



FINANCE
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THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

Section 11-127 of the Administrative Code of the City of New York, as enacted by Chapter 63 of the Laws of New York for 2003, authorized the City of New York to establish a three-month amnesty program for penalties and certain amounts of interest imposed under the laws pertaining to New York City income and excise taxes and the annual vault charge. The City will begin the three-month amnesty period on October 20, 2003. The following amendments to chapter 1 of title 19 of the Rules of the City of New York provide rules for the administration of the 2003 amnesty program. Immediate implementation of these amendments is necessary to provide taxpayers with guidelines for applying for amnesty as soon as possible and to permit the Department of Finance to implement the program promptly.

Therefore, pursuant to section 1043(e)1(c) of the New York City Charter, the Department of Finance hereby finds that there is a substantial need for the earlier implementation of the rules for administering the 2003 amnesty program. Consequently, the following amendments to the Rules of the City of New York relating to the 2003 amnesty program shall be effective upon the final publication of the rules in the City Record and the requirement that thirty days first elapse after such publication shall not apply.

/S/Martha E. Stark
Commissioner of Finance

Approved: /S/ Michael R. Bloomberg, Mayor

Dated: October 14, 2003

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

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-127(i) of the Administrative Code of the City of New York as enacted by Chapter 63 of the Laws of New York of 2003, I hereby promulgate the within amendment to the Rules Relating to the 2003 New York City Tax Amnesty Program. These rules were published in proposed form on August 20, 2003 and the hearing for public comment was held on September 22, 2003.

/S/ Martha E. Stark
Commissioner of Finance

Chapter 1 of Title 19 of the Rules of the City of New York is amended by adding a new Subchapter C to read as follows:

Subchapter C

2003 General Amnesty Program

§1-19 General

§1-20 Effect of Amnesty

§1-21 Eligibility

§1-22 Requirements for Amnesty

§1-23 Refunds or Credits

§1-24 Denial or Revocation of Amnesty

§1-25 Secrecy

§1-26 Bed and Breakfast Amnesty Program

§1-19 General. (a) On a date as designated by the Commissioner, a three-month tax amnesty program shall commence as established under section 11-127(a) of the Administrative Code of the City of New York as enacted by Chapter 63 of the Laws of New York of 2003. The provisions of this subchapter C shall govern the administration of this amnesty program and none of the provisions of subchapters A or B of this chapter 1 shall have any application to this amnesty program.

(b) The amnesty program shall apply to eligible taxpayers owing the following taxes imposed under Title 11 of the Administrative Code and administered by the Commissioner of Finance: the unincorporated business tax (Chapter 5), the general corporation tax (Subchapter 2 of Chapter 6), the banking corporation tax (Part 4 of Subchapter 3 of Chapter 6), the commercial rent or occupancy tax (Chapter 7), the commercial motor vehicle tax (Chapter 8), the tax upon foreign and alien insurers (Chapter 9), the utility tax (Chapter 11), the horse race admissions tax (Chapter 12), the cigarette tax (Chapter 13), the tax on the transfers of taxicab licenses (Chapter 14), the tax on coin operated amusement devices (Chapter 15), the real property transfer tax (Chapter 21), the tax on retail licensees of the State Liquor Authority (Chapter 24), the hotel room occupancy tax (Chapter 25) and the annual vault charge (Chapter 27). See §1-21 Eligibility, *infra*.

(c) Except with respect to the commercial rent or occupancy tax, amnesty will be available for all tax years ending on or before December 31, 2001. Except with respect to the commercial rent or occupancy tax, with respect to all taxes imposed on a basis other than an annual basis or on the basis of a transaction, amnesty shall be available for all periods or transactions ending or occurring on or before December 31, 2001. Amnesty shall be available with respect to the commercial rent or occupancy tax for taxable years ending on or before May 31, 2001.

