

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

NOTICE OF RULE MAKING

Pursuant to the power vested in me as Commissioner of Finance by New York City Administrative Code section 11-208.1 and sections 1043 and 1504 of the New York City Charter, I hereby promulgate the within amendments to the Rules Relating to the Filing of Income and Expense Statements. These rules were published in proposed form on July 8, 2014. A hearing for public comment was held on August 11, 2014. The final version of the rules includes revisions from the proposed version based upon comments received.

S/S
Jacques Jiha Commissioner of Finance

Statement and Basis and Purpose

Section 11-208.1 of the Administrative Code of the City of New York requires that owners of income-producing real property in New York City file income and expense statements each year for the property. The Department of Finance uses the information in the statements to assess the value of real property in the City.

Local Law 52 of 2013 amended Administrative Code § 11-208.1. These proposed amendments will, among other things, conform the rules relating to the filing of income and expense statements set forth in Chapter 33 of Title 19 of the Rules of the City of New York to the Administrative Code by:

- revising the deadline for filing the annual income and expense statements from September 1 to June 1;
- providing that if a property owner has not owned the property and is without knowledge of the income and expenses of the property for the entire year for which the income and expense statement is required, then the owner must file a claim of exclusion and will not be required to file an income and expense statement for that year;
- providing penalties for the failure to file a claim of exclusion, where it is required, and the opportunity for property owners to be heard prior to the imposition of such penalties;
- authorizing the Commissioner of Finance to extend the deadline for filing by up to sixty days for income and expense statements or claims of exclusion for residential class two properties held in the cooperative or condominium form of ownership (the existing rules authorize the Commissioner to provide up to thirty days extension for all properties);
- providing that monetary penalties imposed for failure to file an income and expense statement, or, where required, a claim of exclusion, will be liens on the affected real property and will accrue interest until they are paid; and

- providing an “innocent purchaser” waiver mechanism for property owners who took title to real property without knowledge that a monetary penalty would be imposed for the prior owner’s failure to timely file.

Matter underlined is new. Matter in brackets [] is to be deleted.

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

Amendments to Rules Relating to the Filing of Income and Expense Statements

§1. Paragraph (2)(i) of subdivision (b) of chapter 33-01 of title 19 of the Rules of the City of New York (Rules Relating to the Filing of Income and Expense Statements) is amended to read as follows:

(i) property with a [final] tentative actual assessed valuation of \$40,000 or less[;] on the tentative assessment roll promulgated in the year that the income and expense statement would otherwise be required to be filed pursuant to subdivision (a) of section 33-02 of these rules; notwithstanding the preceding sentence, owners are not required to file income and expense statements if the actual assessed valuation for such tax year is subsequently reduced to \$40,000 or less;

§2. Subdivision (a) of section 33-02 of such rules is amended to read as follows:

(a) *Deadlines.* (1) Owners of income-producing property must file with the Department of Finance an income and expense statement no later than the first day of [September] June of each year. If the first day of June falls on a Saturday, Sunday or City of New York holiday, the deadline for filing will be the next business day. A separate income and expense statement must be filed for each parcel of income-producing property, except that a consolidated income and expense statement may be filed for one or more tax lots that are:

- (i) operated together as an economic unit or are otherwise related for purposes of valuation; and
- (ii) are under common ownership; and
- (iii) are contiguous or within the same tax block or within adjacent tax blocks; and
- (iv) are located within the same borough of the City.

(2) The Commissioner of Finance may for good cause extend the deadline contained in paragraph (1) of this subdivision (a) for filing an income and expense statement by a period not to exceed thirty days, except that with respect to residential class two properties held in the cooperative or condominium form of ownership, by a period not to exceed sixty days.

§3. Paragraphs (1) and (2) of subdivision (b) of section 33-02 of such rules are amended to read as follows:

(1) Income and expense statements or, where required, claims of exclusion must be submitted electronically in the format prepared by the Department of Finance and located on the Department of Finance Internet website and in accordance with the instructions for submission of the income and expense statement found on the website.

(2) Request for waiver of electronic filing requirement. The Commissioner may, for good cause, waive the requirement that the income and expense statement or, where required, claim of exclusion be filed electronically and permit the income and expense statement or, where required, claim of exclusion to be filed by means of a paper form. A request for waiver of the electronic filing requirement must be made in writing no later than thirty days prior to the deadline for filing an income and expense statement or, where required, claim of exclusion. Any filing in paper format must be filed with the New York City Department of Finance at such address as may be designated by the Department.

