined in one indictment or information, in separate counts, and if two or more indictments are found, or two or more informations are filed, the court may order them to be consolidated. If a person or corporation shall be convicted of two or more offenses constituting different crimes set forth in different counts of one indictment or information, or in separate indictments or informations consolidated as hereinbefore provided, the court may impose a separate sentence for each offense, and if imprisonment is imposed, the court may order any of such sentences to be served concurrently or consecutively.

(e) Miscellaneous rules. Any prosecution under this section may be conducted in any county where the person or corporation to whose tax liability the proceeding relates resides, or has a place of business, or in any county in which any such crime is committed. The corporation counsel of the city shall have concurrent jurisdiction with any district attorney in the prosecution of any offense under this section. If the provisions of this section conflict with those contained in any other law, this section shall control. The certificate of the commissioner to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied. All fines levied under this section shall be paid to the commissioner and deposited in the same manner as revenues collected or received under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-45.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1939

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1939 Armed forces relief provisions.

(a) Time to be disregarded. In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalized outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter in respect of the tax liability (including any interest, penalty, or addition to the tax) of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of tax (except withholding tax);

(B) payment of any tax (except withholding tax) or any installment thereof or of any other liability to the commissioner, in respect thereof;

(C) filing a petition with the commissioner for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the commissioner;

(D) allowance of a credit or refund of tax;

(E) filing a claim for credit or refund of tax;

(F) giving or making any notice or demand for the payment of any tax, or with respect to any liability to the commissioner in respect of tax;

(G) collection, by the commissioner, by levy or otherwise of the amount of any liability in respect of tax;

(H) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of tax; and

(I) any other act required or permitted under this chapter or specified in the regulations prescribed under this section by the commissioner.

(2) The amount of any credit or refund (including interest).

(b) Action taken before ascertainment of right to benefits. The collection of the tax imposed by this chapter or of any liability to the commissioner in respect of such tax, or any action or proceeding by or on behalf of the commissioner in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit of subdivision (a).

(c) Members of armed forces dying in action. In the case of any person who dies while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day so served in a combat zone, and no returns shall be required in behalf of such person or his or her estate for such year; and the tax for any such taxable year which is unpaid at the date of death, including interest, additions to tax and penalties, if any, shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to the surviving spouse.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-46.0 added LL 24/1966 § 1

Sub c amended chap 652/1976 § 1

Sub c amended chap 225/1977 § 9

Administrative Code of the City of New York

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NYC Administrative Code 11-1940

Administrative Code of the City of New York

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SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1940 General powers of commissioner.

(a) General. The commissioner shall administer and enforce the tax imposed by this chapter and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provisions of this chapter and the commissioner may delegate his or her powers and functions under all subchapters of this chapter to one of his or her deputies or to any employee or employees of his or her department.

(b) Examination of books and witnesses. The commissioner for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable wages and net earnings from self-employment of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons and may issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or excused from attendance, and for the production of books, papers, records or memoranda.

(c) Abatement authority. The commissioner, of his or her own motion, may abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, if the commissioner determines under uniform rules prescribed by

him or her that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority. Where no questions of fact or law are involved and it appears from the records of the commissioner that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the commissioner at any time, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) Cooperation with the United States and other states. Notwithstanding the provisions of section 11-1942 of this subchapter, the commissioner may permit the secretary of the treasury of the United States or such secretary's delegates, or the proper tax officer of any other state imposing an income tax upon the income of individuals, or the authorized representative of either such officer, to inspect any return filed under this chapter, or may furnish to such officer or his or her authorized representative an abstract of any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or his or her representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner and such information is to be used for tax purposes only; and provided further the commissioner may furnish to the commissioner of internal revenue or his or her authorized representative such returns filed under this chapter and other tax information as he or she may consider proper for the use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or by his or her delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or such secretary's delegates. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-47.0 added LL 24/1966 § 1

Sub e amended chap 170/1970 § 10

Sub e amended LL 21/1970 § 2

Sub e amended chap 119/1971 § 7

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NYC Administrative Code 11-1941

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CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1941 Joint enforcement.

(1) If there is assessed a tax under this chapter and there is also assessed a tax or taxes against the same taxpayer pursuant to article twenty-two of the tax law and if the commissioner of the tax imposed by this chapter takes action under the tax law with respect to the enforcement and collection of the tax or taxes assessed under such tax law, the commissioner shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of this chapter.

(2) Any monies collected as a result of such joint action shall be deemed to have been collected in proportion in the amounts due, including tax, penalties, interest and additions to tax under article twenty-two of the tax law and under this chapter.

(3) Whenever the commissioner takes any action with respect to a deficiency of personal income tax, under article twenty-two of the tax law other than the action set forth in subdivision one of this section the commissioner may, in his or her discretion, accompany such action with a similar action under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-47.1 added LL 21/1970 § 5

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NYC Administrative Code 11-1942

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1942 Secrecy requirement and penalties for violation.

1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner or any other officer or employee of the department of finance of the city, any person engaged or retained by such commissioner or department on an independent contract basis, any depository to which any return may be delivered as provided in subdivision two of this section, any officer or employee of such depository, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of wages or earnings or any particulars set forth or disclosed in any report or return required under this chapter. The commissioner or any other officer and employee charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more; except as provided in subdivision (e) of section 11-1940 of this subchapter. The commissioner may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing required under section 11-1931 of this subchapter of this chapter. Nothing herein

shall be construed to prohibit the delivery to a taxpayer or the taxpayers's duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner. Reports and returns shall be preserved for three years and thereafter until the commissioner orders them to be destroyed. Any violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be the commissioner or any other officer or employee of the city, he or she shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

2. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all individuals, estates or trusts, liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax and reports and returns with such banks, banking houses or trust companies as agents of the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-48.0 added LL 24/1966 § 1

Amended LL 22/1973 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1943

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1943 Provisions not applicable.

The provisions contained in this subchapter shall not be applicable with respect to taxes imposed for taxable periods commencing on or after January first, nineteen hundred seventy-six but, with respect to the tax imposed for such periods the provisions contained in part VI of article twenty-two of the tax law and sections six hundred fifty-three, six hundred fifty-eight, six hundred sixty-two and thirteen hundred eleven of the tax law including the provisions of judicial review by a proceeding under article seventy-eight of the civil practice law and rules shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section except where inconsistent with the provisions of this chapter.

HISTORICAL NOTE

Section amended chap 577/1997 § 46, eff. Sept. 10, 1997

Section amended chap 664/1990 § 9 eff. July 22, 1990 applying to returns

on and after April 15, 1991

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-49.0 added LL 61/1975 § 6

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Administrative Code of the City of New York

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NYC Administrative Code 11-1944

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1944 Deposit and disposition of revenues by commissioner.

All taxes, penalties and interest imposed under this chapter which are paid to or collected by the commissioner of finance shall be deposited by the commissioner of finance in the general fund of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-51.0 added LL 24/1966 § 1

Amended LL 21/1970 § 4

Amended LL 44/1971 § 11

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-1945

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 19 EARNINGS TAX ON NONRESIDENTS

SUBCHAPTER 3 PROCEDURE AND ADMINISTRATION

§ 11-1945 Effect of invalidity in part; inconsistencies with other laws.

(a) If any clause, sentence, paragraph, subdivision, section, provision or other portion of this chapter or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this chapter or the application of such portion held invalid, to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, provision or other portion thereof directly involved in such holding or to the person and circumstances therein involved.

(b) If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § U46-52.0 added LL 24/1966 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2001

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 1 GENERAL SALES AND COMPENSATING USE TAXES*53

§11-2001 Imposition of general sales and compensating use taxes.

(a) On and after August first, two thousand eight, there are hereby imposed and there shall be paid all of the sales and compensating use taxes described in article twenty-eight of the tax law as authorized by subdivision (a) of section twelve hundred ten of the tax law, at the rate of four percent, provided that the taxes described in paragraph six of subdivision (c) of section eleven hundred five of the tax law shall be imposed and paid at the rate of six percent.

(b) Notwithstanding any contrary provision of this section or other law, this section:

(1) does not impose tax on (i) receipts from the sale of the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining described in subparagraph (ii) of paragraph three of subdivision (c) of section eleven hundred five of the tax law; (ii) receipts from the sale of services described in paragraph six of subdivision (c) of section eleven hundred five of the tax law at facilities owned and operated by the city or an agency or instrumentality of the city or a public corporation the majority of whose members are appointed by the mayor or the city council or both of them;

(2) for purposes of the tax described in subdivision (e) of section eleven hundred five of the tax law, defines "permanent resident" to mean any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days with regard to the period of such occupancy;

(3) does not omit from the tax described in paragraph one of subdivision (f) of section eleven hundred five of the tax law charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools; (4) does not provide the clothing and footwear exemption in paragraph thirty of subdivision (a) of section eleven hundred fifteen of the tax law but does exempt clothing and footwear and any item used or consumed to make or repair exempt clothing and which becomes a physical component part of that exempt clothing;

(5) omits the exemption provided in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of the tax law;

(6) omits the exemption provided in subdivision (c) of section eleven hundred fifteen of the tax law insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam; and

(7) omits the provision for refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen of the tax law.

(c) The taxes imposed by this section shall be in addition to any and all other taxes authorized or imposed under any other provision of law.

(d) The taxes imposed by this section shall be administered and collected by the state commissioner of taxation and finance as provided in articles twenty-eight and twenty-nine of the tax law.

(e) The provisions of articles twenty-eight and twenty-nine of the tax law relating or applicable to the taxes imposed by this section, including the applicable definitions, transitional provisions, limitations, special provisions, exemptions, exclusions, refunds, credits and administrative provisions, so far as those provisions can be made applicable to the taxes imposed by this section, shall apply to the taxes imposed by this section with the same force and effect as if those provisions had been incorporated in full into this section and had expressly referred to the taxes imposed by this section, except to the extent that any provision of article twenty-eight or twenty-nine of the tax law is either inconsistent with or not relevant to the taxes imposed by this section.

(f) Net collections from the taxes imposed by this section paid to this city by the state comptroller shall be credited to and deposited in the general fund of this city, but no part of such revenues may be expended unless appropriated in the annual budget of this city.

(g) If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the application of such provision to other persons or circumstances shall not be affected thereby.

HISTORICAL NOTE

Section repealed and added chap 57/2008 Part SS-1 § 13, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§ 1106, 1107 and 1217 of the tax law.

DERIVATION

Formerly § Formerly §§ 11-2002, 11-2004 added chap 907/1985 § 1.

Former § 11-2002 Imposition of sales tax was amended by L.L. 35/2003 § 1, chap 588/2000 § 3 and chap

344/1998 § 1.

§ 11-2002 was derived from § A46-2.0 added L.L. 73/1965 § 1 and amended by L.L. 55/1966, L.L. 92/1968, L.L. 19/1970, L.L. 41/1971, and L.L. 21/1974.

Former § 11-2004 Imposition of compensating use tax was derived from § A46-4.0 added L.L. 73/1965 § 1, amended by L.L. 55/1966 § 3, L.L. 46/1970 § 2, and L.L. 21/1974 § 3.

CASE NOTES FROM FORMER SECTION § A46-2.0

¶ 1. Petitioner who was engaged in die cutting, mounting and finishing work for the graphic arts industry and purchased steel rule cutting dies made to its customers' specification for use in its cutting presses which became the property of the customers after completion of the work was not entitled to the benefit of sale for resale exclusion since primary use of dies to petitioner and customers was exhausted prior to any transfer to customers.-Matter of Cut-Outs, Inc. v. State Tax Comm., 85 App. Div. 2d 838 [1981].

FOOTNOTES

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[Footnote 53]: * Subchapter 1 repealed and added chap 57/2008 Part SS-1 § 13, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§ 1106, 1107 and 1217 of the tax law. [Former Subchapter 1 included Parts 1 & 2, §§ 11-2001-11-2032.]

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2002

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 1 GENERAL SALES AND COMPENSATING USE TAXES*53

§ 11-2002 Imposition of special sales taxes.

(a) For the period commencing August first, two thousand eight, and ending December thirty-first, two thousand eleven, there are hereby imposed and there shall be paid sales taxes at the rate of four percent on receipts from every sale of the services of beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction therewith; but excluding services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title eight of the education law, as amended, and excluding such services when performed on pets and other animals, as authorized by subdivision (a) of section twelve hundred twelve-A of the tax law.

(b) The taxes imposed by this section shall be in addition to any and all other taxes authorized or imposed under any other provision of law.

(c) The taxes imposed by this section shall be administered and collected by the state commissioner of taxation and finance as provided in articles twenty-eight and twenty-nine of the tax law.

(d) The provisions of articles twenty-eight and twenty-nine of the tax law relating or applicable to the taxes imposed by this section, including the applicable definitions, transitional provisions, limitations, special provisions,

exemptions, exclusions, refunds, credits and administrative provisions, so far as those provisions can be made applicable to the taxes imposed by this section, shall apply to the taxes imposed by this section with the same force and effect as if those provisions had been incorporated in full into this section and had expressly referred to the taxes imposed by this section, except to the extent that any provision of article twenty-eight or twenty-nine of the tax law is either inconsistent with or not relevant to the taxes imposed by this section.

(e) Net collections from the taxes imposed by this section paid to this city by the state comptroller shall be credited to and deposited in the general fund of this city, but no part of such revenues may be expended unless appropriated in the annual budget of this city.

(f) If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the application of such provision to other persons or circumstances shall not be affected thereby.

HISTORICAL NOTE

Section repealed and added chap 57/2008 Part SS-1 § 13, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§ 1106, 1107 and 1217 of the tax law.

Subd. (a) amended chap 525/2008 § 20, eff. Aug. 1, 2008.

DERIVATION

Formerly § Formerly subd. (h) of § 11-2002 added chap 907/1985 and expiring Dec.

31, 2011 per chap 880/1975 § 4, as amended chap 525/2008 § 19.

FOOTNOTES

53

[Footnote 53]: * Subchapter 1 repealed and added chap 57/2008 Part SS-1 § 13, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§ 1106, 1107 and 1217 of the tax law. [Former Subchapter 1 included Parts 1 & 2, §§ 11-2001-11-2032.]

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2033

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 2 TAX ON MOTOR FUEL CONTAINING TETRA ETHYL LEAD

§ 11-2033 Definitions.

When used in this subchapter the following terms shall mean and include:

1. "Person." An individual, partnership, society, association, jointstock company, corporation, estate, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other form of unincorporated enterprise.

2. "City." The city of New York.

3. "Commissioner of finance." The commissioner of finance of the city.

4. "Tax commission." The tax commission of the state of New York.

5. "Comptroller." The comptroller of the state of New York.

6. "Distributor." Any person who imports or causes to be imported into the city for use, distribution or sale within the city any motor fuel, or who produces, refines, manufactures or compounds motor fuel within the city. Motor fuel brought into the city in the ordinary fuel tank connecting with the engine of a motor vehicle, aeroplane, motor boat or other conveyance propelled by the use of motor fuel, and to be used only in the operation thereof, shall not be deemed imported within the meaning of this definition, if not removed from such tank except in the propulsion of such

engine.

7. "Motor fuel." Gasoline, benzol or any other product which is suitable for use in operation of a motor vehicle.

8. "Motor vehicle." Any vehicle propelled by any power other than muscular, except boats, road building machinery, power shovels, tractor cranes, tractors used exclusively for agricultural purposes and such vehicles as are run only on rails or tracks.

9. "Sale." In addition to its usual meaning, includes the transfer of fuel by a distributor into a motor vehicle or into a receptacle from which fuel is supplied by such distributor to his or her own or other motor vehicles.

10. Any term used in this subchapter shall have the same meaning as when used in similar or comparable context in article twelve-A of the tax law of the state of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA46-1.0 added LL 40/1971 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-2034

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 2 TAX ON MOTOR FUEL CONTAINING TETRA ETHYL LEAD

§ 11-2034 Imposition of tax.

There is hereby imposed upon every distributor an excise tax at the rate of one cent per gallon upon motor fuel which contains one-half gram or more of tetra ethyl lead, tetra methyl lead or any other lead alkyls per gallon, sold within or for sale within the city by such distributor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA46-2.0 added LL 40/1971 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2035

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 2 TAX ON MOTOR FUEL CONTAINING TETRA ETHYL LEAD

§ 11-2035 Floor tax.

(a) There is hereby imposed upon all such motor fuel, as defined in section two hundred eighty-four-b of the tax law, which is within the city on August first, nineteen hundred seventy-one and which is held for the purpose of sale, a tax at the rate of one cent per gallon. Such tax shall be paid to the tax commission on the tenth day of the month succeeding the month in which the tax becomes effective. Such tax shall not be payable, however, in respect of:

(1) any motor fuel so held by a distributor on August first, nineteen hundred seventy-one as to which a tax will be payable by such distributor if such motor fuel is thereafter sold within the state; nor

(2) the first five hundred gallons of such motor fuel so held by any filling station licensed pursuant to section two hundred eighty-three-a of the tax law on August first, nineteen hundred seventy-one.

(b) If prior to the date upon which a tax imposed pursuant to section 11-2034 of this subchapter goes into effect, a contract of sale of motor fuel, as defined in section one of chapter four hundred eleven of the laws of nineteen hundred seventy-one, shall have been made, and delivery thereof pursuant to such contract is made within the city after such date from a stock of motor fuel which, at the time of the taking of such fuel therefrom for such delivery is subject to the taxing power of the city, the vendor shall be deemed a distributor for the purpose of such tax, and such motor fuel shall be determined to be sold, and shall be subject to the tax imposed pursuant to section 11-2034 of this subchapter, at the time of such delivery.

(c) All the provisions of article twelve-A of the tax law shall be applicable to the taxes imposed pursuant to this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA46-2.1 added LL 17/1972 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2036

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 2 TAX ON MOTOR FUEL CONTAINING TETRA ETHYL LEAD

§ 11-2036 Administration and collection.

1. The tax imposed by this title shall be administered and collected by the tax commission in the same manner as the taxes imposed by article twelve-A of the tax law, and all the provisions of article twelve-A of the tax law shall apply with respect to the tax imposed by this subchapter so far as the provisions of said article twelve-A can be made applicable to the tax imposed by this subchapter with such limitations as set forth in said article twelve-A and such modifications as may be necessary in order to adapt the language thereof to the tax imposed by this subchapter.

2. The tax commission shall make such provisions as it deems necessary for the joint administration and collection of the tax imposed by this subchapter and the taxes imposed by and authorized by article twelve-A of the tax law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA46-3.0 added LL 40/1971 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2037

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 2 TAX ON MOTOR FUEL CONTAINING TETRA ETHYL LEAD

§ 11-2037 Disposition of revenues.

1. All taxes imposed by this subchapter and interest and penalties thereon, collected by the tax commission shall be deposited daily with such responsible banks, banking houses or trust companies as may be designated by the comptroller to the credit of the comptroller. Such deposits shall be kept in trust for the city and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories.

2. After reserving such amounts as the commissioner of taxation and finance of the state of New York may determine and certify to the comptroller to be necessary for refunds in respect of taxes imposed and collected pursuant to this subchapter, and for reasonable costs of the tax commission in administering, collecting and distributing said taxes, the comptroller shall, on or before the tenth day of each month, pay to the commissioner of finance for the use of the city, all taxes, interest and penalties imposed by this subchapter collected during the preceding calendar month.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA46-4.0 added LL 40/1971 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2038

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 2 TAX ON MOTOR FUEL CONTAINING TETRA ETHYL LEAD

§ 11-2038 Construction.

This subchapter shall be construed and enforced in conformity with section two hundred eighty-four-b of the tax law pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § AA46-5.0 added LL 40/1971 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-2039

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2039 Definitions.

(a) "Person" includes an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) When used in this subchapter for the purposes of the taxes imposed by this subchapter, the following terms shall mean:

(1) "Purchaser." A person who purchases property or to whom are rendered services, the receipts from which are taxable under this subchapter.

(2) "Receipt." The amount of the sale price of any property and the charge for any service taxable under this subchapter, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(3) "Sale." Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this subchapter, for a consideration or any agreement

therefor.

(4) "Vendor." A person making sales of tangible personal property or services, the receipts from which are taxed by this subchapter.

(5) "Tax commission." Tax commission of the state of New York.

(6) "Tax law." Tax law of the state of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § BB46-1.0 added LL 37/1975 § 1

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2040

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2040 Imposition of tax.

(a) On and after September first, nineteen hundred seventy-five, there is hereby imposed within the city and there shall be paid a tax at the rate of four percent upon the receipts from every sale, except for resale, of the following services, provided, however, that the tax hereby imposed shall not be imposed after December thirty-first, two thousand eleven, on receipts from sales of the services specified in paragraph one of this subdivision:

1. Credit rating and credit reporting services, including, but not limited to, those services provided by mercantile and consumer credit rating or reporting bureaus or agencies, whether rendered in written or oral form or in any other manner, except to the extent otherwise taxable under article twenty-eight of the tax law.

2. Repealed.

(3) Repealed.

(b) Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in subdivision (a) of this section are not receipts subject to the taxes imposed by such subdivision.

(c) Any taxes imposed by this subchapter are in addition to any other tax which the city may impose or may be imposing pursuant to any law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) open par amended chap 525/2008 § 17, eff. Sept. 4, 2008.

Subd. (a) open par amended chap 636/2005 § 17, eff. Aug. 30, 2005.

Subd. (a) open par amended chap 63/2003 § A7 eff. May 15, 2003.

Subd. (a) open par amended L.L. 35/2003 § 2, eff. Sept. 1, 2003 and expiring and repealed May 31, 2005 reverting to former amendment.

Subd. (a) open par amended chap 118/2001 § LL 15, eff. Aug. 3, 2001.

Subd. (a) open par amended chap 406/1999 § V17, eff. Aug. 9, 1999.

Subd. (a) open par amended chap 496/1997 § 15, eff. Aug. 26, 1997

Subd. (a) amended L.L. 55/1988 § 1

Subd. (a) amended L.L. 47/1987 § 1

Subd. (a) amended L.L. 38/1986 § 1

Subd. (a) open par amended chap 180/1995 § 22, eff. July 19, 1995

Subd. (a) open par amended chap 265/1993 § 16, eff. July 15, 1993

Subd. (a) open par amended chap 273/1991 § 16, eff. July 15, 1991

Subd. (a) open par amended chap 271/1991 § 28, eff. July 15, 1991

Subd. (a) open par amended chap 345/1990 § 16, eff. June 30, 1990

Subd. (a) open par amended L.L. 85/1989 § 1

Subd. (a) pars (2), (3) repealed chap 57/2008 Part SS-1 § 13-b, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§1106, 1107 and 1217 of the tax law.

Subd. (a) par 3 renumbered chap 297/1995 § 5, eff. Dec. 1, 1995 (formerly par 4 added L.L. 61/1989 § 2)

Subd. (a) par 3 (added L.L. 61/1989 § 2) repealed chap 297/1995 § 5, eff. Dec. 1, 1995

Subd. (b) amended L.L. 61/1989 § 3

DERIVATION

Formerly § BB46-2.0 added LL 37/1975 § 1

Sub a open par amended LL 41/1976 § 1

Sub a par 3 repealed LL 41/1976 § 2

Sub a open par amended LL 59/1977 § 1

Sub a amended LL 26/1978 § 1

Sub b amended LL 26/1978 § 2

Sub a amended LL 36/1979 § 1

Sub a amended LL 45/1980 § 1

Sub a amended LL 63/1981 § 1

Sub a amended LL 38/1982 § 1

Sub a amended LL 33/1983 § 1

Sub a amended LL 48/1984 § 1

Sub a amended LL 52/1985 § 1

CASE NOTES

¶ 1. Security services provided at construction sites are subject to sales tax under this section. The taxpayer unsuccessfully argued that a general sales tax exemption for services related to capital improvements (Tax Law §1103(c)(3)(iii)) made the security services exempt from sales tax. Robert Bruce Associates v Urbach, 232 A.D.2d 826, 649 N.Y.S.2d 487 (App. Div. 1st Dept. 1996).

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2041

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2041 Transitional provisions.

The taxes imposed under paragraph one of subdivision (a) of section 11-2040 of this subchapter shall be paid with respect to receipts from all sales of services on or after September first, nineteen hundred seventy-five although rendered or agreed to be rendered under a prior contract. Where a service is sold on a monthly, quarterly, yearly or other term basis, the charge for such service shall be subject to tax under this subchapter to the extent that such charge is applicable to any period on or after September first, nineteen hundred seventy-five, and such charge shall be apportioned on the basis of the ratio of the number of days falling within such period to the total number of days in the full term or period.

HISTORICAL NOTE

Section amended chap 57/2008 Part SS-1 § 13-c, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§1106, 1107 and 1217 of the tax law.

Section amended L.L. 61/1989 § 4

Section added chap 907/1985 § 1

Subd. (b) amended chap 297/1995 § 6, eff. Dec. 1, 1995

DERIVATION

Formerly § BB46-3.0 added LL 37/1975 § 1

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2042

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2042 Exempt organizations.

Except as otherwise provided in this section, any sale by or to any of the following shall not be subject to the taxes imposed by this subchapter:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the

prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(5) A post or organization of war veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:

(A) organized in this state,

(B) at least seventy-five percent of the members of which are war veterans and substantially all of the other members of which are individuals who are veterans (but not war veterans) or are cadets, or are spouses, widows or widowers of war veterans or such individuals, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § BB46-4.0 added LL 37/1975 § 1

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

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NYC Administrative Code 11-2043

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2043 Refunds or credits based on proof of certain uses.

A refund or credit equal to the amount of the sales or compensating use tax imposed by section eleven hundred seven of the tax law or by section 11-2001 of this chapter, as the case may be, and paid on the sale or use of tangible personal property which is later used by such purchaser in performing a service subject to tax under this subchapter shall be allowed such purchaser against the tax imposed by this subchapter and collected by such person on the sale of such services if such property has become a physical component part of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax; provided, however, that any such refund or credit shall be without interest.

HISTORICAL NOTE

Section amended chap 57/2008 Part SS-1 § 14, eff. Aug. 1, 2008 and shall apply to sales made, uses occurring and services rendered on or after that date in accordance with applicable transitional provisions in §§1106, 1107 and 1217 of the tax law.

Section added chap 907/1985 § 1

DERIVATION

Formerly § BB46-5.0 added LL 37/1975 § 1

Amended LL 41/1976 § 3

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

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NYC Administrative Code 11-2044

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2044 Administration and collection.

The taxes imposed by section 11-2040 of this subchapter shall be administered and collected by the tax commission in the same manner as the taxes imposed by article twenty-eight of the tax law are administered and collected by such commission. All of the provisions of such article relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed by this subchapter, including sections eleven hundred one, eleven hundred eleven, and sections eleven hundred thirty-one through eleven hundred forty-seven, with the same force and effect as if those provisions had been incorporated in full into this subchapter and had expressly referred to the taxes imposed by this subchapter, except as otherwise provided in section twelve hundred fifty of the tax law. For purposes of this subchapter, the term "tax" in part IV of such article twenty-eight shall include the taxes imposed by this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § BB46-6.0 added LL 37/1975 § 1

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

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NYC Administrative Code 11-2045

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2045 Deposit and disposition of revenue.

(a) The tax commission shall deposit daily to the credit of the comptroller of the state of New York, all taxes, penalties and interest collected under this subchapter in such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept in trust for the city and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenue collected under this subchapter the comptroller shall retain in his or her hands such amount as the commissioner of taxation and finance of the state of New York may determine to be necessary for refunds under this subchapter and for reasonable costs of the tax commission in administering, collecting and distributing the taxes under this subchapter, out of which the comptroller shall pay any refunds made under the provisions of this subchapter. The comptroller, after reserving such refund fund and such costs, shall on or before the twelfth day of each month, pay to the commissioner of finance of this city all taxes, interest and penalties collected under this subchapter and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, provided, however, that the comptroller shall on or before the last day of June and December make a partial payment consisting of the collections made during and including the first twenty-five days of said months to the commissioner of finance of this city. The amount so payable shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over in any such distribution is more or less than the amount then due to this city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the tax commission

or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to this city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the state tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

(b) All payments to the commissioner of finance pursuant to subdivision (a) of this section shall be credited to and deposited in the general fund of this city, but no part of such revenues may be expended unless appropriated in the annual budget of this city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (b) amended L.L. 61/1989 § 5

DERIVATION

Formerly § BB46-7.0 added LL 37/1975 § 1

Amended LL 41/1976 § 4

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2046

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2046 Construction and enforcement.

This subchapter shall be construed and enforced in conformity with articles twenty-eight and twenty-nine of the tax law of the state of New York pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § BB46-8.0 added LL 37/1975 § 1

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008, amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2047

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 3 SALES TAX ON CREDIT SERVICES*54

§ 11-2047 Effective date.

This subchapter shall take effect September first, nineteen hundred seventy-five except that certificates of registration may be filed with the state tax commission and certificates of authority to collect tax may be issued by the state tax commission prior to such date.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § BB46-10.0 added LL 37/1975 § 1

FOOTNOTES

54

[Footnote 54]: * Subchapter 3 heading amended chap 57/2008 Part SS-1 § 13-a, eff. Aug. 1, 2008,

amended chap 297/1995 § 4, L.L. 61/1989 § 1.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2048

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2048 Definitions.

(a) "Person" includes an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) When used in this subchapter for the purpose of the taxes imposed by this subchapter, the following terms shall mean:

(1) "Purchaser." A person who purchased property or to whom are rendered services, the receipts from which are taxable under this subchapter.

(2) "Receipt." The amount of the sale price of any property and the charge for any service taxable under this subchapter, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(3) "Sale." Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this subchapter, for a consideration or any agreement

therefor.

(4) "Vendor." A person making sales of tangible personal property or services, the receipts from which are taxed by this subchapter.

(5) "Tax commission." Tax commission of the state of New York.

(6) "Tax law." Tax law of the state of New York.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § CC46-1.0 added LL 37/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2049

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2049 Imposition of tax.

On and after September first, nineteen hundred eighty, there is hereby imposed within the city of New York, and there shall be paid, a tax at the rate of eight percent on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles, in every county within the city of New York with a population density in excess of fifty thousand persons per square mile, as determined by reference to the latest federal census; provided, however, that receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this section. For purposes of this section, a homeowner's association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision; and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents. The tax imposed on the receipts described in this section is in addition to the tax imposed on such receipts under subchapter one of this chapter or section eleven hundred seven of the tax law, as the case may be.

HISTORICAL NOTE

Section amended chap 588/2000 § 4, eff. Feb. 6, 2000.

Section added chap 907/1985 § 1

Section amended chap 344/1998 § 4, eff. Sept. 12, 1998

DERIVATION

Formerly § CC46-2.0 added LL 37/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2050

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2050 Transitional provisions.

The taxes imposed by this subchapter shall be paid with respect to receipts from all sales of services on or after September first, nineteen hundred eighty although rendered or agreed to be rendered under a prior contract. Where a service is sold on a monthly, quarterly, yearly or other term basis, the charge for such service shall be subject to tax under this subchapter to the extent that such charge is applicable to any period on or after September first, nineteen hundred eighty, and such charge shall be apportioned on the basis of the ratio of the number of days falling within such period to the total number of days in the full term or period.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § CC46-3.0 added LL 37/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2051

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2051 Exempt organizations and individuals.

(a) Except as otherwise provided in this section, any sale by or to any of the following shall not be subject to the taxes imposed by this subchapter:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer or where it sells services of a kind not ordinarily sold by private persons;

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services of a kind not ordinarily sold by private persons;

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which

inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(5) A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:

(A) organized in this state,

(B) at least seventy-five percent of the members of which are past or present members of the armed forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows or widowers of past or present members of the armed forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) The following Indian nations or tribes residing in New York state: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora, where it is the purchaser, user or consumer;

(7) A not-for-profit corporation operating as a health maintenance organization subject to the provisions of article forty-four of the public health law; and

(8) Cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law.

(b) Nothing in this section shall exempt sales of the service of providing parking, garaging or storing for motor vehicles by an organization described in paragraph four or paragraph five of subdivision (a) of this section operating a garage (other than a garage which is part of premises occupied solely as a private one-family or two-family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

(c) (1) For purposes of paragraph four of subdivision (a) of this section, in the case of a qualified amateur sports organization (A) the requirement of such paragraph that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and (B) such organization shall not fail to meet the requirement of such paragraph merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(d) The tax imposed by this subchapter shall not apply to any sale of services to an individual resident of the county in which such tax is imposed when such services are rendered on a monthly or longer-term basis at the principal location for the parking, garaging or storing of a motor vehicle owned or leased (but only in the case of a lease for a term of one year or more) by such individual resident. For purposes of this subdivision, the term "individual resident" means a natural person who maintains in such county a permanent place of abode which is such person's primary residence; the term "motor vehicle" means a motor vehicle which is registered pursuant to the vehicle and traffic law at the address of the primary residence referred to in this subdivision, or which is registered pursuant to the vehicle and traffic law and leased to an individual resident at the address of the primary residence referred to in this subdivision, and which is not used in carrying on any trade, business or commercial activity; and the term "lease for a term of one year or more" shall not include any lease the term of which is less than one year, irrespective of the fact that the cumulative period for which such lease may be in effect is one year or more as the result of the right to exercise an option to renew

or other like provision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (d) amended L.L. 74/1996 § 1, eff. Dec. 1, 1996 with special provisions

DERIVATION

Formerly § CC46-4.0 added LL 37/1980 § 1

Amended chap 330/1985 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2052

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2052 Administration and collection; penalties; refunds.

(a) The taxes imposed by this subchapter shall be administered and collected by the tax commission in the same manner as the taxes imposed by article twenty-eight of the tax law are administered and collected by such commission. All of the provisions of such article relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed by this subchapter, including section eleven hundred one and sections eleven hundred thirty-one through eleven hundred forty-seven, with the same force and effect as if those provisions had been incorporated in full into this subchapter and had expressly referred to the taxes imposed by this subchapter, except to the extent that any provisions of such article twenty-eight are either inconsistent with a provision of this subchapter, or of article twenty-nine of the tax law, or are not relevant to this subchapter or to article twenty-nine of the tax law. For purposes of this subchapter, the term "tax" in part IV of such article twenty-eight shall include the taxes imposed by this subchapter.

(b) Notwithstanding subdivision (a) of this section or any other provision of law to the contrary, the tax commission shall, subject to such terms and conditions as it may consider necessary, delegate to the commissioner of finance the power and authority to develop and administer reasonable and necessary procedures, including the use of exemption certificates for presentation to vendors, for determining entitlement to exemption from tax under subdivision (d) of section 11-2051 of this subchapter, and to prescribe, subject to the approval of the tax commission, rules and regulations necessary and appropriate in carrying out such responsibilities.

(c) Any person who, in violation of any provision of subdivision (d) of section 11-2051 of this code or any rule or regulation promulgated thereunder, obtains or uses a certificate of exemption relating to the exemption allowed by such subdivision, shall, if such violation was due to negligence or intentional disregard of such provision or rule or regulation (but without intent to defraud), be liable for a penalty of not more than one hundred dollars for each such violation, and, if such violation was due to fraud, be liable for a penalty of not more than five hundred dollars for each such violation. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty imposed pursuant to this subdivision. The penalties authorized by this subdivision shall be in addition to any penalty provided by section eleven hundred forty-five of the tax law, and shall be paid and disposed of, and, if unpaid, shall be determined, assessed, collected and enforced, in the same manner as the taxes imposed by this subchapter.

(d) Notwithstanding subdivision (d) of section 11-2051 of this subchapter, section eleven hundred thirty-nine of the tax law or any other provision of law to the contrary, an individual resident shall not be entitled to a refund or credit with respect to any amount of tax which was paid to a vendor prior to the date such individual resident presented to the vendor a valid certificate of exemption from such tax.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (c) amended chap 325/1986 § 3

DERIVATION

Formerly § CC46-5.0 added LL 37/1980 § 1

Amended chap 330/1985 § 3

Sub c amended chap 325/1986 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2053

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2053 Deposit and disposition of revenue.

(a) The tax commission shall deposit daily to the credit of the comptroller of the state of New York, all taxes, penalties and interest collected under this subchapter in such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept in trust for the city and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenue collected under this subchapter the comptroller shall retain in his or her hands such amount as the commissioner of taxation and finance of the state of New York may determine to be necessary for refunds under this subchapter and for reasonable costs of the tax commission in administering, collecting and distributing the taxes under this subchapter, out of which the comptroller shall pay any refunds made under the provisions of this subchapter. The comptroller, after reserving such refund fund and such costs shall, on or before the twelfth day of each month, pay to the commissioner of finance of this city all taxes, interest and penalties collected under this subchapter during the next preceding calendar month and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of such preceding month, provided, however, that the comptroller shall on or before the last day of June and December make a partial payment consisting of the collections made during and including the first twenty-five days of said months to the commissioner of finance of this city. The amount so payable shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. Provided, however, any such certification may be based on such information as may be available to the tax commission at the time such certificate must be made under this

section and may be estimated on the basis of percentages or other indices calculated from distributions for prior periods. Where the amount so paid over in any such distribution is more or less than the amount then due to this city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to this city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

(b) All payments to the commissioner of finance pursuant to subdivision (a) of this section shall be credited to and deposited in the general fund of this city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § CC46-6.0 added LL 37/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2054

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 4 ADDITIONAL PARKING TAX

§ 11-2054 Construction and enforcement.

This subchapter shall be construed and enforced in conformity with articles twenty-eight and twenty-nine of the tax law of the state of New York pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § CC46-7.0 added LL 37/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2055

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 5 TAX ON BEER AND LIQUOR

§ 11-2055 Definitions.

When used in this subchapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, corporation, joint-stock company, and any combination of individuals, and also an executor, administrator, receiver, trustee or other fiduciary.

2. "Alcohol." Ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process produced.

3. "Beers." All alcoholic beer, lager beer, ale, porter, and stout, and all other fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor containing one-half of one per centum, or more, of alcohol by volume.

4. "Liquors." Any and all distilled or rectified spirits, alcohol, brandy, cordial (whether the base therefor be wine or liquor), whiskey, rum, gin and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of the foregoing, including any alcoholic liquids which would be wines if the alcoholic content thereof were not more than twenty-four per centum by volume. Such term shall not include liquors containing not more than twenty-four per centum of alcohol by volume.

5. "Alcoholic beverages." Beer or liquors.

6. "Distributor." Any person who imports or causes to be imported into this city any alcoholic beverages which are or will be offered for sale or used for any commercial purpose; any purchaser of warehouse receipts for alcoholic beverages stored in a warehouse in this city who causes such beverages to be removed from such warehouse; and also any person who produces, distills, manufactures, brews, compounds, mixes or ferments any alcoholic beverages within this city for sale, except: (a) a person who manufactures, mixes or compounds alcoholic beverages the ingredients of which consist only of alcoholic beverages on which the taxes imposed by this subchapter have been paid, and (b) a person who mixes or compounds alcoholic beverages with non-alcoholic ingredients for sale and immediate consumption on the premises, who shall be a distributor only with respect to the ingredients which consist of alcoholic beverages upon which the taxes imposed by this subchapter have not been paid.

7. "Noncommercial importer." A person other than a distributor who imports or causes to be imported into this city alcoholic beverages, except that such person shall not be a noncommercial importer where he or she imports or causes to be imported into this city alcoholic beverages in the quantities and under the conditions provided by subdivision (e) of section 11-2056 of this subchapter.

8. "Sale." Any transfer, exchange or barter in any manner or by any means whatsoever. The sale of warehouse receipts given upon the storage of alcoholic beverages shall not be construed as a sale of the beverages represented by such receipts.

9. "Use." Any compounding or mixing of alcoholic beverages with other ingredients or other treatment of the same in such manner as to render them unfit or unsuitable for consumption as a beverage and also the actual consumption or possession for consumption of alcoholic beverages as a beverage or otherwise.

10. "Gallon." One hundred twenty-eight fluid ounces; "quart" means thirty-two fluid ounces.

11. "Liter." A metric unit of capacity equal to one thousand cubic centimeters of alcoholic beverages and equivalent to thirty-three and eight hundred fourteen thousandths fluid ounces.

12. "City." The city of New York.

13. "Commissioner of finance." Commissioner of finance of the city.

14. "Tax commission." The tax commission of the state of New York.

15. Unless a different meaning is clearly required, any term used in this subchapter shall have the same meaning as when used in a comparable context in the laws of the state of New York relating to taxes on alcoholic beverages.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Y46-1.0 added LL 30/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2056

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 5 TAX ON BEER AND LIQUOR

§ 11-2056 Imposition of tax.

(a) There are hereby imposed on a distributor and a noncommercial importer excise taxes at the following rates:

(1) twelve cents per gallon upon beers; and

(2) twenty-six and four-tenths cents per liter upon liquors, when sold or used within this city, except when sold or used under such circumstances that this city is without power to impose such tax or when sold to the United States, and except beers when sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, and except when sold to professional foreign consuls-general, consuls and vice-consuls who are nationals of the state appointing them and who are assigned to foreign consulates in this city provided that American consular officers of equal rank who are citizens of the United States and who exercise their official functions at American consulates in such foreign country are granted reciprocal exemptions; provided, however, that the tax commission may permit the sale of alcohol without tax to a holder of any industrial alcohol permit, alcohol permit or alcohol distributor's permit, issued by the state liquor authority, and by the holder of an alcohol distributor's permit, class A, issued by such authority to a holder of a distiller's license, class B, or a winery license, issued by such authority and may also permit the use of alcohol for any purpose other than the production of alcoholic beverages by such holders without tax.

Notwithstanding any other provision of this subchapter, the tax commission may permit the purchase of liquors

without tax by a holder of a distiller's license issued by the state liquor authority from another holder of a distiller's license by such authority, in which event the liquors so purchased shall be subject to the tax imposed by this subchapter in the hands of the purchaser in the same manner and to the same extent as if such purchaser had imported or caused the same to be imported into this city or had produced, distilled, manufactured, brewed, compounded, mixed or fermented the same within this city.

(b) There is also imposed on each person, other than a distributor within the meaning of this subchapter, who, on August first, nineteen hundred eighty, owns and possesses for the purposes of sale beers or liquors, a floor tax at the rates applicable under subdivision (a) upon such beer in excess of one hundred gallons and upon such liquor in excess of four hundred liters. Such floor tax shall be due and payable on the twentieth day of the month succeeding the month of August, nineteen hundred eighty.

(c) If, prior to August first, nineteen hundred eighty, a contract of sale of alcoholic beverages was made, and delivery thereof pursuant to such contract is made within this city on or after August first, nineteen hundred eighty, the vendor shall be deemed a distributor for the purposes of this subchapter, and such alcoholic beverages shall be deemed to be sold, and shall be subject to such taxes, at the time of such delivery.

(d) In any case where the quantity of alcoholic beverages taxable pursuant to this subchapter is a fractional part of one liter (or one gallon in the case of beers) or an amount greater than a whole multiple of liters (or gallons in the case of beers), the amount of tax levied and imposed on such fractional part of one liter (or one gallon in the case of beers), or fractional part of a liter (or gallon) in excess of a whole multiple of liters or gallons shall be such fractional part of the rate imposed by subdivisions (a) and (b) of this section.