(d) Definitions. For purposes of this subchapter:

(i) “Designated taxes” shall mean the amount and type of tax for the tax period or taxable event for which amnesty is requested. (Administrative Code §11-127(a))

(ii) "Taxpayer" shall mean a person liable for payment or collection of any of the taxes or charges enumerated in subdivision (b) of this section.

(iii) "Eligible taxpayer" shall mean any taxpayer other than a taxpayer described in subdivision (a) of §1-21, *infra*.

§1-20 Effect of Amnesty. (Administrative Code §11-127(b)) (a) Under the amnesty program, the granting of amnesty will have the following effect:

(1) Interest relating to the designated tax in excess of the required interest payment will be waived. See, §1-22(c) Payment, *infra*.

(2) Civil penalties relating to the designated tax will be waived, including, but not limited to, all civil penalties imposed on taxpayers pursuant to the provisions of Title 11 of the Administrative Code described in subdivision (b) of §1-20, *supra*.

(3) Criminal penalties prescribed by Chapter 40 of the Administrative Code as they relate to the designated tax will be waived.

(4) Civil, administrative and criminal proceedings relating to the designated tax will be barred.

Example: On June 20, 1999, a taxpayer subject to the commercial rent or occupancy tax, willfully made and subscribed to a false return filed with the Commissioner of Finance for the tax year ending May 31, 1999. The taxpayer applies for amnesty, files the required returns and makes full payment of the correct amount of tax and required interest due. Amnesty is granted. Civil and criminal penalties will be waived. Criminal prosecution for willfully subscribing to and filing a false return for the tax year ending May 31, 1999 under §11-4009 of the Administrative Code will be barred.

(b) The waiver of penalties and prohibition against prosecution apply only to the designated taxes for which amnesty is granted. The granting of amnesty does not preclude the assessment of additional tax for the same period within the otherwise applicable period for assessment of additional tax. Penalties may be imposed and proceedings will not be barred with respect to any amounts that are later determined to be due in excess of the designated tax and interest for which amnesty was granted. (Administrative Code §11-127(b))

Example: A taxpayer applies for and is granted amnesty for a 1999 commercial rent or occupancy tax liability in the amount of \$2,000 plus interest reported on a return filed with the amnesty application. After the end of the amnesty period following an audit of the return filed, it is finally determined that the taxpayer actually owed \$3,000 of tax plus interest. Penalties may be imposed and civil, administrative and criminal proceedings may be brought against the taxpayer with respect to the additional \$1,000 of tax plus interest from the date payment was originally due to the date payment is actually made. The full amount of interest accrued on the additional \$1,000 of tax will be assessed as well.

(c) An application for amnesty will not extend or toll any limitations period for assessment of additional tax or for protesting any proposed assessment of tax.

§1-21 Eligibility. **(a) General.** Amnesty shall be available for any taxpayer liable for any designated tax described in subdivision (b) of §1-19, *supra*, for the periods described in subdivision (c) of §1-19, *supra*, other than:

(1) Any taxpayer with respect to a designated tax if the taxpayer received a benefit under the amnesty program established by section 11-125 of the Administrative Code or the amnesty program established by section 84 of Chapter 765 of the Laws of New York of 1985, for that same tax or charge for the same or any other tax period or for the same or any other transaction.

(2) any taxpayer who is the subject of any criminal investigation with respect to a designated tax being conducted by any agency of the City of New York or of New York State or any other political subdivision of New York State. The Commissioner of Finance, in cooperation with investigating agencies, shall prepare a confidential list of those taxpayers who are ineligible because they are the subject of a pending criminal investigation relating directly to any tax listed in subdivision (b) of §1-19, *supra*. Every application for amnesty shall be compared with the list and any application for amnesty by a taxpayer subject to a pending criminal investigation shall be denied.

(3) any taxpayer who is the subject of any criminal litigation for nonpayment, delinquency or fraud with respect to a designated tax that is pending in any court of New York State or the United States on the date of the taxpayer's application. A litigation begins once (i) an indictment, complaint or information has been filed against the taxpayer and the defendant has been arrested or served a summons, or (ii) an arrest warrant has been issued and the defendant has been notified of such fact, whichever is earlier in regard to such accusatory instrument; and continues until the time to appeal has expired or the appellate process has been exhausted. See §1-24 *Denial or Revocation of Amnesty, infra*. Any such taxpayer is eligible for amnesty for any other eligible tax or period not covered by the criminal litigation.