§4. Paragraphs (2), (4) and (5) of subdivision (c) of section 33-02 of such rules are amended to read as follows:

(2) Owners of income-producing property who maintain their books and records on a fiscal year basis must file an income and expense statement containing information for the last fiscal year concluding before the first day of [August] May immediately preceding the deadline for filing such statements.

(4) [Owners of income-producing property who purchase their property within the twelve month period prior to the first day of August immediately preceding the deadline for filing such statements, and who are without knowledge of the income and expenses of the property for the entire year, shall file an income and expense statement containing the date of purchase, the sale price, the name of the grantor(s) and all information reflecting their actual period of ownership.] Where the owner of the property has not owned the property and is without knowledge of the income and expenses of the operation of the property for the entire year for which the income and expense statement is required, then an income and expense statement will not be required for such year. However, the owner may be required to file a claim of exclusion pursuant to paragraph (3) of subdivision (e) of section 33-02 of these rules.

(5) In addition to the income and expense statement, for any year, the Commissioner of Finance may require owners of income-producing property with a [final] tentative actual assessed value at or above an amount determined by the Commissioner to file an addendum to the income and expense statement in a format determined by the Commissioner, containing rent roll information for a period determined by the Commissioner. The addendum will not be required for a property with a [final] tentative actual assessed value of less than \$750,000 for the tax year during which filing of the income and expense statement is required. Any addendum required by this paragraph will be considered to be a part of the income and expense statement and any filing requirement contained in these rules for the income and expense statement will also be applicable to the addendum.

§5. Subparagraphs (i) and (ii) of paragraph (3) of subdivision (e) of section 33-02 of such rules are amended, and new subparagraphs (iv), (v) and (vi) are added to such paragraph (3), to read as follows:

(3) (i) Owners of property who contend that they are excluded from the filing requirement based on any provision of paragraph (2) of subdivision (b) of section [§]33-01 of these rules, other than subparagraphs (i), (ii), (iii) or (vii) of such paragraph (2), must file with the Department of Finance a claim of exclusion on a form prepared by the

Department, no later than [September 1, 2014 and on or before September 1 in every third year thereafter] the first day of June each year for as long as the owner claims that the property is excluded from the filing requirement. If the first day of June falls on a Saturday, Sunday or City of New York holiday, the deadline for filing will be the next business day.

(ii) In addition to the requirements of subparagraph (i) of this paragraph, owners of properties who claim that they are excluded from the filing requirement, and are required to file a claim of exclusion, must file a claim of exclusion on a form prepared by the Department no later than the [September] June 1 that immediately follows the date on which the owner took title to the property. If the first day of June falls on a Saturday, Sunday or City of New York holiday, the deadline for filing will be the next business day.

(iv) Owners of property who are required to file a claim of exclusion pursuant to paragraph (3) of subdivision (e) of section 33-02 of these rules who file neither a timely claim of exclusion nor a timely income and expense statement will be subject to the penalties set forth in section 11-208.1 of the Administrative Code and section 33-03 of these rules.

(v) The Commissioner may for good cause extend the deadlines provided in subparagraphs (i) and (ii) of this paragraph for filing a claim of exclusion by a period not to exceed thirty days, except that with respect to residential class two properties held in the cooperative or condominium form of ownership, by a period not to exceed sixty days.

(vi) Notwithstanding the submission of a claim of exclusion by an owner, for purposes of section 33-03 of these rules, the term "failure to file a claim of exclusion" may include, but not be limited to:

(A) failure to file in the electronic format prepared by the Department of Finance, or, in the event that the electronic filing requirement is waived by the Commissioner under paragraph (2) of subdivision (b) of section 33-02 of these rules, failure to use the forms prepared by the Department of Finance;

(B) failure to submit a claim of exclusion containing the original signature of the owner or owners, or the signature of an agent accompanied by a power of attorney authorization);

(C) failure to submit a separate claim of exclusion for each parcel (consolidated claims of exclusion may be submitted only for contiguous condominium lots operated as a single entity); and

(D) failure to complete forms in a legible manner.

§6. Subdivision (a) of section 33-03 of such rules is amended to read as follows:

(a) *Monetary penalties.* (1) Owners of income-producing property who fail to file an income and expense statement by the first day of [September] June, or in the event of an extension, by the extended due date, will be subject to a penalty not to exceed three percent of the final actual assessed valuation for the property for the tax year in which such a statement was required to be filed.