(e) Notwithstanding any other provisions of this subchapter, there shall be exempt from the taxes imposed under this subchapter, per month, one quart of alcoholic beverages (or one gallon of such beverages in the case of a person arriving directly from American Samoa, Guam or the Virgin Islands of the United States not more than one quart of which shall have been acquired elsewhere than in such insular possessions):

(1) purchased outside this city as an incident to a journey from which the purchaser is returning and

(2) not to be offered for sale or used for any commercial purpose, provided such alcoholic beverages accompany such person on his or her return to this city and provided, further, that in the case of a person arriving in this city from other than a state of the United States (including the District of Columbia), the Virgin Islands of the United States or a contiguous country maintaining a free zone or free port, such person shall have remained beyond the territorial limits of the United States for a period of not less than forty-eight hours.

Provided, however, where the amounts purchased outside the city or brought in exceed the amounts specified in this subdivision (e) but are not in excess of one liter in the case of the references to one quart or four liters in the case of the reference to one gallon, and where no duty is required by the laws of the United States to be paid on such amounts, such metric standards of fill shall be substituted for one quart and one gallon, respectively, and such amounts shall be exempt from tax under the conditions provided for in this subdivision (e).

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Y46-2.0 added LL 30/1980 § 1

CASE NOTES

¶ 1. The provisions of this section which impose a New York City excise tax upon beer and liquor on distributors and noncommercial importers of alcohol sold or used in the city does not violate the import-export clause of the constitution which bans only duties on imports or exports nor is it violative of the commerce clause or the due process clause because it is either too indefinite and vague or as implemented constitutes a taking of property without due process.-Metropolitan Package Stores Asso. v. Koch, 89 App. Div. 2d 317 [1982].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2057

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 5 TAX ON BEER AND LIQUOR

§ 11-2057 Manner of administration and collection.

All the provisions of article eighteen of the tax law shall apply to the taxes imposed by subdivision (a) of section 11-2056 of this subchapter, and the provisions of sections four hundred twenty, four hundred twenty-six, four hundred twenty-nine through four hundred thirty-four, four hundred thirty-six and four hundred thirty-seven of article eighteen of the tax law shall apply to the tax imposed by subdivision (b) of section 11-2056 of this subchapter, so far as such article or sections can be made applicable to the taxes imposed by this subchapter with such limitations as set forth in section four hundred forty-five of the tax law and such modifications as may be necessary in order to adapt such language to the taxes imposed by this subchapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Y46-3.0 added LL 30/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2058

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 5 TAX ON BEER AND LIQUOR

§ 11-2058 State tax commission; administration.

The taxes imposed by this subchapter shall be administered and collected by the tax commission in the same manner as the taxes imposed under sections four hundred twenty-four and four hundred twenty-five of article eighteen of the tax law subject to all provisions of that article as may be applicable. The tax commission may make such provisions as it deems necessary for the joint administration and collection of the state and local taxes imposed and authorized by article eighteen of the tax law and this subchapter. Nothing in such article eighteen or this subchapter which requires payment of both state and local taxes to the tax commission shall be construed as the payment of either tax more than once.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Y46-4.0 added LL 30/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2059

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 5 TAX ON BEER AND LIQUOR

§ 11-2059 Disposition of revenues.

All taxes, penalties and interest imposed by this subchapter, which are collected by the tax commission, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for this city. Such deposits shall be kept in trust and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenues collected by the tax commission. The comptroller shall retain in his or her hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds in respect of the taxes imposed by this subchapter, and for reasonable costs of the state tax commission in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under the provisions of this subchapter. The comptroller, after reserving such refund and such costs shall, on or before the twelfth day of each month, pay to the commissioner of finance the taxes penalties and interest imposed by this subchapter, collected by the state tax commission pursuant to this subchapter during the next preceding calendar month. The amount so payable shall be certified to the comptroller by the president of the state tax commission or his or her delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to the city in any such distribution is more or less than the amount then due to the city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the state tax commission or his or her delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably

possible and subsequent payments and distributions by the comptroller to the city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the state tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts or circumstances.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Y46-5.0 added LL 30/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2060

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 20 SALES, EXCISE AND RELATED TAXES

SUBCHAPTER 5 TAX ON BEER AND LIQUOR

§ 11-2060 Construction.

This subchapter shall be construed and enforced in conformity with section four hundred forty-five of the tax law, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Y46-6.0 added LL 30/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2101

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2101 Definitions.

When used in this title the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Deed." Any document or writing (other than a will), regardless of where made, executed or delivered, whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed, including any such document or writing whereby any leasehold interest in real property is granted, assigned or surrendered.

3. "Instrument." Any document or writing (other than a deed or a will), regardless of where made, executed or delivered, whereby any economic interest in real property is transferred.

4. "Transaction." Any act or acts, regardless of where performed, and whether or not reduced to writing, unless evidenced by a deed or instrument, whereby any economic interest in real property is transferred (other than a transfer pursuant to the laws of intestate succession).

5. "Real property." Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, which are located in whole or in part within the city of New York. It shall not include a

mortgage, a release of mortgage or, for purposes of paragraph three and subparagraphs (ii) and (iii) of paragraph seven of subdivision a of section 11-2102 of this chapter, a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other. It shall not include rights to sepulture.

6. "Economic interest in real property." The ownership of shares of stock in a corporation which owns real property; the ownership of an interest or interests in a partnership, association or other unincorporated entity which owns real property; and the ownership of a beneficial interest or interests in a trust which owns real property.

7. "Transfer" or "transferred." When used in relation to an economic interest in real property, the terms "transfer" or "transferred" shall include the transfer or transfers or issuance of shares of stock in a corporation, interest or interests in a partnership, association or other unincorporated entity, or beneficial interests in a trust, whether made by one or several persons, or in one or several related transactions, which shares of stock or interest or interests constitute a controlling interest in such corporation, partnership, association, trust or other entity.

8. "Controlling interest." In the case of a corporation, fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the total fair market value of all classes of stock of such corporation; and, in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

9. "Consideration." The price actually paid or required to be paid for the real property or economic interest therein, without deduction for mortgages, liens and encumbrances, whether or not expressed in the deed or instrument and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed.

10. "Net consideration." Any consideration, exclusive of any mortgage or other lien or emcumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed.

11. "Comptroller." The comptroller of the city of New York.

12. "Commissioner of finance." The commissioner of finance of the city of New York.

13. "City." The city of New York.

14. "Grantor." The person or persons making, executing or delivering the deed. The term "grantor" also includes the entity with an interest in real property or the person or persons who transfer an economic interest in real property.

15. "Grantee." The person or persons accepting the deed or who obtain any of the real property which is the subject of the deed or any interest therein. The term "grantee" also includes the person or persons to whom an economic interest in real property is transferred.

16. "Affixed." Includes attached or annexed by adhesion, stapling or otherwise, or a notation by stamp, imprint or writing.

17. "Register." Includes the city register and the county clerk of the county of Richmond.

18. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section separately amended L.L. 23/1986 § 1 and L.L. 71/1986 § 2,

[See Note 1]

Section added chap 907/1985 § 1

Subd. 14 amended chap 63/2003 § C3 eff. May 19, 2003 and applying

to conveyances occurring on or after such date.

Subd. 18 added chap 808/1992 § 95, eff. Oct. 1, 1992

DERIVATION

Formerly § II46-1.0 added LL 78/1965 § 1

Subs 2, 3, 4 amended chap 57/1982 § 6

Sub 3 amended LL 36/1982 § 1

Amended LL 23/1986 § 1

NOTE

1. Provisions of L.L. 71/1986 adding legislative intent and special provisions.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to extending the coverage and application of the real property transfer tax imposed by title II of chapter forty-six of such code to include transfers of economic interests in real property.

Be it enacted by the Council as follows:

Section one. Declaration of legislative findings. On October second, nineteen hundred eighty-six, a judgment was entered by a justice of the New York state supreme court which invalidated local law number twenty-four for the year nineteen hundred eighty-six on the ground that the requirements for notice of public hearing prior to mayoral approval of the measure set forth in former section 38b-1.0 of the administrative code of the city of New York were not met. Since the hearing held in connection with mayoral approval of local law number twenty-three for the year nineteen hundred eighty-six, relating to extending the coverage and application of the real property transfer tax, was similarly noticed, questions may be raised as to the validity of local law number twenty-three for such year. While the corporation counsel advises that the judgment invalidating local law twenty-four for such year is before the appellate courts and that, in his view, the mayor properly approved local law number twenty-four for such year and the other local laws which were before the mayor at that time, the council has determined that to exercise utmost caution in order to protect the fiscal health of the city it is prudent at this time to re-enact the provisions of local law number twenty-three for such year so as to remove any uncertainty that may exist as to its status. In addition, when the text of the provisions of local law number twenty-three for such year was justaposed into the recodified administrative code of the city of New York in accordance with section fourteen of chapter nine hundred seven of the laws of nineteen hundred eighty-five, several technical, non-substantive errors resulted which are corrected by the repeal and re-enactment of the provisions of such local law number twenty-three contained herein.

§ 10. To the extent that this local law has application prior to September first, nineteen hundred eighty-six, the references to sections 11-2101, 11-2102, 11-2103, 11-2104, 11-2105, 11-2106, 11-2115 and 11-2116 of the

administrative code of the city of New York shall be deemed references to former sections II46-1.0, II46-2.0, II46-3.0, II46-4.0, II46-5.0, II46-6.0, II46-15.0 and II46-16.0, respectively, of such code repealed by chapter nine hundred seven of the laws of nineteen hundred eighty-five.

§ 11. Notwithstanding the repeal of sections 11-2101, 11-2102, 11-2103, 11-2104, 11-2105, 11-2106, 11-2115 and 11-2116 of the administrative code of the city of New York by sections two through nine of this local law, all provisions of such sections and any regulations adopted thereunder, in respect to assessment, payment, determination, and collection of taxes imposed thereunder, the filing and preservation of returns in connection therewith, the secrecy of returns and the disposition of revenues shall continue in effect with respect to all taxes accrued up to the effective date of this local law.

§ 12. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 13. This local law shall take effect immediately, provided, however, that to the extent the provisions of this local law re-enact the amendments to the administrative code of the city of New York made by local law number twenty-three for the year nineteen hundred eighty-six, such provisions shall be retroactive to and deemed in full force and effect as of July eighth, nineteen hundred eighty-six and shall apply to conveyances or transfers made on or after July thirteenth, nineteen hundred eighty-six, and further provided, however, that such provisions shall not apply to any conveyance or transfer made pursuant to a written contract entered into prior to July thirty first, nineteen hundred eighty-one.

CASE NOTES

¶ 1. Determination by the Finance Department of the amount of "net consideration" which may be deducted from the real property transfer tax liability to be the amount of liens and encumbrances existing before the sale and not removed thereby is not irrational or irresponsible. The regulation is not vague since it applies to all situations where a mortgage is obtained close to the date of sale of property. Park Ten Associates v. NYC Dept. of Finance, 136 AD2d 307 [1988].

¶ 2. Consolidated mortgage may be deducted from the net consideration subject to the real property transfer tax pursuant to § 11-2101(5) which defines net consideration as "any consideration, exclusive of any mortgage . . . which existed before the delivery of the deed and remains thereon after delivery of the deed." Both mortgages found to be permanent financing. Park Ten v. City NY Dept. of Finance, 136 AD2d 307 modified 74 NY2d 628 [1989].

¶ 3. Respondent appropriately taxed petitioner 2% on $4.3 million consolidated mortgage containing a provision precluding merger of the mortgage with the fee interest at 2% pursuant to Ad Code § 11-2102(a)(4) which provides that deeds delivered during a five-month transitional period, February 1, 1982 to July 1, 1982, be charged at 2% gross consideration on liens which existed before the transfer rather than 1% of net consideration. Net consideration is defined in Ad Code § 11-2101(10) providing any consideration, exclusive of any mortgage or other lien or encumbrance on real property or interest therein which existed before the delivery of the deed and remains thereon after delivery of the deed. Therefore, the hearing officer's determination that a mortgage assigned by one holder to a new holder is not deductible in computing the "net consideration" subject to the real property transfer tax must be upheld. 50 W. 23rd Assoc. v. City of New York, 160 AD2d 660.

¶ 4. For contracts on or before February 1, 1982, a transfer tax is required to be paid in the amount of 1% of the net consideration received upon a transfer of real property (Ad Code § 11-2102) and respondent's determination that a transfer tax is required to be paid on the total purchase price because it is the substance of a transaction, viewed in its entirety, which is material to a determination of its tax consequences, is justified. In addition, it is appropriate for a

penalty to be assessed against petitioner under § 11-2114(c) of the Ad Code despite the absence of intentional wrongdoing. Exchange Plaza Partners v. City of New York, 159 AD2d 333.

¶ 5. The real property transfer tax is applicable to the taxpayer's syndication of limited partnership interests in itself when the taxpayer does not own any real estate but was the sole limited partner in a limited partnership that actually owned the real estate. The sale by syndication to limited partners of a more than 50 percent interest in the taxpayer was a taxable conveyance under the statute. The law applied here where the sole business of the taxpayer was its ownership of an entity that owned real estate located in New York City. 595 Investors Limited Partnership v. Biderman, 140 Misc.2d 441, 531 N.Y.S.2d 714 (Sup.Ct. New York Co. 1988).

¶ 6. Admin. Code § 2101(7) covers the sale of stock in a cooperative apartment. In Re Emerson Unitrust, 16 A.D.3d. 201, 791 N.Y.S.2d 110 (2d Dept. 2005).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2102

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2102 Imposition of tax.

a. A tax is hereby imposed on each deed at the time of delivery by a grantor to a grantee when the consideration for the real property and any improvement thereon (whether or not included in the same deed) exceed twenty-five thousand dollars. The tax shall be:

(1) at the rate of one-half of one per centum of the net consideration with respect to conveyances made before July first, nineteen hundred seventy-one, or made in performance of a contract therefor executed before such date;

(2) at the rate of one per cent of such net consideration with respect to-

(i) all conveyance*23 made on or after July first, nineteen hundred seventy-one and before February first, nineteen hundred eighty-two, or made in performance of a contract therefor executed during such period;

(ii) conveyances made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two of one, two or three-family houses and individual residential condominium units, and

(iii) conveyances made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two where the consideration is less than five hundred thousand dollars (other than grants, assignments or surrenders of leasehold interests in real property taxable under paragraph three of this subdivision); (3) at the rate of one percent of the consideration with respect to grants, assignments or surrenders of leasehold interests in real property made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two where the consideration is five hundred thousand dollars or more, provided however, that for purposes of this paragraph

the amount subject to tax in the case of a grant of a leasehold interest in real property shall be only such amount as is not considered rent for purposes of the tax imposed by chapter seven of this title;

(4) at the rate of two percent of the consideration with respect to all other conveyances made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two, except that, for purposes of this paragraph where the consideration includes the amount of any mortgage or other lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed, the portion of the consideration ascribable to such mortgage, lien or encumbrance shall be taxed at the rate of one percent, and only the balance of such consideration shall be taxed at the rate of two percent;

(5) at the rate of one percent of the consideration with respect to conveyances made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine of one, two or three-family houses and individual residential condominium units;

(6) at the rate of one percent of the consideration with respect to conveyances made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine where the consideration is less than five hundred thousand dollars (other than grants, assignments or surrenders of leasehold interests in real property taxable as hereafter provided);

(7) (i) at the rate of one percent of the consideration with respect to a grant, assignment or surrender, made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine, of a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other,

(ii) at the rate of one percent of the consideration with respect to grants, assignments or surrenders of leasehold interests in real property made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine where the consideration is less than five hundred thousand dollars, or

(iii) at the rate of two percent of the consideration with respect to grants, assignments or surrenders of leasehold interests in real property made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine where the consideration is five hundred thousand dollars or more:

(iv) provided, however, that for purposes of subparagraphs (i), (ii) and (iii) of this paragraph, the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount as is not considered rent for purposes of the tax imposed by chapter seven of this title; and

(8) at the rate of two percent of the consideration with respect to all other conveyances made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine;

(9) with respect to conveyances made on or after August first, nineteen hundred eighty-nine (other than grants, assignments or surrenders of leasehold interests in real property taxable as provided in paragraph ten of this subdivision), the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for conveyances of one, two or three-family houses and individual residential condiminium units where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for such conveyances where the consideration is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration with respect to all other conveyances where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent where the consideration for such conveyances is more than five hundred thousand dollars;

(10) With respect to a grant, assignment or surrender of a leasehold interest in real property made on or after August first, nineteen hundred eighty-nine, the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for the granting, assignment or surrender of a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration where the consideration for granting, assignment or surrender or such leasehold interest is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for the granting, assignment or surrender of a leasehold interest in all other real property where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent of the consideration where the consideration for the granting, assignment or surrender of such a leasehold interest is more than five hundred thousand dollars;

(iii) provided, however, that for purposes of subparagraphs (i) and (ii) of this paragraph, the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount as is not considered rent for purposes of the tax imposed by chapter seven of this title.

Where any real property is situated partly within and partly without the boundaries of the city of New York the consideration and net consideration subject to tax shall be such part of the total consideration and total net consideration attributable to that portion of such real property situated within the city of New York or to the interest in such portion.

b. (1) In addition to the taxes imposed by subdivision a, there is hereby imposed a tax on each instrument or transaction (unless evidenced by a deed subject to tax under subdivision a), at the time of the transfer, whereby any economic interest in real property is transferred by a grantor to a grantee, where the consideration exceeds twenty-five thousand dollars.

(A) With respect to such transfers made on or after July thirteenth, nineteen hundred eighty-six and before August first, nineteen hundred eighty-nine, the tax shall be (i) at the rate of one percent of the consideration where the real property the economic interest in which is transferred is a one, two or three-family house, an individual cooperative apartment, an individual residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other, or where the consideration for the transfer is less than five hundred thousand dollars; and (ii) at the rate of two percent of the consideration with respect to all other transfers.

(B) With respect to such transfers made on or after August first, nineteen hundred eighty-nine, the tax shall be at the following rates: (i) at the rate of one percent of the consideration where the real property, the economic interest in which is transferred, is a one, two or three-family house, an individual cooperative apartment, an individual residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other and where the consideration for such transfer of an economic interest in such real property is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration where the consideration for such transfer of an economic interest in such property is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration with respect to all other transfers of an economic interest in real property where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent of the consideration where the consideration for such transfers is more than five hundred thousand dollars.

(C) Where any real property, the economic interest in which is transferred, is situated partly within and partly

without the boundaries of the city of New York, the consideration subject to tax shall be such part of the consideration as is attributable to that portion of such real property which is situated within the city of New York.

(2) Notwithstanding the definition of "controlling interest" contained in paragraph eight of section 11-2101 or anything to the contrary contained in paragraph seven of that section, in the case of any transfer of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold, the tax imposed by this subdivision shall apply to (i) the original transfer of such shares of stock by the cooperative corporation or cooperative plan sponsor, and (ii) any subsequent transfer of such shares of stock by the owner thereof. Notwithstanding any provision of this chapter to the contrary, in the case of a transfer described in clause (ii) of this paragraph which relates to an individual residential unit, the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of the cooperative housing corporation. In determining the tax on a transfer described in clause (i) of this paragraph, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. Such proportionate part shall be the amount determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a fraction, the numerator of which shall be the number of shares of stock transferred in a transaction described in clause (i) and the denominator of which shall be the total number of outstanding shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax on a transfer described in clause (i) below zero, nor shall any such credit be allowed for any tax paid more than twenty-four months prior to the date on which occurs the first in a series of transfers of shares of stock in an offering of cooperative housing corporation shares described in clause (i). For purposes of this paragraph, the term "cooperative housing corporation" shall not include a housing company organized and operating pursuant to the provisions of article two, four, five or eleven of the private housing finance law.

(3) Notwithstanding the definition of "controlling interest" contained in paragraph eight of section 11-2101 or anything to the contrary contained in paragraph seven of that section, in the case of a corporation (other than a cooperative housing corporation), partnership,association, trust or other entity formed for the purpose of cooperative ownership of real property, the tax imposed by this subdivision shall apply to each transfer of shares of stock in such corporation, interest in such partnership, association or other entity or beneficial interest in such trust, in connection with the grant or transfer of a proprietary leasehold. Notwithstanding any provision of this chapter to the contrary, in the case of a transfer described in this paragraph which relates to an individual residential unit (other than the original transfer of such a unit by the cooperative entity or cooperative plan sponsor), the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of such corporation, partnership, association, trust or other entity. Notwithstanding any other provision of law to the contrary, all revenues arising from the tax imposed pursuant to this paragraph shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

c. (1) Anything to the contrary notwithstanding, in the case of any conveyance or transfer of real property or any economic interest therein in complete or partial liquidation of a corporation, partnership, association, trust or other entity, the taxes imposed by this section shall be measured by (i) the consideration for such conveyance or transfer, or (ii) the value of the real property or economic interest therein, whichever is greater.

(2) If, within twenty-four months following the transfer of an economic interest in real property which is subject to the tax imposed by this chapter, the corporation, partnership, association, trust or other entity owning the real property the economic interest in which was so transferred, is liquidated, and such real property is conveyed to the grantee or grantees of such economic interest, a credit shall be allowed against the tax imposed by this chapter upon such conveyance in liquidation to such grantee or grantees. The amount of such credit shall be equal to the amount of the tax paid upon the prior transfer of the economic interest in such real property, but shall in no event be greater than the tax payable upon the conveyance in liquidation.

d. In the case of a transfer of an economic interest in any entity that owns assets in addition to real property or

interest therein, the consideration subject to tax shall be deemed equal to the fair market value of the real property or interest therein apportioned based on the percentage of the ownership interest in the entity transferred.

e. (1) Notwithstanding anything contained in this section, the tax imposed under subdivisions a and b on any deed or other instrument or transaction conveying or transferring real property or an economic interest therein, that qualifies as a real estate investment trust transfer, as defined below, shall be imposed at a rate equal to fifty percent of the otherwise applicable rate.

(2) For purposes of this subdivision e, a real estate investment trust transfer shall mean (A) any deed or other instrument or transaction conveying or transferring real property or an economic interest therein to a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code (a "REIT") or to a partnership or corporation in which a REIT owns a controlling interest immediately following the transaction; and

(B) any issuance or transfer of an interest in a REIT, or in a partnership or corporation in which a REIT owns a controlling interest immediately following the issuance or transfer in connection with a transaction described in subparagraph (A) of this paragraph. Notwithstanding the foregoing, a transaction described in the preceding sentence shall not constitute a real estate investment trust transfer unless (i) it occurs in connection with the initial formation of the REIT and the conditions described in subparagraphs (C) and (D) of this paragraph are satisfied, or (ii) in the case of any real estate investment trust transfer occurring on or after July thirteenth, nineteen hundred ninety-six and before September first, two thousand eleven, the transaction is described in subparagraph (E) of this paragraph in which case the provision of such subparagraph shall apply.

(C) The value of the ownership interests in the REIT, or in a partnership or corporation in which the REIT owns a controlling interest, received by the grantor as consideration for such conveyance or transfer must be equal to an amount not less than forty percent of the value of the equity interest in the real property or economic interest therein conveyed or transferred by the grantor to the grantee and such ownership interests must be retained by the grantor or owners of the grantor for a period of not less than two years following the date of such conveyance or transfer; provided, however, that in the case of the death of the grantor or an owner of the grantor within such two year period, this two year retention requirement shall be deemed to be satisfied notwithstanding any conveyance or transfer of such ownership interests held by such individual as a result of such death. The value of the equity interest in such real property or economic interest therein shall be computed by subtracting from the consideration for the conveyance or transfer of the real property or economic interest therein the unpaid balance of any loans secured by mortgages or other encumbrances which are liens on the real property or economic interest therein immediately before the conveyance or transfer. For purposes of this computation, in the case of a conveyance or transfer of real property other than a conveyance or transfer of an economic interest in real property, the amount of the unpaid balance of any loans secured by mortgages or other encumbrances to be subtracted from consideration is determined by multiplying the total unpaid balance of any loans secured by mortgages or other encumbrances on the real property by the percentage of the ownership interest in the real property being conveyed or transferred to the grantee. In the case of a transfer of an economic interest in real property, such amount to be subtracted is equal to the sum of the following amounts: (i) a reasonable apportionment to the interests in real property owned by the entity of the amount of any loans secured by encumbrances on the ownership interests in the entity which are being conveyed or transferred and (ii) the amount of any loans secured by mortgages or other encumbrances on the real property of the entity multiplied by the percentage interest in the entity which is being conveyed or transferred.

Provided, however, that for purposes of the computation made pursuant to this subparagraph (C), any mortgages or other encumbrances on the real property or economic interest therein which are created in contemplation of the initial formation of the REIT or in contemplation of the conveyance or transfer of such real property or economic interest therein to the REIT or to a partnership or corporation in which the FEIT owns a controlling interest immediately following the conveyance or transfer shall not be considered.

(D) Seventy-five percent or more of the cash proceeds received by such REIT from the sale of ownership

interests in such REIT upon its initial formation must be used: (i) to make payments on loans secured by any interest in real property (including an ownership interest in an entity owning real property) which is owned directly or indirectly by such REIT; (ii) to pay for capital improvements to real property or any interest therein owned directly or indirectly by such REIT; (iii) to pay brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease incurred in connection with the creation of a leasehold or sublease pertaining to real property or any interest therein owned directly or indirectly by such REIT; (iv) to acquire any interest in real property (including an ownership interest in any entity owning real property), apart from any acquisition to which a reduced rate of tax is applicable pursuant to this subdivision (without regard to this subparagraph); or (v) for reserves established for any of the purposes described in clause (i), (ii) or (iii) of this subparagraph. For purposes of this subparagraph, the term real property shall include real property wherever located.

(E) If a transaction otherwise described in subparagraph (A) or (B) of this paragraph occurs other than in connection with the initial formation of a REIT, the condition set forth in subparagraph (D) shall be disregarded and such transaction shall constitute a "real estate investment trust transfer" if the condition set forth in subparagraph (C) would be satisfied if "fifty percent" is substituted for "forty percent" therein.

(3) For purposes of determining the consideration for a real estate investment trust transfer taxable under this subdivision e the value of the real property or interest therein shall be equal to the estimated market value as determined by the commissioner of finance for real property tax purposes as reflected on the most recent notice of assessment issued by such commissioner, or such other value as the taxpayer may establish to the satisfaction of such commissioner.

(4) This subdivision e shall only apply to real estate investment trust transfers occurring on or after the effective date of this subdivision.

f. Notwithstanding any other provision of this chapter, in determining the tax imposed by this chapter with respect to a deed, instrument or transaction conveying or transferring a one, two or three-family house, an individual residential condominium unit, an individual residential cooperative apartment, or an interest therein, the consideration for such conveyance or transfer shall exclude, to the extent otherwise included therein, the amount of any mortgage or other lien or encumbrance on the real property or interest therein that existed before the delivery of the deed or the transfer and remains thereon after the date of delivery of the deed or the transfer, other than any mortgage, lien or encumbrance placed on the property or interest in connection with, or in anticipation of, the conveyance or transfer, or by reason of deferred payments of the purchase price whether represented by notes or otherwise. Provided, however, that this subdivision shall not apply to a conveyance or transfer (1) to a mortgagee, lienor or encumbrancer, regardless of whether the grantor or transferor is or was personally liable for the indebtedness secured by the mortgage, lien or encumbrance or whether the mortgage, lien or encumbrance is canceled of record, or (2) which qualifies as a "real estate investment trust transfer" as defined in subdivision e of this section.

HISTORICAL NOTE

Section repealed and added L.L. 71/1986 § 3

Section amended L.L. 23/1986 § 2

Section added chap 907/1985 § 1

Subd. a pars (5)-(8) amended L.L. 59/1989 § 1

Subd. a pars (9), (10) added L.L. 59/1989 § 2

Subd. b par (1) amended L.L. 59/1989 § 3

Subd. b par (2) amended L.L. 58/1989 § 1

Subd. b par (3) added L.L. 58/1989 § 2

Subd. d amended chap 63/2003 § 2, eff. May 19, 2003 and applying to conveyances occurring on or after such date.

Subd. e added ch. 170/1994 § 304, eff. June 9, 1994. [See Note 1]

Subd. e par (2) amended chap 309/1996 § 432, eff. July 13, 1996. [See Note 2]

Subd. e par (2) subpar (B) amended chap 416/2008 § 3, eff. Aug. 5, 2008.

Subd. e par (2) subpar (B) amended chap 62/2006 § J3, eff. June 6, 2006 and deemed to have been in full force and effect on and after Sept. 1, 2005.

Subd. e par (2) subpar (B) amended chap 85/2002 § K3, eff. May 29, 2002 and apply to real estate investment trust transfers occurring on and after May 29, 2002.

Subd. e par (2) subpar (B) amended chap 407/1999 § G3, eff. Aug. 9, 1999.

Subd. e par (2) subpar (E) amended chap 85/2002 § K5, eff. May 29, 2002 and apply to real estate investment trust transfers occurring on and after May 29, 2002.

Subd. e par (4) amended chap 309/1996 § 433, eff. July 13, 1996. [See Note 2]

Subd. e par (4) amended chap 94/1996 § 4, eff. May 22, 1996.

Subd. f added chap 314/1997 § 2, eff. July 29, 1997 and applying to conveyances or transfers occurring on or after Aug. 28, 1997.

DERIVATION

Formerly § II46-2.0 added LL 78/1965 § 1

Amended LL 38/1971 § 1

Amended chap 57/1982 § 7

Amended LL 36/1982 § 2

Amended LL 23/1986 § 2

NOTE

1. Note provisions of ch. 170/1994 §§ 309, 310:

§ 309. Notwithstanding any provision of this act to the contrary, the provisions of sections three hundred, three hundred one, three hundred three, and three hundred four of this act shall apply to any real estate investment trust transfer occurring on or after July 1, 1996 if such transfer is pursuant to a binding written contract entered into before July 1, 1996 between a transferor and a real estate investment trust, or a corporation or partnership in which a real estate investment trust owns a controlling interest, provided that (1) the fact that such transfer may occur is disclosed in the prospectus relating to the initial formation of such real estate investment trust and (2) the date of execution of such contract is confirmed by independent evidence, such as the recording of the contract, payment of a deposit or other facts and circumstances determined to be applicable by the commissioner of taxation and finance for purposes of the taxes imposed under sections 1402 and 1441 of the tax law, and by the commissioner of finance for purposes of the tax imposed pursuant to the authority of subdivision (b) of section 1201 of the tax law.

§ 310. If the provisions of sections three hundred through three hundred nine of this act be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, for the period with respect to which such provisions are so adjudged, such provisions shall be deemed not to be in effect, such that real estate investment trust transfers shall be taxed pursuant to the provisions of law that were in effect immediately prior to the enactment of this act; provided, however, that a credit shall be allowed against any additional tax due for any tax paid pursuant to the provisions of sections three hundred through three hundred nine of this act prior to such judgment.

2. Provisions of Chap 309/1996:

§ 434. Section 309 of chapter 170 of the laws of 1994, amending the tax law, the administrative code of the city of New York and various other laws relating to taxation of real estate investment trust transfers, is REPEALED.

§ 435. Notwithstanding any provision of this act to the contrary, the provisions of sections four hundred twenty-nine through four hundred thirty-three of this act as they relate to a conveyance other than in connection with the initial formation of a REIT shall apply to such real estate investment trust transfer occurring on or after September 1, 1999 if such transfer is pursuant to a binding written contract entered into before September 1, 1999 between a transferor and a real estate investment trust, or a corporation or partnership in which a real estate investment trust owns a controlling interest, provided that the date of execution of such contract is confirmed by independent evidence, such as the recording of the contract, payment of a deposit or other facts and circumstances determined to be applicable by the commissioner of taxation and finance for purposes of the taxes imposed under section 1402 of the tax law, and by the commissioner of finance for purposes of the tax imposed pursuant to the authority of subdivision (b) of section 1201 of the tax law.

§ 436. If any of the provisions of sections four hundred thirty through four hundred thirty-two of this act be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, for the period with respect to which such provisions are so adjudged such provisions shall be deemed not to be in effect, such that real estate investment trust transfers shall be taxed pursuant to the provisions of law that were in effect immediately prior to the enactment of this act; provided, however, that a credit shall be allowed against any additional tax due for any tax paid pursuant to the provisions of sections four hundred thirty through four hundred thirty-two of this act prior to such judgment.

CASE NOTES

¶ 1. Syndication to limited partners in October 1986 of more than a fifty percent interest, when plaintiff did not

own any realty in the city but was the sole limited partner in a partnership that did, is taxable because an "economic interest in real property is transferred", § 11-2102(b)(1). 595 Investors v. Biderman, 140 Misc. 2d 441 [1988].

¶ 2. A taxpayer who unwittingly structured an intra-family transfer of property as being a conveyance to a partnership, and thus rendered the conveyance subject to tax under this section, was unable to void the deed on the ground of mistake. Falik v. City of New York Department of Finance, N.Y.L.J., May 14, 1997, page 30, col. 3 (Sup.Ct. Kings Co.).

FOOTNOTES

23

[Footnote 23]: * So in original; "conveyance" should be "conveyances".

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2103

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2103 Presumptions and burden of proof.

For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds and transfers of economic interests in real property are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the value of the real property or interest therein. Such presumption shall prevail until the contrary is established and the burden of proving the contrary shall be on the taxpayer. The burden of proving that a lien or encumbrance existed on the real property or interest therein before the delivery of the deed and remained thereon thereafter and the burden of proving the amount of such lien or encumbrance at the time of the delivery of the deed shall be on the taxpayer.

HISTORICAL NOTE

Section repealed and added L.L. 71/1986 § 4

Section amended L.L. 23/1986 § 4

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-3.0 added LL 78/1965 § 1

Amended LL 23/1986 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2104

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2104 Payment.

The tax imposed hereunder shall be paid by the grantor to the commissioner of finance at the office of the register in the county where the deed is or would be recorded within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed, or, in the case of a tax on the transfer of an economic interest in real property, at such place as the commissioner of finance shall designate, within thirty days after the transfer. The grantee shall also be liable for the payment of such tax in the event that the amount of tax due is not paid by the grantor or the grantor is exempt from tax. All moneys received as such payments by the register during the preceding month shall be transmitted to the commissioner of finance on the first day of each month or on such other day as is mutually agreeable to the commissioner of finance and the register. From the moneys so received by him or her, the commissioner of finance shall set said*27 in a special account:

(1) the total amount of taxes imposed pursuant to the provisions of paragraph three of subdivision a of section 11-2102 of this chapter including any interest or penalties thereon;

(2) fifty percent of the total amount of taxes imposed pursuant to the provisions of paragraph four of subdivision a of section 11-2102 of this chapter, including fifty percent of any interest or penalties thereon, provided, however, that where such tax is measured by the consideration for a conveyance without deduction for the amount of any mortgage or other lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed, the entire amount of tax imposed at the rate of one percent on the portion of the consideration ascribable to such nondeductible mortgage, lien or other encumbrance, including any interest or penalties thereon, and fifty percent of the tax on the balance of the consideration, including fifty percent of any interest or penalties thereon, shall be set aside in such special account;

(3) fifty percent of the total amount of taxes imposed pursuant to the provisions of subparagraph (iii) of paragraph seven of subdivision a of section 11-2102 of this chapter, including fifty percent of any interest or penalties thereon;

(4) fifty percent of the total amount of taxes imposed pursuant to the provisions of paragraph eight of subdivision a of section 11-2102 of this chapter, including fifty percent of any interest or penalties thereon;

(5) fifty percent of the total amount of taxes imposed at the rate of two percent pursuant to the provisions of clause (ii) of subparagraph A of paragraph one of subdivision b of section 11-2102 of this chapter including fifty percent of any interest or penalties thereon;

(6) with respect to any conveyance of real property, transfer of an economic interest therein, or any grant, assignment or surrender of a leasehold interest in real property, made on or after August first, nineteen hundred eighty-nine and taxable under this chapter, in each instance where the tax rate is in excess of two percent, a portion of the tax received equal to one percent of the consideration subject to the tax plus any interest or penalty attributable to such portion of the tax; and

(7) notwithstanding anything in subdivision six to the contrary, in each instance where the tax rate imposed pursuant to subdivision e of section 11-2102 of this chapter is in excess of one percent, a portion of the tax received equal to one-half of one percent of the total consideration for the real property or economic interest therein conveyed or transferred, plus any interest or penalty attributable to such portion of the tax.

Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance acount of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of section eight-eight-a of the state finance law, and, on the fifteenth day of each month, the commissioner of finance shall transmit all funds in such account on the last day of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he or she deems necessary for refunds and such other amounts necessary to finance the New York City transportation disabled committee and the New York City paratransit system as established by section fifteen-b of the transportation law, provided, however, that such amounts shall not exceed six percent of the total funds in the accunt*29 but in no event be less than one hundred seventy-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of New York and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city.

HISTORICAL NOTE

Section repealed and added L.L. 71/1986 § 5

Section amended L.L. 23/1986 § 5

Section added chap 907/1985 § 1

Subd. (4) amended L.L. 59/1989 § 4

Subd. (5) amended chap 170/1994 § 305, eff. June 9, 1994

Subd. (5) amended L.L. 59/1989 § 4

Subd. (6) amended chap 170/1994 § 306, eff. June 9, 1994

Subd. (6) added L.L. 59/1989 § 5

Subd. (7) added chap 170/1994 § 307, eff. June 9, 1994

DERIVATION

Formerly § II46-4.0 added LL 78/1965 § 1

Amended chap 57/1982 § 8

Amended LL 36/1982 § 3

Amended LL 7/1984 § 7

Amended chap 498/1984 § 7

(See effective date provisions chap 498/1984 § 8)

(Legislative findings, transportation of disabled persons, chap 498/1984 § 1)

Amended chap 999/1984 § 12

Amended chap 385/1985 § 9

(Special provision, disabled committee, paratransit system, chap 385/1985 § 10)

Amended LL 23/1986 § 4

CASE NOTES FROM FORMER SECTION

¶ 1. A mortgage foreclosure sale is a transfer of real property within the meaning of this section and the referee as the transferor/grantor has the duty to pay the taxes as expenses of the sale from the proceeds of the sale.-Trefoil Corp. v. Creed Taylor, 125 Misc. 2d 152 [1984].

FOOTNOTES

27

[Footnote 27]: * "Said" reads "aside" in L.L. 23/1986.

29

[Footnote 29]: * So in original; "accunt" should read "account".

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2105

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2105 Returns.

a. A joint return shall be filed by both the grantor and the grantee for each deed whether or not a tax is due thereon. Such return shall be filed with the commissioner of finance within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed. The commissioner of finance may, by rule, require that such returns be filed electronically. Filing shall be accomplished by delivering the return to the register for transmittal to the commissioner of finance or, where required by the commissioner of finance, by electronic filing of the return in a manner designated by the commissioner of finance. In the case of a transfer of an economic interest in real property, a joint return shall be filed in the above manner by both the grantor and the grantee for each instrument or transaction by which such transfer is effected, whether or not a tax is due thereon. Such return shall be filed with the commissioner of finance, at such place and in such manner as he or she may designate within thirty days after the transfer. The commissioner of finance shall prescribe the form of the return and the information which it shall contain. The return shall be signed by both the grantor or the grantor's agent and the grantee or the grantee's agent. Where the commissioner of finance requires electronic filing, the return shall be signed electronically. Upon the filing of such return for a deed, evidence of the filing shall be affixed to the deed by the register. The commissioner of finance may provide for the use of stamps as evidence of payment and that they shall be affixed to the deed before it is recorded. Where either the grantor or grantee has failed to sign the return, it shall be accepted as a return, but the party who has failed to sign the return or file a separate return shall be subject to the penalties applicable to a person who has failed to file a return and the period of limitations for assessment of tax or of additional tax shall not apply to such party. For good cause, the commissioner of finance may waive any rule requiring electronic filing and may permit a return to be filed in such other manner as the commissioner of finance may designate.

b. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

c. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

d. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

e. Where a deed, or instrument or transaction has more than one grantor or more than one grantee, the return may be signed by any one of the grantors and by any one of the grantees, provided, however, that those not signing shall not be relieved of any liability for the tax imposed by this chapter.

f. The payment of, and the filing of returns relating to, the taxes imposed hereunder, shall be required as a condition precedent to the recording or filing of a deed, lease, assignment or surrender of lease or other instrument effecting a conveyance or transfer subject to such taxes.

(g)*30 Every cooperative housing corporation shall be required to file an information return with the commissioner of finance as follows: such information return shall be filed by February fifteenth of the year two thousand and of each year thereafter, covering the reporting period beginning on January sixth of the year preceding the filing and ending on January fifth of the year of the filing. For reporting periods beginning before January sixth, nineteen hundred ninety-nine, such information return shall be filed by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first provided, however, that for the reporting period from January first through June thirtieth, nineteen hundred eighty-nine, such information return shall be filed by July thirty-first, nineteen hundred eighty-nine. The return shall contain such information regarding the transfer of shares of stock in the cooperative housing corporation as the commissioner may deem necessary, including but not limited to, the names, addresses and employer identification numbers or social security numbers of the grantor and the grantee, the number of shares transferred, the date of the transfer and the consideration paid for such transfer, provided, however, that if such cooperative housing corporation elects that such information return be deemed an application for an abatement pursuant to paragraph (f) of subdivision three of section four hundred sixty-seven-a of the real property tax law, such return shall contain the information required pursuant to paragraph (d) of subdivision three of such section. The commissioner of finance may enter into an agreement with the commissioner of taxation and finance of the state of New York to provide that a single information return may be filed for purposes of the tax imposed by this chapter and the real estate transfer tax imposed by article thirty-one of the tax law.

g.*31 Returns with respect to the conveyance of a one- or two-family dwelling will not be accepted for filing unless accompanied by an affidavit signed by the grantor and grantee indicating that the premises is equipped with an approved and operational smoke detecting device as provided in article six of subchapter seventeen of chapter one of title twenty-seven of this code.

HISTORICAL NOTE

Section repealed and added L.L. 71/1986 § 6

Section amended L.L. 23/1986 § 5

Section added chap 907/1985 § 1

Subd. a amended chap 385/2006 § 2, eff. July 26, 2006.

Subd. (g) (laid out first in main volume) amended chap 407/1999 § LL10,

eff. Sept. 8, 1999.

Subd. (g) added L.L. 58/1989 § 3 (laid out first)

Subd. g added L.L. 81/1989 § 3 (laid out second)

DERIVATION

Formerly § II46-5.0 added LL 78/1965 § 1

Amended LL 23/1986 § 5

FOOTNOTES

30

[Footnote 30]: * There are 2 subdivisions g.

31

[Footnote 31]: * There are 2 subdivisions g.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2106

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2106 Exemptions**

a. The following32 shall be exempt from the payment of the tax imposed by this chapter and from filing a return:

1. The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada) or political subdivisions;

2. The United States of America, and any of its agencies and instrumentalities, insofar, as they are immune from taxation, provided, however, that the exemption of such governmental bodies or persons shall not relieve a grantee from them of liability for the tax or from filing a return.

b. The tax imposed by this chapter shall not apply to any of the following deeds, instruments or transactions:

1. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to the United Nations or other world-wide international organizations of which the United States of America is a member;

2. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to any corporation, or association, or trust, or community chest, fund or foundation, organized or operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that

nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph;

3. A deed, instrument or transaction conveying or transferring real property or an economic interest therein to any governmental body or person exempt from payment of the tax pursuant to subdivision a of this section;

4. A deed delivered pursuant to a contract made prior to May first, nineteen hundred fifty-nine;

5. A deed delivered by any governmental body or person exempt from payment of the tax pursuant to subdivision a of this section as a result of a sale at a public auction held in accordance with the provisions of a contract made prior to May first, nineteen hundred fifty-nine;

6. A deed or instrument given solely as security for, or a transaction the sole purpose of which is to secure, a debt or obligation or a deed or instrument given, or a transaction entered into, solely for the purpose of returning such security;

7. A deed, instrument or transaction conveying or transferring real property or an economic interest therein from a mere agent, dummy, straw man or conduit to his principal or a deed, instrument or transaction conveying or transferring real property or an economic interest therein from the principal to his agent, dummy, straw man or conduit.