(4) any taxpayer that has been convicted of a crime relating to a designated tax. Any such taxpayer is eligible for amnesty for any other eligible tax or period not covered by the criminal conviction.

(5) any taxpayer with respect to liabilities for a designated tax or charge to the extent that the taxpayer's liability for such taxes or charges was the subject of an audit pending with the Department of Finance on March 10, 2003.

(i) For purposes of this paragraph (5), a taxpayer's liability for taxes or charges will be considered to be the subject of an open audit on March 10, 2003, and thus ineligible for amnesty, if the Department has sent the taxpayer a written notification, dated on or before March 10, 2003, of the Department's intent to review the taxpayer's liability for that tax and period including the following: (A) a letter requesting an audit appointment; (B) an information and document request; (C) an inquiry letter; (D) a notice of proposed tax

adjustments unless the taxpayer has paid the amount proposed in full on or before March 10, 2003; or (E) any other written document that includes the taxpayer's name, taxpayer identification number, the tax and tax years, periods or transactions in question indicating the Department's intent to review the taxpayer's liability for that tax and year, period or transaction.

(ii) An audit will not be considered to be open if the Department has sent the taxpayer, or the taxpayer's duly authorized representative, a written notification, dated on or before March 10, 2003, that the matter has been finally closed including the following: (A) consent determination; (B) settlement or closing agreement signed by the taxpayer; (C) notice of determination; or (D) other written notification that the case was closed or that the returns were accepted as filed with no adjustment.

(iii) A written notification described in subparagraph (ii) will not be considered a notification of a final closure of a matter if the document described in subparagraph (ii) contained an exception for additional adjustments based on final Federal or New York State changes and if (A) there was a Federal or New York State audit of the taxpayer affecting all or a portion of the same period pending on March 10, 2003, (B) the taxpayer was a party to an administrative or court proceeding pending on March 10, 2003 protesting an adjustment made by the Internal Revenue Service or New York State affecting all or a portion of the same period, or (C) there was a final determination of a Federal or New York State change affecting all or a portion of the same period that either was not reported to the Department as required by the appropriate provision of the Administrative Code or was reported to the Department with a statement by the taxpayer that the taxpayer disagreed with the determination. The provisions of subparagraphs (i) and (ii) of this paragraph will apply in determining whether a Federal or New York State audit was pending on March 10, 2003.

(iv) A taxpayer will be ineligible for amnesty with respect to a matter that was the subject of an open audit as provided in this paragraph regardless of whether the audit was closed after March 10, 2003.

(6) Any taxpayer with respect to a designated tax that is the subject of an administrative proceeding or civil litigation commenced in the Department's Conciliation Bureau, the New York City Tax Appeals Tribunal or any court of this state to which the taxpayer is a party and that is pending on the date of the taxpayer's amnesty application, unless the taxpayer withdraws from the entire proceeding or litigation, with prejudice, prior to the granting of amnesty or agrees, as a condition of amnesty, to withdraw from the entire proceeding or litigation, with prejudice,. The preceding sentence does not apply to any proceeding or litigation that involves a designated tax that was the subject of an audit pending with the Department on March 10, 2003 as described in paragraph (5) of this subdivision. Amnesty is not available with respect any such matter. See §1-22(a)(4) and §1-24(a)(4), *infra*.

(7) any taxpayer with respect to liabilities for designated taxes to the extent that the taxpayer's liability for such taxes is the subject of an installment agreement with

the Department of Finance on the date that the amnesty program described in subdivision (a) of §1-19, *supra*, begins.

(b) Except as provided in paragraphs (5), (6) and (7) of subdivision (a) of this section, a taxpayer's eligibility is determined as of the date of application.

