DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing

Tax Exemption under §§420-c, 421-a, 421-b, 488-a and 489 of the Real Property Tax Law

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Commissioner of Housing Preservation and Development by §1802 (6) (b) and in accordance with the requirements of §1043 of the New York City Charter that the Department of Housing Preservation and Development is adopting rules governing tax exemption under §§420-c, 421-a, 421-b, 488-a and 489 of the Real Property Tax Law of the State of New York of the Real Property Tax Law of the State of New York.

A public hearing was held on July 6, 2011.

Material to be added is underlined. Material to be deleted is in [brackets].

Section one. Paragraphs one and five of subdivision (e) of Section 5-07 of Chapter 5 of Title 28 of the Rules of the City of New York are amended to read as follows:

(e) *Revocation or reduction of tax exemption and tax abatement for failure to substantiate claimed costs.* All applications are subject to post-audit by HPD.

(1) In addition to the bases for revocation of tax benefits provided in chapter [thirty-seven] thirty-nine of this title, the Commissioner may reduce or revoke past or future tax exemption or tax abatement if he or she finds that the application for tax exemption or tax abatement, including all affidavits submitted in connection with the application, contains a false statement or false information as to a material matter or omits a material matter relating to claimed costs. It is the responsibility of the recipient of the benefits, whether the original applicant or any subsequent owner, including any condominium or cooperative, to document all claimed costs in a manner acceptable to HPD and in accordance with generally accepted auditing standards so that original checks or such other proof of payment as the Office shall require can be properly matched against the items on the Itemized Cost Breakdown Schedule and so that the auditors may examine original documentation for the cost of all supplies and the cost of all subcontracts. If a recipient of tax benefits hereunder fails to substantiate claimed costs to the satisfaction of HPD, the CRC shall be reduced or revoked as applicable. In the event that HPD determines on the basis of the total available evidence that the application contains a false statement or false information as to a material matter, or omits a material matter, relating to claimed costs, all benefits hereunder shall be revoked.

(5) The revocation of tax exemption and/or abatement for failure to substantiate claimed costs hereunder shall be conducted in accordance with the procedures established pursuant to chapter [thirty-seven] thirty-nine of this title. Notwithstanding the foregoing, if, after HPD delivers an Initial Notice in accordance with chapter [thirty-seven] thirty-nine of this title, the Taxpayer fails to submit documentation to substantiate claimed costs during the Comment Period as defined in

such Initial Notice, HPD shall deliver a Determination Notice to the Taxpayer in accordance with such chapter.

§2. Subparagraph (i) of paragraph (1) and paragraph (5) of subdivision (d) of Section 6-05 of Chapter 6 of Title 28 of the Rules of the City of New York are amended to read as follows:

(i) A sworn statement of the actual total project cost of the newly constructed building. Such actual project cost may be approved by the Department as the total project cost of such building provided all of the items comprising such actual total project cost are certified to by a certified public accountant licensed by the State of New York, and further provided that such actual total project cost does not exceed the specific costs determined by the Department pursuant to its promulgated Annual Schedule, plus any allowable abnormal, unique or special foundation costs which may be incurred. In the event that costs relating to commercial portions of the building are incomplete, an estimate of such costs may be accepted tentatively by the Office, provided a supplemental accountant's certification is provided after such costs have been determined. If additional fees are owed on the basis of such supplemental certification, benefits are subject to revocation pursuant to chapter [thirty-seven] thirty-nine of this title if the fees are not paid. Where such costs differ from the original cost certification filed with the application for a Preliminary Certificate of Eligibility, such sworn statement shall include

(5) In the event that all the required documents are not timely filed, benefits of the Act may be revoked in accordance with the procedures established pursuant to chapter [thirty-seven] thirty-nine of this title. An application shall be deemed complete when all items delineated in §6-05 have been submitted, as well as any other documents which the Office may request.

§3. Subparagraph (i) of paragraph (2) of subdivision (e) of Section 6-08 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(i) In the event ownership of the affordable units is retained by a for-profit owner, the owner of the building receiving the benefits of the Act as a result of satisfaction of the requirements of this section shall have the ongoing responsibility for insuring the continuing maintenance and operation of the affordable units in a habitable condition. Should an owner fail to maintain such units as affordable or in a habitable condition, benefits of the Act received by the multiple dwelling located in the geographic exclusion area shall be revoked retroactive to the start of construction. Such revocation shall be conducted in accordance with the procedures established pursuant to chapter [thirty-seven] thirty-nine of this title.

§4. Paragraph (3) of subdivision (d) of Section 31-04 of Chapter 31 of the Rules of the City of New York is amended to read as follows:

(3) Notwithstanding the issuance of a Certificate of Eligibility, the tax exemption may be revoked or revised pursuant to chapter [thirty-seven] thirty-nine of this title.

Statement of Basis and Purpose. HPD determines eligibility for certain real property tax exemptions and abatements under the Real Property Tax Law. Chapter 39 of Title 28 of the Rules of the City of New York, which governs the revocation procedures for such tax

exemptions and abatements, currently contains several incorrect section references. The rule amendments would correct those section references.

Commissioner Mathew M. Wambua
July 12, 2011