8. A deed, instrument or transaction conveying or transferring real property or an economic interest therein that effects a mere change of identity or form of ownership or organization to the extent the beneficial ownership of such real property or economic interest therein remains the same, other than a conveyance to a cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. For purposes of this paragraph, the term "cooperative housing corporation" shall not include a housing company organized and operating pursuant to the provisions of article two, four, five or eleven of the private housing finance law.

c. Notwithstanding any provision of this chapter to the contrary, where stock of a cooperative housing corporation and the appurtenant proprietary leasehold are transferred to such cooperative housing corporation or a wholly owned subsidiary of such housing corporation, or to the holder of a mortgage on the real property of such cooperative housing corporation or a wholly owned subsidiary of such holder of a mortgage on the real property of such cooperative housing corporation, such cooperative housing corporation or its wholly owned subsidiary, or such mortgage holder or its wholly owned subsidiary, shall not be liable as grantee for the tax determined to be due under this chapter from the grantor in such transfer, provided that such transfer occurred pursuant to, as the result of, or in connection with an action, proceeding, or other procedure to which such cooperative housing corporation is a party, to enforce a lien, security interest or other rights on or in such stock and proprietary leasehold, including but not limited to rights under the proprietary lease. This subdivision shall apply to transfers occurring on or after June sixteenth, nineteen hundred ninety-two.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b repealed and added L.L. 71/1986 § 7

Subd. b amended L.L. 23/1986 § 6

Subd. b par 8 added chap 170/1994 § 308, eff. June 9, 1994 and shall

apply to conveyances or transfers occurring on or after such effective

date.

Subd. c amended L.L. 16/1996 § 1, eff. Feb. 20, 1996 and retroactive to

Dec. 7, 1992.

Subd. c added L.L. 94/1992 § 1, eff. Dec. 7, 1992

DERIVATION

Formerly § II46-6.0 added LL 78/1965 § 1

Sub a par 2 amended LL 42/1970 § 1

Sub b amended LL 23/1986 § 6

NOTE

Provisions of L.L. 16/1996:

§ 2. If the exemption from grantee liability provided for in section one of this local law is adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not result in the extension of such exemption to any person not specifically exempted pursuant to such section one; in the event of such judgment, liability for the tax imposed under chapter 21 of title 11 of the administrative code of the city of New York with respect to any transfer described in such section one shall be determined and enforced as if this local law had not been enacted.

§ 3. This local law shall take effect immediately and shall be deemed to have been in full force and effect on December 7, 1992.

CASE NOTES FROM FORMER SECTION

¶ 1. Exemptions of the United States from taxation and imposition of transfer tax upon the grantee is not unconstitutional as double taxation since the same sale is not being taxed twice.-Eight Sherwood Corp. v. City of N.Y., 162 (119) N.Y.L.J. (12-22-69) 11, Col. 3 F.

¶ 2. Where property was sold to a private party who assigned its bid to petitioner when a judgment in a mortgage foreclosure action by the United States directed that the property be sold, the grantee must pay the New York City tax on deed, the United States being exempted from such tax and this section is constitutional.-Matter of Eight Sherwood Corp. v. City of N.Y., 67 Misc. 2d 246 [1969].

CASE NOTES

¶ 1. The New York City Real Property Transfer Tax, which exempted purchasers buying from the United Nations and from certain charitable organizations, but did not exempt purchasers buying from the United States government, was based on a reasonable classification and did not violate the supremacy clause (Art. VI) of the United States Constitution. Assay Partners v. City of New York, 149 A.D.2d 63, 544 N.Y.S.2d 1008 (1st Dept. 1989).

FOOTNOTES

32

[Footnote 32]: ** So in original. (Period omitted.)

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NYC Administrative Code 11-2107

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§ 11-2107 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable, including the assessed valuation of the real property or interest therein. Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or, unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking,

issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and intterest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 96, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-7.0 added LL 78/1965 § 1

CASE NOTES

¶ 1. Where there was a transfer of interests as tenants in common to a newly created partnership formed for the basis of holding the property, and the petitioners received consideration in the form of an interest in that partnership, the transaction was subject to the tax due under this section. Levinsky v. Kraut, 121 A.D.2d 723, 504 N.Y.S.2d 150 (2d Dept. 1986)(decided under the former Admin. Code § II 46-2.0, from which § 11-2107 was derived.).

¶ 2. Petitioner sought review of a determination of an administrative law judge of the New York City Tax Appeals Tribunal, that a transfer of real property from petitioner to another individual was not tax exempt. The court dismissed the petition for failure to exhaust administrative remedies. Only a determination by the New York City Tax Appeals Tribunal, sitting en banc (the entire "bench") to review a determination by one of its administrative law judges, is reviewable under CPLR Article 78. In the absence of a timely request by the taxpayer for such an en banc review, the termination of the administrative law judge, although deemed a final decision of the tribunal, is not subject to judicial review. Moreover, the Article 78 proceeding could not be maintained because the petitioner had not deposited the tax sought to be reviewed, with penalties and interest, or an equivalent undertaking, prior to commencing the proceeding. Fridman v. City of New York, 656 N.Y.S.2d 636, 239 A.D.2d 121 (App.Div. 1st Dept. 1997).

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NYC Administrative Code 11-2108

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CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2108 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reason therefor and give notice thereof to the taxpayer in writing. Such application may be made by the grantor, grantee or other person who has actually paid the tax. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and the commissioner of finance. The applicant shall be entitled to review such decision of the tax appeals tribunal

sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2107 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-2107 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing, or on the commissioner of finance's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 97, eff. Oct. 1, 1992

DERIVATION

Formerly § II46-8.0 added LL 78/1965 § 1

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NYC Administrative Code 11-2109

Administrative Code of the City of New York

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§ 11-2109 Reserves.

In cases where the grantor or grantee has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-9.0 added LL 78/1965 § 1

Administrative Code of the City of New York

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NYC Administrative Code 11-2110

Administrative Code of the City of New York

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CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2110 Remedies exclusive.

The remedies provided by sections 11-2107 and 11-2108 of this chapter shall be exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-2107 of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-10.0 added LL 78/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2111

Administrative Code of the City of New York

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CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2111 Proceedings to recover tax.

a. Whenever any grantor or grantee shall fail to pay any tax, penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such grantor or grantee subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied, and that any such tax or penalty will not be paid when due, such commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the grantor, grantee or other person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and

for services in executing the warrant he or she shall be entitled to the same fees, which such sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c added chap 513/2002 § 36, eff. Sept. 17, 2002.

DERIVATION

Formerly § II46-11.0 added LL 78/1965 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2112

Administrative Code of the City of New York

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§ 11-2112 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford returns, reports and other information to such tax commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To prescribe the methods for determining the consideration and net consideration attributable to that portion of real property located partly within and partly without the city of New York which is located within the city of New York or any interest therein;

6. To require any grantor or grantee to keep such records, and for such length of time as may be required for the

proper administration of this chapter and to furnish such records to the commissioner of finance upon request;

7. To assess, determine, revise and adjust the taxes imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-12.0 added LL 78/1965 § 1

Sub 2 amended LL 2/1983 § 8

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NYC Administrative Code 11-2113

Administrative Code of the City of New York

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§ 11-2113 Administration of oaths and compelling testimony.

a. The commissioner of finance, his or her employees or agents duly designated and authorized by him or her, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before such commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 98, eff. Oct. 1, 1992

DERIVATION

Formerly § II46-13.0 added LL 78/1965 § 1

Sub c repealed and added chap 765/1985 § 44

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NYC Administrative Code 11-2114

Administrative Code of the City of New York

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CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2114 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-2107 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion

of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax.)

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner to the effect that a tax has not been paid or that

information has not been supplied pursuant to the provisions of this chapter shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(i) Failure to file information return. If a cooperative housing corporation fails to file an information return required under subdivision (g) of section 11-2105 of this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed on such cooperative housing corporation a penalty of one hundred dollars for each such failure.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended chap 241/1989 § 22

Subd. (g) par (2) amended chap 63/2003 § E10, eff. May 19, 2003 and

deemed in full force and effect on and after May 1, 2003. [See

§ 11-537 Note 1]

Subd. (i) added L.L. 58/1989 § 4

DERIVATION

Formerly § II46-14.0 added LL 78/1965 § 1

Repealed and added LL 2/1983 § 9

Subs a, c, d, h amended chap 765/1985 § 45

Sub b pars 1, 4 amended chap 765/1985 § 45

CASE NOTES

¶ 1. See § 11-2101, note ¶ 4.

¶ 2. A penalty can be assessed under this section for for a tax deficiency despite the absence of intentional wrongdoing. Exchange Plaza Partners v. City of New York, 159 A.D.2d 333, 552 N.Y.S.2d 609 (1st Dept. 1990).

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NYC Administrative Code 11-2115

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§ 11-2115 Returns to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, register or tax appeals tribunal or any officer or employee of the department of finance, register or tax appeals tribunal to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to an action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of a deed or to any subsequent owner of the real property conveyed by such deed or to the duly authorized representative of any of them of a certified copy of any return filed in connection with the tax on such deed; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto to the United States of America or any department thereof, the state of New York or any department thereof, the city of New York or any department thereof provided the same is required for official business; not to prohibit the inspection for official business of such returns by the register, the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section

shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

e. This section shall not apply to any information contained in or relating to a return filed on or after the first day of January, two thousand three with respect to a transaction or transfer occurring on or after that date; provided, however, that this section shall continue to apply to any social security account number contained in any report or return pursuant to this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 99, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 7

Subd. a repealed and added L.L. 71/1986 § 8. [See Note after

§ 11-2101.]

Subd. a amended L.L. 23/1986 § 7

Subd. c added chap 714/1989 § 10

Subd. d added chap 808/1992 § 100, eff. Oct. 1, 1992

Subd. e added chap 385/2006 § 3, eff. July 26, 2006.

DERIVATION

Formerly § II46-15.0 added LL 78/1965 § 1

Sub b amended chap 765/1985 § 46

Sub a amended LL 23/1986 § 7

CASE NOTES FROM FORMER SECTION

¶ 1. Petitioner, a public utility maintaining that its special franchise assessment for a particular year was unequal, overvalued and illegal, was entitled to disclosure of sales data in the possession of the State Board of Equalization although the data might have been based in part on real property transfer tax returns, since privilege created by this section is a qualified one.-Con. Edison Co. v. State Board of Equalization, 112 Misc. 2d 422 [1982].

¶ 2. Petitioner, an attorney, representing real property owners engaged in tax certiorari litigation was not entitled to sales data lists for certain years compiled by the city from information contained in New York City real property tax returns and which contained names and addresses of buyer and seller, location of the property sold by block and lot number, sale date and sale price, assessed valuation and total valuation of the land.-Morris v. Martin, 82 A.D. 2d 965 [1981].

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NYC Administrative Code 11-2116

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2116 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter in any application made by him or her, or in any deed or instrument which is the subject of the notice, or, if no return has been filed or application made or address stated in the deed or instrument, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. Except as otherwise provided in this subdivision, if any return, claim, statement, notice, application, or other

document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal. Any return filed electronically shall be deemed to be filed on the date of issuance by the commissioner of finance of a confirmation.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a repealed and added L.L. 71/1986 § 9

Subd. a amended L.L. 23/1986 § 8

Subd. d amended chap 385/2006 § 4, eff. July 26, 2006.

Subd. d amended chap 513/2002 § 16, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 101, eff. Oct. 1, 1992

Subd. f added chap 513/2002 § 17, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § II46-16.0 added LL 78/1965 § 1

Subs d, e added LL 41/1984 § 4

Sub a amended LL 23/1986 § 8

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2117

Administrative Code of the City of New York

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CHAPTER 21 REAL PROPERTY TRANSFER TAX

§ 11-2117 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter ninety-three of the laws of nineteen hundred sixty-five, as amended.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-17.0 added LL 78/1965 § 1

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NYC Administrative Code 11-2118

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§ 11-2118 Disposition of revenues.

Except as otherwise provided, all revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city. Except as otherwise provided, no part of such revenues may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § II46-19.0 added LL 78/1965 § 1

Amended chap 57/1982 § 9

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2201

Administrative Code of the City of New York

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CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2201 Definitions.

When used in this chapter, the following terms shall mean and include:

1. "City". The city of New York.

2. "Commissioner of finance". The commissioner of finance of the city.

3. "Highway". The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

4. "Individual resident". One or more natural persons other than a firm, copartnership, trustee or trustees conducting a business or association who, or one of whom, owns a motor vehicle registered or required to be registered pursuant to section four hundred one of the vehicle and traffic law, the registration fees for which are provided for by subdivision six of said section, who, at the time he or she makes application for registration or renewal thereof of such motor vehicle (or such application is made on his or her behalf): (a) is domiciled in the city, unless he or she maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and during the period of one year next preceding the date upon which such application is made, spent in the aggregate not more than thirty days in the city; or (b) is not domiciled in the city but maintains a permanent place of abode in the city and, during the period of one year next preceding the date upon which such application is made, spent in the aggregate more than one hundred eighty-three days in the city, unless such individual is in the armed forces of the United States.

5. "Motor vehicle". Every vehicle, except electrically-driven invalid chairs being operated or driven by an

invalid, operated or driven upon a public highway by any power, other than muscular power, which includes electric power obtained from overhead trolley wires, except vehicles which run only upon rails or tracks.

6. "Other resident". Every firm, copartnership, trustee or trustees conducting a business or association or a corporation, who or which regularly keeps, stores, garages or maintains within the city a motor vehicle owned by it which, at the time it makes application for registration or renewal of registration thereof, is registered or required to be registered pursuant to subdivision six of section four hundred one of the vehicle and traffic law.

7. "Person". Unless otherwise indicated, an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other form of unincorporated enterprise.

8. "Owner". A person, other than a lien holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person.

9. "Vehicle". Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

10. "Leased or rented passenger motor vehicles". Any motor vehicle owned by any person engaged in the business of renting or leasing motor vehicles to be operated on the public highways for carrying passengers registered or required to be registered pursuant to any provision of section four hundred one of the vehicle and traffic law, which vehicle at the time when application is made for registration, re-registration or renewal thereof is regularly kept, stored, garaged or maintained in the city, including such vehicles which have been rented and leased by the owner and are in possession of lessees when such application for registration, re-registration or renewal is made.

11. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 11 added chap 808/1992 § 102, eff. Oct. 1, 1992

DERIVATION

Formerly § O46-1.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2202

Administrative Code of the City of New York

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CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2202 Imposition of tax.

Notwithstanding the provisions of section four hundred of the vehicle and traffic law and of subdivision ten of section four hundred one of the vehicle and traffic law to the contrary, a tax of fifteen dollars per annum is hereby imposed:

1. With respect to each motor vehicle registered or required to be registered pursuant to subdivision six of section four hundred one of the vehicle and traffic law:

a. Upon each individual resident for each such motor vehicle registered or for which registration is renewed, or required to be registered or renewed by him or her; and

b. Upon each other resident of each such motor vehicle regularly kept, stored, garaged or maintained in the city and registered or required to be registered or renewed by such other resident; and

2. With respect to each leased or rented passenger motor vehicle, upon the owner thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-2.0 added LL 26/1974 § 1

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***** Current through December 2009 ****

NYC Administrative Code 11-2203

Administrative Code of the City of New York

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§ 11-2203 Exemptions.

The tax imposed by this chapter shall not be imposed upon:

(1) owners of motor vehicles, the registration fees for which are or may be prescribed, governed or established by subdivisions seven (except for leased or rented passenger vehicles), eight, twelve, thirteen, sixteen of section four hundred one, articles fifteen and sixteen, or section four hundred twenty of the vehicle and traffic law;

(2) any owner to whom the provisions of the vehicle and traffic law relative to registration and equipment of motor vehicles are made inapplicable by the provisions of article three of title two of such law, for the period of such inapplicability;

(3) the state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada) or political subdivision;

(4) the United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation;

(5) the United Nations or other international organizations of which the United States of America is a member;

(6) any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and

no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-3.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2204

Administrative Code of the City of New York

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CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2204 Payment of tax and evidence of tax payment.

Every owner of a motor vehicle subject to tax hereunder shall pay the tax thereon to the commissioner of motor vehicles of the state of New York on or before the date upon which he or she registers or renews his or her registration thereof or is required to register or renew his or her registration thereof pursuant to section four hundred one of the vehicle and traffic law.

Notwithstanding the provisions of section four hundred of the vehicle and traffic law to the contrary, the payment of such tax shall be a condition precedent to the registration or renewal thereof of such motor vehicle and to the issuance of any certificate of registration and plates or removable tag specified in subdivision three of section four hundred one and in sections four hundred three and four hundred four of the vehicle and traffic law, and no such certificate of registration, plates or tag shall be issued unless such tax has been paid. The commissioner of motor vehicles shall not issue a registration certificate for any motor vehicle for which the registrant's address is within any such city, except upon proof, in a form approved by the commissioner of motor vehicles, that such tax has been paid, or is not due, with respect to such motor vehicle. The commissioner of motor vehicles, upon the payment of such tax or upon the application of any person exempt therefrom, shall furnish to each taxpayer paying the tax a receipt for such tax and to each such taxpayer or exempt person a statement, document or other form approved by the commissioner of motor vehicles pursuant to the last sentence, showing that such tax has been paid or is not due, with respect to such motor vehicle.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-4.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2205

Administrative Code of the City of New York

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§ 11-2205 Returns.

a. At the time the payment of the tax imposed by this chapter becomes due, every person subject to tax hereunder shall file a return with the commissioner of motor vehicles in form and containing such information as may be prescribed by such commissioner of motor vehicles. The taxpayer's application for registration or the renewal of registration shall constitute the return required under this chapter, unless the commissioner of motor vehicles, by regulation, shall otherwise provide.

b. Returns shall be preserved for three years and thereafter until the commissioner of motor vehicles permits them to be destroyed.

c. The commissioner of motor vehicles may require amended returns or certificates of facts to be filed within twenty days after notice and to contain the information specified in the notice. Any such certificate shall be deemed to be part of the return required to be filed.

d. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of motor vehicles or the commissioner of finance if designated as his or her agent shall take the necessary steps to enforce the filing of such a return or of a corrected return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-5.0 added LL 26/1974 § 1

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NYC Administrative Code 11-2206

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§ 11-2206 Determination of tax.

If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, or if a tax or any part thereof due hereunder be not paid when required, the amount of tax due shall be determined by the commissioner of motor vehicles or by the commissioner of finance if designated as his or her agent, from such information as may be obtainable, including motor vehicle registration with the department of motor vehicles of the state of New York and/or other factors. Notice of such determination shall be given to the person liable for the tax. Such a determination by the commissioner of motor vehicles shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, shall apply to the commissioner of motor vehicles for a hearing, or unless such commissioner of his or her own motion shall redetermine the same. If the commissioner of finance is designated as the agent of the commissioner of motor vehicles, such a determination by the commissioner of finance shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) applies to the tax appeals tribunal for a hearing by filing a petition, or unless the commissioner of finance of his or her own motion shall redetermine the same. A hearing following a petition to the tax appeals tribunal and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing by the commissioner of motor vehicles or the tax appeals tribunal, the commissioner of motor vehicles, if he or she holds the hearing, or the tax appeals tribunal if the tax appeals

tribunal holds the hearing, shall give notice of the determination or decision to the person against whom the tax is assessed and in the case of a tax appeals tribunal decision, to the commissioner of finance. Such determination by the commissioner of motor vehicles, or a decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such determination or tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of motor vehicles and there shall be filed with the commissioner of motor vehicles an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the taxpayer such undertaking filed with the commissioner of motor vehicles may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination or decision, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 103, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-6.0 added LL 26/1974 § 1

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NYC Administrative Code 11-2207

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§ 11-2207 Refunds for certain unused registrations.

Whenever any fee or portion of a fee paid for the registration of a motor vehicle under the provisions of the vehicle and traffic law is refunded pursuant to the provisions of subdivision one of section four hundred twenty-eight thereof, the amount of any tax paid pursuant to this chapter upon such registration shall also be refunded by the commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-7.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2208

Administrative Code of the City of New York

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§ 11-2208 Refunds.

a. In the manner provided in this section the commissioner of motor vehicles shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application for such refund shall be made within one year from the payment thereof to the commissioner of motor vehicles or to the commissioner of finance if designated as his or her agent. Whenever a refund is made or denied, the reasons therefor shall be stated in writing by the commissioner of motor vehicles or by the commissioner of finance, as the case may be, who in lieu of any refund, may allow credit therefor on payments due from the applicant.

b. (1) If the commissioner of motor vehicles has not designated the commissioner of finance as his or her agent, an application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of and the commissioner of motor vehicles shall hold a hearing and receive evidence with respect thereto. After such hearing, the commissioner of motor vehicles shall give notice of the determination of such application to the applicant who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the commissioner of motor vehicles in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such pro- ceeding.

(2) If the commissioner of motor vehicles has designated the commissioner of finance as his or her agent, a determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall

be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established conciliation procedure pursuant to section 11-124 of the administrative code and the applicant has requested a conciliation conference in accorrdance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refundd or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner of motor vehicles, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which has been determined to be due pursuant to the provisions of section 11-2206 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination made pursuant to section 11-2206 of this chapter, unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper after a hearing, or on his or her own motion, by the commissioner of motor vehicles or after a hearing by the tax appeals tribunal, or on his or her own motion by the commissioner of finance, as the case may be, or in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section amended chap 808/1992 § 104, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-8.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2209

Administrative Code of the City of New York

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§ 11-2209 Reserves.

In cases where a taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such taxpayer on his or her application for refund, the commissioner of motor vehicles shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-9.0 added LL 26/1974 § 1

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NYC Administrative Code 11-2210

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§ 11-2210 Remedies exclusive.

The remedies provided by sections 11-2206 and 11-2208 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of motor vehicles or by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a final determination by the commissioner of motor vehicles or a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of motor vehicles prior to the institution of such suit and posts a bond for costs as provided in section 11-2206 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 105, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-10.0 added LL 26/1974 § 1

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NYC Administrative Code 11-2211

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CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2211 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax, penalty or interest imposed by this chapter as herein provided, the corporation counsel, upon the request of the commissioner of motor vehicles or of the commissioner of finance if designated as his or her agent, shall bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state of the United States. However, if in his or her discretion the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, believes that any such person subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied, and that any such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the person who issued it and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the

warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant such sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of motor vehicles, or of the commissioner of finance if designated as his or her agent, a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance of the city, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of motor vehicles or the commissioner of finance, as the case may be, may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if he or she had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c added chap 513/2002 § 37, eff. Sept. 17, 2002.

DERIVATION

Formerly § O46-11.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2212

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2212 General powers of the commissioner of motor vehicles.

In addition to the powers granted to the commissioner of motor vehicles in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. For cause shown, to remit penalties; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles of any other state or the treasury department of the United States, or any city or county of the state of New York; and to afford such information to such other state, treasury department, city or county, any provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy commissioner in the department of motor vehicles or any employee or employees of his or her department or to any county clerk or other officer who acts as the agent of such commissioner in the registration of motor vehicles;

5. To prescribe methods for determining the tax;

6. To require all persons owning motor vehicles subject to tax to keep such records as he or she may prescribe

and to furnish such information upon his or her request;

7. To request the police department of the city to assist in the enforcement of the provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-12.0 added LL 26/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2213

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2213 Administration of oaths and compelling testimony.

a. The commissioner of motor vehicles or his or her employees or agents duly designated and authorized by such commissioner, and the tax appeals tribunal, shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers and duties under this chapter. The commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent or the tax appeals tribunal, shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner of motor vehicles, the commissioner of finance or the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or her or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and production and examination of books, papers and documents called for by the subpoena of the commissioner of motor vehicles, or, if the commissioner of finance is designated as his or her agent under this chapter, of the commissioner of finance and the tax appeals tribunal.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, or the tax appeals tribunal if the commissioner of finance is designated as the agent of the commissioner of motor vehicles, and witnesses attending in response thereto shall be entitled to the

same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies, or any officers or employees of the department of motor vehicles designated by the commissioner of motor vehicles to serve such process or any officers or employees of the department of finance of the city designated by the commissioner of finance to serve such process or any officers or employees of the tax appeals tribunal designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 106, eff. Oct. 1, 1992

DERIVATION

Formerly § O46-13.0 added LL 26/1974 § 1

Sub c repealed and added chap 765/1985 § 56

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2214

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2214 Penalties and interest.

a. Any person failing to file a return or to pay any tax or any portion thereof within the time required by this chapter shall be subject to a penalty of five times the amount of the tax due, plus interest of five percent of such tax for each month of delay or fraction thereof, but the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percent per year. Penalties and interest shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

b. The certificate of the commissioner of motor vehicles or of the commissioner of finance if designated as his or her agent to the effect that a tax has not been paid, or that a return required by this chapter has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be presumptive evidence thereof.

c. Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-14.0 added LL 26/1974 § 1

Subs b, c, d, e repealed chap 765/1985 § 57

Sub b relettered chap 765/1985 § 57

(formerly sub f)

Sub c added chap 765/1985 § 57

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2215

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2215 Returns to be secret.

a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of motor vehicles, any officer or employee of the department of motor vehicles, the commissioner of finance, any officer or employee of the department of finance, the tax appeals tribunal, any commissioner or employee of such tribunal, any agent of the commissioner of motor vehicles, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or portion of any return is furnished, or to whom any information contained in any return is furnished to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of motor vehicles or the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to an action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner of motor vehicles may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to section 11-2206 or 11-2208 of this chapter. Nothing herein shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a certified copy of any return filed by him or her pursuant to this chapter, or of the receipt, document or other form issued pursuant to section 11-2204 of this chapter, or a duplicate copy thereof; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, to the United States of America or any department thereof, the state of New York or any department thereof, the city of New York or any department thereof provided the same is required for official business; nor to prohibit the inspection for

official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the state of New York or the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in the state of New York or this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tax appeals tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tax appeals tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 107, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 8

Subd. c added chap 714/1989 § 11

Subd. d added chap 808/1992 § 108, eff. Oct. 1, 1992

DERIVATION

Formerly § O46-15.0 added LL 26/1974 § 1

Sub b amended chap 765/1985 § 58

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2216

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2216 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter, in any application made by him or her, or in any application for registration made by him or her pursuant to section four hundred one of the vehicle and traffic law or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this title is, after such period or such date, delivered by United States mail to the commissioner of motor vehicles, commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of motor vehicles, commis- sioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of motor vehicles, commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of motor vehicles is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. This subdivision shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by regulation of the commissioner of motor vehicles.

e. When the last day prescribed under authority of this title (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 808/1992 § 109, eff. Oct. 1, 1992

DERIVATION

Formerly § O46-16.0 added LL 26/1974 § 1

Subs d, e added LL 41/1984 § 8

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2217

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2217 Commissioner of finance as agent.

The commissioner of motor vehicles is hereby authorized to designate the commissioner of finance his or her agent to exercise any or all of his or her functions and powers specified or provided for in subdivision (d) of section 11-2205 and in sections 11-2206, 11-2208, 11-2211, 11-2213, 11-2214 and 11-2216 of this chapter. Where the commissioner of finance has been so designated as agent, the commissioner of finance, in addition to the powers elsewhere granted to him or her in this chapter, is hereby authorized and empowered:

1. To delegate such functions and powers to a commissioner or deputy commissioner in the department of finance or to any employee or employees of the department of finance;

2. For cause shown, to remit penalties and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles of any other state or the treasury department of the United States, or any city or county of the state of New York; and to afford such information to such other state, treasury department, city or county, any provision of this chapter to the contrary notwithstanding;

4. To request the police department of the city to assist in the enforcement of the provisions of this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-17.0 added LL 26/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2218

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2218 Agreement between commissioner of finance and commissioner of motor vehicles.

The commissioner of finance is hereby authorized and empowered to enter into an agreement with the commissioner of motor vehicles to govern the administration and collection of the taxes imposed by this chapter, which agreement shall provide for the exclusive method of collection of such taxes, custody and remittal of the proceeds of such tax; for the payment by the city of the reasonable expenses incurred by the department of motor vehicles in collecting and administering such tax; and for the audit, upon request of the commissioner of finance or his or her delegate, of the accuracy of the payments, distributions and remittances to the commissioner of finance pursuant to the provisions of this chapter, to be conducted at a time agreed upon by the state comptroller and to be allowed not more frequently than once in each calendar year. Such agreement shall have the force and effect of a rule or regulation of the commissioner of motor vehicles, and shall be filed and published in accordance with any statutory requirements relating thereto.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-18.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2219

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2219 Notification to corporation counsel.

The commissioner of motor vehicles shall promptly notify the corporation counsel of the city of any litigation instituted against him or her which challenges the constitutionality or validity of any provision of this chapter, or of the enabling act pursuant to which it was adopted, or which attempts to limit or question the applicability of either such law, and such notification shall include a copy of the papers served upon him.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-19.0 added LL 26/1974 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2220

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2220 Construction and enforcement.

This chapter shall be construed and enforced in conformity with subdivisions (g) and (h) of section twelve hundred one of the tax law, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-20.0 added LL 26/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2221

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 22 TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2221 Disposition of revenues.

All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § O46-22.0 added LL 26/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2301

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23 SURCHARGE ON OFF-TRACK WINNINGS

§ 11-2301 Surcharge on off-track winnings.

There shall be a surcharge of five percent of the portion of pari-mutuel wagering pools distributable to persons having placed bets at off-track betting facilities located within the city. The revenues derived from such surcharge, plus the breaks, shall be held separate and apart from any amounts otherwise authorized to be retained from pari-mutuel pools.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § TT51-1.0 added LL 24/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2302

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23 SURCHARGE ON OFF-TRACK WINNINGS

§ 11-2302 Distribution of revenues.

The revenues received from the surcharge imposed by this chapter, plus the breaks, shall be distributed monthly as follows:

(a) fifty percent to New York city, or to the counties and cities entitled to receive revenues from the regional off-track betting corporation pursuant to section five hundred sixteen of the racing, pari-mutuel wagering and breeding law and in the same proportion as provided therein, or to an off-track betting operator; and the balance as follows:

(b) where the track conducting the race on which the bet was placed is located within a city with a population in excess of one hundred thousand, to such city;

(c) where the track conducting the race on which the bet was placed is not located within a city with a population in excess of one hundred thousand, to the county in which such track is located; (d) where the track conducting the race on which the bet was placed is located partially within New York city and partially within a county, twenty-five percent of such balance to the city and the remainder to the county; and

(e) where the track conducting the race on which the bet was placed is located outside the state, in the same manner as set forth in subdivision (a) of this section.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § TT51-2.0 added LL 24/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2321

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2321 Short title.

This chapter shall be known and may be cited as the "enhanced 911 telephone surcharge act."

HISTORICAL NOTE

Section added L.L. 94/1991 § 2, eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

Section 1. Declaration of legislative findings and intent. The council acknowledges the paramount importance of the health, safety and welfare of the citizens of the city of New York, and when the lives or property of its citizens are in imminent danger, timely and appropriate assistance must be rendered. The council recognizes further that such assistance is often summoned by the three-digit number, "911", a nationally recognized and applied telephone number which is used to summon police, firefighting, medical and other emergency services. The council finds that the enhanced emergency service known as "E911" provides

substantial benefits beyond the basic 911 system, through, **inter alia,** the provision of selective routing and automatic number and location identification, and that these enhancements not only significantly reduce the response time of emergency services but also represent the state-of-the-art in fail-safe emergency telephone system technology.

The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2322

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2322 Definitions.

When used in this chapter the following terms shall mean:

(a) "E911 system" means an enhanced emergency telephone service which automatically connects a person dialing the digits 9-1-1 to the answering point established within the New York city police department, and which shall include, but not be limited to, selective routing, automatic number identification and automatic location identification.

(b) "Lifeline" means a discounted or low-priced telephone service available to eligible low-income residential customers.

(c) "Access line" means a communications circuit that connects a customer location to a facility housing the switching system and related equipment that provides telephone service.

(d) "911 service area" means the area within the geographic boundaries of the city of New York.

(e) "Municipality" means any New York city agency, or any public benefit corporation, local development corporation or other governmental entity the majority of whose members or governing body is appointed by a city official.

(f) "Service supplier" means a telephone corporation which provides local exchange access service within the 911 service area.

(g) "System costs" means the costs associated with obtaining and maintaining the telecommunication equipment

and the telephone services costs necessary to establish and provide an E911 system.

HISTORICAL NOTE

Section added L.L. 94/1991 § 2, eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

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The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2323

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2323 Establishment of surcharge for E911 system.

(a) In accordance with the provisions of article six of the county law, as amended, there is hereby established a surcharge of one dollar per telephone access line per month on the customers of every telephone service supplier within the city of New York.

(b) The surcharge imposed by subdivision (a) of this section shall be used to pay for the costs associated with obtaining and maintaining the telecommunication equipment and telephone services needed to provide an enhanced 911 emergency telephone system to service the city of New York.

(c) All telephone service suppliers which provide local access service within the 911 service area in the city of New York shall begin to add the monthly surcharge of one dollar per telephone access line per month as provided in subdivision (a) of this section to all service bills no later than the forty-fifth day after the effective date of the local law that increased such surcharge to one dollar per telephone access line per month.

HISTORICAL NOTE

Section added L.L. 94/1991 § 2, eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

Subd. (a) amended L.L. 16/2002 § 1, eff. July 10, 2002.

Subd. (c) amended L.L. 16/2002 § 1, eff. July 10, 2002.

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

Section 1. Declaration of legislative findings and intent. The council acknowledges the paramount importance of the health, safety and welfare of the citizens of the city of New York, and when the lives or property of its citizens are in imminent danger, timely and appropriate assistance must be rendered. The council recognizes further that such assistance is often summoned by the three-digit number, "911", a nationally recognized and applied telephone number which is used to summon police, firefighting, medical and other emergency services. The council finds that the enhanced emergency service known as "E911" provides substantial benefits beyond the basic 911 system, through, **inter alia,** the provision of selective routing and automatic number and location identification, and that these enhancements not only significantly reduce the response time of emergency services but also represent the state-of-the-art in fail-safe emergency telephone system technology.

The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2324

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2324 Application; limitations; exemptions.

(a) The surcharge established pursuant to the provisions of section 11-2323 shall be imposed on a per access line basis on all current bills rendered for local exchange access service within the 911 service area.

(b) No such surcharge shall be imposed upon:

(1) more than seventy-five exchange access lines per customer per location;

(2) any lifeline customers of a local telephone service supplier; or

(3) the access lines of the municipality, as defined in subdivision (e) of section 11-2322 of this chapter.

HISTORICAL NOTE

Section added L.L. 94/1991 § 2, eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

Section 1. Declaration of legislative findings and intent. The council acknowledges the paramount importance of the health, safety and welfare of the citizens of the city of New York, and when the lives or property of its citizens are in imminent danger, timely and appropriate assistance must be rendered. The council recognizes further that such assistance is often summoned by the three-digit number, "911", a nationally recognized and applied telephone number which is used to summon police, firefighting, medical and other emergency services. The council finds that the enhanced emergency service known as "E911" provides substantial benefits beyond the basic 911 system, through, **inter alia,** the provision of selective routing and automatic number and location identification, and that these enhancements not only significantly reduce the response time of emergency services but also represent the state-of-the-art in fail-safe emergency telephone system technology.

The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2325

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2325 Collection of surcharge.

(a) The appropriate service supplier or suppliers serving the New York city 911 service area shall act as collection agents for the city and shall remit the funds collected as the surcharge to the commissioner of finance each month. Such funds shall be remitted no later than thirty days after the last business day of such period.

(b) The service supplier shall be entitled to retain as an administrative fee an amount equal to two per cent of its collections of the surcharge.

(c) The surcharge required to be collected by the service supplier shall be added to and stated separately in its billings to the customer.

(d) The service supplier shall annually provide to the commissioner of finance an accounting of the surcharge amounts billed and collected.

HISTORICAL NOTE

Section added L.L. 94/1991 § 2 eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

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The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2326

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2326 Liability for surcharge.

(a) Each service supplier who is subject to the provisions of this chapter shall be liable to the city for the surcharge until it has been paid to the city, except that payment to a service supplier is sufficient to relieve the customer from further liability for such surcharge.

(b) The service supplier shall have no obligation to take any legal action to enforce the collection of any surcharge. However, whenever the service supplier remits the funds collected as the surcharge to the city, it shall also provide the city with the name and address of any customer refusing or failing to pay the surcharge imposed by this chapter and shall state the amount of such surcharge remaining unpaid.

HISTORICAL NOTE

Section added L.L. 94/1991 § 2 eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

Section 1. Declaration of legislative findings and intent. The council acknowledges the paramount importance of the health, safety and welfare of the citizens of the city of New York, and when the lives or property of its citizens are in imminent danger, timely and appropriate assistance must be rendered. The council recognizes further that such assistance is often summoned by the three-digit number, "911", a nationally recognized and applied telephone number which is used to summon police, firefighting, medical and other emergency services. The council finds that the enhanced emergency service known as "E911" provides substantial benefits beyond the basic 911 system, through, **inter alia,** the provision of selective routing and automatic number and location identification, and that these enhancements not only significantly reduce the response time of emergency services but also represent the state-of-the-art in fail-safe emergency telephone system technology.

The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2327

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-A*33 ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2327 System revenues; adjustment of surcharge.

(a) All surcharge monies remitted to the commissioner of finance by a service supplier and all other monies dedicated to the payment of system costs from whatever source derived or received by the city of New York shall be expended only upon authorization of the council, and only for payment of system costs as permitted by this chapter. The finance commissioner and the director of the office of management and budget shall separately account for and keep adequate records of the amount and source of all such revenues and of the amount and object or purpose of all expenditures thereof.

(b) If at the end of any fiscal year the total amount of all such revenues exceeds the amount necessary and expended for payment of system costs in such fiscal year, such unencumbered cash surplus shall be carried over for the payment of system costs in the following fiscal year. However, if at the end of any fiscal year such unencumbered cash surplus exceeds an amount equal to five per cent of that necessary for the payment of system costs in such fiscal year, the council shall by local law reduce the surcharge for the following fiscal year to a level which more adequately reflects the system cost requirements of its E911 system. The council may also reestablish or increase such surcharge, subject to the provisions of section three hundred three of the county law, if the revenues generated by such surcharge and by any other source are not adequate to pay for system costs.

HISTORICAL NOTE

Section added L.L. 94/1991 § 2 eff. Dec. 16, 1991, expiration date of

Jan. 31, 1995 was removed by L.L. 28/1994 § 1

FOOTNOTES

33

[Footnote 33]: * Note provision of L.L. 94/1991 § 1.

Section 1. Declaration of legislative findings and intent. The council acknowledges the paramount importance of the health, safety and welfare of the citizens of the city of New York, and when the lives or property of its citizens are in imminent danger, timely and appropriate assistance must be rendered. The council recognizes further that such assistance is often summoned by the three-digit number, "911", a nationally recognized and applied telephone number which is used to summon police, firefighting, medical and other emergency services. The council finds that the enhanced emergency service known as "E911" provides substantial benefits beyond the basic 911 system, through, **inter alia,** the provision of selective routing and automatic number and location identification, and that these enhancements not only significantly reduce the response time of emergency services but also represent the state-of-the-art in fail-safe emergency telephone system technology.

The council further finds that a major obstacle to the establishment of an E911 system is the cost of the telecommunication equipment and services which are necessary to provide such system. In recognition of the necessity to provide a funding mechansim for the establishment of an E911 system, in 1989 the New York state legislature enacted article six of the county law, which authorizes municipalities of the state to adopt local laws to impose a monthly surcharge on the customers of telephone service suppliers. Nothing herein shall be construed to abridge the powers of the New York city department of finance or any other city department, or the right of such departments to engage in any of their necessary or proper activities.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2341

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-B*43 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2341 Short title.

This chapter shall be known and may be cited as the "wireless communications service surcharge act."

HISTORICAL NOTE

Section added L.L. 15/2002 § 1, eff. July 10, 2002.

FOOTNOTES

43

[Footnote 43]: * Chapter 23-B added L.L. 15/2002 § 1, eff. July 10, 2002. Note: Provisions of L.L. 15/2002.

§ 2. This local law shall take effect immediately, provided that the provisions of this local law defining primary place of use shall take effect for bills rendered to wireless communications service customers by a wireless communications service supplier on and after August 1, 2002, provided that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on July 28, 2002, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service

contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

§ 3. Notwithstanding the provisions of section two of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section two of this local law.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2342

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-B*43 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2342 Definitions.

(a) "Wireless communications device" means any equipment used to access a wireless communications service.

(b) "Wireless communications service" means all commercial mobile services, as that term is defined in section 332(d) of title 47, United States Code, as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licensees, which offer real time, two-way voice or data service that is interconnected with the public switched telephone network or otherwise provides access to emergency communications services.

(c) "Wireless communications service supplier" means any commercial entity that operates a wireless communications service.

(d) "Place of primary use" means the street address that is representative of where the customer's use of the wireless communications service primarily occurs, which address must be either the residential street address or the primary business street address of the customer; and within the licensed service area of the wireless communications service provider.

HISTORICAL NOTE

Section added L.L. 15/2002 § 1, eff. July 10, 2002.

FOOTNOTES

43

[Footnote 43]: * Chapter 23-B added L.L. 15/2002 § 1, eff. July 10, 2002. Note: Provisions of L.L. 15/2002.

§ 2. This local law shall take effect immediately, provided that the provisions of this local law defining primary place of use shall take effect for bills rendered to wireless communications service customers by a wireless communications service supplier on and after August 1, 2002, provided that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on July 28, 2002, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

§ 3. Notwithstanding the provisions of section two of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section two of this local law.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2343

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-B*43 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2343 Establishment of surcharge for wireless communications devices.

(a) In accordance with the provisions of article six of the county law, as amended, there is hereby established a surcharge of thirty cents per month on wireless communications service in the city of New York. The surcharge shall be imposed on each wireless communications device and shall be reflected and made payable on bills rendered for wireless communications service that is provided to a customer whose place of primary use is within the city of New York.

(b) The surcharge imposed by subdivision (a) of this section shall be used to pay for the costs associated with the design, construction, operation, maintenance, and administration of public safety communications networks serving the city of New York.

(c) All wireless communications service suppliers that provide service to customers whose place of primary use is within the city of New York shall begin to add the monthly surcharge as provided in subdivision (a) of this section to all service bills no later than the forty-fifth day after the effective date of the local law that added this chapter.

HISTORICAL NOTE

Section added L.L. 15/2002 § 1, eff. July 10, 2002.

FOOTNOTES

43

[Footnote 43]: * Chapter 23-B added L.L. 15/2002 § 1, eff. July 10, 2002. Note: Provisions of L.L. 15/2002.