(2) Owners of income-producing property who fail to file an income and expense statement by the thirty-first day of December will be subject to a penalty not to exceed four percent of the final actual assessed valuation for the property for the tax year in which such a statement was to be filed.

(3) If, in the year immediately following the year in which an owner fails to file an income and expense statement by the thirty-first day of December, the owner again fails

to file an income and expense statement within the time provided in subdivision (a) of section [§]33-02 of these rules (determined with regard to any extension of time for filing), such owner will be subject to a penalty in an amount not to exceed five percent of the final actual assessed value of such property determined for the tax year in which such a statement was to be filed. Such owner will also be subject to a penalty of up to five percent of such final actual assessed value in any year immediately succeeding a year in which a penalty of up to five percent could have been imposed, if in such succeeding year the owner fails to file an income and expense statement within the time prescribed in section [§]33-02(a) of these regulations (determined with regard to any extension of time for filing).

(4) Owners of income-producing property who are required to submit a claim of exclusion but fail to do so by the first day of June, or in the event of an extension, by the extended due date, will be subject to a penalty. Such penalty will not exceed the following amounts:

(i) one hundred dollars for failure to submit a claim of exclusion in one year;

(ii) five hundred dollars for failure to submit a claim of exclusion in two consecutive years;

(iii) one thousand dollars for failure to submit a claim of exclusion in three consecutive years or more.

(5) Any penalties prescribed in subdivision (a) of section 33-03 of these rules when entered in the records of the Department of Finance will be a lien on the real property as to which the statement or claim was required to be filed and will continue to be a lien until paid. The lien may be enforced by tax lien sale, in rem foreclosure, or any other means provided by law for enforcement of tax liens.

(6) If any penalty imposed under this subdivision is not paid within thirty days from the date it is entered in the records of the Department of Finance, interest will accrue on the amount of the penalty at the rate applicable to the affected real property for delinquent real property taxes, calculated from the date of entry to the date of payment.

(7) Innocent purchasers. In cases where the closing or finalizing of the sale of real property occurs after the filing deadline for income and expense statements and precedes the later of the publication of both lists described in paragraph (7) of subdivision (d) of section 11-208.1 of the Administrative Code or the first property tax bill to reflect a penalty imposed on such property for failure to file an income and expense statement or, when required, a claim of exclusion, the Commissioner may waive any such penalty and/or cancel the lien imposed as a result of such penalty, upon request of the owner of the property, provided the owner files in the electronic format prepared by the Department a properly completed innocent purchaser waiver request no later than one hundred and twenty days following the later of the publication of both lists or the first property tax bill to reflect such a penalty.

(8) The Commissioner, may for good cause, waive the requirement that the innocent purchaser waiver request form be filed electronically and permit the innocent purchaser waiver request form to be filed by means of a paper form. A request for waiver of the electronic filing requirement must be made in writing no later than ninety days following the later of the publication of both lists described in paragraph (7) of subdivision (d) of section 11-208.1 of the Administrative Code or the first property tax bill to reflect such a penalty. Any filing in paper format must be filed with the New York City Department of Finance at such address as may be designated by the Department.

§7. Subparagraphs (i) and (ii) of paragraph (1) of subdivision (a) of section 33-04 of such rules are amended to read as follows:

(i) Owners of income-producing property who fail to file a timely income and expense statement or, where required, a claim of exclusion, in compliance with section [§]11-208.1 of the Administrative Code and these rules will be notified of such failure to comply and of the opportunity for a hearing prior to the imposition of the penalties contained in section [§]33-03 of these rules.

(ii) Except as provided in subparagraph (iii) of this paragraph, the notice will also provide that such owners may avoid penalties for failure to file by filing a properly completed income and expense statement or, where required, a claim of exclusion, no later than thirty days following the date of the notice.

§8. Subparagraphs (i) and (ii) of paragraph (7) of subdivision (a) of section 33-04 of such rules are amended to read as follows:

(7) *Matters reviewable*. The purpose of the hearing is to determine whether:

(i) an income and expense statement or, where required, a claim of exclusion, was not filed, and if it was not filed, what penalties, if any, should be imposed;

(ii) an income and expense statement or, where required, a claim of exclusion, was not timely filed, and if it was not timely filed, what penalties, if any, should be imposed; and/or