§ 2. This local law shall take effect immediately, provided that the provisions of this local law defining primary place of use shall take effect for bills rendered to wireless communications service customers by a wireless communications service supplier on and after August 1, 2002, provided that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on July 28, 2002, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

§ 3. Notwithstanding the provisions of section two of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section two of this local law.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2344

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-B*43 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2344 Collection of surcharge.

(a) Each wireless communications service supplier serving the city of New York shall act as collection agent for the city of New York and shall remit the funds collected pursuant to the surcharge imposed under the provisions of this chapter to the commissioner of finance each month. Such funds shall be remitted no later than thirty days after the last business day of the month.

(b) Each wireless communications service supplier shall be entitled to retain, as an administrative fee, an amount equal to two per cent of its collections of the surcharge.

(c) The surcharge required to be collected by the wireless communications service supplier shall be added to and stated separately in its billings to customers.

(d) Each wireless communications service supplier shall annually provide to the city of New York an accounting of the surcharge amounts billed and collected.

HISTORICAL NOTE

Section added L.L. 15/2002 § 1, eff. July 10, 2002.

FOOTNOTES

43

[Footnote 43]: * Chapter 23-B added L.L. 15/2002 § 1, eff. July 10, 2002. Note: Provisions of L.L. 15/2002.

§ 2. This local law shall take effect immediately, provided that the provisions of this local law defining primary place of use shall take effect for bills rendered to wireless communications service customers by a wireless communications service supplier on and after August 1, 2002, provided that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on July 28, 2002, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

§ 3. Notwithstanding the provisions of section two of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section two of this local law.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2345

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-B*43 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2345 Liability for surcharge.

(a) Each wireless communications service customer who is subject to the provisions of this chapter shall be liable to the city of New York for the surcharge until it has been paid to the city except that payment to a wireless communications service supplier is sufficient to relieve the customer from further liability for such surcharge.

(b) No wireless communications service supplier shall have a legal obligation to enforce the collection of any surcharge imposed under the provisions of this chapter, provided, however, that whenever the wireless communications service supplier remits the funds collected to the city of New York, it shall also provide the city with the name and address of any customer refusing or failing to pay the surcharge and shall state the amount of such surcharge remaining unpaid.

HISTORICAL NOTE

Section added L.L. 15/2002 § 1, eff. July 10, 2002.

FOOTNOTES

43

[Footnote 43]: * Chapter 23-B added L.L. 15/2002 § 1, eff. July 10, 2002. Note: Provisions of L.L.

15/2002.

§ 2. This local law shall take effect immediately, provided that the provisions of this local law defining primary place of use shall take effect for bills rendered to wireless communications service customers by a wireless communications service supplier on and after August 1, 2002, provided that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on July 28, 2002, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

§ 3. Notwithstanding the provisions of section two of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section two of this local law.

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Administrative Code of the City of New York

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NYC Administrative Code 11-2346

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 23-B*43 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2346 Systems revenues; adjustment of surcharge.

(a) All surcharge monies remitted to the city of New York by a wireless communications service supplier shall be expended only upon authorization of the council and only for payment of system costs or other costs associated with the design, construction, operation, maintenance, and administration of public safety communications networks serving the city of New York. The finance commissioner and the director of the office of management and budget shall separately account for and keep adequate books and records of the amount and source of all such monies and of the amount and object or purpose of all expenditures thereof.

(b) If, at the end of any fiscal year, the total amount of all such monies exceeds the amount necessary for payment of the above mentioned costs in such fiscal year, such excess shall be reserved and carried over for the payment of those costs in the following fiscal year.

HISTORICAL NOTE

Section added L.L. 15/2002 § 1, eff. July 10, 2002.

FOOTNOTES

43

[Footnote 43]: * Chapter 23-B added L.L. 15/2002 § 1, eff. July 10, 2002. Note: Provisions of L.L. 15/2002.

§ 2. This local law shall take effect immediately, provided that the provisions of this local law defining primary place of use shall take effect for bills rendered to wireless communications service customers by a wireless communications service supplier on and after August 1, 2002, provided that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contract or agreement in effect on July 28, 2002, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.

§ 3. Notwithstanding the provisions of section two of this local law, if New York Assembly Bill No. 11817 [A11817 became Chap 93/2002 effective June 25, 2002] has not become a law prior to the time that this local law is enacted, then this local law shall take effect immediately upon the enactment into law of such bill and shall then apply as provided in section two of this local law.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2401

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2401 Definitions.

When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Retail licensee." Any person to whom a license has been issued by the state liquor authority under the state alocholic beverage control law who sells at retail in the city, for on or off premises consumption, any liquor, wine or beer for the sale of which such license is required.

3. "Return." Any return required to be filed as herein provided.

4. "State." The state of New York.

5. "City." The city of New York.

6. "Commissioner." The commissioner of finance of the city of New York.

7. "Tax year." June first of any calendar year through May thirty-first of the following calendar year.

8. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 8 added chap 808/1992 § 110, eff. Oct. 1, 1992

DERIVATION

Formerly § FF46-1.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2402

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2402 Imposition of tax.

For the privilege of selling liquor, wine or beer at retail, for on or off premises consumption, within the city of New York, there is hereby imposed and there shall be paid annually for each tax year, commencing with the tax year beginning June first, nineteen hundred eighty, a tax to be paid by each retail licensee in an amount equal to twenty-five percent of the license fees payable under the state alcoholic beverage control law by such retail licensee for the license year in effect at the commencement of the tax year under this chapter. A retail licensee who obtains a license subsequent to the commencement of a tax year shall pay the tax based upon fees payable under the state alcoholic beverage control law by such licensee for the license year in effect at the time such license is issued. This tax shall be in addition to any and all other taxes paid by such retail licensee.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-2.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2403

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2403 Exemptions.

The tax imposed by this chapter shall not apply to the following:

(a) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions;

(b) The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation;

(c) The United Nations or other international organizations of which the United States of America is a member; and

(d) Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-3.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

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NYC Administrative Code 11-2404

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2404 Records to be kept.

Every retail licensee shall keep such records of its business and in such form as the commissioner may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-4.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2405

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2405 Returns.

a. On or before the twenty-fifth day of June in each tax year, every person subject to tax hereunder shall file a return with the commissioner on a form prescribed by the commissioner. A retail licensee who obtains a license subsequent to the commencement of a tax year shall file a return for such tax year on or before the twenty-fifth day of the month following the month in which such license was obtained.

b. The return shall state the amount of license fees paid to the state under the alcoholic beverage control law and the date when a license under such law was issued to the retail licensee and shall contain any other information which the commissioner may deem necessary for the proper administration of this chapter. The commissioner may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

c. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face, the commissioner shall take the necessary steps to enforce the filing of such a return or of a corrected return.

d. The return otherwise required to be filed on or before June twenty-fifth, nineteen hundred eighty under the provisions of subdivision a of this section, shall be made and filed on or before August twenty-fifth, nineteen hundred eighty.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-5.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2406

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2406 Payment of tax.

At the time of filing a return each person shall pay to the commissioner the tax imposed hereunder. Such tax shall be due and payable on the last day on which such return is required to be filed, regardless of whether a return is filed or whether the return which is filed correctly indicates the amount of tax due.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-6.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2407

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2407 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner and there shall be filed with the commissioner an undertaking issued by a surety

company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceedings or (b) at the option of the taxpayer, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such decision, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 111, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-7.0 added LL 31/1980 § 1

NYC Administrative Code 11-2408

Administrative Code of the City of New York

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CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2408 Refunds.

a. In the manner provided in this section, the commissioner shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied, the commissioner shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and

provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section, of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2407 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner made pursuant to section 11-2407 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 112, eff. Oct. 1, 1992

DERIVATION

Formerly § FF46-8.0 added LL 31/1980 § 1

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***** Current through December 2009 ****

NYC Administrative Code 11-2409

Administrative Code of the City of New York

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§ 11-2409 Remedies exclusive.

The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if such taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner prior to the institution of such suit and posts a bond for costs as provided in section 11-2407 of this chapter.

HISTORICAL NOTE

Section amended ch. 808/1992 § 113, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-9.0 added LL 31/1980 § 1

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NYC Administrative Code 11-2410

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§ 11-2410 Reserves.

In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such taxpayer on his or her application for refund, the city comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-10.0 added LL 31/1980 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2411

Administrative Code of the City of New York

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CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2411 Proceedings to recover tax.

a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties or interest might be satisfied and that any such tax or penalty or interest will not be paid when due, he or she may declare such tax or penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commission may issue a warrant, directed to the city sheriff, commanding such sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay to him or her the money collected by virtue thereof within sixty days after receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant such sheriff shall be

entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee for compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner as required by the preceding paragraph, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 38, eff. Sept. 17, 2002.

DERIVATION

Formerly § FF46-11.0 added LL 31/1980 § 1

NYC Administrative Code 11-2412

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2412 General powers of the commissioner.

In addition to all other powers granted to the commissioner in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to prescribe the form of blanks, reports and other records relating to the enforcement and administration of this chapter;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the department of taxation and finance of the state of New York or the state liquor authority or the officials of any political subdivision of this state or the treasury department of the United States relative to any person; and to afford information to such department of taxation and finance, liquor authority, officials or treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy or assistant or other employee or employees of his or her department; 5. To assess, reassess, determine, revise and readjust the taxes imposed under this chapter;

6. To provide by regulation for granting a refund of an appropriate portion of the tax where the retail licensee ceases to do business during the course of the tax year under circumstances which result in, or would entitle such licensee to, a refund of license fee by the state liquor authority. The provisions of section 11-2408 of this chapter shall

be applicable to such refunds.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-12.0 added LL 31/1980 § 1

Sub 2 amended LL 2/1983 § 6

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NYC Administrative Code 11-2413

Administrative Code of the City of New York

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§ 11-2413 Administration of oaths and compelling testimony.

a. The commissioner, his or her employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 114, eff. Oct. 1, 1992

DERIVATION

Formerly § FF46-13.0 added LL 31/1980 § 1

Sub c repealed and added chap 765/1985 § 40

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NYC Administrative Code 11-2414

Administrative Code of the City of New York

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§ 11-2414 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twentyfive percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-2407 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion

of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid,

that a return has not been filed, that information has not been supplied pursuant to the provisions of this chapter or that records have not been retained pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended chap 241/1989 § 23

Subd. (g) par (2) amended chap 63/2003 § E11, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

DERIVATION

Formerly § FF46-14.0 added LL 31/1980 § 1

Repealed and added LL 2/1983 § 7

Subs a, c, d, h amended chap 765/1985 § 41

Sub b pars 1, 4 amended chap 765/1985 § 41

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NYC Administrative Code 11-2415

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§ 11-2415 Returns to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner, the tax appeals tribunal or any officer or employee of the city to divulge or make known in any manner any information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return filed in connection with his or her tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city, or by the district attorney of any county within the city, or the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter may be instituted. Returns shall be preserved for three years and thereafter until the commissioner permits them to be destroyed.

(b) (1) Any officer or employee of the city who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(c) This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

(d) Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 115, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 9

Subd. c added chap 714/1989 § 12

Subd. d added chap 808/1992 § 116, eff. Oct. 1, 1992

DERIVATION

Formerly § FF46-15.0 added LL 31/1980 § 1

Sub a designated chap 765/1985 § 42

(formerly open par)

Sub b added chap 765/1985 § 42

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2416

Administrative Code of the City of New York

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CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2416 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter or in any application made by him or her, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty or interest provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 513/2002 § 18, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 117, eff. Oct. 1, 1992

Subd. f added chap 513/2002 § 19, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § FF46-16.0 added LL 31/1980 § 1

Subs d, e added LL 41/1984 § 3

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 24 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2417 Construction and enforcement.

This chapter shall be construed and enforced in conformity with article twenty-nine of the tax law, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § FF46-17.0 added LL 31/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2501

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2501 Definitions.

When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, jointstock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise and any combination of individuals or of the foregoing.

2. "Operator." Any person operating a hotel in the city of New York, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgage in possession, licensee or any other person otherwise operating such hotel.

3. "Occupant." A person who, for a consideration, uses, possesses, or has the right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

4. "Occupancy." The use or possession, or the right to the use or possession of any room or rooms in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

5. "Hotel." A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house or club, whether or not meals are served.

6. "Room." Any room of any kind, other than a bathroom or lavatory, in any part or portion of a hotel which is

available for, or let out for, use or possession for any purpose other than a place of assembly as defined in section 27-232 of the code.

7. "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

8. "Permanent resident." Any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

9. "Commissioner of finance." The commissioner of finance of the city.

10. "Comptroller." The comptroller of the city.

11. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 11 added chap 808/1992 § 118, eff. Oct. 1, 1992

DERIVATION

Formerly § VV46-1.0 added LL 15/1970 § 1

Sub 8 amended LL 35/1980 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2502

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2502 Imposition of tax.

a. (1) On and after July first, nineteen hundred seventy until and including August thirty-first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of New York at the rates set forth in, and determined in accordance with the following table:

[See tabular material in printed version]

(2) On and after September first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of New York at the rates set forth in, and determined in accordance with, the following table:

[See tabular material in printed version]

Where a person occupies a room for less than a full day and pays less than the rent for a full day, the tax shall nevertheless be the same amount as would be due had such person occupied the room for a full day at the rent for a full day.

(3) In addition to the tax imposed by paragraph two of this subdivision, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of New York (A) at the rate of five percent of the rent or charge per day for each such room up to and including August thirty-first, nineteen hundred ninety, (B) at the rate of six percent of the rent or charge per day for each such room on and after September first, nineteen hundred ninety and before December first, nineteen hundred ninety-four, (C) at the rate of five percent of the rent or charge per

day for each such room on and after December first, nineteen hundred ninety-four and before March first, two thousand nine, (D) at the rate of five and seven-eighths percent of the rent or charge per day for each such room on and after March first, two thousand nine and before December first, two thousand eleven, and (E) at the rate of five percent of the rent or charge per day for each such room on and after December first, two thousand eleven.

(4) Where the rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the daily rent upon which the tax is determined shall be the result obtained by dividing the rent for such term by the number of days in such term. Where the rent is for more than one room, including but not limited to a suite of rooms, the daily rent per room upon which tax is determined shall be calculated by multiplying the daily rent for the group of rooms by a fraction, the numerator of which shall be the daily rent for the particular room, or a similar room, when such room is rented alone with similar bath facilities, and the denominator of which shall be the total of the daily rent for the individual rooms in the group of rooms, or similar rooms, when such rooms are rented alone with similar bath facilities. In any case in which it is not possible to determine the daily rent per room in the foregoing manner, the commissioner of finance shall prescribe methods for making such determination.

b. (1) No tax shall be imposed hereunder upon a permanent resident.

(2) For purposes of this subdivision, an occupant who is eligible to request and has requested a lease pursuant to the provisions of paragraph two of subdivision (a) of section 2522.5 of the rent stabilization regulations promulgated by the division of housing and community renewal of the state of New York (title nine, subtitle S, chapter VIII of the official compilation of codes, rules and regulations of the state of New York), shall tentatively be accorded the status of permanent resident as of the date of such request, notwithstanding that such occupant has not met the one hundred eighty-consecutive-day requirement contained in subdivision eight of section 11-2501 of this chapter as of such date. In the case of such an occupant, the operator shall not collect the taxes imposed by this chapter for any day, commencing with the date such lease is requested, which falls within a period of continuous occupancy by such occupant of a room or rooms in the hotel. Provided, however, if such occupant ceases to occupy a room or rooms in the hotel prior to the completion of one hundred eighty consecutive days of occupancy, any taxes not collected theretofore by reason of the provisions of this paragraph shall become immediately due and payable on the date of cessation of occupancy and shall be collected by the operator from such occupant. In the event, however, that the operator is unable to collect such taxes from the occupant, the operator shall not be liable to the city for such taxes. The provisions of this paragraph shall apply with respect to leases requested on or after September first, nineteen hundred ninety.

c. No tax shall be imposed hereunder upon any organization described in subdivision (a) of section eleven hundred sixteen of the tax law to the extent such organization is not subject to the tax imposed under subdivision (e) of section eleven hundred five of the tax law.

d. (1) No tax shall be imposed hereunder upon any person occupying any room or rooms in a hotel solely and directly as a result of such person's involuntary displacement from premises by the attack on the World Trade Center on September eleventh, two thousand one, provided such premises were not subject to the tax imposed by this section or the tax imposed under section eleven hundred seven of the tax law.

(2) Where an occupant claims exemption from the tax under the provisions of paragraph one of this subdivision, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a signed written statement describing the specific circumstances providing the basis for such claim and containing such other information as the commissioner of finance may require. The operator shall retain such statement and provide it to the commissioner of finance upon request.

e. Where any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propanganda,*35 or otherwise attempting to influence

legislation, carries on its activities in furtherance of any of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in said premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder. Nothing in this subdivision shall be deemed to include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of it**36 profits are payable to one or more organizations described in this subdivision.

f. The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the city, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this chapter, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he or she may have in the event of nonpayment of rent by the occupant; provided however, that the commissioner of finance shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

g. Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this chapter, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the commissioner of finance, and it shall be the duty of the occupant to file a return thereof with the commissioner of finance and to pay the tax imposed therein to the commissioner of finance within fifteen days after such tax was due.

h. The commissioner of finance may, wherever he or she deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay directly to the commissioner of finance the tax herein imposed, at such times as returns are required to be filed and payment over made by the operator.

i. The tax imposed by this chapter shall be paid upon any occupancy on and after July first, nineteen hundred seventy, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such effective date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly, or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after July first, nineteen hundred seventy, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within said period, to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the commissioner of finance may by regulation provide for credit and/or refund of the amount of such tax upon application therefor as provided in section 11-2507 of this chapter.

j. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant. Where an occupant claims exemption from the tax under the provisions of subdivision c of this section, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a copy of the exempt organization certificate that is necessary to obtain exemption from the tax imposed under subdivision (e) of section eleven hundred five of the tax law, together with a certificate duly executed by the organization named in such certificate certifying that the occupant is its agent, representative or employee and that his or her occupancy is paid or to be paid by, and is necessary or required in the course of or in connection with the affairs of said organization.

k. No operator shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this chapter is not considered as an element in the rent charged to the occupant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a par (3) amended L.L. 65/2008 § 1, eff. Dec. 29, 2008.

Subd. a par (3) amended L.L. 21/1994 § 1, eff. July 5, 1994

Subd. a par (3) amended L.L. 43/1990 § 1 eff. July 12, 1990

Subd. a par (3) added L.L. 69/1986 § 2

Subd. a par (3) added L.L. 29/1986 §§ 1, 2

Subd. a par (4) renumbered L.L. 69/1986 § 2. (formerly par (3))

Subd. b amended L.L. 43/1990 § 2 eff. July 12, 1990

Subd. c repealed and added chap 454/1998 §§ 2, 3, eff. July 22, 1998.

Subd. d added L.L. 73/2001 § 1, eff. Dec. 26, 2001 and retroactive to

Sept. 11, 2001.

Subd. d repealed chap 454/1998 § 2, eff. July 22, 1998.

Subd. j amended chap 454/1998 § 4, eff. July 22, 1998.

DERIVATION

Formerly § VV46-2.0 added LL 15/1970 § 1

Sub a amended LL 35/1980 § 2

Sub a par 4 renumbered LL 29/1986 § 1

(formerly par 3)

Sub a par 3 added LL 29/1986 § 1

CASE NOTES

¶ 1. The NY City hotel occupancy tax provides in Section 11-2502(a)(2) of the Ad Code that these shall be paid a tax for every occupancy of each room in a hotel in the City of New York at certain rates and the commissioner's determination that the kitchens in questions were "rooms" subject to the law is reasonable and in accord with the statutory definition. The hotel suites contained one or more bedrooms and certain spaces contained cooking facilities alleged to be kitchens. Parker Meridien Assoc. v. Grayson, 159 A.D.2d 391, 563 N.Y.S.2d 95 (1st Dept. 1990).

¶ 2. Local Law 29 of 1986 reversed and §11-2502(a)(3) declared null and void. Defendant exceeded its authority by imposing 5% tax on reduced room rate, utilizing rate that would be paid for full day. 1986 amendment to enabling act does not contain language specifically authorizing flat percentage tax on short-stay occupancies based on full day rate. Specific authorization contained in earlier 1980 amendment to enabling act does not authorize flat percentage tax contained in §11-2502(a)(3) because it authorizes local law imposing tax at rates "specified in this paragraph (b)" to tax short-stay occupancies. Paragraph (b) specifies graduated schedule of tax rates. 80-05 Grand Cent. Parkway Corp. v. NYC Fin. Commser., 191 AD2d 239 [1993].

FOOTNOTES

35

[Footnote 35]: * So in original. (Word misspelled.)

36

[Footnote 36]: ** So in original. ("it" should be "its".)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2503

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2503 Records to be kept.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner of finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-3.0 added LL 15/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2504

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2504 Returns.

a. Every operator shall file with the commissioner of finance a return of occupancy and of rents, and of the taxes payable thereon, for the quarterly periods ending on the last day of February, May, August and November of each year. Such returns shall be filed within twenty days after the end of the quarterly period covered thereby. The commissioner of finance may permit or require returns to be made by other periods and upon such dates as he or she may specify. If the commissioner of finance deems it necessary in order to insure the payment of the tax imposed by this chapter, he or she may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this subdivision and upon such dates as he or she may specify.

b. The forms of returns shall be prescribed by the commissioner of finance and shall contain such information as he or she may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

c. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of finance shall take the necessary steps to enforce the filing of such a return or a corrected return.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-4.0 added LL 15/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2505

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2505 Payment of tax.

At the time of filing a return of occupancy and of rents each operator shall pay to the commissioner of finance the taxes imposed by this chapter upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this chapter, even though it be judicially determined that the tax collected is invalidly imposed. All the taxes for the period for which a return is required to be filed shall be due from the operator and payable to the commissioner of finance on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon. Where the commissioner of finance in his or her discretion deems it necessary to protect revenues to be obtained under this chapter he or she may require any operator required to collect the tax imposed by this chapter to file with him or her a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as the commissioner of finance may fix, to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the commissioner of finance determines that an operator is to file such bond he or she shall give notice to such operator to that effect specifying the amount of the bond required. The operator shall file such bond within five days after the giving of such notice unless within such five days the operator shall request in writing a hearing before the commissioner of finance at which the necessity, propriety and amount of the bond shall be determined by the commissioner of finance. Such determination shall be final and shall be complied with within fifteen days after the giving of notice thereof. In lieu of such bond, securities approved by the commissioner of finance or cash in such amount as he or she may prescribe, may be deposited which shall be kept in the custody of the commissioner of finance who may at any time without notice to the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him or her at public or private sale without notice to the

depositor thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-5.0 added LL 15/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2506

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2506 Determination of tax.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed, within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person liable for the tax unless: (a) the amount of any tax sought to be reviewed, with penalties and

interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of such person such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event such person shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 119, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-6.0 added LL 15/1970 § 1

CASE NOTES

¶ 1. The statutory requirement that a petition for an administrative hearing of petitioner's liability be filed within 30 days after the mailing of the Notice of Determination is absolute. In the absence of a timely application, the determination finally and irrevocably fixes the tax, and the court cannot review the determination. D & Z Holding Corp. v. City of New York Department of Finance, 179 A.D.2d 796, 579 N.Y.S.2d 694 (2nd Dept. 1992).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2507

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2507 Refunds.

a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reasons therefor and give notice thereof to the taxpayer in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the commissioner of finance provided that the application is made within one year of the payment by the occupant to the operator, but no actual refund of moneys shall be made to such operator until he or she shall first establish to the satisfaction of the commissioner of finance, under such regulations as the commissioner of finance may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance, has established a conciliation procedure pursuant to section 11-124 and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals

tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to review such decision of the tax appeals tribunal sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of the notice of such decision, and provided, in the case of an application by a person liable for the tax, that a final determination of tax was not previously made. Such a proceeding shall not be instituted by a person liable for the tax unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2506 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-2506 of this chapter unless it be found that such determinatiion was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner of finance's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provision of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 120, eff. Oct. 1, 1992

DERIVATION

Formerly § VV46-7.0 added LL 15/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2508

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2508 Reserves.

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such occupant or operator on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-8.0 added LL 15/1970 § 1

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***** Current through December 2009 ****

NYC Administrative Code 11-2509

Administrative Code of the City of New York

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CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2509 Remedies exclusive.

The remedies provided by sections 11-2506 and 11-2507 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, and action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-2506 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 121, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-9.0 added LL 15/1970 § 1

NYC Administrative Code 11-2510

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2510 Proceedings to recover tax.

a. Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this chapter as therein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such operator, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax, penalties or interest might be satisfied, and that any such tax, penalty or interest will not be paid when due, he or she may declare such tax, penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the operator or officer of a corporate operator or of the occupant or other person liable for the tax, which may be found within the city for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then

proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant such sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance , and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of such operator's hotel or of his or her lease, license or other agreement or right to possess or operate such hotel, or of the equipment, furnishings, fixtures, supplies or stock of merchandise, or of the said premises or lease, license or other agreement or right to possess or operate such hotel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel, other- wise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding paragraph, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 39, eff. Sept. 17, 2002.

DERIVATION

Formerly § VV46-10.0 added LL 15/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2511

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2511 General powers of the commissioner of finance.

In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a commissioner or deputy commissioner in the department of finance or to any employee or employees of the department of finance;

5. To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

6. To require any operator within the city to keep detailed records of the nature and type of hotel maintained, the nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or

arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this chapter, and to furnish such information upon request to the commissioner of finance;

7. To assess, determine, revise and readjust the taxes imposed under this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-11.0 added LL 15/1970 § 1

Sub 2 amended LL 2/1983 § 22

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2512

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2512 Administration of oaths and compelling testimony.

a. The commissioner of finance, his or her employees or agents duly designated and authorized by him or her, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state of unable to attend before such commissioner or tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 122, eff. Oct. 1, 1992

DERIVATION

Formerly § VV46-12.0 added LL 15/1970 § 1

Sub c repealed and added chap 765/1985 § 74

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NYC Administrative Code 11-2513

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2513 Reference to tax.

Whenever reference is made in placards or advertisements or in any other publication to this tax, such reference shall be substantially in the following form: "city tax on occupancy of hotel rooms", except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator the words "city tax" will suffice.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-13.0 added LL 15/1970 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2514

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2514 Registration.

By June thirtieth, nineteen hundred seventy, or in the case of operators commencing business or opening new hotels after such date, within three days after such commencement or opening, every operator shall file with the commissioner of finance a certificate of registration in a form prescribed by the commissioner of finance. The commissioner of finance shall within five days after such registration issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the commissioner of finance upon the cessation of business at the hotel named or upon its sale or transfer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-14.0 added LL 15/1970 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2515

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2515 Interest and penalties.

(a) Interest on underpayments. If any amount of tax is not paid or paid over on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of

any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-2506 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such paragraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion

of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or, if earlier, the date of the payment of the tax).

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(h) Miscellaneous. (1) Officers of a corporate operator and partners in a partnership which is an operator shall be

personally liable for the tax collected or required to be collected by such corporation or partnership under this chapter, and subject to the penalties and interest imposed by this section.

(2) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(3) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (g) amended chap 241/1989 § 24

Subd. (g) par (2) amended chap 63/2003 § E12, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

DERIVATION

Formerly § VV46-15.0 added LL 15/1970 § 1

Repealed and added LL 2/1983 § 23

Subs a, c, d, h amended chap 765/1985 § 75

Sub b pars 1, 4 amended chap 765/1985 § 75

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NYC Administrative Code 11-2516

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2516 Returns to be secret.

a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, any officer or employee of the department of finance, any person engaged or retained on an independent contract basis, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with his or her tax; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, to the United States of America or any department thereof, to the state of New York or any department thereof, or to any agency or department of the city of New York, provided the same is requested for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended chap 808/1992 § 123, eff. Oct. 1, 1992

Subd. a amended L.L. 62/1988 § 10

Subd. c added chap 714/1989 § 13

Subd. d added chap 808/1992 § 124, eff. Oct. 1, 1992

DERIVATION

Formerly § VV46-16.0 added LL 15/1970 § 1

Sub b amended chap 765/1985 § 76

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2517

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2517 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter or in any application made by him or her or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d amended chap 513/2002 § 20, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

Subd. d amended chap 808/1992 § 125, eff. Oct. 1, 1992.

Subd. f added chap 513/2002 § 21, eff. Sept. 17, 2002 and applying to any document required to be filed and any payment required to be made on or after Oct. 17, 2002.

DERIVATION

Formerly § VV46-17.0 added LL 15/1970 § 1

Subs d, e added LL 41/1984 § 12

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2518

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2518 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter one hundred sixty-one of the laws of nineteen hundred seventy, as amended, pursuant to which it is enacted.

HISTORICAL NOTE

Section amended chap 454/1998 § 5, eff. July 22, 1998.

Section added chap 907/1985 § 1

DERIVATION

Formerly § VV46-18.0 added LL 15/1970 § 1

51 of 101 DOCUMENTS

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2519

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 25 TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2519 Tourism and convention fund.

-Notwithstanding any provision of law to the contrary, with respect to the additional tax imposed at the rate of six percent on and after September first, nineteen hundred ninety and before December first, nineteen hundred ninety-four pursuant to subparagraph (B) of paragraph three of subdivision a of section 11-2502 of this chapter, four and one-sixth percent of the total revenues resulting from the imposition of such tax, including four and one-sixth percent of any interest or penalties thereon, shall be credited to and deposited in a special tourism and convention fund, which shall be used solely for the purpose of promoting tourism and conventions in the city. Seven-eighths of the moneys in such fund shall be made available to the New York Convention and Visitor's Bureau, Inc. pursuant to an annual contract with the city which may specify, among other things, the services which shall be provided by such bureau with such moneys and the content and number of reports which will have to be provided by such bureau to the city concerning the expenditure of such moneys, and provided that the annual budget and business plan of such bureau is approved by the mayor of the city or his or her designee. The remaining one-eighth of the fund shall be spent for promoting tourism and conventions which may include, at the mayor's discretion, moneys spent in connection with additional contracts made with the New York Convention and Visitor's Bureau, Inc. For purposes of this section, the term "promoting tourism and conventions" shall mean developing, placing, and purchasing advertising promoting the city, and engaging in such other efforts as are designed to attract tourists and conventions to the city.

HISTORICAL NOTE

Section amended L.L. 21/1994 § 1, eff. July 5, 1994

Section added L.L. 43/1990 § 3 eff. July 12, 1990

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2601

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 26 TAX ON MORTGAGES

§ 11-2601 Imposition of tax.

a. A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage on real property situated within the city and recorded on or after August first, nineteen hundred seventy-one and prior to February first, nineteen hundred eighty-two, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage, and shall be collected and paid as provided in this chapter.

b. With respect to: (1) one, two or three-family houses, individual cooperative apartments and individual residential condominium units, and (2) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, and with respect to all other real property a tax of one dollar and twelve and one-half cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage on such real property situated within the city and recorded on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of one dollar is hereby imposed on such mortgage, and shall be collected and paid as provided in this chapter.

c. With respect to: (1) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, (2) with respect to one, two or three-family houses, individual cooperative apartments and

individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and (3) with respect to all other real property, a tax of one dollar and twenty-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage on such real property situated within the city and recorded on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred ninety, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of one dollar is hereby imposed on such mortgage and shall be collected and paid as provided in this chapter.

d. With respect to: (1) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of one dollar, (2) with respect to one, two or three-family houses and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of one dollar and twelve and one-half cents, and (3) with respect to all other real property, a tax of one dollar and seventy-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof, or at any time thereafter by a mortgage on such real property situated within the city and recorded on or after August first, nineteen hundred ninety, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of one dollar is hereby imposed on such mortgage and shall be collected and paid as provided in this chapter.

e. (1) For the purpose of determining whether a mortgage is subject to the tax imposed by subdivision b or c of this section at a rate in excess of fifty cents, or by subdivision d of this section at a rate in excess of one dollar, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation, the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by such mortgage shall be aggregated with the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by any other mortgage, where such mortgages form part of the same or related transactions and have the same or related mortgagors. If the commissioner of taxation and finance finds that a mortgage transaction or mortgage transactions have been formulated for the purpose of avoiding or evading a rate of tax imposed under this section in excess of the lowest such rate, rather than solely for an independent business or financial purpose, such commissioner shall treat all of the mortgages forming part of such transaction or transactions as a single mortgage for the purpose of determining the applicable rate of tax. For the purposes of this subdivision, all mortgages having the same or related mortgagors offered for recording within a period of twelve consecutive months shall be presumed to form part of a related transaction, unless clear and convincing evidence is offered to the contrary. The commissioner of taxation and finance may require such affidavits and forms, and may prescribe such rules and regulations, as he determines to be necessary to enforce the provisions of this subdivision.

(2) The term "related", when used in this subdivision with reference to mortgagors, shall include, but shall not be limited to, the following relationships:

(i) members of a family, including spouses, ancestors, lineal descendants, and brothers and sisters (whether by the whole or half blood);

(ii) a shareholder and a corporation more than fifty percent of the value of the outstanding stock of which is owned or controlled directly or indirectly by such shareholder;

(iii) a partner and a partnership more than fifty percent of the capital or profits interest in which is owned or controlled directly or indirectly by such partner;

(iv) a beneficiary and a trust more than fifty percent of the beneficial interest in which is owned or controlled directly or indirectly by such beneficiary;

(v) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity, or interests; and

(vi) a grantor of a trust and such trust.

f. Notwithstanding any provision to the contrary in paragraph (a) of subdivision one of section two hundred fifty-five of the tax law, the taxes imposed by subdivision c or d of this section shall also apply to principal indebtedness or obligation secured by or which under any contingency may be secured by a supplemental instrument or additional mortgage, whether or not there is any new or further indebtedness or obligation other than the principal indebtedness or obligation secured by a recorded primary mortgage, where (1) the supplemental instrument or additional mortgage imposes the lien of a recorded mortgage upon real property situated within the city not previously subject to the mortgage or where an additional mortgage upon such additional property is recorded as additional or substitute security for indebtness or obligation already secured by a recorded mortgage and (2) the recorded primary mortgage was on real property outside the city and recorded without payment of the city tax.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. c amended L.L. 44/1990 § 1 eff. August 1, 1990

Subd. d added L.L. 44/1990 § 2 eff. August 1, 1990

Subd. e relettered L.L. 44/1990 § 2 eff. August 1, 1990

(formerly subd. d)

Subd. e added chap 241/1989 § 89

Subd. e par 1 amended L.L. 44/1990 § 3 eff. August 1, 1990

Subd. f amended L.L. 44/1990 § 3 eff. August 1, 1990

Subd. f relettered L.L. 44/1990 § 2 eff. August 1, 1990

(formerly subd. e)

Subd. f added ch. 241/1989 § 89. (Read subd. e)

DERIVATION

Formerly § W46-1.0 added LL 39/1971 § 1

Amended chap 57/1982 § 4

Sub b amended LL 36/1982 § 4

Sub c added LL 36/1982 § 4

CASE NOTES FROM FORMER SECTION

¶ 1. The retroactive application of this section which more than doubled the rate of the mortgage recording tax in New York City is constitutional.-Beaumont Co. v. State of N.Y., 125 Misc. 2d 87 [1984].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2602

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 26 TAX ON MORTGAGES

§ 11-2602 Payment and payment over of taxes.

The taxes imposed by this chapter shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such taxes shall be paid to the recording officer of the county in which the real property or any part thereof is situated, except where real property is situated within and without the city, the recording officer of the county in which the mortgage is first recorded shall collect the tax imposed by this chapter, as required by subdivision three of section two hundred fifty-three-a of the tax law. It shall be the duty of such recording officer to indorse upon each mortgage a receipt for the amount of the tax so paid. Any mortgage so endorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded therewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage. Upon the first day of each month the city register and the recording officer of Richmond county shall pay over to the commissioner of finance of the city for credit to the general fund of such city, the balance of the moneys received during the preceding month upon account of taxes paid to him or her as herein prescribed, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of the tax law, except taxes paid upon mortgages which are first to be apportioned by the commissioner of taxation and finance, which taxes and money shall be paid over by him or her as provided by the determination of the said commissioner of taxation and finance. Notwithstanding the foregoing provision, in each instance where the tax imposed pursuant to section 11-2601 of this chapter is one dollar and twenty-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, fifty percent of the total amount of such tax, including fifty percent of any interest or penalties thereon, shall be set aside in a special account by the commissioner of finance, and in each instance where the tax imposed pursuant to that section is one dollar and seventy-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, thirty-five and seven-tenths percent of the total

amount of such tax, including thirty-five and seven-tenths percent of any interest or penalties thereon, shall also be set aside in such special account. Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance account of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of section eighty-eight-a of the state finance law, and on the fifteenth day of each month, such commissioner shall transmit all funds in such account at the end of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he or she deems necessary for refunds and such other amounts necessary to finance the New York city transportation disabled committee and the New York city paratransit system as established by section fifteen-b of the transportation law, provided, however, that such amounts shall not exceed six percent of the total funds in the account but in no event be less than two hundred twenty-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of New York and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city.

HISTORICAL NOTE

Section amended L.L. 44/1990 § 4 eff. August 1, 1990

Section added chap 907/1985 § 1

DERIVATION

Formerly § W46-2.0 added LL 39/1971 § 1

Amended LL 18/1972 § 1

Amended chap 57/1982 § 5

Amended LL 36/1982 § 5

Amended chap 7/1984 § 6

Amended chap 498/1984 § 6

(See effective date provisions chap 498/1984 § 8)

(Legislative findings, transportation of disabled persons, chap 498/1984 § 1)

Amended chap 999/1984 § 11

Amended chap 385/1985 § 8

(Special provision, disabled committee, paratransit system, chap 385/1985 § 10)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2603

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 26 TAX ON MORTGAGES

§ 11-2603 Manner of administration and collection.

The taxes imposed under this chapter shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and subdivision one of section two hundred fifty-five of the tax law. All the provisions of article eleven of the tax law relating to or applicable to the administration and collection of the taxes imposed by subdivision one of section two hundred fifty-three and subdivision one of section two hundred fifty-five of the tax law shall apply to the taxes imposed under this chapter with the same force and effect as if those provisions had been set forth in full in this chapter except to the extent that any such provision is either inconsistent with a provision of this chapter or not relevant to the tax imposed by this chapter. For purposes of this chapter any reference in article eleven of the tax law to the tax or taxes imposed by such article shall be deemed to refer to a tax imposed by this chapter, and any reference to the phrase "within this state" shall be read as "within this city" unless a different meaning is clearly required. Whenever real property covered by the mortgage is partly within and partly without the city of New York, the portion of the mortgage taxable under this chapter shall be determined in the manner prescribed in the first paragraph of section two hundred sixty of the tax law where the property without the city is located within the state and, in the manner prescribed in the second paragraph of such section of the tax law, where the property without the city is located without the state.

HISTORICAL NOTE

Section amended chap 241/1989 § 90

Section added chap 907/1985 § 1

DERIVATION

Formerly § W46-3.0 added LL 39/1971 § 1

Amended LL 18/1972 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2604

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 26 TAX ON MORTGAGES

§ 11-2604 Tax additional.

The tax imposed by this chapter shall be in addition to any taxes imposed by section two hundred fifty-three of the tax law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § W46-4.0 added LL 39/1971 § 1

Amended LL 18/1972 § 3

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2701

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2701 Definitions.

When used in this chapter, the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Vault." Any subsurface opening, structure or erection, whether or not wholly or partly covered over, to the extent that it extends from the building line into any street of the city, for the erection of which a license fee is required pursuant to the charter or code of the city.

3. "Street." Every public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk and viaduct, and every other class of public highway, road, square and place within or belonging to the city.

4. "Using, occupying or maintaining." Any right or authority to install, store or maintain property of any kind in a vault, or otherwise to use, occupy or maintain such vault for any purpose whatsoever. Such right or authority shall be deemed to exist wherever a vault has not been filled in or closed by the licensee or abutting property owner and the street restored to its original condition pursuant to the requirements of the charter or code of the city.

5. "City surveyor." Any person appointed a surveyor of the city of New York pursuant to the code of the city.

6. "Owner of the premises immediately adjoining the vault." Any person who is the owner of record of real property located in whole or in part within the city, from which a vault has been extended.

7. "Depth." The vertical distance from the ceiling, roof or top of a vault to the floor, bottom or lowest point thereof.

8. "City." The city of New York.

9. "Comptroller." The comptroller of the city.

10. "Commissioner of finance." The commissioner of finance of the city.

11. "Return." Any return required to be filed as herein provided.

12. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 11 reinstated chap 753/1988 § 5. (Reads as added in 1985)

Subd. 11 repealed chap 752/1988 § 1

Subd. 12 added chap 808/1992 § 126, eff. Oct. 1, 1992

DERIVATION

Formerly § Z46-1.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1547

(formerly § Z41-1.0)

Sub 10 amended chap 100/1963 § 1547

Sub 10 amended LL 36/1980 § 1

CASE NOTES

¶ 1. Entire area of vault is taxable unless rendered unusable through closure procedures enumerated in bulletins. Keeping the doors to vault locked does not render them unavailable for use or storage because petitioner had a key. Vault charge was proper regardless of actual use. 71 Fifth Ave. Co. v. NYC Dept. of Fin., 138 AD2d 300 reversed 73 NY2d 861 [1989].

¶ 2. A personal injury was sustained in a fall into an underground vault. Defendant owner of multiple dwelling was in control of the vault and the cast iron plate over it and is liable to maintain it properly even if he doesn't "use" it. O'Brien v. Christy, 142 Misc. 2d 1069 [1989].

¶ 3. Landowner is liable for a vault that has not been filled in or closed pursuant to § 11-2701(4). Whether he actually uses the vault is irrevalent. Cast iron plate covering vault broke causing plaintiff's injuries. Defendant is responsible to maintain vault in reasonably safe condition. Record shows no inspections of plate over years. O'Brien v. Christy, 142 Misc 2d 1069 [1989].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2702

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2702 Imposition of charge.

(a) In addition to any and all other license fees, charges and taxes, there is hereby imposed and there shall be paid an annual vault charge, beginning as of July first, nineteen hundred sixty-two, for the privilege of occupying, using or maintaining a vault in the streets of the city, to be paid by the owner of the premises immediately adjoining the vault.

(A) For periods prior to July first, nineteen hundred seventy-one such annual vault charges shall be at the following rates:

1. On any vault occupying up to two hundred and fifty square feet in plane or surface area but no more than twelve feet in depth, thirty-five cents per square foot but not less than five dollars for the total occupancy;

2. On any vault occupying more than two hundred fifty square feet in plane or surface area but not more than twelve feet in depth, thirty-five cents per square foot for the first two hundred fifty square feet of an area and sixty cents per square foot for that portion of the area in excess of two hundred fifty square feet;

3. On any vault more than twelve feet in depth, an additional charge for each additional ten feet in depth or fraction thereof calculated by adding the plane or surface area for each such additional depth to the area calculated pursuant to subparagraphs one and two and by applying to such total area the same rates as provided in subparagraphs one and two. The additional area for any additional depth of ten feet or fraction thereof shall however, be reduced by ten per cent for each foot of depth less than ten feet.

(B) For periods beginning on or after July first, nineteen hundred seventy-one and ending on or before May

thirty-first, nineteen hundred eighty, such annual vault charges shall be at the following rates:

1. On any vault occupying no more than twelve feet in depth, one dollar per square foot of plane or surface area but not less than five dollars for the total occupancy;

2. On any vault more than twelve feet in depth, an additional charge for each additional ten feet in depth, or fraction thereof calculated by adding the plane or surface area for each such additional depth to the area calculated pursuant to subparagraph one and by applying to such total area the same rate as provided in subparagraph one. The additional area for any additional depth of ten feet or fraction thereof shall however, be reduced by ten percent for each foot of depth less than ten feet.

(C) For periods beginning on or after June first, nineteen hundred eighty such annual vault charge shall be at the following rates: 1. On any vault occupying no more than twelve feet in depth, two dollars per square foot of plane or surface area;

2. On any vault more than twelve feet in depth, an additional charge for each additional ten feet in depth, or fraction thereof calculated by adding the plane or surface area for each such additional depth to the area calculated pursuant to subparagraph one and by applying to such total area the same rate as provided in subparagraph one. The additional area for any additional depth of ten feet or fraction thereof shall however, be reduced by ten percent for each foot of depth less than ten feet.

(D) Notwithstanding any provision of law to the contrary, no annual vault charge or additional charge shall be imposed pursuant to this chapter on or after June first, nineteen hundred ninety-eight.

(b) Where the owner of the premises immediately adjoining the vault is exempt from or otherwise not liable for the annual vault charge, the tenant, lessee or any other person using, occupying or maintaining such vault shall be liable therefor.

(c) The annual vault charge imposed by this section shall be due from, and shall be paid by, the person who is the owner of the premises immediately adjoining the vault on the first day of July of the year for which such charge is imposed except that, on and after June first, nineteen hundred seventy-two, such charge shall be due from, and shall be paid by the person who is the owner of the premises immediately adjoining the vault on the first day of June of the year for which such charge is imposed. Where the annual vault charge is imposed pursuant to subdivision (b) of this section, such annual vault charge shall be due from and paid by, the tenant, lessee or any other person using, occupying or maintaining the vault on the first day of July of the year for which such charge is imposed, except that for years beginning on or after June first, nineteen hundred seventy-two, such charge shall be due from, and paid by, the tenant, lessee or any other person using, occupying or maintaining the vault on the first day of June of the year for which such charge is imposed.

(d) In the event that the annual vault charge as imposed by this chapter shall be held invalid, then such annual vault charge shall be deemed a tax on the same basis and at the same rates as provided in this chapter and all other provisions of this chapter shall be equally applicable.

(e) Where, prior to the first day of August in any year in which the annual vault charge imposed hereunder shall be due and payable, if a vault or part thereof is made unavailable for use or occupancy, the annual vault charge paid for such year, pursuant to the provisions of this chapter, shall be refunded in full upon application to and furnishing of such proof as the commissioner of finance may require. Where such closing of a vault occurs prior to the last day of December in any such year, fifty percent of the annual vault charge due and actually paid for such year shall be refunded to the payor upon application to and furnishing of such proof as the commissioner of finance may require. Where such closing is limited to a part of a vault, such a refund shall be granted only to the extent that the closing reduces the area of the vault and thereby the amount of the charge for the vault.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (a) par (C) subpar 1 amended ch. 752/1988 § 2, eff. 6/1/1989

Subd. (a) par (D) added L.L. 47/1997 § 1, eff. June 23, 1997

DERIVATION

Formerly § Z46-2.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1548

(formerly § Z41-2.0)

Sub e amended chap 100/1963 § 1548

Sub a amended LL 37/1971 § 1

Sub c amended LL 37/1971 § 2

Sub a amended LL 36/1980 § 2

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2703

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2703 Exemptions.

The charges imposed by this chapter shall not apply to the following:

1. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state;

2. The United States of America, in so far as it is immune from taxation;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

5. Any vault constituting property defined as a special franchise in section one hundred two of the real property tax law or assessed as such pursuant to article six of such law.

6. Any vault to the extent that it is used, occupied or maintained pursuant to a revocable consent granted pursuant to section three hundred seventy-four of the charter.

7. Any vault immediately adjoining a building or structure designed for and used exclusively as a single-family or a two-family dwelling house or any other real property which is classified as class one real property pursuant to section eighteen hundred two of the real property tax law.

8. Any street occupancy usable solely and exclusively for the melting of snow and ice, or for delivery into the immediately adjoining premises, of coal, oil or other fuel for the heating thereof.

9. Any vault occupying no more than thirty-six square feet in plane or surface area, irrespective of the depth of such vault.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 7 amended chap 752/1988 § 3, eff. 6/1/1989

Subd. 9 amended chap 753/1988 § 1, eff. 6/1/1989

Subd. 9 added chap 752/1988 § 4, eff. 6/1/1989

DERIVATION

Formerly § Z46-3.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1549

(formerly § Z41-3.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2704

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2704 Filing of returns.

a. Every person subject to the annual vault charge under this chapter shall, on or before the first day of August, nineteen hundred sixty-two, and on or before the fifteenth day of July of every year thereafter, file with the commissioner of finance a return showing the dimensions of the vault as to length, width and depth, except that the return required to be filed on or before July fifteenth, nineteen hundred seventy-two shall be filed on or before June fifteenth, nineteen hundred seventy-two and those due in later years shall be required to be filed on or before June fifteenth of such years. The commissioner of finance, if he or she deems it necessary to insure adequate information with regard to the proper charge to be imposed, may require information returns from other persons, including the owners of real property regardless of whether a vault has been extended therefrom, the users or lessees of the vault or lessees or tenants of the property adjoining the vault.

b. The forms of returns shall be prescribed by the commissioner of finance and shall contain such information as he or she may deem necessary for the proper administration of this chapter; and the commissioner of finance or his or her duly authorized agents or employees shall be empowered to require supplemental returns. If a return required by this chapter is not filed or if the return when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return. Upon failure to comply with a notice to furnish a return or a sufficient return, the commissioner of finance may require the filing of a certificate signed by a city surveyor specifying the dimensions of the vault.

c. For each annual vault charge year beginning on or after June first, nineteen hundred eighty-nine, the commissioner of finance shall, at least thirty days prior to the commencement of such year, mail to each person who has filed an annual vault charge return for the immediately preceding year an annual vault charge return form on which shall

be shown the amount of the charge for such immediately preceding year. Such return form shall be accompanied by instructions which explain in clear and simple terms how to determine the dimensions and extent of street occupancy of a vault, how to calculate the amount of the charge, and such other matters as the commissioner considers necessary or helpful to an understanding of the requirements of this chapter. Notwithstanding the foregoing, neither the failure of the commissioner to mail such return form and instructions nor the failure of any person to receive the same shall relieve any person of the obligation to file any return required under this section or of liability for the charge, interest or penalties imposed by this chapter.

d. If no form or other notice has previously been sent to a person subject to the annual vault charge with respect to the amount of vault charge owed for any year, the commissioner of finance shall notify such person of the amount owed as soon as practicable after discovering that such amount is owed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. c, d added chap 753/1988 § 2

DERIVATION

Formerly § Z46-4.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1550

(formerly § Z41-4.0)

Sub a amended LL 37/1971 § 3

Sub a amended LL 36/1980 § 3

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2704

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2704 Annual notice of charge.

HISTORICAL NOTE

Section repealed chap 753/1988 § 5

Section added chap 752/1988 § 5

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2705

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2705 Payment of vault charges.

a. At the time of filing a return as required by this chapter the person subject to the annual vault charge shall pay to the commissioner of finance the charge imposed by this chapter. Such charge shall be due and payable on the last day on which such return is required to be filed, without regard to whether a return is filed or whether the return which is filed correctly shows the amount due.

b. The charge otherwise required to be paid with the return due on or before June fifteenth, nineteen hundred eighty shall be paid in two equal installments as follows: one-half of the charge shall be paid with the return on or before June fifteenth, nineteen hundred eighty, and one-half of the charge shall be paid on or before September fifteenth, nineteen hundred eighty.

HISTORICAL NOTE

Section repealed ch. 753/1988 § 5

Section repealed and added ch. 752/1988 § 5

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-5.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1551

(formerly § Z41-5.0)

Amended LL 36/1980 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2706

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2706 Presumption and burden of proof.

For the purpose of the proper administration of this chapter and to prevent evasion of the annual vault charge hereby imposed, it shall be presumed, except where the depth of a vault exceeds twelve feet, that the size of the vault as indicated upon the license therefor originally issued by the borough president up to and including December thirty-first, nineteen hundred sixty-two, and the commissioner of transportation thereafter is a proper measure of the charge until the contrary is established, and the burden of proving that the size of the vault is not accurately stated upon the license shall be upon the person so claiming. In cases where no license of record has been issued for a vault or where the depth of a vault exceeds twelve feet, the burden of proving the actual size of the vault shall be upon the person liable for the vault charge.

HISTORICAL NOTE

Section amended chap 753/1988 § 3

Section amended chap 752/1988 § 7

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-6.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1552

(formerly § Z41-6.0)

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Administrative Code of the City of New York

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NYC Administrative Code 11-2707

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2707 Determination of vault charge.

If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, the amount of the vault charge due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the charge may be estimated on the basis of external indices, including but not limited to the records of the department of transportation, the reports of tax assessors, the reports of inspectors and investigators in the offices of the commissioner of finance and commissioner of transportation, and/or other information or factors. Notice of such determination shall be given to the person liable for the payment thereof. Such determination shall finally and irrevocably fix the vault charge unless the person against whom it is assessed shall, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and such person has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal, or unless the commissioner of finance of his or her own motion shall redetermine the same. Upon such hearing the tax appeals tribunal may require the filing of a certificate signed by a city surveyor specifying the dimensions of the vault. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the vault charge is assessed. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the vault charge was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person against whom the vault charge is assessed unless (a) the amount of any vault charge sought to be reviewed, with

penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the vault charge confirmed the person against whom the vault charge is assessed will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of such person, such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the vault charge, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against him or her in the prosecution of the proceeding, in which event such person shall not be required to deposit such vault charge, penalties and interest as a condition precedent to the application.

HISTORICAL NOTE

Section amended chap 808/1992 § 127, eff. Oct. 1, 1992

Section restored chap 753/1988 § 5. (Reads as added in 1985)

Section amended chap 752/1988 § 8

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-7.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1553

(formerly § Z41-7.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2708

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2708 Refunds.

a. In the manner provided in this section, the commissioner of finance shall refund or credit, without interest, any vault charge, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made or denied by the commissioner of finance, he or she shall state his or her reason therefor and give notice thereof to the applicant in writing. Such application may be made by the owner of the premises, or other person, who has actually paid the vault charge. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the administrative code and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any vault charge, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to review such

decision of the tax appeals tribunal sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of the notice of such decision, and provided, in the case of an application by a person against whom the vault charge is assessed, that a final determination of the vault charge due was not previously made. Such a proceeding shall not be instituted by a person against whom the vault charge is assessed unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the vault charge confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a vault charge, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2707 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of annual vault charge, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-2707 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or on the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the vault charge, interest or penalty found to have been overpaid.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, c amended chap 808/1992 § 128, eff. Oct. 1, 1992

DERIVATION

Formerly § Z46-8.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1554

(formerly § Z41-8.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2709

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2709 Reserves.

In cases where the person or persons liable for the vault charge imposed by this chapter has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-9.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1555

(formerly § Z41-9.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2710

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2710 Remedies exclusive.

The remedies provided by sections 11-2707 and 11-2708 of this chapter shall be the exclusive remedies available to any person for the review of the liability imposed hereunder, and no determination or proposed determination of an annual vault charge or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a person liable for the annual vault charge may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-2707 of this chapter.

HISTORICAL NOTE

Section amended chap 808/1992 § 129, eff. Oct. 1, 1992

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-10.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1556

(formerly § Z41-10.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2711

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2711 Proceedings to recover annual vault charge.

a. Whenever any person shall fail to pay any vault charge, penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance bring, or cause to be brought, an action to enforce the payment of the same on behalf of the city of New York in any court of the state of New York or of any other state or of the United States.

b. As an additional remedy or as an alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff, commanding him or her to levy upon and sell the real and personal property of the person liable for vault charges which may be found within the city for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the vault charge, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he or she shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual

expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. In addition to any other lien provided for in this section, the annual vault charge imposed by this chapter shall become a lien, binding upon the premises immediately adjoining such vault, on the date such charge is required to be paid until the same is paid in full.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid vault charges, additions to vault charges, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. d added chap 513/2002 § 40, eff. Sept. 17, 2002.

DERIVATION

Formerly § Z46-11.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1557

(formerly § Z41-11.0)

Sub c added LL 23/1973 § 1

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2712

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2712 General powers of the commissioner of finance.

In addition to all other powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purpose thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding sixty days; and to compromise disputed claims in connection with the vault charges hereby imposed;

3. To delegate his or her functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

4. To prescribe methods for determining the size, dimensions, depth and extent of street occupancy of a vault; to set forth the manner of computing the vault charges hereunder; to prescribe standards or methods, by regulation or otherwise, for determining whether a vault has been made unavailable for use or occupancy; and the commissioner of finance or his or her designated employees or agents shall have power to inspect premises for the purpose of determining the extent, if any, of liability imposed by this chapter.

5. To require any owner of premises or licensee or other person using, occupying or maintaining a vault to obtain from the commissioner of finance a certificate stating the dimensions and depth of the vault and that the vault charge thereon has been paid and to exhibit the same to duly authorized employees at the premises or real property

adjoining the said vault, and to keep such records, and for such length of time, as may be required for the proper administration of this chapter, and to furnish such records to the commissioner of finance upon request;

6. To assess, reassess, determine, revise and readjust the vault charges imposed under this chapter;

7. Where he or she has exercised his or her authorized power to require the filing of a certificate signed by a city surveyor specifying the dimensions of a vault and the owner of the premises has failed to comply, he or she may obtain such certificate and, in such situation, the necessary expense of obtaining such certificate shall constitute a lien against such premises until paid.

8. The commissioner of finance or his or her designated employees or agents shall have power to inspect premises for the purpose of determining the extent, if any, of liability imposed by this chapter.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. 2 restored chap 753/1988 § 5. (Reads as added in 1985)

Subd. 2 amended chap 752/1988 § 9

DERIVATION

Formerly § Z46-12.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1558

(formerly § Z41-12.0)

Sub 2 amended LL 2/1983 § 26

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2713

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2713 Administration of oaths and compelling testimony.

a. The commissioner of finance, his or her employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before such commissioner or the tax appeals tribunal or excused from attend- ance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fradulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subds. a, b, d amended chap 808/1992 § 130, eff. Oct. 1, 1992

DERIVATION

Formerly § Z46-13.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1559

(formerly § Z41-13.0)

Sub c repealed and added chap 765/1985 § 80

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2714

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2714 Interest and penalties.

(a) Interest on underpayments. If any annual vault charge is not paid on or before the last date prescribed for payment (without regard to any extension of time granted for payment), interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of six percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as vault charge on such return five percent of the amount of such charge if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a vault charge return within sixty days of the date prescribed for filing of such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to the vault charge under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as vault charge on such return.

(C) For purposes of this paragraph, the amount of vault charge required to be shown on the return shall be

reduced by the amount of any part of the charge which is paid on or before the date prescribed for payment of the charge and by the amount of any credit against the charge which may be claimed upon the return.

(2) Failure to pay vault charge shown on return. In case of failure to pay the amount shown as vault charge on a return required to be filed under this chapter on or before the prescribed date (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as vault charge on such return one-half of one percent of the amount of such charge if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of vault charge shown on the return shall be reduced by the amount of any part of the charge which is paid on or before the beginning of such month and by the amount of any credit against the charge which may be claimed upon the return. If the amount of vault charge required to be shown on a return is less than the amount shown as such charge on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay vault charge required to be shown on return. In case of failure to pay any amount in respect of any vault charge required to be shown on a return required to be filed under this chapter which is not so shown (including a determination made pursuant to section 11-1106 of this chapter) within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of vault charge stated in such notice and demand one-half of one percent of such charge if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of vault charge stated in the notice and demand shall be reduced by the amount of any part of the charge which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph (1) of this subdivision, the amount of the addition under such paragraph (1) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph (1) of this subdivision (determined without regard to subparagraph (B) of such paragraph (1)) which is attributable to the charge for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of a vault charge is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder (but without intent to defraud), there shall be added to the charge a penalty equal to five percent of the underpayment.

(2) There shall be added to the charge (in addition to the amount determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to the negligence or intentional disregard referred to in such paragraph (1), for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the charge (or, if earlier, the date of the payment of the charge).

(d) Underpayment due to fraud. (1) If any part of an underpayment of a vault charge is due to fraud, there shall be added to the charge a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the charge (in addition to the penalty determined under paragraph (1) of this subdivision) an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph (1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the charge (or, if earlier, the date of the payment of the charge).

(3) The penalty under this subdivision shall be in lieu of any other addition to the vault charge imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any vault charge imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the vault charge imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance, shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at six percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than six percent per annum. Any such rate set by the commissioner of finance shall apply to vault charges, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent).

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the

city charter relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a vault charge has not been paid, that a vault has not been licensed, that a return has not been filed, that access has not been allowed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. (b) restored chap 753/1988 § 5. (Reads as added in 1985)

Subd. (b) amended chap 752/1988 § 10

Subd. (g) amended chap 241/1989 § 25

Subd. (g) par (2) amended chap 63/2003 § E13, eff. May 19, 2003 and deemed in full force and effect on and after May 1, 2003. [See § 11-537 Note 1]

Subd. (h) par (1) restored chap 753/1988 § 5. (Reads as added in 1985)

Subd. (h) amended chap 752/1988 § 11

DERIVATION

Formerly § Z46-14.0 added LL 36/1962 § 1

Renumbered and amended chap 100/1963 § 1560 (formerly § Z41-14.0)

Repealed and added LL 2/1983 § 27

Subs a, c, d, h amended chap 765/1985 § 81

Sub b pars 1, 4 amended chap 765/1985 § 81

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2715

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2715 Notices and limitations of time.

a. Any notice authorized or required under the provisions of this chapter may be given to the person for whom it is intended by mailing it in a postpaid envelope addressed to such person at the address given in the return filed by him or her pursuant to the provisions of this chapter or in any application made by him or her or, if no such return has been filed or application made, then to the address of the premises immediately adjoining the vault. The mailing of a notice as in this subdivision provided, shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice as in this subdivision provided.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to appraise, assess, determine, levy or enforce the collection of any vault charge or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the vault charge, no assessment shall be made after the expiration of more than three years from the date of such return; provided, however, that where no return has been filed as provided by law, the annual vault charge may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional vault charge, a person has consented in writing that such period be extended, the amount of such additional vault charge due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment

required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. This subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state , the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a restored chap 753/1988 § 5. (Reads as added in 1985)

Subd. a amended chap 752/1988 § 12

Subd. d amended chap 808/1992 § 131, eff. Oct. 1, 1992

DERIVATION

Formerly § Z46-15.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1561

(formerly § Z41-15.0)

Subs d, e added LL 41/1984 § 14

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2715.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2715.1 Vault charge amnesty program.

HISTORICAL NOTE

Section repealed chap 753/1988 § 5

Section added chap 752/1988 § 13

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2715.1

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2715.1 Vault charge amnesty program.

a. Notwithstanding any other provision of law to the contrary, there is hereby established a nine-month amnesty program, beginning January first, nineteen hundred eighty-nine and ending September thirtieth, nineteen hundred eighty-nine (hereinafter referred to as the "amnesty period"), for all persons owing the annual vault charge imposed by this chapter. Such amnesty program shall be administered by the commissioner of finance and shall apply to liabilities for annual vault charge years ending prior to June first, nineteen hundred eighty-nine.

b. (1) A person seeking amnesty pursuant to this section must, during the amnesty period, file a written application therefor with the commissioner of finance, on a form prescribed by the commissioner, and must provide such information as the commissioner may require. In order to qualify for amnesty, such person must pay all annual vault charges for which he or she is liable. Upon payment by such person to the commissioner of all such charges as provided in this subdivision, the commissioner shall waive any applicable penalties and interest, and no civil, administrative or criminal action or proceeding shall be brought against such person with respect to the charges so paid. In addition, the commissioner shall release the lien binding upon the premises immediately adjoining the vault pursuant to subdivision c of section 11-2711 of this chapter for charges which became payable prior to the time such person acquired title to the premises. Failure to pay all charges as provided in this subdivision shall invalidate any amnesty granted pursuant to this section.

(2) In the case of any vault adjoining premises owned by a person who (A) prior to January first, nineteen hundred eighty-nine, paid all annual vault charges and interest and penalties for which he or she was liable, and (B) is otherwise in full compliance with this chapter, the commissioner of finance shall release the lien binding upon the premises immediately adjoining the vault pursuant to subdivision c of section 11-2711 of this chapter for charges which

became payable prior to the time such person acquired title to the premises.

c. Amnesty shall not be granted to any person subject to the annual vault charge who is a party to any civil litigation which is pending on the date of such person's application in any court of this state or the United States for nonpayment or other delinquency in relation to the annual vault charge. A civil litigation shall not be deemed to be pending if such person withdraws from such litigation prior to the granting of amnesty.

d. No refund or credit shall be granted of any penalty or interest paid prior to the time the person subject to the annual vault charge makes a request for amnesty pursuant to subdivision b of this section.

e. Unless the commissioner of finance on his or her own motion redetermines the amount of the annual vault charge, no refund or credit shall be granted of any charges paid under this section.

f. The commissioner of finance shall formulate such regulations as are necessary, issue forms and instructions, and take any and all other actions necessary to implement the provisions of this section. Furthermore, prior to and throughout the duration of the amnesty period, the commissioner of finance shall implement a plan for prominently announcing and explaining the amnesty program. Such plan shall be reasonably calculated to inform all property owners who may be liable for vault charges and may include written announcements sent in tax bills and other mailings done by the city of New York to property owners, public service announcements, advertisements in newspapers of general circulation and notification of community boards. The plan shall include, but not be limited to, information which explains the determination of vault size and charge.

HISTORICAL NOTE

Section added chap 753/1988 § 4

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2715.2

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2715.2 Refunds of vault charges.

HISTORICAL NOTE

Section repealed chap 753/1988 § 5

Section added chap 752/1988 § 14

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2715.3

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2715.3 Severability.

If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter or the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

HISTORICAL NOTE

Section added chap 753/1988 § 4

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2716

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2716 Construction and enforcement.

This chapter shall be construed and enforced in conformity with chapter nine hundred forty-nine of the laws of nineteen hundred sixty-two, pursuant to which it is enacted.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-16.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1562

(formerly § Z41-16.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2717

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 27 ANNUAL VAULT CHARGE

§ 11-2717 Effective date.

This chapter shall take effect July first, nineteen hundred sixty-two and shall remain in effect so long as the power of the city to adopt such laws for revenue purposes shall exist.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § Z46-18.0 added LL 36/1962 § 1

Renumbered chap 100/1963 § 1564

(formerly § Z41-18.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2801

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 28 CLAIMS AGAINST FIRE INSURANCE PROCEEDS

§ 11-2801 Claims against fire insurance proceeds.

Definitions. 1. As used in this chapter, any inconsistent provision of law notwithstanding, the following terms shall have the following meanings:

(a) "Commissioner" means the commissioner of finance.

(b) "Real property" means property upon which there is erected any residential, commercial or industrial building or structure except a one or two family residential structure.

(c) "Lien" means any lien including liens for taxes, special ad valorem levies, special assessments and municipal charges arising by operation of law against property in favor of the city and remaining undischarged for a period of one year or more.

(d) "Board" means the board created by subdivision five of this section.

(e) "Special lien" means a lien upon fire insurance proceeds pursuant to this chapter and chapter seven hundred thirty-eight of the laws of nineteen hundred seventy-seven.

(f) "Fund" means the fire insurance proceeds fund created pursuant to subdivision ten of this section.

2. The commissioner shall file a notice of intention to claim against the proceeds of fire insurance policies pursuant to section twenty-two of the general municipal law with the state superintendent of insurance for entry in the index of liens maintained by him or her as provided in section three hundred thirty-one of the insurance law.

3. Prior to the payment of any proceeds of a policy of insurance for damages caused by fire to real property, which policy insures the interest of an owner and is issued on real property located within the city, and following notification to the commissioner by an insurer of the filing of a claim for payment of such proceeds, the commissioner shall claim, by serving a certificate of lien, against such proceeds to the extent of any lien (including interest and penalties to the date of the claim) thereon, which claim when made and perfected in the manner provided for in section twenty-two of the general municipal law and section three hundred thirty-one of the insurance law, shall constitute a special lien against such proceeds and shall, as to such proceeds, be prior to all other liens and claims except the claim of a mortgagee of record named in such policy. Notice of the service of the certificate of the special lien shall be given to the insured by certified mail.

4. The provisions of this chapter shall not be deemed or construed to alter or impair the right of the city to acquire or enforce any lien against property but shall be in addition to any other power provided by law to acquire or enforce such right.

5. The fire insurance proceeds claims board is hereby established to administer the provisions of subdivisions six through thirteen of this section. The board shall consist of the first deputy mayor, who shall be chairperson, the commissioner of buildings, the commissioner of housing preservation and development, the commissioner of finance and the deputy mayor for economic development, each of whom shall have the power to designate an alternate to represent him or her at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation shall be in writing to the chairperson. So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective heads to the board for the carrying out of its functions. Each member shall serve without additional compensation except for expenses actually incurred.

6. Whenever the proceeds of policy of fire insurance which will be or has been paid to the city instead of an insured, all or part of such proceeds may be paid or released to the insured if the insured satisfies the board that the affected premises have been or will be repaired or restored, that such repairs or restoration are in the public interest, and the insured is issued and complies with a certificate of the board pursuant to this chapter. To secure such payment or release of proceeds the insured must notify the board within forty-five days after the mailing to the insured of a notice of the service of the certificate of special lien pursuant to subdivision three hereof, of the intention to restore or repair the affected premises and must file with the board a completed application with all required supporting documentation pursuant to subdivision seven of this section within sixty days thereafter, unless the board grants an extension for a stated period of time.

7. The release or return to the insured of any amounts to which he or she or it would otherwise be entitled to claim shall be subject to the following conditions:

(a) Such release or return shall be subject to the repair or restoration of the affected premises, in accordance with applicable building laws, to the condition it was in prior to the time the lien of the city arose, or to an improved condition.

(b) The insured shall file with the board an application in affidavit form, with such supporting documentation as the board shall require, containing the following:

(i) A complete description of the nature and extent of the damage to the insured premises and of the condition of the premises prior to the time the lien of the city arose;

(ii) A complete description of the nature of the repairs or restoration to be undertaken and the cost thereof;

(iii) A statement as to the source of funds needed to complete such repairs or restoration if the insurance proceeds are not sufficient therefor;

(iv) The name and address of each contractor who will effect such repairs or restoration;

(v) An estimated time schedule showing how long the repairs or restoration, and each phase thereof, will take; and

(vi) Such other information as may be required by the board to enable it to determine whether the repairs or restoration are in the public interest and will be or have been timely and properly made.

(c) Upon a preliminary approval by the board of an application pursuant to paragraph (b) of this subdivision, the board may issue a certificate, to be signed by the chairperson or his or her designee; evidencing the right of release to the insured of amounts representing insurance proceeds, upon such conditions as may be set forth therein. The repairs or restoration required by the board shall be completed in compliance with the terms and conditions of the certificate prior to the release or return of any part of the insurance proceeds, provided however that the board may, upon the written request of the insured and in its sole discretion, approve a prior release of such proceeds or a portion thereof, in a lump sum or in installments, where the insured certifies and demonstrates that such release is required to permit such repairs or restoration to go forward. Any such insurance proceeds released or returned prior to the completion of the repairs or restoration required by the board may be paid directly to the contractor or contractors responsible for making such repairs or restoration. Such payment shall, to the extent thereof, release the board from further liability to the insured.

8. If the insured: (i) fails to notify the city of his or her or its intention to repair or restore the affected premises as required in subdivision six of this section, (ii) fails to file a completed application pursuant to this chapter, or (iii) fails to obtain a certificate from the board or comply therewith within the time set forth, the right of the insured to assert a claim against the insurance proceeds, except to the extent they exceed the amount of the lien, shall terminate.

9. Until such termination, any insurance proceeds received by the city shall be deposited in a special fund and shall be retained therein. Upon termination of the insured's right to claim against the proceeds, the proceeds and any interest accrued thereon shall be applied to the liens affecting the premises in a manner determined by the board and may be transferred to the general fund.

10. There shall be established in the office of the commissioner a fund for the deposit of fire insurance proceeds to be held and applied in accordance with this chapter. Such funds shall not be held together with the general tax levies in the general fund.

11. The lien or liens against the affected premises upon which the special lien against proceeds is based shall continue in full force and effect except to the extent that such lien or liens are or have been paid.

12. The board may, pursuant to this chapter, release, compromise or adjust the special lien upon insurance proceeds created by this chapter. Any certificate issued by such board pursuant to this chapter shall be for the purpose of preserving and evidencing the right of release of the special lien created by this chapter, shall be subject solely to the provisions of this chapter, and shall not be deemed to be a contract subject to city regulation. Any repair or restoration performed in anticipation of a release of insurance proceeds shall not be deemed to be a public work or municipal project nor to have been done pursuant to a muncipal contract.

13. The board shall be empowered to promulgate rules and regulations and to adopt approved forms to be used by applicants.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § C17-1.0 added LL 82/1977 § 1

Subs 2, 3 amended chap 805/1984 § 101

CASE NOTES FROM FORMER SECTION

¶ 1. Title C is meant to apply to tax arrears accruing before effective date of statute.-Kroll v. N.Y. Property Ins. Underwriting Assoc., 120 Misc. 2d 1 [1983].

¶ 2. Where Department of Finance of City filed a notice of intent to claim fire insurance proceeds and its lien became effective December 22, 1977 lien of city for unpaid taxes was superior to right of mortgagee who was not named in fire policy and thus had only equitable lien and whose mortgage was not recorded until December 23, 1977.-Kovacs v. N.Y. Property Ins. Underwriting Asso., 101 Misc. 2d 244, 420 N.Y.S. 2d 837 [1979].

¶ 3. Title C of chapter 17 is not unconstitutional, and city is entitled to offset costs of demolition of building against its lien on the fire insurance proceeds.-Shirpsen Realty Corp. v. City of N.Y., 107 Misc. 2d 714 [1981].

¶ 4. N.Y.C. is clearly given right to claim proceeds of fire ins. policy issued upon real property upon which there are outstanding unpaid taxes, assessments and charges, to extent of any liens on property, whether city's rights thereunder are "independent" or merely "derivative" is of no practical importance.-Kroll v. N.Y. Property Ins. Underwriting Assoc., 120 Misc. 2d 1 [1983].

¶ 5. Constitutionality of section upheld as against claim of plaintiff that he was not given an opportunity to repair and restore the damaged property where he had ignored all prior notices and did nothing to demonstrate any intention to restore the premises for over one year.-Shirpsen Realty Corp. v. City of N.Y., 107 Misc. 2d 714 [1981].

CASE NOTES

¶ 1. City is entitled to the fire insurance proceeds for unpaid real property taxes pursuant to § 11-2801(3). This policy "insures the interest of an owner" for purposes of a tax lien. Insurance Company of North America v. City of New York, 71 NY2d 983 [1988].

¶ 2. The City claimed that this section gave it a lienholder's priority over the entirety of fire insurance proceeds obtained from an insurer through a settlement of the action against it. The court, however, held that the insured's attorneys were entitled to fees. Otherwise, the court said, attorneys would have no incentive to bring coverage actions against insurers and the City would not obtain any insurance proceeds at all. LMWT Realty Corp. v. Davis Agency, 205 A.D.2d 479, 614 N.Y.S.2d 16 (1st Dept. 1994).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-2901

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 29 TAX STUDY COMMISSION

§ 11-2901 Establishment of the Tax Study Commission; membership.

a. There is established a joint tax study commission to advise the mayor and the council. The commission shall consist of seventeen voting members, nine of whom shall be elected or appointed officials of the city of New York and eight who shall be public members. The commission shall be appointed as follows:

(1) four members appointed by the mayor;

(2) three members appointed by the vice chairman;

(3) one member appointed by the council president;

(4) one member appointed by the comptroller; and

(5) eight public members appointed jointly by the mayor and the vice chairman.

One member shall be designated by both the mayor and the vice chairman to serve as chairperson.

b. Vote of the commission; delegates. The commission shall be authorized to vote on any motion properly before it when a quorum, consisting of more than one-half of its members, is present. The motion shall be adopted if a majority of the members vote thereon. Each member may designate a representative who may vote on behalf of such member and who shall be counted as a member for the purposes of determining the existence of a quorum. The designation of a representative shall be made in a prior written notice served upon the chairperson of the commission.

c. Mandates of the commission. The commission is hereby mandated:

(1) to analyze the impact of the extensive changes in federal taxation, the implementation of which is to begin in 1987, and to consider how the local tax system might best adapt to anticipated changes in tax burdens and tax receipts; and

(2) to analyze the city's current personal income tax laws to determine their effectiveness in realizing municipal fiscal and policy goals, and in satisfying the traditional objectives of equity and efficiency; and

(3) to analyze the city's real property, business and other tax structures to determine their effectiveness in realizing municipal fiscal and policy goals; and

(4) to make recommendations in each instance for such actions as it deems necessary to achieve these objectives.

d. Duties and powers of the commission. The commission shall, in order to achieve its mandates:

(1) meet at such times as it shall deem necessary;

(2) utilize the best expertise available as it proceeds with its work, seeking both the advice and the active participation of tax professionals, economists, and fiscal analysts who shall act as advisors and/or paid consultants.

e. Reports. The commission shall issue at least two separate reports to the mayor and the council. The first report shall be submitted to the mayor and the council no later than four months from the effective date of this local law and shall address possible municipal adaptations to the new federal tax law. The second report shall be issued no later than twenty-four months from the effective date of this local law and shall address the reforms of the city's tax system as a whole. Additional separate studies and reports may be issued from time to time as the commission deems appropriate. In all instances, to the greatest extent possible, the commission shall recommend, legislative and other courses of action to the mayor and the council.

f. Duration of the commission. The commission shall expire on January thirty-first, one thousand nine hundred eighty-nine.

HISTORICAL NOTE

Section added L.L. 48/1986 § 2. [See Note.]

NOTE

Provision of L.L. 48/1986 adding legislative intent

Section one. Declaration of legislative intent. The council finds that the economic and social well-being of the people of the city of New York is clearly related to the tax policies and procedures of the city and the manner in which those policies and procedures are administered. The council is aware that the changes made in the federal tax law and contemplated for the state tax laws, as well as major changes taking place in our national and local economies, have significant effects on the operation and impact of our tax system. Accordingly, the council finds it appropriate to establish a joint tax study commission to: (1) analyze the impact of the federal tax reform law on the city and consider how the local tax system might best adapt to anticipated changes in tax burdens and tax receipts; (2) analyze the city's current tax laws to determine their effectiveness in realizing municipal fiscal, and policy goals, and in satisfying the traditional objectives of equity and efficiency; and (3) make recommendations in each instance for such improvements as it deems necessary to achieve these objectives, including, but not limited to, identifying in what instances state legislative approval would be a prerequisite to such improvements.

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NYC Administrative Code 11-4001

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4001 Definitions.

(a) As used in this chapter, the term "person" shall include, but shall not be limited to, an individual, corporation (including a dissolved corporation), partnership, association, trust or estate.

(b) As used in this chapter, the term "person" shall also include an officer, employee or agent of a corporation; a member, employee or agent of a partnership or association; an employee or agent of an individual proprietorship; an employee or agent of an estate or trust; or a fiduciary.

(c) As used in this chapter, the term "felony" and the term "misdemeanor" shall have the same meaning as they have in the penal law, and the disposition of such offenses and the sentences imposed therefor shall be as provided in such law, except: (1) notwithstanding the provisions of paragraph a of subdivision one of section 80.00 and paragraph (a) of subdivision one of section 80.10 of the penal law relating to the fine for a felony, the court may impose a fine not to exceed fifty thousand dollars, except that in the case of a corporation the fine may not exceed two hundred fifty thousand dollars, and (2) notwithstanding the provisions of subdivision one of section 80.05 and paragraph (b) of subdivision one of section 80.10 of the penal law relating to the fine for a class A misdemeanor, the court may impose a fine not to exceed ten thousand dollars, except that in the case of a corporation the fine may not exceed twenty thousand dollars.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Section added chap 765/1985 § 82, language juxtaposed per chap 907/1985 § 14. Number supplied by the Legislative Bill Drafting Commission.

DERIVATION

Formerly § DD46-1.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4002

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4002 Failure to file a return or report; supply information; or supplying false information; utility tax, corporate taxes or unincorporated business tax.

Any person who, with intent to evade any tax imposed under chapter five, six or eleven of this title, or any requirement thereof or any lawful requirement of the commissioner of finance thereunder, shall fail to make, render, sign, certify or file any return or report, or to supply any information within the time required by or under the provisions of such chapters, or who, with like intent, shall supply any false or fraudulent information, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-2.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4003

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4003 Repeated failure to file; utility tax or corporate taxes.

(a) Any person who, with intent to evade payment of any tax imposed under chapter six or eleven fails, (i) in the case of any tax imposed under chapter six (except section 11-663 thereof), to file a return or report for three consecutive taxable years, (ii) in the case of the tax imposed under chapter eleven, to file a return for thirty-six consecutive calendar months, or (iii) in the case of the tax imposed under section 11-663, to file a return or report for twelve consecutive quarterly periods, shall be guilty of a class E felony, provided that such person had an unpaid tax liability with respect to each of the three consecutive taxable years or each of the other consecutive periods specified in this subdivision.

(b) In any prosecution for a violation of subdivision (a) of this section, it shall be a defense that the defendant had no unpaid tax liability for any of the three consecutive taxable years or for any of the other consecutive periods specified in subdivision (a).

(c) As used in this section, the terms "return" and "report" shall mean a return or report required under section 11-605, 11-646, 11-667 or 11-1104. Such terms shall not include any declaration of estimated tax required under section 11-607 or 11-644.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-3.0 added chap 765/1985 § 82

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4004

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4004 False returns or reports; utility tax, corporate taxes or unincorporated business tax.

(a) Any person who, with intent to evade any tax imposed by or any requirement of chapter five, six or eleven of this title, or any lawful requirement of the commissioner of finance thereunder, shall make, render, sign, certify or file any false or fraudulent return or report, declaration or statement shall be guilty of a misdemeanor.

(b) Any person who, with intent to evade any tax imposed by chapter five, six or eleven, files a false or fraudulent return or report and, with such intent, substantially understates on such return or report his or her tax liability under such chapters, shall be guilty of a class E felony.

(c) For purposes of subdivision (b) hereof, the term "substantially understates" refers to the excess amount of the tax required to be shown on the return or report for the taxable year or other applicable taxable period over the amount of the tax imposed which is shown on the return or report, provided that the excess is more than one thousand five hundred dollars, and provided that the taxpayer, acting without reasonable ground for belief that his conduct is lawful, intended to evade at least said amount of such excess.

(d) As used in this section in relation to the tax imposed under chapter six or eleven of this title, the terms "return" and "report" shall have the same meaning as defined in subdivision (c) of section 11-4003 of this chapter, and as used in this section in relation to the tax imposed under chapter five of this title, the terms "return" and "report" shall mean a return or report required under section 11-514, but shall not include a declaration of estimated tax required under section 11-511.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap 907/1985 § 14. Number supplied by the Legislative Bill Drafting Commission.

Subd. (d) amended chap 411/1986 § 25

DERIVATION

Formerly § DD46-4.0 added chap 765/1985 § 82

Sub d amended chap 411/1986 § 23

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4005

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4005 Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents; utility tax, corporate taxes or unincorporated business tax.

(a) Any person who, with the intent that any tax imposed under chapter five, six or eleven of this title, or any lawful requirement of the commissioner of finance thereunder, be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under such chapters of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall be guilty of a misdemeanor.

(b) Any person who, with the intent that any tax imposed by chapter five, six or eleven of this title be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation of any return or report, which is filed, and which is fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, and thereby causes, by means of a common scheme or plan, an understatement of tax liability of one or more persons of more than fifteen hundred dollars in the aggregate, shall be guilty of a class E felony. The term "understatement" shall mean the excess of the amount of the tax required to be shown on the return or report over the amount of the tax imposed which is shown on the return or report.

(c) As used in this section in relation to the tax imposed under chapter six or eleven of this title, the terms

"return" and "report" shall have the same meaning as defined in subdivision (c) of section 11-4003 of this chapter, and as used in this section in relation to the tax imposed under chapter five of this title, the terms "return" and "report" shall mean a return or report required under section 11-514, but shall not include a declaration of estimated tax required under section 11-511.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

Subd. (c) amended chap 411/86 § 26

DERIVATION

Formerly § DD46-5.0 added chap 765/1985 § 82

Sub c amended chap 411/1986 § 24

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4006

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4006 Failure to pay tax; utility tax, corporate taxes or unincorporated business tax.

Any person, who, with intent to evade any tax or any requirement of chapter five, six or eleven of this title, or any lawful requirement of the commissioner of finance thereunder, shall fail to pay the tax, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-6.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4007

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4007 Failure to obey subpoenas; false testimony.

(a) Any person who, being duly subpoenaed, pursuant to chapter five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or twenty-seven of this title or the provisions of the civil practice law and rules, in connection with a matter arising under any of such chapters, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers, (i) fails or refuses to attend without lawful excuse, (ii) refuses to be sworn, (iii) refuses to answer any material and proper question, or (iv) refuses, after reasonable notice, to produce books, papers and documents in his or her possession or under his or her control which constitute material and proper evidence shall be guilty of a misdemeanor.

(b) Any person who shall testify falsely in any material matter pending before the commissioner of finance with respect to any of the chapters specified in subdivision (a) shall be guilty of and punishable for perjury.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-7.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4008

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4008 Willful failure to file a return or report or pay tax or charge.

Any person required under chapter seven, eight, nine, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-four or twenty-seven of this title to pay any tax or charge or make any return or report, who willfully fails to pay such tax or charge or make such return or report, at the time or times so required, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-8.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4009

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4009 Fraudulent returns, reports, statements or other documents.

(a) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the commissioner of finance or to any person, pursuant to the provisions of chapter seven, eight, nine, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or twenty-seven of this title, which he does not believe to be true and correct as to every material matter shall be guilty of a misdemeanor.

(b) Any person who willfully delivers or discloses to the commissioner of finance or to any person, pursuant to the provisions of any of the chapters specified in subdivision (a), any list, return, report, account, statement or other document known by him or her to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor.

(c) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him or her to be fraudulent or to be false as to any material matter.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-9.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4010

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4010 Willful failure to collect taxes.

Any person who willfully fails to collect any tax required to be collected under the provisions of chapter twelve or twenty-five of this title shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-10.0 added chap 765/1985 § 82

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4011

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4011 Failure to file bond.

Any person willfully failing to file a bond where such filing is required pursuant to section 11-1203, 11-1304 or 11-2505 of this title shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-11.0 added chap 765/1985 § 82

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4012

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4012 Cigarette tax.

(a) Attempt to evade or defeat tax. (1) Any person who willfully attempts in any manner to evade or defeat any tax imposed by chapter thirteen of this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

(2) Any person who willfully attempts in any manner to evade or defeat any tax imposed by chapter thirteen of this title or payment thereof on ten thousand cigarettes or more or has previously been convicted two or more times of a violation of paragraph one of this subdivision shall be guilty of a class E felony.

(b) Any person, other than an agent so authorized by the commissioner of finance, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax under chapter thirteen of this title, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of such chapter shall be guilty of a misdemeanor. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class E felony.

(c) (1) Any person, other than an agent so authorized by the commissioner of finance, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class E felony.

(2) Any person, other than an agent appointed by the commissioner of finance, who willfully possesses or transports for the purpose of sale thirty thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class D felony.

(d) For the purposes of this section, the possession or transportation within this city by any person, other than an agent, at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by chapter thirteen of this title. With respect to such possession or transportation, any provisions of chapter thirteen of this title providing for a time period during which a use tax imposed by such chapter may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this city of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by chapter thirteen of this title.

(e) Nothing in this section shall apply to common or contract carriers or warehouseman while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, not*37 to persons whose possession is for the purpose of aiding police officers in performing their duties.

(f) Any willful act or omission, other than those described in subdivision (a), (b), (c), (d), (e) or (g) of this section, by any person which constitutes a violation of any provision of chapter thirteen of this title or subchapter one of chapter two of title twenty of the code shall constitute a misdemeanor.

(g) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the commissioner of finance under the provisions of chapter thirteen of this title, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possess any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp, prescribed by the commissioner of finance under the provisions of chapter thirteen of this title, or who knowingly and willfully possesses any such device, shall be guilty of a class E felony. For the purposes of this subdivision, the words "stamp prescribed by the commissioner of finance" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by the commissioner of finance and the state tax commission.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

Subd. (a) par (2) amended chap 508/2004 §3, eff. Dec. 20, 2004.

Subd. (b) amended chap 262/2000 § 11, eff. Nov. 14, 2000.

Subd. (c) amended chap 262/2000 § 11, eff. Nov. 14, 2000.

Subd. (c) par (1) amended chap 508/2004 §4, eff. Dec. 20, 2004.

Subd. (f) amended L.L. 2/2000 § 3, eff. Aug. 2, 2000.

DERIVATION

Formerly § DD46-12.0 added chap 765/1985 § 82

FOOTNOTES

37

[Footnote 37]: * So in Original.

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Administrative Code of the City of New York

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NYC Administrative Code 11-4013

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4013 Tax on coin-operated amusement devices.

Any person required, pursuant to the provisions of chapter fifteen of this title, to place or keep the stamp or other indicia denoting payment of the tax imposed by such title conspicuously posted on any device taxable under such chapter, who willfully fails to place or keep such stamp or other indicia conspicuously posted on any such device, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-13.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4014

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4014 Tax on commercial motor vehicles and motor vehicles for transportation of passengers.

(a) Any person who counterfeits or forges, or causes or procures to be counterfeited or forged, or aids or assists in counterfeiting or forging, by any way, art, or means, any stamp, indicia of payment or indicia that no tax is payable authorized by chapter eight of this title, or who knowingly acquires, possesses, disposes of or uses such a counterfeited or forged stamp, indicia of payment or indicia that no tax is payable, or who transfers a stamp, indicia of payment or indicia that no tax is payable where such a transfer is not authorized by such chapter shall be guilty of a misdemeanor.

(b) The owner or driver of any motor vehicle subject to the tax imposed by chapter eight who, upon demand, shall fail to exhibit the stamp or other indicia of payment of the tax to the commissioner of finance, his duly authorized agent or employee, or any police officer of this city or state, as required by subdivision a of section 11-809 of such chapter, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-14.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

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NYC Administrative Code 11-4015

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4015 Tax on owners of motor vehicles.

(a) Any person who counterfeits or forges, or causes or procures to be counterfeited or forged, or aids or assists in counterfeiting or forging, by any way, art, or means, any receipt or other document evidencing payment or exemption from the tax imposed by chapter twenty-two of this title, or who knowingly acquires, possesses, disposes of or uses such a counterfeited or forged receipt or other document, shall be guilty of a misdemeanor.

(b) Any person who uses, operates or parks or permits the use, operation or parking upon any public highway or street of a motor vehicle owned by him or under his control for which the tax imposed by chapter twenty-two has not been paid in accordance with the provisions of such chapter and the regulations prescribed thereunder shall be guilty of a misdemeanor. For the purpose of this subdivision any person using, operating or parking a motor vehicle shall be presumed to be doing so with the permission of the owner of such motor vehicle.

(c) To the extent that any other section of this chapter is applicable to the tax imposed by chapter twenty-two, any reference in such section to the commissioner of finance shall be deemed a reference to the commissioner of motor vehicles or to the commissioner of finance if designated as his agent.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-15.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4016

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4016 Hotel room occupancy tax.

(a) Any person required under chapter twenty-five of this title to make any return or report, who willfully fails to make such return or report at the time or times so required, shall be guilty of a misdemeanor.

(b) The penalties provided for in this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the city any hotel room occupancy tax imposed by chapter twenty-five of this title, whenever such person has been required to collect and has collected any such tax. In any such prosecution under the penal law, a person who has been required to collect and has collected any such tax shall be deemed to have acted in a fiduciary character with respect to the city, and the tax collected shall be deemed to have been entrusted to such person by the city.

(c) Any person who willfully fails to file a registration certificate as required pursuant to the provisions of chapter twenty-five of this title and such data in connection therewith as the commissioner of finance by regulation or otherwise may require, or willfully fails to display or surrender a certificate of authority as required by chapter twenty-five of this title, or willfully assigns or transfers such certificate of authority, shall be guilty of a misdemeanor, provided, however, that the provisions of this subdivision shall not apply to a failure to surrender a certificate of authority which is required to be surrendered where business never commenced.

(d) Any person who willfully fails to charge separately the tax imposed under chapter twenty-five or willfully fails to state such tax separately on any bill, statement, memorandum or receipt issued or employed by such person upon which the tax is required to be stated separately as provided in such chapter, or who shall refer or cause reference to be made to this tax in a form or manner other than required by such chapter, shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap 907/1985 § 14. Number supplied by the Legislative Bill Drafting Commission

DERIVATION

Formerly § DD46-16.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4017

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4017 Violation of secrecy provisions.

Any person who violates the provisions of subdivision a of section 11-1214, subdivision (a) of section 11-2415, subdivision a of section 11-2115, subdivision a of section 11-1516, subdivision a of section 11-818, subdivision a of section 11-716, subdivision a of section 11-2215, subdivision a of section 11-1116, subdivision one of section 11-688, subdivision one of section 11-538, subdivision a of section 11-2516, or subdivision a of section 11-1414 of this title shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-17.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4018

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4018 Other offenses.

(a) Any person who willfully fails to keep or retain any records required to be kept or retained by chapter seven, twelve, fourteen, twenty-one, twenty-two, twenty-four or twenty-seven of this title shall be guilty of a misdemeanor.

(b) Any person willfully simulating, altering, defacing, destroying or removing any evidence of the filing of a return or the payment of a tax provided for in chapter twenty-one of this title shall be guilty of a misdemeanor.

(c) Any person failing to file a certificate of registration or information registration certificate as required by chapter eight of this title shall be guilty of a misdemeanor.

(d) Any person refusing access to personnel authorized by the commissioner of finance to inspect any vault or any premises concerning which a return or information return may be required under chapter twenty-seven of this title shall be guilty of a misdemeanor.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-18.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4019

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4019 Jurisdiction.

For purposes of the taxes imposed by chapter five or six of this title: (a) any prosecution under this chapter may be conducted in any county where the person against whom a violation or violations of any of the provisions of this chapter are charged resides or has a place of business, or from which such person received any income, or in any county in which any such violation is committed; and

(b) notwithstanding any other provision of law, the corporation counsel shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses under this chapter.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-19.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4020

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4020 Disposition of fines.

All fines levied under this chapter shall be paid to the commissioner of finance and deposited in the general fund of the city.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-20.0 added chap 765/1985 § 82

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4021

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4021 Seizure and forfeiture of cigarettes.

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision five of section 2.10 of such law, acting pursuant to his special duties, shall discover any cigarettes subject to any tax provided by chapter thirteen of this title, and upon which the tax has not been paid or the stamps not affixed as required by such chapter, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized cigarettes and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized cigarettes, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his own motion release the seized cigarettes, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such decision. Such proceeding shall not be instituted unless there shall first be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in New York state and approved by the superintendent of insurance of New York state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect

that if such proceeding be dismissed, or the seizure confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such cigarettes, vending machines or receptacles, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited cigarettes and vending machines or receptacles at public sale and pay the proceeds into the treasury of the city to the credit of the general fund. Cigarettes so seized and sold shall be sold only to an agent under chapter thirteen of this title and the notice of sale shall contain a provision to this effect. Such seized cigarettes, vending machines or receptacles may be sold prior to forfeiture if the owner of the seized property consents to the sale. Notwithstanding any other provision of this section, the commissioner of finance may enter into an agreement with the state tax commission to provide for the disposition between the city and state of the proceeds from any such sale.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom said cigarettes were seized to redeem the said cigarettes, and any vending machine or receptacle seized therewith, or may permit the owner of any such cigarettes, vending machine or receptacle to redeem the same, by the payment of the tax due, plus a penalty of fifty percent thereof, plus interest on the amount of tax due for each month or fraction thereof after such tax became due (determined without regard to any extension of time for filing or paying) at the rate applicable under subdivision (d) of section 11-1317 of this title and the costs incurred in such proceeding, which total payment shall not be less than five dollars; provided, however, that such seizure and sale or redemption shall not be deemed to relieve any person from fine or imprisonment provided for in this chapter for violation of any provisions of this chapter or chapter thirteen of this title.

(e) In the alternative, if the commissioner of finance concludes that any cigarettes seized pursuant to this section, when offered at public sale, will bring a price less than the reasonably estimated price which the department of correction would have to pay for the purchase of such cigarettes for sale to or use by inmates in institutions under the jurisdiction of such department, the commissioner of finance may dispose of such cigarettes by transferring them to the department of correction for sale to or use by inmates in such institutions.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-21.0 added chap 765/1985 § 82

CASE NOTES FROM FORMER SECTION

¶ 1. There was probable cause to arrest defendant for violation of Cigarette Tax Law when on the basis of information received from an unnamed informant police observed defendant on October 23, 1973 back a vehicle into a garage area at a particular address in Queens and observed him open the garage door in which appeared to be half cases of cigarettes, and saw him two days later conversing with a person known to police to be a bootleger of illegal cigarettes and on November 13 was observed purchasing a new car and this car was later seen to have special air shocks and the rear seat removed and was subsequently observed heading south in New Jersey and then returning to the Queens address where he opened his trunk and as police approached him they observed partially covered cartons in the back of the car.-People v. Appelman, 172 (115) N.Y.L.J. (12-16-74) 20, Col. 1 F.

¶ 2. Seizure of cigarettes that were the property of petitioner under this section was invalid where no statute or rule of the Department of Finance requires a hearing after a seizure and petitioner could not obtain a determination exception at the "whim" of respondent.-Matter of Sen Lar Trading Co. v. Michael, 107 Misc. 2d 93 [1980].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 11-4022

Administrative Code of the City of New York

Title 11 Taxation and Finance

CHAPTER 40 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4022 Filing of documents.

For purposes of the prosecution of offenses under the provisions of this title, reports, returns, statements, other documents or other information required to be filed with or delivered to the commissioner of finance shall include such items which under the provisions of this title are required to be recorded or filed with, served upon or delivered to another person, including, but not limited to, a recording officer of any county within the state, county clerk, any other governmental agency or entity, or other entity in its capacity as an agent of the commissioner of finance.

HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap

907/1985 § 14. Number supplied by the Legislative Bill Drafting

Commission

DERIVATION

Formerly § DD46-22.0 added chap 765/1985 § 82

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-101

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-101 Salaries; retroactive increases forbidden.

Any action taken by the head of an agency or by the mayor to increase the salary of any officer or person whose salary is paid out of the city treasury, to take effect prior to the date of such action is void.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 124-1.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 19

(formerly § 67-1.0)

CASE NOTES FROM FORMER SECTION

¶ 1. The word "salary" being narrowly construed to mean an employee's base pay, petitioner, who served in the police department from 1940 until 1974 was entitled to a lump sum payment for accumulated overtime and sick leave benefits under a mayoral personnel order made during the period of his employment even though a personnel order subsequent to his retirement reduced the right to overtime and sick leave accumulations and his right to such payments was not retroactively increased.-Taylor v. McGuire, 100 Misc. 2d 834 [1979].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-102

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-102 Salaries; increases after fixation in budget permitted.

The head of an agency subject to the provisions of section one hundred twenty-four of the charter, or the mayor shall have the power to increase, during any fiscal year, the salary of any officer or person paid from the city treasury even after such salary shall have been fixed in the budget for such fiscal year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 124-2.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 20

(formerly § 67-2.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-103

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-103 Salaries; of county officials.

The salaries of all county officers in counties within the city, unless otherwise provided by law, shall be fixed by the mayor.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 124-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 21

(formerly § 67-3.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-104

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-104 Payment of claims of certain employees authorized.

The mayor is hereby authorized to inquire into, hear and determine any claim heretofore or hereafter filed against the city, or any agency, or the board of education, by a duly appointed employee or his or her estate, where it is shown that such employee failed and neglected to cash the check paid to such employee for services rendered, notwithstanding a bar to the payment of any such claim by limitation of time or otherwise. The mayor may, after due consideration, authorize payment of such claim, and such claim shall thereupon be paid in such amount as the mayor shall determine to be just, in full statisfaction*1 thereof, provided that the claimant or his or her estate, shall execute and deliver a release upon receipt of such payment, in such form as shall be approved by the corporation counsel.

The allowance in payment of such claim shall be without any interest whatsoever.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § F51-23.1 added chap 496/1956 § 1

Sub a added chap 720/1958 § 1

Renumbered and amended chap 100/1963 § 1275

(formerly § F41-23.1)

FOOTNOTES

1

[Footnote 1]: * So in original. (Word misspelled.)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-105

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-105 Heads of agencies; power to make deductions from salaries of subordinates.

Except as otherwise provided by law, every head of an agency is empowered:

1. To make ratable deductions from the salaries and wages of subordinates, on account of absences from duty without leave.

2. In his or her discretion, to cause deductions to be made from the salaries, compensation or wages of subordinates of such agency, not exceeding thirty days' pay, as a fine for delinquency or misconduct.

3. In his or her discretion, to suspend for not more than one month without pay, any subordinate pending the hearing and determination of charges against such subordinate, or the making of any explanation, as the case may be. If the subordinate so suspended be removed, such subordinate shall not be entitled to salary or compensation after suspension. If he or she be not so removed, such subordinate shall be entitled to full salary or compensation from the date of suspension to the date of reinstatement, less such deduction or fine as may be imposed.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1103-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 613

(formerly § 884-1.0)

CASE NOTES FROM FORMER SECTION

¶ 1. In directing the attention of the Civil Service Commission to civil service employee's meretricious relationship with a female City employee, who had been found guilty of a serious offense, and in requiring them to act thereon, the Mayor did not usurp the Commission's functions nor deprive them of their freedom of action. The Mayor, as the chief executive officer of the City, was authorized by the Charter and by standards of proper official conduct to keep himself informed as to acts of subordinate officials and employees and to cause appropriate action to be taken when impropriety was brought to his attention. Consequently, having acted on their own independent judgment in framing and serving charges against the employee, the Commission was authorized to suspend him for not more than one month without pay, pending hearing and determination of the charges (Admin. Code § 884-1.0. subd. 30.-Guinier v. Kern, 29 N.Y.S. 2d 822 [1941].

¶ 2. Issues as to procedural irregularities in service of charges and the order of suspension upon employee by the Civil Service Commission might be raised only after an adverse decision, and reviewed by certiorari.-Id.

¶ 3. Administrative Code § 884-1.0 does not apply to a teacher in the employ of the Board of Education.-Wolf v. Board of Education, 184 Misc. 890, 57 N.Y.S. 2d 63 [1945].

¶ 4. Petitioner, city social worker, was given a medical leave of absence with pay in order to obtain psychiatric care. At end of leave her superiors extended the leave without pay. Four months later petitioner sought to vacate order made by Commissioner which extended her leave, contending that Commission had no authority in the absence of written charges alleging her incompetency. **Held:** Petitioner not guilty of laches as found by special term and she was reinstated from end of first leave.-Matter of Smith v. McNamara, 277 App. Div. 585, 101 N.Y.S. 2d 522 [1950].

¶ 5. The Court's sense of fairness was so shocked that it held that a dismissal of a physician who had a record of 23 years of good and faithful service was an abuse of discretion, and it annulled the dismissal and remitted the matter to the Commissioner for the imposition of disciplinary measures consistent with the provisions of subdivision 2 of this section. The record indicated that all the charges against the physician were trivial in nature.-Matter of Nimelman, 5 A.D. 2d 984, 173 N.Y.S. 2d 136 [1958].

¶ 6. Under subdivision 3 of this section and subdivision 3 of § 75 of the Civil Service Law, an employee may be suspended for not more than one month without pay pending the hearing and determination of charges against him, and if the employee so suspended be removed, he shall not be entitled to salary or compensation after suspension and in construing these provisions, the court found that a correction officer was not entitled to back salary where he was ordered discharged by the Commissioner of Correction on three charges; where one of the charges on judicial review was found to be unsupported; where the court then ordered a redetermination; and where a year later the Commissioner adhered to his original determination of discharge. The order of the App. Div. did not direct a reinstatement of the officer pending the redetermination by the Commissioner.-Matter of Phinn v. Kross, 26 Misc. 2d 889, 205 N.Y.S. 2d 692 [1900], aff'd 15 A.D. 2d 641, 223 N.Y.S. 2d 855 [1961].

¶ 7. The city could not require sewage workers to work overtime in excess of 8 hours per day with compensatory time off rather than overtime pay.-DelGaudio v. Zurmuhlen, 29 Misc. 2d 84, 213 N.Y.S. 2d 157 [1961].

¶ 8. The one-month suspension period authorized by § 75 (3) of the Civil Service Law and § 884-1.0 of the Administrative Code does not apply to school teachers or employees of the City Board of Education, since they are governed by the provisions of § 2566 of the Education Law.-Matter of Nash v. Board of Education of the City of New York, 26 Misc. 2d 46, 198 N.Y.S. 2d 180 [1960].

¶ 9. Employees who were in permanent competitive civil service and who were charged with misconduct in that they participated in an unauthorized meeting of employees which was held during regular working hours in a welfare center of the city were not subject to this section and thus had no standing to challenge its constitutionality but had standing to challenge its implementation by executive order. Coleman v. Ginsberg, 66 Misc. 2d 46, 319 N.Y.S. 2d 338 [1971].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-106

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-106 Heads of agencies other than the police and fire commissioner, may rehear charges against and reinstate persons dismissed.

a. The head of any agency, upon written application by any person who has been dismissed from service, setting forth the reasons for demanding an opportunity of making a further explanation, shall have the power, in his or her discretion, to rehear the explanation and any new matter offered in further reply to the charges or complaint upon which such person was dismissed from service. Such person shall be required to waive, in writing, all claims against the city for back pay. Such application for another opportunity to explain shall only be presented to and granted by the officer who made the removal or such officer's immediate successor, when the applicant for the further explanation shall make it appear, by affidavit:

1. That on a further opportunity to explain, he or she can produce such evidence as would probably have changed the decision if it had been presented theretofore; and

2. If such evidence has been discovered since the previous explanation, that it is not cumulative; and

3. That the failure to produce it at the first explanation was not owing to want of diligence.

b. If upon the further explanation, the head of such agency shall determine that such person has been illegally or unjustly dismissed, the head of such agency may, in his or her discretion, and with the approval in writing of the commissioner of citywide administrative services, cause such person to be reinstated.

c. The consent of the mayor shall be required when reinstatement of an applicant is made by the immediate

successor of the removing official. It shall be unlawful, however, for the immediate successor of the removing official to reinstate an applicant who has been removed for more than two years.

d. This section shall not apply to members of the uniformed forces under the jurisdiction of the police commissioner and the fire commissioner.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. b amended L.L. 59/1996 § 58, eff. Aug. 8, 1996

DERIVATION

Formerly § 1103-2.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 614

(formerly § 884-2.0)

Sub b amended chap 100/1963 § 614

CASE NOTES FROM FORMER SECTION

¶ 1. Petition for rehearing **dismissed** where petitioner failed to aver new evidence in the petition but rather relied upon contention that he was unable to protect his rights at original hearing due to ill health. Nothing in the record sustained his averment that his rights were prejudiced.-Purcell v. Moses, 134 (14) N.Y.L.J. (7-21-55) 2, Col. 8 M.

¶ 2. Although courts ordinarily are reluctant to interfere with conduct of municipal affairs, where it appeared that employee in Department of Public Works had been unjustly dismissed from service and on the facts was entitled to reinstatement but that such relief was denied him by Commissioner of the Department for wholly inadequate reasons, court granted an order directing the Commissioner to reinstate the employee.-Matter of Kelly (Morgan), 169 Misc. 242, 6 N.Y.S. 2d 852 [1938], aff'd 256 App. Div. 814, 9 N.Y.S. 2d 904 [1939].

¶ 3. Failure of removed chief supervisor of Department of Public Markets to comply with the statutory requirements governing a rehearing did not preclude Commissioner from granting the rehearing, since the Commissioner could waive the requirement that the application for rehearing be made "by affidavit".-Matter of Kelly.-Id.

¶ 4. Administrative Code § 884-2.0 (c), requiring consent of the Mayor for reinstatement of an applicant by the immediate successor of the removing official, did not apply in a case where the reinstatement was attempted to be made by the removing officer, following a rehearing of charges.-Id.

¶ 5. Four month statute of limitations for Article 78 proceeding seeking to annul decision which terminated petitioner's services as a caretaker for the N.Y.C. Housing Authority because of failure to meet medical requirements could not be extended by subsequent requests for reconsideration of the decision as there is no statutory authority for a rehearing in this situation. This statute applies only to those dismissed from services because of complaints against them.-Avilles v. Hoberman, 162 (63) N.Y.L.J. (9-29-69) 17, Col. 7 F.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-107

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-107 Publication of notice of appointments, removals, and changes of salaries.

Notice of all appointments and removals from office, and all changes of salaries except those resulting from collective bargaining or original jurisdiction adjustments, shall be transmitted within one week after they are made, by the appointing agency or department head, to and published within thirty days in the City Record, indicating the name, title and salary of each individual appointed, promoted, demoted, removed from office or whose services have otherwise terminated, and whether an appointment is a "provisional appointment."

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1103-3.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 615

(formerly § 884-3.0)

Amended LL 27/1974 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-108

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-108 Overtime work by officers or employees and additional compensation therefor.

Notwithstanding the provisions of any other statute, general, special or local, the mayor may authorize the head of any agency to require any officer or employee in such agency or any class or group of officers or employees in such agency to work in excess of the maximum number of hours of employment prescribed for such officer or employee or class or group of officers or employees by any statute, general, special or local, provided that each such officer or employee shall be paid overtime compensation for such work at not less than his or her regular basic pay rate. The amounts received as overtime compensation pursuant to the provisions of this section shall be regarded as salary or compensation for the purposes of any pension or retirement system of which the employee receiving such overtime compensation is a member. Such overtime compensation shall not be regarded as salary or compensation for the purpose of determining the right to any increase of salary or any salary increment on account of length of service or otherwise, nor shall the payment of such overtime compensation be construed to constitute a promotion.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1103-4.0 added chap 754/1957 § 1

Renumbered chap 100/1963 § 616

(formerly § 884-4.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Sewage treatment workers were required to work overtime in excess of eight hours a day and they were given equal time off in place of overtime pay at the risk of disciplinary action if such overtime work was refused. **Held,** such practice was unlawful and violated the provisions of § 220 of the Labor Law and § 888-4.0 of the Administrative Code. There was no claim of any emergency requiring such procedures.-DelGaudio v. Zurmuhlen, 29 Misc. 2d 84, 213 N.Y.S. 2d 157 [1961].

¶ 2. Firemen were not entitled to overtime in accordance with this section on the ground that the Board of Estimate had reduced the work week of firemen from 42 hours to 40 hours and that they had been compelled to work 40.32 hours per week as the application of § 487-11.0 of administrative code which is the only statute prescribing hours of employment of firemen results in a work week of approximately 4.032 hours and no overtime compensation is permissible under this section in the absence of any statute reducing the hours of work or an authorization by the Mayor requiring them to work in excess of the hours prescribed by statute. Ryan v. Lindsay, 158 (63) N.Y.L.J. (9-29-67) 17, Col. 5 M.

¶ 3. Plaintiff who brought action on behalf of her husband's estate was entitled to monetary value of accumulated and unused vacation and compensatory time where her husband was a clerk of the criminal court of the city who was separated from service by death. Koenig v. McCoy, 164 (43) N.Y.L.J. (8-31-70) 11, Col. 5 T.

¶ 4. Estate of deceased city employee was not entitled to a cash payment for back salary for accumulated sick leave and unused vacation days accrued by decedent where under the applicable rulings, determinations and agreements of the Comptroller the decedent had he retired while in the employ of the city would have been entitled to terminal leave of 111 days and $32^1/_2$ unused vacation days where there was no statute or duly authorized action or agreement by an appropriate official for its payment.-Biondi v. City of N.Y., 171 (71) N.Y.L.J. (4-12-74) 15, Col. 3 F.

¶ 5. Assistant district attorney could not recover a liquidated sum for overtime compensation absent proof that the mayor had authorized the district attorney to require overtime and that the district attorney had consented to the overtime service.-Menoudakos v. City of N.Y., 74 A.D. 2d 897 [1980].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-109

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-109 Activities of mayor and other officers of the city or of any agency as officers or members of an educational corporation chartered by the board of regents of the University of the state of New York to carry out programs to encourage scholastic achievement by pupils within the city.

The provisions of sections eleven hundred and two thousand six hundred four of the charter, section three of the general city law and any other similar provision of law, general, special or local, or rule or regulation or rule of law shall not apply to the mayor, the head of any city department or of any agency, or any other officer of the city or of any agency in respect to his or her activities as an officer or member of an educational corporation chartered by the board of regents of the University of the state of New York to carry out award, citation, scholarship and other programs in cooperation with participating colleges and universities designed to encourage scholastic achievement on the part of pupils attending public, private and parochial schools within the city of New York or to foster interest in the humanities and the arts and to encourage participation in cultural programs. Notwithstanding any other provision of law, general, special or local, the mayor, the head of any department of the city or of any agency or any other officer of the city or any agency may, during his or her term of office, serve as an officer or member of such a corporation.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1106-4.0 added chap 926/1963 § 1

Amended chap 530/1966 § 1

Amended LL 66/1969 § 1

(Note laid out as § 1106-4.0 formerly § 1106-1.0)

Amended LL 54/1977 § 70

(Note bill section lays out as § 1106-4.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-110

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-110 Annual disclosure.

a. Definitions. As used in this section:

1. The term "business dealings with a state or local agency" shall mean any transaction with any state or local agency involving the sale, purchase, rental, disposition or exchange of any goods, services or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

2. The term "city employee" shall be defined as an employee of a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury and shall include but not be limited to employees of the New York city health and hospitals corporation, the New York city industrial development agency, the offices of the district attorneys of the counties of Bronx, Kings, New York, Queens and Richmond and of the special narcotics prosecutor, and the New York city housing development corporation.

3. The "conflicts of interest board" shall mean the conflicts of interest board appointed pursuant to section twenty-six hundred two of the New York city charter.

4. The term "domestic partners" shall mean persons who have a registered domestic partnership, which shall include any partnership registered pursuant to section 3-240 of the administrative code of the city of New York.

5. The term "independent body" shall mean any organization or group of voters which nominates a candidate or

candidates for office to be voted for at an election, and which is not a political party as defined in paragraph seven of this subdivision.

6. The term "local political party official" shall mean:

(1) any chair of a county committee elected pursuant to section 2-112 of the election law, or his or her successor in office, who received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more;

(2) that person (usually designated by the rules of a county committee as the "county leader" or "chair of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(i) the principal political, executive and administrative officer of the county committee;

(ii) the power of general management over the affairs of the county committee;

(iii) the power to exercise the powers of the chair of the county committee as provided for in the rules of the county committee;

(iv) the power to preside at all meetings of the county executive committee if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(v) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law or for the purpose of filling a vacancy or vacancies in the county committee which exist by reason of an increase in the number of election districts within the county occasioned by a change of the boundaries of one or more election districts, taking effect after the election of its members, or for the purpose of determining the districts that the elected members shall represent until the next election at which such members of such committee are elected; provided, however, that in no event shall such power encompass the power of a chair of an assembly district committee or other district committee smaller than a county and created by the rules of the county committee, to call a meeting of such district committee for such purpose;

(vi) the power to direct the treasurer of the party to expend funds of the county committee; or

(vii) the power to procure from one or more bank accounts of the county committee the necessary funds to defray the expenses of the county committee.

The terms "constituted committee" and "political committee" as used in this subparagraph shall have the same meanings as those contained in section 14-100 of the election law.

7. The term "political party" shall mean any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor.

8. The term "political organization" shall mean any political party as defined in paragraph seven of this subdivision, or independent body, as defined in paragraph five of this subdivision, or any organization that is affiliated with or a subsidiary of a party or independent body.

9. The term "relative" shall mean the spouse, domestic partner, parent, grandparent, child, stepchild, or stepparent of the person reporting, or any person who is the direct descendant of the grandparents of the person reporting or of the spouse or domestic partner of the person reporting.

10. The terms "state agency" and "local agency" shall be given the same meanings as such terms are given in section eight hundred ten of the general municipal law.

b. Persons required to file a financial disclosure report. The following persons shall file with the conflicts of interest board a report, in such form as the board shall determine, disclosing certain financial interests as hereinafter provided. Reports filed prior to January first, two thousand six may be filed electronically, in such form as the board may determine, and thereafter shall, except as otherwise provided by the board in consultation with the filer's agency, be filed electronically, in such form as the board may determine:

1. Elected and political party officials.

(a) Each elected officer described in sections four, twenty-four, twenty-five, eighty-one, ninety-one and eleven hundred twenty-five of the New York city charter, and each local political party official described in paragraph six of subdivision a of this section, shall file such report not later than May first of each year.

(b) A local political party official required to file a report pursuant to subparagraph (a) of this paragraph who is also subject to the financial disclosure filing requirements of subdivision two of section seventy-three-a of the public officers law may satisfy the requirements of paragraph one by filing with the conflicts of interest board a copy of the statement filed pursuant to section seventy-three-a of the public officers law, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by paragraph one of this subdivision.

2. Candidates for public office.

(a) Each person, other than any person described in paragraph one, who has declared his or her intention to seek nomination or election and who has filed papers or petitions for nomination or election, or on whose behalf a declaration or nominating paper or petition has been made or filed which has not been declined, for an office described in paragraph one of subdivision b of this section shall file such report on or before the last day for filing his designating petitions pursuant to the election law.

(b) Each person, other than any person described in paragraph one, who was a write-in candidate at the primary election for an office described in paragraph one of subdivision b of this section and whose name is thereafter entered in the nomination book at the board of elections, shall file such report within twenty days after such primary election.

(c) Each person, other than any person described in paragraph one, who has been designated to fill a vacancy in a designation or nomination for an office described in paragraph one of subdivision b of this section shall file such report within fifteen days after a certificate designating such person to fill such vacancy is filed with the board of elections, or within five days before the election for which the certificate is filed, whichever is earlier.

(d) The conflicts of interest board shall obtain from the board of elections lists of all candidates for the elected positions set forth below, and from such lists, shall determine and publish lists of those candidates who have not, within ten days after the required date for filing such reports, filed the reports required by this section.

3. (a) The following categories of persons who had such status during the preceding calendar year or up until the date of filing their financial disclosure report shall be required to file a report not later than May first of each year:

(1) Each agency head, deputy agency head, assistant agency head, member of any board or commission, other than a member of a board or a commission who serves without compensation, provided, however, that a member of the

New York city housing development corporation shall be deemed to be a compensated member of such corporation for purposes of this section;

(2) Each employee of the mayor's office, the city council, a district attorney's office, the office of the special narcotics prosecutor, or any other agency that does not employ M-level mayor's management plan indicators for its managers, whose responsibilities on April thirtieth of each year involve the independent exercise of managerial or policymaking functions, as annually determined by the appointing authority of his or her agency, subject to review by the conflicts of interest board;

(3) Each city employee, other than an employee of the mayor's office, the city council, a district attorney's office or the special narcotics prosecutor's office, who, on April thirtieth of each year, is paid in accordance with the mayor's management pay plan at level M4 or higher, or who holds a policymaking position on such date, as defined by rule of the conflicts of interest board and as annually determined by the head of his or her agency, subject to review by the conflicts of interest board;

(4) Each employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or her agency head or employer, subject to review by the conflicts of interest board.

(5) Each assessor required to file a report solely by reason of section three hundred thirty-six of the real property tax law, provided, however, that the report filed by any such assessor shall be the report prescribed by such section of the real property tax law;

(6) Any other person required by New York law to file a financial disclosure report with the conflicts of interest board.

(b) Separation from service.

(1) Each person described in this paragraph shall, following separation from service, file such report for the portion of the last calendar year in which he or she served in his or her position within sixty days of his or her separation from service or on the May first next succeeding, whichever is earlier, if such person met the criteria of this subparagraph on his or her last day of service. Each such person who leaves service prior to May first shall also file a report for the previous calendar year within sixty days of his or her separation from service or on the May first next succeeding, whichever is earlier.

(2) Each person who is terminating or separating from service shall not receive his or her final paycheck, and/or any lump sum payment to which he or she may be entitled, until such person has complied with the requirements of this section.

(3) Each elected officer and each local political party official described in paragraph six of subdivision a of this section shall, after leaving office, file such report for the previous calendar year, if such officer or local political party official has not previously filed such report, and shall file such report for the portion of the last calendar year in which he or she served in office, within sixty days of his or her last day in office or on the May first next succeeding, whichever is earlier.

c. Procedures involving the filing of financial disclosure reports.

1. Each agency shall file with the conflicts of interest board, prior to the date required for the filing of reports, a list of persons obligated to report pursuant to this section.

2. Each agency head shall determine, subject to review by the conflicts of interest board, which persons within

the agency occupy positions that are described in clauses three and four of subparagraph (a) of paragraph three of subdivision b of this section, and shall, prior to the date on which the filing of the report is required, inform such employees of their obligation to report. The conflicts of interest board shall promulgate rules establishing procedures whereby any employee may seek review of the agency's determination that he or she is required to report.

3. The speaker of the council, each district attorney and the special narcotics prosecutor shall determine, subject to review by the conflicts of interest board, which persons on their staff occupy positions that are described in clause two of subparagraph (a) of paragraph three of subdivision b of this section, and shall, prior to the date required for the filing of the reports, inform such employees of their obligation to report.

4. The conflicts of interest board shall promulgate rules establishing procedures whereby a person required to file an annual financial disclosure report may request an additional period of time within which to file such report, due to justifiable cause or undue hardship. Such rules shall include, but not be limited to, the establishment of a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted.

5. Any amendments and changes to a financial disclosure report made after its filing shall be made on a separate form to be provided by the conflicts of interest board and attached to the report. Said form shall contain the corresponding page and item numbers of the report, the amendment, the signature of the person making such amendment and the initials of the chair of the board or his or her designee. Amendments shall be made only by the person who originally filed such report.

d. Information to be reported. The report shall contain the following information:

1. List the name of the person reporting; his or her title or position; the entity by which he or she is employed; his or her office address and telephone number; list the marital status of the person reporting, and if married, list the spouse's full name including maiden name where applicable; indicate whether the person is a member of a domestic partnership, and if so, list the partner's full name; list the names of all unemancipated children. For purposes of this section, the term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of the person reporting, and shall also include any son or daughter of the spouse or domestic partner of such person who is under age eighteen, unmarried and living in the household of the person.

2. List any office, trusteeship, directorship, partnership, or position of any nature including honorary positions, whether compensated or not, held by the person reporting or his or her spouse or domestic partner or unemancipated child with any firm, corporation, association, partnership, or other organization other than the state of New York. Do not list membership positions. If the listed entity was licensed or regulated by any state or local agency, or engaged in business dealings with, or had matters other than ministerial matters before, any state or local agency, list the name of such agency.

3. (a) List the name, address and description of any occupation, trade, business, profession or employment, other than the employment listed pursuant to paragraph one of this subdivision, engaged in by the person reporting. If such employer or business was licensed or regulated by any state or local agency, or engaged in business dealings with, or had matters other than ministerial before, and state or local agency, list the name of any such agency.

(b) If the spouse, domestic partner or unemancipated child of the person reporting was engaged in any occupation, employment, trade, business or profession which activity was licensed or regulated by any state or local agency, or engaged in business dealings with, or had matters other than ministerial matters before, any state or local agency, list the name, address and description of such occupation, employment, trade, business or profession and the name of any such agency.

4. List any positions the person reporting held as an officer of any political party or political organization, as a member of any political party committee, or as a political party district leader.

5. If the person reporting practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the state department of education, give a general description of the principal subject areas of matters undertaken by such person. If the person reporting practices with a firm or corporation of which he or she is a partner or shareholder, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients.

6. (a) Describe the terms of, and the parties to, any agreement providing for continuation of payments or benefits to the person reporting of one thousand dollars or more from a prior employer other than the city of New York. Such description of an agreement shall include interests in or contributions to a pension fund, profit-sharing plan, life or health insurance, buy-out agreements or severance payments, etc.

(b) Describe the terms of, and the parties to, any contract, promise or agreement between the person reporting and any person, firm or corporation with respect to the employment of such reporting person after leaving his or her office or position, other than a leave of absence.

7. List the nature and amount of any income of one thousand dollars or more from each source derived during the preceding calendar year, to the person reporting or his or her spouse or domestic partner. For purposes of this paragraph, "income" shall include, but not be limited to, salary for government employment, income from other compensated employment whether public or private, directorships and other fiduciary or advisory positions, contractual arrangements, teaching income, partnership income, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

8. List the source of each of the following items received or accrued during the preceding calendar year by the person reporting:

(a) Any deferred income to be paid following the close of the calendar year for which this disclosure statement is filed, other than any source of income otherwise disclosed pursuant to subparagraph (a) of paragraph nine of this subdivision, of one thousand dollars or more from each source. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall be identified as to the source, including the name of the firm, corporation, partnership or association through which the income was derived, but shall not include individual clients' identities.

(b) Reimbursement to the person reporting or his or her spouse or domestic partner, for expenditures, excluding campaign expenditures and expenditures in connection with official duties reimbursed by the city, of one thousand dollars or more in each instance. For purposes of this subparagraph, the term "reimbursements" shall mean any travel-related expenses provided by non-governmental sources, whether directly or as repayment, for activities related to the reporting person's official duties, such as speaking engagements, conferences, or fact-finding events, but shall not include gifts reported pursuant to subparagraph (d) of this paragraph.

(c) Honoraria received by the person reporting or his or her spouse or domestic partner from a single source in the aggregate amount of one thousand dollars or more.

(d) Any gift, its value and nature, in the aggregate amount or value of one thousand dollars or more from any single source received by the person reporting, his or her spouse or domestic partner or unemancipated child, during the preceding calendar year, excluding gifts from a relative, except as otherwise provided under the election law covering campaign contributions. For purposes of this subparagraph, the term "gift" shall not include reimbursements, as defined

in subparagraph (b) of this paragraph.

9. (a) List the identity and value, if reasonably ascertainable, of each interest in a trust, estate or beneficial interest held by the person reporting or his or her spouse or domestic partner, including but not limited to (1) retirement plans (other than retirement plans of the state of New York or city of New York) and (2) deferred compensation plans established in accordance with the internal revenue code, where the person reporting or his or her spouse or domestic partner held a beneficial interest of one thousand dollars or more during the preceding calendar year. Do not report interests in an estate of a relative or interests in a trust or other beneficial interest established by or for a relative or by or for the estate of a relative.

(b) List each assignment of income of one thousand dollars or more, and each transfer other than to a relative during the preceding calendar year for less than fair consideration of an interest of one thousand dollars or more, in a trust, estate, or other beneficial interest, securities or real property, by the person reporting, which would otherwise be required to be reported herein and is not or has not been reported.

10. List any interest of one thousand dollars or more, excluding bonds and notes, held by the person reporting, his or her spouse or domestic partner or the reporting person's unemancipated child, or partnership of which any such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled by any such person, whether vested or contingent, in any contract made or executed by a state or local agency. Include the name of the entity which holds such interest and the relationship of the person reporting, or his or her spouse or domestic partner or unemancipated child, to such entity and the interest in such contract. Do not list any interest in any such contract on which final payment has been made and all obligations under the contract, except for guarantees and warranties, have been performed, provided, however, that such an interest shall be listed if there has been an ongoing dispute during the calendar year for which this statement is filed with respect to any such guarantees or warranties. Do not list any interest in a contract made or executed by a state agency after public notice and pursuant to a process for competitive bidding or a process for competitive requests for proposals.

11. List the name, principal address and general description or the nature of the business activity of any entity in which the person reporting or his or her spouse or domestic partner had an investment of one thousand dollars or more, excluding investments in securities and interests in real property.

12. List the type and market value of securities held by the person reporting or his or her spouse or domestic partner from each issuing entity, valued at one thousand dollars or more at the close of the preceding calendar year, including the name of the issuing entity, exclusive of securities held by the person reporting issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed only if the person reporting has knowledge thereof, except where the person reporting or his or her spouse or domestic partner has transferred assets to such trust for his or her benefit; in that event the securities shall be listed unless they are not ascertainable by the person reporting because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to the person reporting. Securities of which the person reporting or his or her spouse or domestic partner is the owner of record but in which he or she has no beneficial interest shall not be listed. Where the person or his or her spouse or domestic partner holds more than five per centum of the stock of a publicly held corporation or more than ten per centum of a privately held corporation, percentage of ownership shall be listed. List any securities owned for investment purposes by a corporation more than fifty per centum of the stock of which is owned or controlled by the person reporting or his or her spouse or domestic partner. For pusposes of this paragraph the term "securities" shall mean bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and certificates of deposits and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in paragraph five of this subdivision or if the security is corporate stock, not publicly traded, in a trade or business of the reporting person or his or her spouse or domestic partner.

13. List the location, size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest of one thousand dollars or more was held by the person reporting or his or her spouse or domestic partner during the preceding calendar year. List real property owned for investment purposes by a corporation more than fifty per centum of the stock of which is owned or controlled by the person reporting or his or her spouse or domestic partner. Do not list any real property which is the primary or secondary personal residence of the reporting person or his or her spouse or domestic partner, except where there is a co-owner who is other than a relative.

14. List the identity of each note or account receivable or other outstanding loan in the amount of one thousand dollars or more held by the person reporting or his or her spouse or domestic partner during the preceding calendar year, including debts secured by a mortgage, and other secured and unsecured debts. List the name of the debtor, type of obligation, date due and the nature of the collateral, if any, securing payment for each such debt. Debts, notes and accounts receivable owed to the person reporting or his or her spouse or domestic partner by a relative shall not be reported.

15. List each creditor to whom the person reporting or his or her spouse or domestic partner was indebted, for a period of ninety consecutive days or more during the preceding calendar year, and each such creditor to whom any debt was owed on the date of filing, in an amount of five thousand dollars or more. Debts to be listed include real estate mortgages and other secured and unsecured loans. If any reportable liability has been guaranteed by any third person, list the name of such guarantor. Do not list liabilities incurred by, or guarantees made by, the person reporting or his or her spouse or domestic partner or by any proprietorship, partnership or corporation in which such person has an interest, when incurred or made in the ordinary course of trade, business or professional practice of such person. Include the name of the creditor and any collateral pledged by such individual to secure payment of any such liability. Do not list any liability to a relative or any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Revolving charge account information shall only be set forth if the liability thereon is in excess of five thousand dollars for a period of ninety consecutive days or more during the preceding calendar year, or if the liability thereon is in excess of five thousand dollars as of the time of filing. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded.

16. Whenever a "value" or "amount" is required to be reported pursuant to this section, such value or amount shall be reported as being within one of the following categories: (a) at least one thousand dollars but less than five thousand dollars; (b) at least five thousand dollars but less than thirty-two thousand dollars, or such other amount as the conflicts of interest board shall set pursuant to subdivision sixteen of section twenty-six hundred one and subdivision a of section twenty-six hundred three of the charter; (c) at least thirty-two thousand dollars, or such other amount as the conflicts of interest board shall set pursuant to subdivision sixteen of section twenty-six hunddred one and subdivision a of section twenty-six hundred three of the charter, but less than sixty thousand dollars; (d) at least sixty thousand dollars but less than one hundred thousand dollars; (e) at least one hundred thousand dollars but less than two hundred fifty thousand dollars; (f) at least two hundred fifty thousand dollars but less than five hundred thousand dollars; and (g) five hundred thousand dollars or more.

e. Public inspection of reports and privacy considerations. Information filed in reports required by this section shall be maintained by the conflicts of interest board and shall be made available for public inspection, upon written request on such form as the board shall prescribe, subject to the following provisions:

1. Privacy, safety and security requests.

(a) Any person required to file a report pursuant to this section may, at the time the report is filed or at any time thereafter, except when a request for inspection is pending, submit a request to the conflicts of interest board, in such form as the board shall require, to withhold any item disclosed therein from public inspection on the ground that the

inspection of such item by the public would constitute an unwarranted invasion of his or her privacy or a risk to the safety or security of any person. Such request shall be in writing and shall be in such form as the conflicts of interest board shall prescribe and shall set forth the reason such person believes the item should not be disclosed.

(b) The conflicts of interest board shall evaluate such request and any such item shall be withheld from public inspection upon a finding by the board that the inspection of such item by the public would constitute an unwarranted invasion of privacy or a risk to the safety or security of any person. In making this determination, the board shall consider the following factors:

(1) whether the item is of a highly personal nature;

(2) whether the item in any way relates to the duties of the positions held by such person, including whether there are security or safety issues relating to such duties;

(3) whether the disclosure poses a risk to the security or safety of the reporting person or any other individual;

(4) whether the item involves an actual or potential conflict of interest.

(c) The conflicts of interest board shall provide a written notification of the board's determination to the person who requested that information be withheld from public inspection and shall not release the information subject to the request until at least ten days after mailing of the notification. Such notification shall advise the person of his or her right to seek review of such determination by the supreme court of the state of New York and that the conflicts of interest board will not release the information subject to the request until ten days after the mailing of the notification.

(d) Any information regarding any financial interests of the spouse, domestic partner or an unemancipated child of a person filing in which the person filing has no financial interest shall be withheld from public inspection as an unwarranted invasion of privacy unless the conflicts of interest board determines that such information involves an actual or potential conflict of interest on the part of the person filing, subject to the factors set forth in subparagraph (b) of paragraph one of this subdivision.

(e) Whether or not a person required to file a report pursuant to this section has submitted a request for privacy, the conflicts of interest board may upon its own initiative grant privacy as to any information contained in such person's report upon a finding by the board that the release of such information would constitute a risk to the safety or security of any person.

(f) Where a person required to file a report pursuant to this section files an amendment to a previously submitted report, both the original submission and the amendment shall be available for public inspection, subject to the provisions of this subdivision.

(g) The conflicts of interest board shall establish procedures governing the withholding of information on the ground of privacy. Such procedures shall include provision for the person who filed the information to appear in person to set forth, or submit a written statement setting forth, the reasons why the information should be withheld from public inspection.

2. Requests to examine reports. Whenever pursuant to this section the conflicts of interest board produces a report for public inspection, the board shall notify the person who filed the report of the production and of the identity of the person to whom such report was produced, except that no such notification shall be required if the request to examine the report is made by the department of investigation or any governmental unit, or component thereof, which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that such report is requested solely for a law enforcement function. Nothing in this section shall preclude the conflicts of interest board from disclosing any and all information in a financial disclosure report to the department of investigation or any other governmental unit, or component thereof, which performs as one of its principal functions any activity pertaining

to the enforcement of criminal laws, provided that such report is requested solely for a law enforcement function.

f. Retention of reports. Reports filed pursuant to this section shall be retained by the conflicts of interest board for a period of two years following the termination of the public employment of the person who filed the report. In the case of candidates for office who have filed reports pursuant to this section and who were not elected, the reports shall be retained by the board for a period of two years following the day of an election on which the candidates were defeated. Notwithstanding the foregoing, the board, in consultation with the department of records and information services and the department of investigation, may establish by rule a different period or periods of retention of financial disclosure reports which takes into account the need for efficient records management and the need to retain such reports for a reasonable period for investigatory and other purposes. Such reports shall thereafter be destroyed by the board unless a request for public disclosure of an item contained in such report is pending. In lieu of the destruction of such reports, the board, in its discretion, may establish procedures providing for their return to the persons who filed them.

g. Penalties.

1. Any person required to file a report pursuant to this section who has not so filed at the end of one week after the date required for filing shall be subject to a fine of not less than two hundred fifty dollars or more than ten thousand dollars. Factors to be considered by the conflicts of interest board in determining the amount of the fine shall include but not be limited to the person's failure in prior years to file a report in a timely manner, and the length of the delay in filing. In addition, two weeks after the date required for filing, the conflicts of interest board shall inform the appropriate agency and the commissioner of investigation of the failure to file of any such person.

2. Any intentional violation of the provisions of this section, including but not limited to failure to file, failure to include assets or liabilities, and misstatement of assets or liabilities, shall constitute a misdemeanor punishable by imprisonment for not more than one year or by a fine not to exceed one thousand dollars, or by both, and shall constitute grounds for imposition of disciplinary penalties, including removal from office in the manner provided by law. In addition, any intentional violation of the provisions of this section may subject the person reporting to assessment by the conflicts of interest board of a civil penalty in an amount not to exceed ten thousand dollars.

3. Any intentional and willful disclosure of confidential information that is contained in a report filed in accordance with this section, by a city officer or employee or by any other person who has obtained access to such a report or confidential information contained therein, shall constitute a misdemeanor punishable by imprisonment for not more than one year or a fine not to exceed one thousand dollars, or by both, and shall constitute grounds for imposition of disciplinary penalties, including removal from office in the manner provided by law.

4. The conflicts of interest board shall establish procedures governing the receipt of complaints alleging a violation of this section.

HISTORICAL NOTE

Section repealed and added L.L. 43/2003 § 1, eff. Jan. 1, 2004 and shall

apply to reports of annual disclosure filed for the calendar year 2003

except as otherwise provided herein.

Subd. a par 2 amended L.L. 14/2006 § 1, eff. June 13, 2006 and shall

apply to reports of annual disclosure required to be filed for the calendar

year 2005.

Subd. a par 9 amended L.L. 14/2006 § 2, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. b par 3 amended L.L. 14/2006 § 3, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 1 amended L.L. 14/2006 § 4, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 3 subpar (a) amended L.L. 14/2006 § 5, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 8 subpar (b) amended L.L. 14/2006 § 6, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 8 subpar (d) amended L.L. 14/2006 § 7, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 9 subpar (a) amended L.L. 14/2006 § 8, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 9 subpar (b) amended L.L. 14/2006 § 9, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 13 amended L.L. 14/2006 § 10, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 14 amended L.L. 14/2006 § 11, eff. June 13, 2006 and shall

apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. d par 15 amended L.L. 14/2006 § 12, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. e open par amended L.L. 14/2006 § 13, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. e par 1 subpar (c) added L.L. 14/2006 § 14, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. e par 1 subpar (d) renumbered (former subpar (c)) L.L. 14/2006 § 14, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. e par 1 subpar (e) added L.L. 14/2006 § 15, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. e par 1 subpar (f) added L.L. 14/2006 § 15, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Subd. e par 1 subpar (g) relettered (former subpar (d)) L.L. 14/2006 § 15, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

Sub. e par 2 amended L.L. 14/2006 § 16, eff. June 13, 2006 and shall apply to reports of annual disclosure required to be filed for the calendar year 2005.

HISTORICAL NOTE FOR FORMER § 12-110

Section added chap 907/1985 § 1

Subd. a open par amended L.L. 9/1990 § 1 eff. April 19, 1990

Subd. a par 1 amended L.L. 84/1990 § 1, eff. Dec. 31, 1990

Subd. a par 1 amended L.L. 16/1986 § 1

Subd. a par 2 amended L.L. 16/1986 § 2

Subd. a par 3 subpar (a) amended L.L. 5/2002 § 1, eff. May 1, 2002.

Subd. a par 3 subpar (a) amended L.L. 16/2000 § 1, eff. Apr. 6, 2000.

Subd. a par 3 subpar (a) amended L.L. 13/1999 § 1, eff. Apr. 29, 1999.

Subd. a par 3 subpar (a) amended L.L. 19/1998 § 1, eff. Apr. 27, 1998.

Subd. a par 3 subpar (a) amended L.L. 28/1995 § 1, eff. Apr. 10, 1995.

Subd. a par 3 subpar (a) amended L.L. 6/1994 § 1, eff. Apr. 25, 1994

Subd. a par 3 subpar (a) amended L.L. 25/1993 § 1 eff. Mar. 25, 1993

Subd. a par 3 subpar (a) amended L.L. 9/1990 § 2 eff. April 19, 1990

Subd. a par 3 subpar (a) amended L.L. 18/1987 § 1, amended L.L. 16/1986 § 3

Subd. a par 3 subpars (c), (d), (e) added L.L. 84/1990 § 2, eff. Dec. 31, 1990

Subd. a par 4 amended L.L. 9/1990 § 3 eff. April 19, 1990

Subd. a par 4 added L.L. 16/1986 § 4

Subd. b amended L.L. 84/1990 § 3, eff. Dec. 31, 1990 Amendments to Subd. b by L.L. 16/1986 §§ 5-10 and chap 688/1986 §§ 1, 2 were superseded by L.L. 84/1990 amendement

Subd. b pars 1-3 amended L.L. 27/1998 § 14, eff. Sept. 5, 1998

Subd. b pars 7-15 amended L.L. 27/1998 § 14, eff. Sept. 5, 1998

Subd. c amended L.L. 9/1990 § 4 eff. April 19, 1990

Subd. d amended L.L. 84/1990 § 4, eff. Dec. 31, 1990

Subd. d amended L.L. 9/1990 § 5 eff. April 19, 1990

Subd. d par 1 amended L.L. 16/1986 § 11

Subd. d par 2 amended L.L. 16/1986 § 11

Subd. d par 2 subpar (b) amended L.L. 27/1998 § 15, eff. Sept. 5, 1998

Subd. e amended L.L. 93/1992 § 1 eff. Dec. 7, 1992

Subd. e amended L.L. 9/1990 § 6 eff April 19, 1990

Subd. f amended L.L. 9/1990 § 6 eff. April 19, 1990

Subd. g amended L.L. 9/1990 § 7 eff. April 19, 1990

Subd. g added L.L. 16/1986 § 12

Subd. h amended L.L. 84/1990 § 5, eff. Dec. 31, 1990, so designated and

amended L.L. 16/1986 § 12 (formerly subd. g)

DERIVATION

Formerly § 1106-5.0 added LL 1/1975 § 1

Sub a pars 1, 3 amended LL 48/1979 § 1

Sub c amended LL 48/1979 § 2

Subs g, h relettered LL 48/1979 § 3

(formerly subs d, e)

Subs d, e, f added LL 48/1979 § 3

(Special provision, reports destroyed, LL 48/1979 § 4)

Sub a par 3 amended LL 27/1984 § 1

(Special provision, reports returned, LL 27/1984 § 2)

Sub a par 3 amended LL 29/1984 § 1

Amended LL 16/1986 § 13

(Special provision, reports, LL 16/1986 § 14)

CASE NOTES FROM FORMER SECTION

¶ 1. This section which requires city employees and their spouses whose base pay is more than $25,000 a year to disclose personal financial information is not unconstitutional as an invasion of privacy and classification of employees earning more than $25,000 a year as managerial or policymaking in nature is not an arbitrary one.-Hunter v. City of N.Y., 88 Misc. 2d 562 [1976].

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Administrative Code of the City of New York

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NYC Administrative Code 12-111

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-111 Contracts awarded in absence of appropriation.

a. It shall be unlawful for any agency to incur any expense unless an appropriation shall have been previously made covering such expense.

b. Bids for any contract may be made and opened without an appropriation therefor, but such contract shall be awarded only after a sufficient appropriation therefor is secured. But any contract for the purchase of fuels, printing, stationery, books and other supplies required for daily or continuous use or for supplies, materials and equipment needed for use immediately after the beginning of the next succeeding fiscal year, may be awarded before any appropriation is made, provided that such contract shall not be for a longer period than one year.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1111-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 617

(formerly § 891-1.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Failure of City Board of Education to award simultaneously all contracts for construction of school building for which it had advertised for bids, or to advise plaintiffs, who were the successful bidders for the electrical contract, of inability to grant the same until additional funds were available, would not support a claim of fraud and deceit, as no contract can be let in the absence of a specific appropriation sufficient to pay the estimated expense, and furthermore the instructions to bidders gave notice to the plaintiffs that defendant reserved the right to reject any and all bids. Also, the delay in construction was occasioned by the general contractor's inability to obtain a delivery of the necessary steel as scheduled, and not by defendant's failure to award the plumbing and heating contract simultaneously with the contract to the plaintiffs and the general contractor.-Bank v. Board of Education, 280 App. Div. 58, 111 N.Y.S. 2d 130 [1952].

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Administrative Code of the City of New York

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NYC Administrative Code 12-112

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-112 Council; violations of law by members of.

Any member of the council, who shall vote for any appropriation unauthorized by law or in excess of the amount authorized by law, or for any illegal or injurious disposition of corporate property or rights, shall be guilty of a misdemeanor and liable to the punishment and penalties prescribed therefor; and every member voting in favor thereof shall be individually liable to refund the amounts to the city at the suit of any citizen and taxpayer.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1116-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 619

(formerly § 896-1.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-113

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-113 Protection of sources of information.

a. Definitions. For purposes of this section:

1. "Adverse personnel action" shall include dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

2. "Remedial action" means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:

(a) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;

(b) reinstatement of full seniority rights;

(c) payment of lost compensation; and

(d) other measures necessary to address the effects of the adverse personnel action.

3. "Commissioner" shall mean the commissioner of investigation.

4. "Child" shall mean any person under the age of nineteen, or any person ages nineteen through twenty-one if

such person receives instruction pursuant to an individualized education plan.

5. "Educational welfare" shall mean any aspect of a child's education or educational environment that significantly impacts upon such child's ability to receive appropriate instruction, as mandated by any relevant law, rule, regulation or sound educational practice.

6. "Superior officer" shall mean an agency head, deputy agency head or other person designated by the head of the agency to receive a report pursuant to this section, who is employed in the agency in which the conduct described in such report occurred.

b. 1. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the commissioner, or (ii) to a council member, the public advocate or the comptroller, who shall refer such report to the commissioner. For purposes of this subdivision, an agency of the city shall be deemed to include, but not be limited to, an agency the head or members of which are appointed by one or more city officers, and the offices of elected city officers.

2. Upon request, the commissioner, council member, public advocate or comptroller receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.

3. No officer or employee of an agency of the city shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to present a substantial and specific risk of harm to the health, safety or educational welfare of a child by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the commissioner, (ii) to a council member, the public advocate, the comptroller or the mayor, or (iii) to any superior officer.

c. An officer or employee (i) of an agency of the city, or (ii) of a public agency or public entity subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter who believes that another officer or employee has taken an adverse personnel action in violation of subdivision b of this section may report such action to the commissioner.

d. 1. Upon receipt of a report made pursuant to subdivision c of this section, the commissioner shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

2. Within fifteen days after receipt of an allegation of a prohibited adverse personnel action, the commissioner shall provide written notice to the officer or employee making the allegation that the allegation has been received by the commissioner. Such notice shall include the name of the person in the department of investigation who shall serve as a contact with the officer or employee making the allegation.

3. Upon the completion of an investigation initiated under this section, the commissioner shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the commissioner's recommendations, if any, for remedial action, or shall state the commissioner has determined to dismiss the complaint and terminate the investigation.

e. Upon a determination that a retaliatory adverse personnel action has been taken, the commissioner shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who (i) shall determine whether to take remedial action and (ii) shall report such determination to the commissioner in writing. Upon a determination that the agency or entity head has failed to take appropriate remedial

action, the commissioner shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action. If such action is not taken, the commissioner shall report his or her findings and the response of the agency or entity head (i) if the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor, (ii) if the complainant was employed by a non-mayoral agency of the city, to the city officer or officers who appointed the agency head, or (iii) if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate.

f. Nothing in this section shall be construed to limit the rights of any officer or employee with regard to any administrative procedure or judicial review, nor shall anything in this section be construed to diminish or impair the rights of a public employee or employer under any law, rule, regulation or collective bargaining agreement or to prohibit any personnel action which otherwise would have been taken regardless of any report of information made pursuant to this section.

g. Violation of this section may constitute cause for administrative penalties.

h. The commissioner shall conduct ongoing public education efforts as necessary to inform employees and officers of covered agencies of their rights and responsibilities under this section.

i. Not later than October thirty-first of each year, the commissioner shall prepare and forward to the mayor and the council a report on the complaints governed by this section during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.

HISTORICAL NOTE

Section amended L.L. 10/2003 § 1, eff. Feb. 18, 2003.

Section added chap 907/1985 § 1

Subd. a par 4 added L.L. 25/2007 § 1, eff. June 6, 2007.

Subd. a par 5 added L.L. 25/2007 § 1. eff. June 6, 2007.

Subd. a par 6 added L.L. 25/2007 § 1, eff. June 6, 2007.

Subd. b amended (as subd. a) L.L. 68/1993 § 29, eff. Jan. 1, 1994.

Subd. b par 3 added L.L. 25/2007 § 2, eff. June 6, 2007.

Subd. f amended L.L. 25/2007 § 3, eff. June 6, 2007.

DERIVATION

Formerly § 803-2.0 added LL 10/1984 § 2

(Legislative findings, whistleblowers critical role LL 10/1984 § 1)

CASE NOTES

¶ 1. No private right of action exists under the statute. Instead, the section provides a procedure under which an aggrieved employee can bring a complaint to the Commissioner of Investigations; that procedure must be used instead

of an action in court. Healy v. City of New York, 2006 WL 3457702 (U.S.Dist.Ct. S.D.N.Y.).

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-114

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-114 Fees paid to city.

a. Every officer of the city government shall be paid a fixed salary and all fees, percentages or commissions or other money paid to such officer in his or her official capacity, shall be the property of the city. All sums so received, including sums received for licenses or permits, shall be paid over not later than the next succeeding business day after receipt thereof, except as otherwise provided by law, to the commissioner of finance without deduction.

b. Each such officer who shall receive any fees, perquisites, commissions or percentages, or money paid to such officer in his or her official capacity, or any other money which should be paid over to the city, shall make a detailed return to the comptroller, under oath, and in such form as the comptroller shall prescribe, showing the amount of all such fees, commissions, percentages, perquisites and money received by him or her since the last preceding statement and return, and showing when, from whom and for what reason such money was received.

c. The comptroller may require any such officer to make such statement and return to him or her, if it has not been made as herein provided, and he or she shall order the commissioner of finance to withhold the salary of such officers until such return is produced, and upon the production of said return the comptroller shall immediately issue a release to the commissioner of finance for the salary so withheld.

d. This section shall not apply to city marshals.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1121-1.0 added chap 929/1937 § 1

Amended LL 62/1957 § 1

Renumbered chap 100/1963 § 623

(formerly § 901-1.0)

Subs a, c amended chap 100/1963 § 623

Sub a amended LL 87/1965 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. Where the City was not a party to the action in which a jury fee was paid to the clerk of the City Court, and upon transfer to the Supreme Court another fee had been paid, both of which fees under Administrative Code § 901-1.0 thereupon became the property of the City in absence of allegation of notice of claim, etc., as required under § 394a-1.0, petitioner **held** not entitled to bring a proceeding against the City for return of the second fee.-In re William Sherman, Inc. (McGoldrick), 104 (92) N.Y.L.J. (10-18-40) 1142, Col. 3 M.

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NYC Administrative Code 12-115

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-115 Civil rights protected.

Nothing in the code contained shall affect any rights given or secured by section fifteen of the civil rights law.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1124-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 624

(formerly § 904-1.0)

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NYC Administrative Code 12-116

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-116 Certificates of appointment.

Every person who shall be appointed or elected to any office in any agency shall receive a certificate of appointment, designating the term for which such person has been appointed or elected.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-1.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 625

(formerly § B40-1.0)

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NYC Administrative Code 12-117

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-117 Official oath.

Every person elected or appointed to any office in any agency of the city, shall within five days after notice of such election or appointment, take and subscribe, before the mayor, any judge of a court of record, the appointing officer or the city clerk, an oath or affirmation faithfully to perform the duties of his or her office. Such oath or affirmation shall be filed in the office of the city clerk.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-2.0 added chap 929/1937 § 1

Amended LL 4/1946 § 1

Renumbered chap 100/1963 § 626

(formerly § B40-2.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-118

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-118 Appropriations for contesting office to be made for prevailing party only.

An appropriation or payment for the contesting of the office of mayor or any seat in the council or office in any department, or the office of any officer whose salary is paid from the city treasury, shall be made only to the prevailing party. Such appropriations or payment shall be made to the prevailing party only upon the written certificate of the corporation counsel and of the presiding justice of the appellate division of the first department of the supreme court, certifying who is the prevailing party, and the value of the services rendered in the case.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-3.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 627

(formerly § B40-3.0)

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NYC Administrative Code 12-119

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-119 Definitions.

As used in sections 12-120 and 12-121 of this subchapter:

a. The word "residence" means domicile and the word "resident" means domiciliary.

b. The term "city service" means service as an employee of the city or of any agency thereof other than service in a position which is exempted from municipal residence requirements pursuant to the public officers law or any other state law.

HISTORICAL NOTE

Section repealed and added L.L. 40/1986 § 2

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-4.0 added LL 20/1978 § 2

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***** Current through December 2009 ****

NYC Administrative Code 12-120

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-120 Residency requirements.

a. Except as otherwise provided in section 12-121, any person who enters city service on or after September first nineteen hundred eighty-six (i) shall be a resident of the city on the date that he or she enters city service or shall establish city residence within ninety days after such date and (ii) shall thereafter maintain city residence as a condition of employment. Failure to establish or maintain city residence as required by this section shall constitute a forfeiture of employment; provided, however, that prior to dismissal for failure to establish or maintain city residence an employee shall be given notice of and the opportunity to contest the charge that his or her residence is outside the city.

b. Notwithstanding subdivision a of this section, employees who have completed two years of city employment and are either (i) in titles certified to a collective bargaining representative that has entered into an agreement with the city dated September 29, 2006 to modify the residency requirements contained herein or (ii) represented by or affiliated with said representative and hold titles covered by Section 220 of the New York State Labor Law which subsequently enter into collective bargaining agreements or consent determinations to modify the residency requirements, shall be deemed to be in compliance with the residency requirements of this section if they are residents of Nassau, Westchester, Suffolk, Orange, Rockland or Putnam county.

HISTORICAL NOTE

Section amended L.L. 10/2009 § 1, eff. Feb. 11, 2009. [See Note 1]

Section repealed and added L.L. 40/1986 § 2

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-4.1 added LL 20/1978 § 2

(Legislative findings LL 20/1978 § 1)

(Special provisions, pending lawsuits, LL 40/1978)

(LL 40/1978 repealed LL 40/1986 § 1)

NOTE

1. Provisions of L.L. 10/2009:

§ 3. The amendments to the administrative code enacted by this local law shall not be construed to affect administrative or judicial actions taken to enforce the residency requirements in effect prior to the effective date of this local law, or to supersede, alter or affect any provision of the public officers law requiring that a person appointed to a position in city service be a resident. In addition, such amendments shall not be construed to require the termination of any certification issued by the commissioner of citywide administrative services pursuant to subdivision a of § 12-121 of such code, as such subdivision was in effect prior to the effective date of this local law, or to require the recertification of any positions so certified prior to such effective date.

CASE NOTES FROM FORMER SECTION

¶ 1. In view of rules of Temporary Emergency Relief Administration, under which the New York City Emergency Relief Bureau functioned, that residence should not be a condition of employment, employees who had been selected for discharge because of nonresidence in City **held** entitled to injunction to restrain dismissal.-Cromer et al., etc., v. City of N.Y. et al., 97 (47) N.Y.L.J. (2-27-37) 1005, Col. 3 M.

¶ 2. Where, in answer to complaint of New York City teacher who sought an injunction pendente lite and a declaratory judgment that Local Law No. 40 of 1937 (the Residence Law) was inapplicable to City teachers, Corporation Counsel as legal representative of both the City and the City Board of Education, filed an affidavit stating agreement of defendants with plaintiff on the inapplicability of the law, both the injunction and the declaratory judgment were denied. Denial of injunction was on ground that there was no threat of injury to plaintiff. Declaratory judgment was denied, notwithstanding importance of public question involved and possibility that subsequent City officers might take a different position, on ground that no issue having yet arisen and a motion for judgment on the pleadings still being impossible as time to answer had not yet expired, action was merely one for an advisory opinion.-Eriksen v. City of N.Y., 167 Misc. 42, 2 N.Y.S. 2d 280 [1937].

¶ 3. Local Law No. 40 of 1937, requiring New York City employees to reside within the City, **would seem** not to apply to members of the teaching and supervisory staff of the City Board of Education, in view of the state policy to separate public education from all other municipal functions, provisions of Education Law § 872 fixing the statutory policy of the state with reference to protection of members of teaching and supervising staff in their tenure rights, and restrictions in Home Rule Law § 21 preventing a city from adopting a local law superseding a statute affecting the educational system in the city.-Id.

¶ 4. Local Law No. 40 of 1937, requiring New York City employees to reside within the City, **held** not applicable to members of the teaching and supervising staff of the Board of Education, since in delegation of function of education, the state Legislature delegated the local power not to the corporation of the City of New York, but to the Board of Education, and while the City is custodian of the funds for educational purposes, the Board of Education has

the power to administer such funds and to control members of the teaching and supervising staff without interference by the City authorities.-Id.

¶ 5. Orders of Municipal Civil Service Commission denying certification and appointment of petitioners as patrolman and fireman, respectively, because of the residence requirements of Administrative § B40-4.0, were affirmed without opinion.-Mullins v. Kern, 255 App. Div. 969, 8 N.Y.S. 2d 466 [1938], aff'd 280 N.Y. 543, 20 N.E. 2d 10 [1939].

¶ 6. Section held invalid as in conflict with Public Officers Law §§ 3 and 30 which prohibit more restrictive residency requirements.-Uniformed Firefighters Asso. v. The City of N.Y., 50 N.Y. 2d 85 [1980].

CASE NOTES

¶ 1. In one case, the City began to suspect that petitioner, a permanent civil service employee who had been employed by the City for nine years, was living in Nassau County, in contravention to the City residency requirement. He was asked to appear at a meeting, and to bring with him documents, including federal and state tax returns, in support of his claim that he resided in the City. At the meeting, the only documentation he presented was a driver's license reflecting a New York City address that was no longer current. He was given an opportunity to attend a second meeting, at which he was to present further proof. At the second meeting, he presented a voter registration card and vehicle registration card reflecting what he claimed was his address in Queens; those documents were first created between the first and second meetings, after he was already aware that his residency was being challenged. The only tax return he produced at the second meeting reflected an address in Nassau County. At that point, the City terminated petitioner's employment by reason of non-City residency. In the subsequent Article 78 proceeding, the court held that, so long as petitioner had an opportunity to be heard and to produce documentation on the issue of residence, the City did not have to conduct a pre-termination hearing. The court explained that employees terminated for non-residence differ from those who are disciplined for misconduct; in the latter case, the employees are entitled to a pre-termination hearing under Civil Service Law §75. The rationale is that the City residency rule was enacted to encourage City workers to maintain a commitment to and involvement with the municipality that employs them, and is unrelated to job performance or misconduct. In other words, the Civil Service Law and the City residence rules had different purposes. The court also held that the respondent's determination of non-residence had a reasonable basis. The tax returns, which were crucial, showed an address outside the City, and the voter registration and vehicle registration were done after the fact in an effort to establish a City residency which did not exist before his residency was challenged. Felix v. New York City Dept. of Administrative Services, 3 N.Y.3d 498, 788 N.Y.S.2d 631, 821 N.E.2d 935 (2004).

¶ 2. OATH does not have jurisdiction to provide an evidentiary hearing before or after removal of an employee for not maintaining city residence. Gajwani v. Dep't of Design & Construction, OATH Index No. 1498/99, mem. dec. (Mar. 15, 1999).

¶ 3. In Prendergast v. City of New York, 44 A.D.3d 414, 843 N.Y.S.2d 256 (1st Dept. 2007), the court upheld a determination that an employee of the Human Resources Administration was not a bona fide resident of the City for purposes of the residency requirement. Petitioner's wife, to whom he remained married despite asserting that they had been separated for ten years, owned a home with petitioner (purchased together at the time they allegedly separated), at which he was seen spending the night on most of the occasions he was under surveillance. He was never seen residing at the Queens home. Petitioner also refused to allow the investigators to come to his Queens home to prove that he had access to that residence, which was occupied by another person. Under these circumstances, the HRA determination that petitioner did not reside at the Queens residence had a rational basis.

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NYC Administrative Code 12-121

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-121 Exceptions to residence requirements.

a. The commissioner of citywide administrative services on his or her own initiative or upon application of the head of an agency may certify that there is difficulty in the recruitment of personnel for a position and that to restrict recruitment for such position to persons who meet the residency requirements of section 12-120 based on their residence or their willingness to establish residence consistent with such requirements would not be in the public interest. Persons appointed to positions so certified by the commissioner shall not be required to establish or maintain residence consistent with the requirements of such section as a condition of employment while in service in that position. Each agency head may make application to the commissioner, in such form as the commissioner shall prescribe, for the certification of positions within the agency head's jurisdiction. The commissioner may certify such positions subject to such limitations and conditions as the commissioner may deem appropriate. Notwithstanding the foregoing provisions, positions in the city council may be so certified by the speaker of the city council. Copies of all certifications of the commissioner and the speaker shall be filed with the city clerk and shall be subject to annual review by the commissioner and speaker.

b. Residence in the city or Nassau, Westchester, Suffolk, Orange, Rockland or Putnam county shall not be required as a condition of employment for:

(1) persons appointed to the position of chaplain; or

(2) employees whose regular work site is outside the city; or

(3) employees who have performed functions at a regular work site outside the city, where the city has reduced

or terminated, or is in the process of reducing or terminating, the direct performance by city employees of such functions at such site, and the city seeks to transfer, reassign, or appoint such employees to positions located within the city. This paragraph shall apply only where the commissioner of citywide administrative services finds that it is in the public interest to waive the residence requirement for reasons including, but not limited to, facilitating the operations of the affected agency or agencies or furthering the interests of employee relations.

c. City residence shall not be required as a condition of employment for campus peace officers level I, level II and level III, as defined by subdivision twenty-seven of section 2.10 of the criminal procedure law, employed by the city university of New York before the effective date of this subdivision.

HISTORICAL NOTE

Section repealed and added L.L. 40/1986 § 2

Section added chap 907/1985 § 1

Section heading amended L.L. 10/2009 § 2, eff. Feb. 11, 2009. [See § 12-120 Note 1]

Subd. a amended L.L. 10/2009 § 2, eff. Feb. 11, 2009. [See § 12-120 Note 1]

Subd. a amended L.L. 59/1996 § 59, eff. Aug. 8, 1996

Subd. b amended L.L. 10/2009 § 2, eff. Feb. 11, 2009. [See § 12-120 Note 1]

Subd. b amended L.L. 61/1991 § 1, eff. Oct. 18, 1999.

Subd. c added chap 427/2000 § 1, eff. Sept. 20, 2000.

DERIVATION

Formerly § B49-4.2 added LL 20/1978 § 2

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-122

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-122 Temporary transfer of employees.

Whenever the mayor shall determine that there is such an accumulation of work in any agency, the performance of which work will impose upon the regular employees thereof unreasonable and unwarranted burden, the mayor, upon application by the head of such agency, and with the consent of the commissioner of citywide administrative services, may assign to it for temporary employment, employees from any other agency, with the consent of the head thereof. Such transfer shall be for a limited period to be stated in the order of the mayor and may be extended if the mayor shall so determine. Such transfer shall not in any way affect the civil service standing, continuity of service, right to pension, grade or compensation of an employee so transferred.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 60, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-5.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 629

(formerly § B40-5.0)

Amended chap 101/1963 § 1

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NYC Administrative Code 12-123

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Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-123 Authorizing leaves of absence with pay, for employees of the city to attend conventions, encampments, or parades.

The mayor is hereby empowered to authorize the head of any agency, in the mayor's discretion, to grant to an employee in any such agency, including per diem employees, a leave of absence with pay for the purpose of attending a convention, encampment or parade of any organization composed of veterans of the wars in which the United States has participated, or a convention of any firefighter's association or other organization composed of active or exempt volunteer firefighter, if such employee is a member of such organization or association, and does actually attend such convention, encampment or parade.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-9.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 632

(formerly § B40-9.0)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-124

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-124 Payment of salaries; exceptions.

The salary of every officer or employee paid out of the city treasury who is unable to devote full time to the performance of such person's regular duties by reason of his or her attendance as a delegate at a constitutional convention shall be paid, notwithstanding such person's inability to devote full time to his or her regular duties.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-9.1 added LL 6/1938 § 1

Renumbered chap 100/1963 § 633

(formerly § B40-9.1)

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-124.1

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-124.1 Electronic pay stubs.

a. The pay stub of each city employee receiving direct deposit shall be made available to such employee in electronic format which shall be printable by such employee.

b. Each such city employee shall have access to such electronic pay stub through a secure password-protected website, which can be accessed remotely from a computer terminal or kiosk with intranet and/or internet access in compliance with any local, state and federal laws, regulations and rules, including those dealing with privacy protection. Every city agency shall make reasonable accommodations to provide computer terminals and/or kiosks with intranet and/or internet access for city employees employed by such agency to access such employee's electronic pay stub and shall permit said employees to access such pay stub as an incidental use.

c. Any city employee who does not wish to receive an electronic pay stub pursuant to subdivision a of this section may request that a printed paper copy of such employee's pay stub be prepared and forwarded to such employee.

d. No later than September 1, 2008, the executive director of payroll administration, in collaboration with the commissioner of citywide administrative services, or his or her respective designee, shall establish and report to the council a plan regarding staggered implementation cycles for all city agencies to comply with the provisions of this local law by December 31, 2009. Such plan shall include, but not be limited to, a phase-in period during which city employees receive their respective pay stubs in both electronic and printed paper copy format and have the opportunity to request such pay stubs in printed paper copy format pursuant to subdivision c of this section.

e. Any obligation to prepare an electronic version of a city employee's pay stub pursuant to subdivision a of this

section shall not negate or diminish any other obligation to furnish such employee with a W-2 wage and tax statement in accordance with federal laws and regulations.

f. For the purposes of this section, the following terms shall have the following meanings:

(1) "city employee" shall include elected officials of the city of New York and employees of such officials, including employees of mayoral agencies, provided that such employee's pay is processed by the office of payroll administration; and

(2) "city agency" shall include any agency of the city of New York that employs a city employee.

HISTORICAL NOTE

Section added L.L. 31/2008 § 3, eff. July 29, 2008.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-125

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-125 Retired employees; change of options.

Notwithstanding any other law to the contrary, no beneficiary shall be permitted to change any optional selection after it has become effective, provided, however, that if:

(a) a retired member nominates the spouse of such member as the survivor beneficiary under option two or three of section 13-177 of the code, or if a retired member nominates the spouse of such member under option four of such section to receive payment of an annual benefit as a survivor; and

(b) such person so nominated ceases by causes other than death to be his or her spouse or is separated from such spouse; then the board of trustees shall have authority to permit the change of the optional benefit to the maximum benefit that is the actuarial equivalent by and with the consent of all parties.

HISTORICAL NOTE

Section amended chap 834/1987 § 1

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-9.2 added chap 899/1957 § 1

Renumbered chap 100/1963 § 634

(formerly § B40-9.2)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-126

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-126 Health insurance coverage for city employees, persons retired from city employment, and dependents of such employees and retirees.

a. Definitions. As used in this section, the following terms shall have the meaning hereinafter stated:

i. "City employee." A person: (1) who is employed by a department or agency of the city; and (2) is paid out of the city treasury; and (3) is employed under terms prescribing a work week regularly consisting of twenty or more hours during the fiscal year; and (4) is not employed by the board of education.

ii. "City retiree." A person who: (1) is receiving a retirement allowance, pension or other retirement benefit from a retirement or pension system either maintained by the city or to which the city has made contributions on behalf of such person pursuant to subdivision (g) of section 80-a of the retirement and social security law; and (2) immediately prior to such person's retirement as a member of such system, was a city employee, or was an employee of the board of education employed under terms prescribing a work week regularly consisting of twenty or more hours during the fiscal year; and (3) had at the time of retirement, at least five years of credited service as a member of such retirement or pension system, except that (A) such requirement of credited service shall not apply in cases of retirement for accident disability, and (B) the requirement of credited service for vested retirement and service retirement shall be at least ten years for a person who was not an employee of the city or the board of education on or before the effective date of the local law that added this clause.

iii. "Dependent." The spouse of a city employee or city retiree or any child of a city employee or city retiree during the period of eligibility of such child for coverage under the insurance contract applicable to such employee or retiree; provided, however, that no spouse or child of any such employee or retiree shall be deemed a dependent after

the death of such employee or retiree.

iv. "Health insurance coverage." A program of hospital-surgical-medical benefits to be provided by health and hospitalization insurance contracts entered into between the city and companies providing such health and hospitalization insurance.

b. Payment of health insurance costs. Except as otherwise provided in section 12-126.1 and section 12-126.2 of this chapter, for city employees, city retirees and their dependents:

(1) The city will pay the entire cost of health insurance coverage for city employees, city retirees, and their dependents, not to exceed one hundred percent of the full cost of H.I.P.-H.M.O. on a category basis. Where such health insurance coverage is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the Social Security Act, the city will pay the amount set forth in such act under 1839(a) as added by title XVIII of the 1965 amendment to the Social Security Act; provided that such amount shall not exceed the sum of nineteen dollars and fifty-three cents per month per individual for the period beginning January first, nineteen hundred eighty-eight and ending December thirty-first, nineteen hundred eighty-eight, and provided further however that such amount shall not exceed the sum of twenty-seven dollars and ninety cents per month per individual for the period beginning January first, nineteen hundred eighty-nine and ending December thirty-first, nineteen hundred ninety-one, and provided further that such amount shall not exceed the sum of twenty-nine dollars per month per individual for the period beginning January first, nineteen hundred ninety-two and ending December thirty-first nineteen hundred ninety-five. Provided further, that such amount shall not exceed the sum of thirty-two dollars per month per individual effective January first, nineteen hundred ninety-six. Provided further, that such amount shall not exceed the sum of thirty eight dollars and seventy cents per month effective January first, two thousand and provided further that each year thereafter, the City shall reimburse covered employees in an amount equal to one hundred percent of the Medicare Part-B premium rate applicable to that year.

(2) Health insurance coverage for surviving spouses, domestic partners and children of police officers, firefighters and certain other city employees:

(i) Where the death of a member of the uniformed forces of the police or fire departments is or was the natural and proximate result of an accident or injury sustained while in the performance of duty, the surviving spouse or domestic partner, until he or she dies, and the children under the age of nineteen years and any such child who is enrolled on a full-time basis in a program of undergraduate study in an accredited degree-granting institution of higher education until such child completes his or her educational program or reaches the age of twenty-three years, whichever comes first, shall be afforded the right to health insurance coverage, and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act, as is provided for city employees, city retirees and their dependents as set forth in paragraph one of this subdivision. Where the death of a uniformed member of the correction or sanitation departments has occurred while such employee was in active service as the natural and proximate result of an accident or injury sustained while in the performance of duty, the surviving spouse or domestic partner, until he or she dies, and the child of such employee who is under the age of nineteen years and any such child who is enrolled on a full-time basis in a program of undergraduate study in an accredited degree-granting institution of higher education until such child completes his or her educational program or reaches the age of twenty-three years, whichever comes first, shall be afforded the right to health insurance coverage, and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act, as is provided for city employees, city retirees and their dependents as set forth in paragraph one of this subdivision. Where the death of an employee of the fire department of the city of New York who was serving in a title whose duties are those of an emergency medical technician or advanced emergency medical technician (as those terms are defined in section three thousand one of the public health law), or whose duties required the direct supervision of employees whose duties are those of an emergency medical technician or advanced emergency medical technician (as those terms are defined in section three thousand one of the public health law) is or was the natural and proximate result of an accident or injury sustained while in the performance of duty on or

after September eleventh, two thousand one, the surviving spouse or domestic partner, until he or she dies, and the children under the age of nineteen years and any such child who is enrolled on a full-time basis in a program of undergraduate study in an accredited degree-granting institution of higher education until such child completes his or her educational program or reaches the age of twenty-three years, whichever comes first, shall be afforded the right to health insurance coverage, and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act, as is provided for city employees, city retirees and their dependents as set forth in paragraph one of this subdivision. The mayor may, in his or her discretion, authorize the provision of such health insurance coverage for the surviving spouses, domestic partners and children of employees of the fleet services division of the police department who died on or after October first, nineteen hundred ninety-eight and before April thirtieth, nineteen hundred ninety-nine, and the surviving spouses, domestic partners and children of employees of the roadway repair and maintenance division of the department of transportation who died on or after September first, two thousand five and before September twenty-eighth, two thousand five, and the surviving spouses, domestic partners and children of employees of the bureau of wastewater treatment of the department of environmental protection who died on or after January eighth, two thousand nine and before January tenth, two thousand nine as a natural and proximate result of an accident or injury sustained while in the performance of duty, subject to the same terms, conditions and limitations set forth in the section. Provided, however, and notwithstanding any other provision of law to the contrary, and solely for the purposes of this subparagraph, a member otherwise covered by this subparagraph shall be deemed to have died as the natural and proximate result of an accident or injury sustained while in the performance of duty upon which his or her membership is based, provided that such member was in active service upon which his or her membership is based at the time that such member was ordered to active duty, other than for training purposes, pursuant to Title 10 of the United States Code, with the armed forces of the United States, and such member died while on active duty on or after the effective date of local law number ninety-six of the city of New York for the year two thousand five while serving on such active military duty.

(ii) Where a retired member of the fire department dies and is enrolled in a health insurance plan, the surviving spouse shall be afforded the right to such health insurance coverage and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act as is provided for retirees and their dependents as set forth in subparagraph (i) of this paragraph, provided such surviving spouse pays one hundred two percent of the group rate for such coverage, with two percent intended to cover administrative costs incurred, provided such spouse elects such health insurance coverage within one year of the death of his or her spouse. For purposes of this subparagraph, "retired member of the fire department" shall include persons who, immediately prior to retirement, were employed by the fire department of the city of New York in a title whose duties are those of an emergency medical technician or advanced emergency medical technician (as those terms are defined in section three thousand one of the public health law), or whose duties required the direct supervision of employees whose duties are those of an emergency medical technician or advanced emergency medical technician (as those terms are defined in section three thousand one of the public health law).

(iii) Where a retired member of the police department, including premerger retirees who were police officers employed by the New York city housing authority or the New York city transit authority, dies and is enrolled in a health insurance plan, the surviving spouse shall be afforded the right to such health insurance coverage and health insurance coverage which is predicated on the insured's enrollment in the hospital and medical program for the aged and disabled under the social security act as is provided for retirees and their dependents as set forth in subparagraph (i) of this paragraph, provided such surviving spouse pays one hundred two percent of the group rate for such coverage, with two percent intended to cover administrative costs incurred, provided such spouse elects such health insurance coverage within one year of the death of his or her spouse.

c. Any amount paid by the city pursuant to subdivision b of this section shall not be deemed to be salary, wages or compensation within the meaning of any law relating to any retirement or pension system and shall not be considered or included for the purpose of computing or determining employee or city contributions or the rights, allowances and benefits to which a city employee or such employee's heirs or beneficiaries shall become entitled under any retirement

or pension system; and shall not be construed as a change of grade or classification or as a promotion to higher grade or position.

d. Such health insurance coverage as is provided under this section shall be administered by office of labor relations.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a par ii amended L.L. 76/2001 § 1, eff. Dec. 27, 2001.

Subd. a par ii amended L.L. 78/1995 § 1, eff. Nov. 8, 1995.

Subd. b amended chap 531/1994 § 1, eff. July 26, 1994

Subd. b amended chap 374/1993 § 5 eff. July 21, 1993

Subd. b amended chap 764/1990 § 1 eff. April 1, 1991

Subd. b par (1) amended L.L. 39/2001 § 1, eff. Jan. 1, 2000.

Subd. b par (1) amended L.L. 56/1997 § 1, eff. July 11, 1997.

Subd. b par (1) amended L.L. 50/1993 § 1 eff. June 15, 1993

Subd. b par (1) amended L.L. 3/1989 § 1

Subd. b par (1) amended L.L. 23/1987 § 1

Subd. b par (2) heading amended L.L. 22/2007 § 1, eff. May 1, 2007 and retroactive to Sept. 23, 2005.

Subd. b par (2) amended chap 436/2001 § 1, eff. Nov. 13, 2001.

Subd. b par (2) amended L.L. 12/2001 § 1, eff. Mar. 16, 2001.

Subd. b par (2) amended L.L. 17/2000 § 1, eff. Apr. 6, 2000.

Subd. b par (2) amended L.L. 14/1998 § 1, eff. Apr. 6, 1998.

Subd. b par (2) subpar (i) amended L.L. 9/2009 § 1, eff. Feb. 10, 2009 and shall be retroactive to and deemed to have been in full force and effect on and after Jan. 8, 2009.

Subd. b par (2) subpar (i) amended chap 339/2008 § 1, eff. July 21, 2008 and deemed to have been in full force and effect on and after Sept. 11, 2001.

Subd. b par (2) subpar (i) amended L.L. 22/2007 § 1, eff. May 1, 2007

and retroactive to Sept. 23, 2005.

Subd. b par (2) subpar (i) amended L.L. 96/2005 § 1, eff. Nov. 15, 2005.

Subd. b par (2) subpar (i) separately amended L.L. 34/2005 § 1, eff. Apr. 28, 2005 and chap 105/2005 § 29, eff. June 14, 2005.

Subd. b par (2) subpar (i) amended L.L. 3/2004 § 1, eff. Mar. 15, 2004.

Subd. b par (2) subpar (ii) amended chap 339/2008 § 2, eff. July 21, 2008.

Subd. d amended L.L. 59/1996 § 61, eff. Aug. 8, 1996

DERIVATION

Formerly § B49-9.3 added LL 120/1967 § 1

Sub b amended LL 20/1968 § 1

Sub b amended LL 32/1970 § 1

Sub b amended LL 58/1971 § 1

Sub b amended LL 59/1972 § 1

Sub b amended LL 75/1973 § 1

Sub b par 2 added LL 75/1973 § 2
(formerly § B49-10.2)

Sub b amended LL 28/1974 § 1

Sub b par 1 subpar b amended LL 9/1979 § 1

Sub b par 1 subpar b amended LL 25/1980 § 1

Sub b par 1 subpar b amended LL 23/1981 § 1

Sub b par 1 subpar b amended LL 84/1981 § 1

Sub b par 1 subpar b amended LL 52/1982 § 1

Sub b par 2 amended LL 53/1982 § 1

Sub b par 1 subpar b amended LL 28/1984 § 1

Sub b par 1 subpar b amended LL 28/1985 § 1

NOTE

1. Provisions of L.L. 19/2006, eff. June 19, 2006:

A Local Law in relation to the establishment of a retiree health benefits trust fund.

Be it enacted by the Council as follows:

Section 1. Legislative Intent. The Council hereby finds that it is in the best interests of the City to begin to address the ongoing liability of funding the increasing costs of health benefits for the City's retired workers and their dependents covered under the City's health and welfare plans. In his Fiscal 2007 Preliminary Budget the Mayor proposed the establishment of a retiree health benefits trust fund into which would be deposited money for the exclusive purpose of funding the health and welfare benefits (other than those paid through the Management Benefits Fund) of retired city employees and their dependents. The rationale behind the fund's creation is to give the City the ability to place certain surplus and potentially non-recurring funds in fiscal years of strong revenues in trust for the purpose of irrevocably funding certain of the City's retiree health and welfare benefit obligations. The Council, agreeing with this goal, approved a budget modification in March, appropriating $1 billion for such a trust fund.

The Council further finds that it is imperative that in order to establish and employ such a trust for the purpose of funding these costs, the trust fund must be irrevocable so that the funds may not be able to be used for any other purpose than for the payment of such retiree health and welfare benefits. Funds in the trust must be used only to pay these costs and must be paid directly to the retirees, to the providers of the health and welfare benefits to retired City workers and their dependents or to welfare funds established for their benefit.

In addition, the Council finds that the creation and existence of such a trust fund must in no way affect the operation of the budget adoption process as it relates to the funding of these costs. In other words, decisions as to whether or not the liability for retiree health benefits should be paid from current revenues or from money previously set aside in the trust fund should be made in the budget adoption process and neither the Council nor the Mayor should be able to use the trust fund to circumvent or short circuit that process. For this reason the Council and the Mayor have agreed that all appropriations for such retiree health and welfare benefits shall be paid into the fund and all expenses shall be paid from the fund as long as such funds are available. In this way the annual liability will be paid first from money available in the trust fund to the extent these funds are available, and the City will determine, in the course of adopting a budget, how much will be paid into the fund from current revenues.

Finally, to ensure accountability, the Council finds that the City's chief fiscal officer, the Comptroller, should be responsible for auditing the trust and managing the investment of the funds.

§ 2. Establishment of Trust. (a) Notwithstanding any provision of law to the contrary, the mayor is hereby authorized to establish a retiree health benefits trust fund for the exclusive benefit of retired city employees and their dependents.

(b) Such trust fund shall be established under the common law of the state of New York.

(c) The sole purpose of the trust fund established pursuant to subdivision (a) of this section shall be to fund the health and welfare benefits of retired city workers and their dependents.

§ 3. Payments into and from the trust. (a) Payments into and from the trust fund established pursuant to section two of this local law shall be made in accordance with this section.

(b) All appropriations in the city's expense budget for retiree health and welfare benefits (other than those provided through the management benefits fund) shall be paid into such trust fund.

(c) All payments for retiree health and welfare benefits (other than those provided through the management benefits fund) shall be made from such trust fund to the extent funds are available therefore.

§ 4. Investments; audits. (a) The comptroller shall be responsible for managing the investments of the trust fund

established pursuant to section two of this local law.

(b) The comptroller shall have the power to audit such trust fund and shall ensure that all funds appropriated for retiree health and welfare benefits (other than those provided through the management benefits fund) are paid into such trust fund and that monies paid out of such trust fund are used solely as set forth in section two of this local law.

§ 5. Other Matters. Prior actions taken by the city in connection with the establishment of the trust fund are hereby ratified.

§ 6. This local law shall take effect immediately.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-126.1

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-126.1 Special provisions applicable to health insurance and welfare benefit fund coverage for certain members of city retirement systems.

a. Definitions. The following terms, as used in this section, shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "NYCERS former fractional plan member". A member of the New York city employees' retirement system who, pursuant to the provisions of subdivision m of section 13-162 of the code, is deemed to have elected to become a career pension plan member (as defined in subdivision forty-six of section 13-101 of the code), and who currently is such a career pension plan member or a fifty-five-year-increased-service-fraction member (as defined in subdivision fifty-one of section 13-101 of the code).

(2) "BERS former fractional plan member". A member of the board of education retirement system of the city of New York who, pursuant to the provisions of paragraph (g) of subdivision eighteen of section twenty-five hundred seventy-five of the education law, is deemed to have elected to become a career pension plan member (as defined in paragraph twenty-eight of section two of the rules and regulations of such retirement system), and who currently is such a career pension plan member or a fifty-five-year-increased-service-fraction member (as defined in paragraph thirty-one of section two of such rules and regulations).

(3) "Health insurance and welfare benefits fund surcharge". An amount, expressed as a percentage of salary, specified in a collective bargaining agreement (or other similar instrument) between the city of New York (or the board of education of the city) and the employee organization or organizations representing NYCERS former fractional plan members or BERS former fractional plan members in which it is provided that such members shall absorb the additional

health insurance and welfare benefit fund increases caused by the enactment of subdivision m of section 13-162 of the code and paragraph (g) of subdivision eighteen of section twenty-five hundred seventy-five of the education law.

b. Commencing with the first full payroll period which begins after October first, nineteen hundred ninety-three, the salary of each NYCERS former fractional plan member and each BERS former fractional plan member shall be reduced by the amount of the health insurance and welfare benefits fund surcharge on each and every payroll of such member for each and every payroll period.

c. The commissioner of labor relations shall promulgate rules for the appropriate administration of this section.

d. Any salary reduction effectuated pursuant to subdivision b of this section shall be considered part of such member's salary for the purpose of computing employer and employee pension contributions and all retirement benefits administered by the New York city employees' retirement system or the board of education retirement system of the city of New York.

HISTORICAL NOTE

Section added chap 374/1993 § 6 eff. July 21, 1993.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-126.2

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-126.2 Special provisions applicable to health insurance and welfare benefit fund coverage for certain correction officers and sanitation workers.

a. Definitions. The following terms, as used in this section shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "RSSL". The New York state retirement and social security law.

(2) "Tier II member". A member of a retirement system or pension fund maintained by the city who is subject to the provisions of article eleven of the RSSL.

(3) "Tier III member". A member of a retirement system or pension fund maintained by the city who is subject to the provisions of article fourteen of the RSSL.

(4) "Tier IV member". A member of a retirement system or pension fund maintained by the city who is subject to the provisions of article fifteen of the RSSL.

(5) "Tier II or tier III correction officer participant in a twenty year retirement program." A tier II or tier III member of the uniformed correction force who is a participant in the twenty-year retirement program established pursuant to (A) section four hundred forty-five-a of the RSSL or (B) section four hundred forty-five-c of the RSSL or (C) section five hundred four-a of the RSSL or (D) section five hundred four-b of the RSSL.

(6) "Tier II or tier IV sanitation worker participant in a twenty-year retirement program." A tier II or tier IV

member of the uniformed force of the New York city department of sanitation who is a participant in the twenty-year improved benefit retirement program established pursuant to section four hundred forty-five-b of the retirement and social security law or is a participant in the twenty-year retirement program established pursuant to section six hundred four-a of the retirement and social security law.

(7) "Health insurance and welfare benefits fund surcharge." An amount, expressed as a percentage of salary, specified in a collective bargaining agreement (or other similar instrument) between the city of New York and the employee organization or organizations representing tier II and tier III correction officer participants in a twenty-year retirement program or tier II or tier IV sanitation worker participants in a twenty-year retirement program in which it is provided that such participants shall absorb the additional health insurance and welfare benefit fund increases caused by the enactment of section four hundred forty-five-a of the retirement and social security law, section four hundred forty-five-b of the retirement and social security law, section four hundred forty-five-c of the retirement and social security law, section five hundred four-a of the retirement and social security, section five hundred four-b of the retirement and social security law and section six hundred four-a of the retirement and social security law.

(8) "Starting date." The first day of the first whole payroll period commencing after the date which is thirty days after the effective date of this section.

b. Effective as of the starting date, the salary of any tier II or tier III correction officer participant in a twenty-year retirement program or any tier II or tier IV sanitation worker participant in a twenty-year retirement program shall be reduced by the amount of the health insurance and welfare benefits fund surcharge on each and every payroll of such member for each and every payroll period.

c. The commissioner of labor relations shall promulgate rules for the appropriate administration of this section.

d. Any salary reduction effectuated pursuant to subdivision b of this section shall be considered part of such participant's final average salary for the purpose of computing employer and employee pension contributions and all retirement benefits administered by any retirement system or plan to which the city of New York contributes on behalf of said such participant. However, this subdivision shall in no way be construed to supersede the provisions of sections four hundred thirty-one, five hundred twelve and six hundred eight of the retirement and social security law or any other similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

HISTORICAL NOTE

Section added chap 531/1994 § 2, eff. July 26, 1994. [See Note]

NOTE

Provisions of chap 531/1994

§ 11. Nothing contained in this act shall be construed as limiting or restricting the power of the city of New York to make deductions from employee compensation where authorized or permitted by a collective bargaining agreement (or similar agreement) for the period of time commencing as of the date referenced in such agreement and ending on the starting date, as defined in paragraph 8 of subdivision a of section 12-126.2 of the administrative code of the city of New York, as added by section two of this act.

§ 12. This act shall take effect immediately provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration or repeal of any provision of law amended by any section of this act and such provision shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law.

FISCAL NOTE.-This proposed legislation provides for a salary reduction for additional contributions to be paid for health insurance and welfare benefits by certain members of the New York City Employees' Retirement System ("NYCERS") who are Tier II, Tier III or Tier IV members of the uniformed forces of the Department of Corrections or the Department of Sanitation.

This proposed legislation provides that any such salary reductions will be made on a federally tax-favored basis, but will be considered part of such members' salary for New York State and local income tax purposes and for computing member contributions to and pension benefits from NYCERS.

The enactment of this proposed legislation would not result in any increase in benefits or employer contributions.

The enactment of this proposed legislation would cause a modest increase in administrative expenses for the City of New York and NYCERS.

This estimate is intended for use only during the 1994 Legislation Session. It is Fiscal Note 94-04 dated April 26, 1994, prepared by the Chief Actuary for the New York City Employees' Retirement System.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-126.3

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-126.3 Health2 insurance coverage and welfare fund benefits of certain retirees and their dependents.

a. Definitions. The following terms, as used in this section, shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Pre-merger transit police retiree". A member of the uniformed force of the former transit police department of the New York city transit authority who retired as such a member prior to April thirtieth, nineteen hundred ninety-five or retired thereafter as such an employee as a result of an application to retire filed prior to such April thirtieth.

(2) "Pre-merger civilian retiree of the transit police department". An employee of such former transit police department who was not a member of its uniformed force and who retired as such an employee prior to April thirtieth, nineteen hundred ninety-five or retired thereafter as such an employee as a result of an application to retire filed prior to such April thirtieth.

(3) "Pre-merger housing police retiree". A member of the uniformed force of the former housing police department of the New York city housing authority who retired as such a member prior to April thirtieth, nineteen hundred ninety-five or retired thereafter as such an employee as a result of an application to retire filed prior to such April thirtieth.

(4) "Pre-merger civilian retiree of the housing police department". An employee of such former housing police department who was not a member of its uniformed force and who retired as such an employee prior to April thirtieth, nineteen hundred ninety-five or retired as such an employee thereafter as a result of an application to retire filed prior to

such April thirtieth.

(5) "Health insurance coverage". The program of hospital-surgical-medical benefits provided to participants therein and their dependents at city cost pursuant to section 12-126 of this chapter and any supplements to such program (i) provided for by an applicable collective bargaining agreement (or other similar instrument) or (ii) provided by other action or practice of the city and/or an appropriate public employee organization representing employees of the city police department.

(6) "Welfare fund benefits". The benefits provided to eligible participants and their dependents pursuant to (i) the provisions of a collective bargaining agreement (or other similar instrument) which denominates such benefits as welfare fund benefits or (ii) a welfare fund agreement executed pursuant to a collective bargaining agreement (or other similar instrument) and benefits provided as welfare fund benefits pursuant to other action or practice of the city and/or an appropriate employee organization representing employees of the city police department.

(7) "Appropriate public employee organization representing employees of the city police department". The certified or recognized public employee organization under article fourteen of the civil service law and chapter three of title twelve of the code which represents employees of the police department of the city who have a title and rank which are the same as or equivalent to the title and rank which a pre-merger retiree had at the time of the retirement of such pre-merger retiree.

(8) "Pre-merger retiree". A retiree identified in any of paragraphs one, two, three and four of this subdivision.

(9) "Similarly situated retiree of the city police department". A person (i) who retired as an employee of the police department of the city on a date the same as the retirement date of a pre-merger retiree and (ii) whose title and rank on the date of retirement were the same as or equivalent to the title and rank of such pre-merger retiree at the time of the retirement of such pre-merger retiree.

b. Health insurance coverage and welfare fund benefits shall be provided pursuant to the provisions of this section to each pre-merger transit police retiree and each pre-merger housing police retiree, and the dependents of each such retiree, in the same manner and to the same extent as if such retiree, at the time of his or her retirement, was a similarly situated retiree of the city police department.

c. (1) Subject to the provisions of paragraphs two and three of this subdivision, health insurance coverage and welfare fund benefits shall be provided pursuant to the provisions of this section to each pre-merger civilian retiree of the transit police department and each pre-merger civilian retiree of the housing police department, and the dependents of each such retiree, in the same manner and to the same extent as if such retiree, at the time of his or her retirement, was a similarly situated retiree of the city police department.

(2) Where any civilian retiree referred to in paragraph one of this subdivision was not entitled, under the collective bargaining agreement (or other similar instrument) and/or employer-provided health insurance program applicable to such retiree immediately prior to his or her retirement, to reimbursement by his or her employer for the whole or any part of Medicare premiums paid, such retiree shall not be entitled to reimbursement under this section for the whole or any part of Medicare premiums paid.

(3) Subject to the provisions of paragraph two of this subdivision, all costs of providing health insurance coverage and welfare fund benefits to pre-merger civilian retirees of the housing police department shall be paid by the New York city housing authority.

d. In relation to providing health insurance coverage and welfare fund benefits pursuant to the preceding provisions of this section to each pre-merger retiree, the respective powers and obligations of the city and the appropriate employee organization representing employees of the city police department (subject to the provisions of paragraphs two and three of subdivision c of this section) shall be the same as in the case of a similarly situated retiree

of the city police department.

e. Subject to the provisions of paragraphs two and three of subdivision c of this section, the costs of providing the health insurance coverage and welfare fund benefits prescribed by the preceding subdivisions of this section to each pre-merger retiree shall be paid by the city and/or paid by or shared with the appropriate public employee organization representing employees of the city police department in the same manner and to the same extent as the city and/or such public employee organization pay or share such costs with respect to a similarly situated retiree of the city police department.

f. Nothing contained in this section shall be construed as amending or altering any provision of article fourteen of the civil service law or chapter three of title twelve of the code.

HISTORICAL NOTE

Section added chap 625/1999 § 1, eff. Nov. 16, 1999.

FOOTNOTES

2

[Footnote 2]: * There are 2 sections 12-126.3.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-126.3

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-126.3 Health3 insurance coverage for former mayors.

a. Any former mayor of the city of New York, upon attaining the age of sixty-two, shall be afforded the right to such health insurance coverage as is provided for city employees, city retirees, and their dependents as set forth in paragraph one of subdivision b of section 12-126.

b. Any amount paid by the city pursuant to this section shall not be deemed to be salary, wages or compensation within the meaning of any law relating to any retirement or pension system and shall not be considered or included for the purpose of computing or determining employee or city contributions or the rights, allowances and benefits to which a city employee or such employee's heirs or beneficiaries shall become entitled under any retirement or pension system; and shall not be construed as a change of grade or classification or as a promotion to higher grade or position.

c. Such health insurance coverage as is provided under this section shall be administered by the office of labor relations.

HISTORICAL NOTE

Section added L.L. 4/2000 § 1, eff. Feb. 4, 2000.

FOOTNOTES

3

[Footnote 3]: * There are 2 sections 12-126.3.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-127

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-127 City employees injured in course of duty.

a. Any member of the uniformed forces of the fire or police departments or any person employed in the department of sanitation in the sanitation service classification of the classified civil service who shall be injured while actually employed in the discharge of police orders of his or her superior officers in the police station, fire house or sanitation section station, as the case may be, or as the result of illness traceable directly to the performance of police, fire or sanitation duty, as the case may be, or any employee of the department of parks, general services, ports and terminals or environmental protection or a person employed by the police commissioner as a school crossing guard who shall be injured while actually employed in the discharge of duty, shall be received by any hospital for care and treatment when such facts are certified to by the head of the department. Unless otherwise provided in this section, such members shall be received by any hospital at the usual ward patient rates. The bill for such care and treatment at such rates, when certified by the superintendent or other person in charge of such hospital and approved by the head of the department concerned, shall be paid by the city.

b. Any member of the uniformed forces of the fire or police department or any person employed in the department of sanitation in the sanitation service classification of the classified civil service or a person employed by the police commissioner as a school crossing guard who, while in the actual performance of duty, and by reason of the performance of such duty and without fault or misconduct on his or her part, shall receive injuries to an extent which may endanger his or her life, shall be received by any hospital for care and treatment, and shall be afforded such medical or surgical care and hospitalization as may be ordered by the chief medical officer of the respective departments in conformity with the provisions of this section. Such medical officer shall forthwith notify the comptroller of the care and hospitalization so ordered. The rate charged for such care and hospitalization for such

member or such person shall not exceed the rate charged any person in receipt of an income equal to the salary of such member or of such person for the same accommodations. The comptroller and the heads of the departments affected shall make necessary rules and regulations to carry out the provisions of this section. Upon certification by the chief medical officer of the department concerned, the bill for such care and hospitalization, when certified by the superintendent or other person in charge of the hospital and approved by the head of the department concerned, shall be paid by the city.

Notwithstanding any provision of law to the contrary, a provider of medical treatment or hospital care furnished pursuant to the provisions of this section shall not collect or attempt to collect reimbursement for such treatment or care from any such city employee.

c. (1) Each agency shall keep a record of any workers' compensation claim filed by an employee, the subject of which concerns an injury sustained in the course of duty while such employee was employed at such agency. Such record shall include, but not be limited to, the following data:

(i) the name of the agency where such employee worked;

(ii) such employee's title;

(iii) the date such employee or the city filed such claim with the appropriate office of the state of New York, if any;

(iv) the date the city began to make payment for such claim, or the date such claim was established by the appropriate state office and the date the city began to make payment for such claim pursuant to such establishment, if any;

(v) the date such injury occurred;

(vi) the location at which such injury occurred;

(vii) the nature of such injury, including, but not limited to, the circumstances of such injury, the type or diagnosis of such injury and a description of how such injury occurred;

(viii) the length of time such employee is unable to work due to such injury, if any; and

(ix) a list of any expenses paid as a result of such claim, including, but not limited to, expenses relating to wage replacement, medical costs, administrative costs and any penalties.

(2) Each agency shall transmit records gathered pursuant to paragraph (1) of subdivision c of this section, as soon as practicable, to the mayor of the city of New York.

(3) The mayor of the city of New York shall ensure that an annual report is prepared utilizing the records received from each city agency pursuant to paragraph (2) of subdivision c of this section. Such report shall be transmitted to the mayor, the comptroller, the public advocate and the speaker of the council of the city of New York by the first day of May, covering the previous calendar year. Such report shall include, but not be limited to:

(i) an analysis, with respect to each agency included in the report, of expenses paid as a result of workers' compensation claims, including, but not limited to, expenses relating to wage replacement, medical costs, administrative costs and any penalties paid by an agency;

(ii) a list of the occurrence of specific claims for each agency and for the city as a whole;

(iii) a list of the specific sites where injuries occurred for each agency and for the city as a whole;

(iv) year-to-year comparisons of information compiled pursuant to this paragraph.

HISTORICAL NOTE

Section amended chap 806/1986 § 5

Section added chap 907/1985 § 1

Subd. c added L.L. 41/2004 § 1, eff. Jan. 1, 2005.

DERIVATION

Formerly § B49-10.0 added chap 929/1937 § 1

Amended LL 73/1956 § 1

Amended chap 551/1962 § 3

Renumbered chap 100/1963 § 635

(formerly § B40-10.0)

Amended chap 806/1986 § 4

CASE NOTES FROM FORMER SECTION

¶ 1. That motorcycle policeman had been injured in collision with automobile owned by defendant and that City had paid for the hospitalization of such policeman pursuant to Code of Ordinances, Art. 1, ch. 13, § 5, providing that City would pay hospitalization of any policeman or fireman injured in discharge of duties, **held** not to entitle City to recover amount thereof from defendant, in view of facts that City's claim was dependent upon policeman's cause of action for personal injuries, that such cause had vested in policeman and was nontransferable; that defendant was still subject to a suit for damages by the policeman and, since medical expenses constituted a part of his damages, to authorize the action by the City would result in a forbidden splitting up of cause of action, and that City may have become liable to hospital under the ordinance, which contained no expression or expectation of reimbursement, did not impose liability upon defendant as expense to City was a remote cause of the damage sustained. That not to sanction the cause of action would result in defendant escaping liability since policeman, not having expended money for medical services, might not recover therefor, was insufficient to sustain the action. Action might not be sustained on theory of subrogation since conventional subrogation arises by contract, which did not exist in present case, and legal subrogation arises in equity, necessitating a strong and clear showing of right and was never available to a volunteer.-City of N.Y. v. Barbato, 5 N.Y.S. 2d 125 [1938].

¶ 2. Where settlement effected between taxicab company's insurer and policeman provided for payment to policeman of $1000 for injuries sustained when struck by taxicab, and also for assumption of responsibility for bill of City hospital in which the policeman had been confined, insurer could not escape liability to the hospital on theory it had assumed liability only for so much of the hospital bill as the policeman would be legally liable for and that under Code of Ordinances, ch. 13, § 5, such bill was payable by the City. The agreement to pay the hospital expenses was part of the consideration for the settlement and such promise inured to benefit of Commissioner of City Hospitals, the obligation to pay was one imposed by law on the taxicab company and was not primarily an obligation of the policeman, in paying for hospital services the City did so out of generosity and not as a matter of legal duty, a patient who is able to pay for treatment in a public hospital is liable therefor and the Commissioner is required to collect such payment (old Charter § 692m), and there was no showing that the City ever intended treating the policeman without compensation.-Goldwater v. Citizens Casualty Co., 7 N.Y.S. 2d 242 [1938].

¶ 3. Nothing in this section precludes a malpractice action against a fellow employee who is a physician also employed by the department of sanitation, and such a suit could be maintained where the department of sanitation was excluded from workers' compensation coverage.-Liantenio v. Baum, 95 Misc. 2d 636, 408 N.Y.S. 2d 257 [1978].

¶ 4. Petitioner police officer was injured as an "incident of employment" when he fell on ice in family ct. parking lot 5 min. before going on duty there. The denial of line of duty designation was arbitrary and capricious.-Brullman v. McGuire, 189 (37) N.Y.L.J. (2-24-83) 12, Col. 1 T.

¶ 5. Policeman was injured in uniform while in the precinct when he reported to work 30 min. early. Ct. determined that injury should be designated "line-of-duty".-Yacano v. McGuire, 191 (72) N.Y.L.J. (4-13-84) 6, Col. 2 B.

CASE NOTES

¶ 1. A police officer slipped in a puddle of water in a precinct bathroom and sustained a back injury. Petitioner was disqualified from receiving payment of her hospital bills pursuant to § 12-127(b) which does not authorize such payment if an officer's injury resulted from his or her "fault or misconduct". Petitioner was negligent, failing to avoid an obvious hazard. Matter of Heintz v. Brown, 178 AD2d 333 affirmed 80 NY2d, 998 [1992].

¶ 2. A police officer was in the ladies' room, brushing her teeth, when a mirror dislodged and struck her. The court held that the officer was not entitled to a line-of-duty injury designation. The law does not provide for compensation for injuries sustained while performing personal hygiene function not undertaken at the behest of a superior officer, the court said (would the result have been different if a superior officer had complained about her teeth and had directed her to go to the ladies' room to brush the teeth?). The court construed the legislation to mean that even here an officer is still on duty at the time of the injury, a line-of-duty injury designation is available only where the injury itself arises out of police duties. Crockett v. Safir, 269 A.D.2d 227, 703 N.Y.S.2d 109 (App.Div. 1st Dept. 2000).

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-128

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-128 Claims of officers and employees of city for injuries caused by persons deeming themselves aggrieved.

The comptroller with the approval of the mayor is authorized to audit, allow and certify for payment, as charges against the city, the reasonable expenses for medical and surgical treatment and maintenance incurred by the mayor or any other officer or employee of the city, by reason of gunshot wounds or other personal injuries received or sustained by the mayor or other officer or employee of the city at the hands of any person deeming himself or herself aggrieved by and seeking revenge for any alleged official act or omission on the part of said mayor or other officer or employee of the city.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 93d-5.0 added chap 929/1937 § 1

Amended chap 100/1963 § 141

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-129

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-129 Hours of service during July and August.

Four hours on any Saturday during the months of July and August, shall constitute a full day's work for all employees of any city agency. The head of any agency shall have power to employ his or her subordinates on any legal holiday, or may employ them on any such Saturday in excess of the legal day's work above prescribed, paying them compensation therefor at the rate of their usual wages or salaries. The provisions of this section shall apply to and include per diem employees, but shall not apply to the uniformed forces of the police and fire departments.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-11.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 636

(formerly § B40-11.0)

CASE NOTES FROM FORMER SECTION

¶ 1. City ordinance (Admin. Code § B40-11.0) providing that four hours on any Saturday during July and August should constitute a full day's work for City employees, **held** not to warrant recovery by laborer for work done on

Saturdays in excess of four hours during July and August over a period of three years, since neither the Board of Aldermen nor the head of the Park Department had authority to increase the compensation fixed by the Board of Estimate and Apportionment, such as would be the practical result of giving validity to the ordinance. Furthermore, the ordinance ran counter to Greater New York Charter § 56, which exempted day laborers from the authorization otherwise given the Board of Aldermen to fix salaries with concurrence of the Board of Estimate and Apportionment. It was also significant that during the 20 years existence of the ordinance no other attempt to enforce it had been made.-Hagan v. Moses, 173 Misc. 327, 17 N.Y.S. 2d 438 (1939). **Followed** in In re Baker (O'Dwyer), 118 (97) N.Y.L.J. (11-5-47) 1175, Col. 1 F.

¶ 2. Order denying petition of auto engine men employed by Department of Hospitals at per annum salaries, for additional compensation for period during which they worked on some of the legal holidays without being paid additional compensation or being given compensating time off, **was affirmed,** without opinion. Respondent City officials contended that Admin. Code § B40-11.0 was invalid insofar as it purported to impose financial budgetary obligations upon the City without concurrence of the Board of Estimate and to confer upon department heads the power to increase salaries beyond amounts fixed in the budget, and that petitioners could not in any event recover additional compensation for legal holidays worked if they did not sign the payrolls under protest.-Brooks v. O'Dwyer, 298 N.Y. 714, 83 N.E. 2d 15 [1948].

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-130

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-130 Office hours.

Except as otherwise provided by law, the office hours in all public offices of the city, and of all county offices within the city, shall be from nine o'clock antemeridian to five o'clock postmeridian. The head of a city office or department, or a county officer who comes within the foregoing provisions of this section, may adopt a rule that such office shall be closed to the public at four o'clock postmeridian, when in the judgement of such officer, the period between the hours of four o'clock postmeridian and five o'clock postmeridian is required for the performance of the work in such office. During the months of July and August the office hours of such offices shall be from nine o'clock antemeridian to four o'clock postmeridian if the head of the office or department so orders. The office hours of any such office, however, shall be from nine o'clock antemeridian to twelve o'clock noon on Saturday, provided that the commissioner of the department of finance may, in his or her discretion, adopt a rule that such office or department shall be closed to the public on Saturdays.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-12.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 637

(formerly § B40-12.0)

Amended LL 30/1966 § 1

CASE NOTES FROM FORMER SECTION

¶ 1. In view of provisions of this section, fixing an eight hour working day in City departments, petitioner, an employee of the Department of Public Welfare, was within his legal rights in refusing to accede to a request to remain after 5 o'clock to mail checks to relief recipients, which was an ordinary routine duty of petitioner, and hence no disciplinary action should have been taken against him. No emergency was shown to exist at the time.-In re Weiselberg (McNamara), 198 Misc. 48, 97 N.Y.S. 2d 224 [1950], reversed in part, 279 App. Div. 694, 103 N.Y.S. 2d 1014 [1951].

¶ 2. The budget of 1959-60 provided for savings of $60,000 through the elimination of 15 positions in the office of City Registrar, the savings to be effected by conforming the office hours of that office with the provisions of § B40-12.0. The City Registrar issued an order increasing the working hours of his employees. They filed an action for declaratory judgment that the savings provision of the budget and the order of the City Registrar pursuant thereto were invalid. **Held:** The budget provision did not constitute an usurpation of the legislative power of the Council of the City of New York. The Board of Estimate is vested with the power to create and abolish positions. The order issued by the City Registrar was the only means by which he could accomplish the savings: to wit, increase the working hours of the employees. The order did not violate § 1052-22.0.-Montreuil v. Board of Estimate, 10 A.D. 2d 266, 198 N.Y.S. 2d 891 [1960].

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-131

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-131 Reproduction of records on film.

a. The head of each agency may cause any or all records kept in such agency to be reproduced on photographic film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the orginal record in all details.

b. Such photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-13.1 added chap 516/1940 § 1

Renumbered chap 100/1963 § 639

(formerly § B40-13.1)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-132

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-132 Records to be kept and abstracts published.

Every agency shall keep a record of all its transactions, which shall be accessible to the public. A brief abstract, omitting formal language, shall be made, once a week of all transactions and of all contracts awarded and entered into for work and material of every description. Such abstract shall contain the name or names and residences by street and number, of the party or parties to the contract and of their sureties, if any. A copy of such abstract shall be promptly transmitted for publication in the City Record to the director thereof.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-14.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 640

(formerly § B40-14.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-133

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-133 Order to use patented articles prohibited.

It shall be unlawful for any officer of the city to order any owner or occupant to use any patented article on any building or in any public street or place, except under such circumstances that there can be a fair and reasonable opportunity for competition, the conditions to secure which shall be prescribed by the board of estimate.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § B49-15.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 641

(formerly § B40-15.0)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-134

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-134 Powers and duties of the District Attorney's investigators.

In the performance of their duties, all detective investigators, senior detective investigators, racket investigators, senior racket investigators and supervising racket investigators employed by the district attorney of each county contained within the city of New York, shall have all the powers and perform all the duties of police officers in the state.

HISTORICAL NOTE

Section added L.L. 64/1986 § 1

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-138

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-138 Applicability of age qualifications to veterans of armed forces.

When the qualifications for any examination or test for, or appointment or election to any office, position or employment in the city, includes a maximum age limit, any person who heretofore and subsequent to July first, nineteen hundred forty, entered or hereafter, in time of war, shall enter the active military or naval service of the United States, or the active service of the women's army corps, the women's reserve of the naval reserve or any similar organization authorized by the United States to serve with the army or navy, shall be deemed to meet such maximum age requirement if his or her actual age, less the period of such service, would meet such maximum age requirement.

HISTORICAL NOTE

Section added chap 907/1985 § 1

DERIVATION

Formerly § 1141-1.1 added LL 51/1945 § 1

Renumbered chap 100/1963 § 666

(formerly § 953-1.1)

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-139

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 1 OFFICERS AND EMPLOYEES

§ 12-139 Election of qualified transportation benefits in lieu of taxable dollar compensation.

Employees of the city of New York shall be permitted to use pre-tax earnings to purchase qualified transportation benefits, other than qualified parking, in accordance with federal law and shall thereupon be entitled to such personal income tax benefits as may be authorized by such law.

HISTORICAL NOTE

Section added L.L. 18/2000 § 1, eff. July 11, 2000.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-201

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-201 City surveyors; examination, appointment of.

a. The commissioner of citywide administrative services shall have power and it shall be his or her duty to appoint an examining board which shall serve without compensation, consisting of a chairperson, two consulting or topographical engineers in the employ of the city, and two city surveyors engaged in private practice. Such board shall formulate and conduct examinations of applicants who apply to the commissioner for appointment as city surveyors of the city of New York. Every person applying for examination shall pay an examining fee to be fixed by the commissioner. The fee so collected shall be paid into the general fund. The commissioner, as soon as practicable thereafter, shall certify to the mayor all those applicants who have qualified by successfully passing such examination. To be eligible for appointment, the applicant must be licensed by the state of New York as a land surveyor and must have a minimum of six years surveying experience within the limits of the city.

b. There shall be appointed by the mayor as many city surveyors as are qualified by successfully passing such examination. Each city surveyor, before entering on his or her duties shall take an oath well and truly to perform such duties.

HISTORICAL NOTE

Section added chap 907/1985 § 1

Subd. a amended L.L. 59/1996 § 63, eff. Aug. 8, 1996

DERIVATION

Formerly § 817-1.0 added LL 180/1964 § 1

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-202

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-202 Commissioner of citywide administrative services to conduct examinations for licenses for master plumbers.

The commissioner of citywide administrative services, in addition to his or her other powers and duties, shall formulate and conduct examinations to determine the merit and fitness of applicants who apply, pursuant to section 26-143 of the code, to the commissioner of health for licenses to engage in the trade, business or calling of a duly registered and licensed master plumber. The department of citywide administrative services shall keep in its office an official roster of candidates who have succeeded in passing such examinations and shall certify to the commissioner of health the names of such candidates who are successful.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 64, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 817-2.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 588

(formerly § 816-1.0)

CASE NOTES FROM FORMER SECTION

¶ 1. Alleged unconstitutionality of Laws of 1936, ch. 610, § 3, did not render the remainder of chapter 610 unconstitutional, in view of fact that § 3 was nothing more than a "saving clause" and clearly severable from the remainder of the chapter. Furthermore, since petitioners were not affected by such saving clause they had no standing to attack the constitutionality thereof.-Matter of Benedetto (Kern), 167 Misc. 831, 4 N.Y.S. 2d 844 [1938], aff'd without opinion, 255 App. Div. 753, 7 N.Y.S. 2d 227 [1938], aff'd, 279 N.Y. 798, 12 N.E. 2d 92 [1939].

¶ 2. Laws of 1936, ch. 610, § 3, providing for licensing of plumbers in City of New York, was not unconstitutional because it conferred upon the Municipal Civil Service Commission the power to examine applicants for plumbers' licenses notwithstanding plumbers were not in the civil service.-Id.

¶ 3. Balance of Laws of 1936, ch. 610, dealing with licensing of plumbers, was not affected by an unconstitutionality in section dealing with examination for renewal licenses, since such provision was clearly severable from remaining provisions.-Id.

¶ 4. Severance of section providing for examination of applicants for renewal licenses did not render statute invalid on ground no test was then provided for licensing of plumbers prescribed for the renewal of licenses, since statute, reasonably construed, required issuance of renewal licenses to those possessing original licenses, unless good cause existed for denying the renewal.-Id.

¶ 5. Requirement of statute that applicants for licenses as master plumber should have not less than ten years' experience in plumbing industry or three years of such experience together with an engineering degree, did not render the statute constitutionally unreasonable. In any event, petitioners were in no position to contest such provision as they were not aggrieved thereby inasmuch as they all had the requisite experience. Also, since they sued as a single and indivisible group without differentiating as to which possessed engineering degrees and which only experience, they might not attack the provision because of discrimination as to candidates possessing engineering degrees.-Id.

¶ 6. Provisions of statute providing for licensing of plumbers, which authorized Municipal Civil Service Commission to call upon the plumbing industry for assistance in preparation, conduct and grading of practical and written examinations, were not invalid because of possibilities of domination of the industry by present personnel, inasmuch as the examination was actually prepared, conducted and graded by the Commission itself through its own experts.-Id.

¶ 7. A character deficiency based on criminal charges which were 28 and 39 years old was not sufficient grounds for the denial of petitioner's application for license as a master plumber.-In re Drexler, 146 (97) N.Y.L.J. (11-20-61) 14, Col. 1 M.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.

Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-203

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-203 Assistance of committee of plumbing industry.

The commissioner of citywide administrative services shall call upon the plumbing industry for assistance in the preparation, conduct and rating of the practical and written examination of all persons seeking a plumber's license, pursuant to section 26-143 of the code. Such assistance shall consist of the obtaining of the services of two registered and licensed master plumbers of not less than ten years' experience as such, and one journeyman plumber of not less than ten years' experience as such, for each examination. The commissioner may also call upon duly accredited sanitary engineers or physicians to assist in the preparation and conduct of such examination. The names of such master and journeyman plumbers selected to assist the commissioner shall be publicly drawn for each examination from a panel of not less than thirty names furnished to the commissioner by a special committee to consist of one experienced master plumber representing each of the established and recognized master plumbers' associations, or branches thereof, in the five boroughs of the city, and one experienced journeyman plumber representing the established and recognized organization having jurisdiction over journeyman plumbers in the city. Such committee members shall be named once each year by the incumbent presidents or boards of directors or governors of their respective associations or organizations. No such master or journeyman plumber shall serve as such assistant oftener than once in five years. The compensation of each such person selected by the commissioner to assist in the preparation, conduct and rating of the written and practical examinations shall be fixed by the commissioner.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 65, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 817-3.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 589

(formerly § 816-2.0)

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-204

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-204 Qualifications of plumbers. [Repealed]

HISTORICAL NOTE

Section repealed L.L. 37/1986 § 5

Section added chap 905/1985 § 1

DERIVATION

Formerly § 817-4.0 added chap 929/1937 § 1

Renumbered chap 100/1963 § 590

(formerly § 816-3.0)

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.

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Administrative Code of the City of New York

***** Current through December 2009 ****

NYC Administrative Code 12-205

Administrative Code of the City of New York

Title 12 Personnel and Labor

CHAPTER 2 DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES*1

§ 12-205 Inspectors; certificate.

The commissioner of citywide administrative services shall have sole power to examine applicants for positions as inspectors of plumbing and no person shall be appointed an inspector for plumbing who shall not have obtained a certificate from such commissioner.

HISTORICAL NOTE

Section amended L.L. 59/1996 § 66, eff. Aug. 8, 1996

Section added chap 907/1985 § 1

DERIVATION

Formerly § 817-5.0 added chap 929/1937 § 1

Renumbered and amended chap 100/1963 § 591

(formerly § 816-4.0)

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended L.L. 59/1996 § 62, eff. Aug. 8, 1996.