(c) Except as provided in paragraphs (2) and (6) of subdivision (a) of this section, a taxpayer's eligibility is determined separately in relation to each designated tax. Thus, a taxpayer may be ineligible for amnesty for one designated tax, but may be eligible for amnesty for another designated tax. With respect to a designated tax that is the subject of a pending administrative proceeding or litigation, the taxpayer must withdraw or discontinue, or agree to withdraw from or discontinue, with prejudice, the entire proceeding or case as a condition of the granting of amnesty.

Example 1: A taxpayer was granted amnesty in 1994 with respect to its liability for commercial rent or occupancy tax for the tax years ending May 31, 1991 and 1992. The taxpayer is eligible for amnesty under the program established pursuant to §1-19 or §1-26 for its liability for any tax other than the commercial rent or occupancy tax. The taxpayer is not eligible for amnesty for the commercial rent or occupancy tax for any period, including periods ending after 1994.

Example 2: On March 10, 2003, a taxpayer was being audited by the Audit Division of the Department with respect to its liability for general corporation tax for the tax years ending on December 31, 1998, 1999 and 2000. In June 1999, the taxpayer sold a controlling interest in a corporation owning real property in New York City but did not file a real property transfer tax return reporting the transfer and did not pay the real property transfer tax. The taxpayer is not being audited for this transaction. Although the taxpayer is ineligible for amnesty for general corporation tax for the tax years ending in 1998, 1999, and 2000, the taxpayer may be eligible for amnesty for the real property transfer tax. The taxpayer may also be eligible for other periods under the general corporation tax.

(d) A taxpayer whose outstanding liability with respect to a designated tax is limited to penalties and interest is eligible for amnesty with respect to the unpaid amounts. See, §1-22(c) *Payment*, and §1-23 **Refunds or Credits**, *infra*.

§1-22 Requirements for Amnesty. (Administrative Code §11-127(b) and (c)) (a) ***General.*** Within the three-month amnesty period, a taxpayer must:

(1) file an application specifying both the tax and tax period(s) for which amnesty is sought on the form designated for that purpose by the Department of Finance;

(2) submit previously unfiled or amended returns, including unfiled reports of federal or state changes or, if the taxpayer is requesting amnesty on an outstanding assessment, copies of the assessment documents. For purposes of this section, an assessment document is any document that finally fixes the amount of tax due or would so fix the amount of tax after the passage of a stated period of time, e.g., a notice of determination, notice of tax due, or a warrant;

(3) pay the tax and required interest prior to the end of the amnesty period or the date specified on the tax amnesty bill mailed to the taxpayer, if the taxpayer calculated the interest due incorrectly or otherwise erroneously determined the amount due; and

(4) withdraw from any pending administrative proceeding or litigation, with prejudice, or stipulate to discontinue or withdraw from such administrative proceeding or litigation, with prejudice, upon the granting of amnesty, if the matter is the subject of an administrative proceeding or civil litigation commenced in the Department's Conciliation Bureau, the New York City Tax Appeals Tribunal or any court of this state to which such taxpayer is a party and that is pending on the date of the taxpayer's amnesty application. See §1-21(a)(6), *infra*. The taxpayer must submit with the amnesty application proof of discontinuance of, or withdrawal from, the entire proceeding or litigation, with prejudice, or a stipulation agreeing to discontinue or withdraw from the entire proceeding or litigation with prejudice contingent upon the granting of amnesty. See §1-21(a)(6), *supra* and §1-24(a)(4) *infra*.) Taxpayers requesting amnesty with respect to a designated tax that is the subject of a pending administrative proceeding or litigation cannot withdraw or discontinue the proceeding or litigation in part so as to be eligible for amnesty with respect to a portion of the subject matter of the proceeding or litigation while retaining the option of continuing the proceeding or litigation as to the remainder. A taxpayer also cannot request that a proceeding be bifurcated to achieve the same result.

(b)(1) Amnesty applications must be sent to the address designated on the application form developed for that purpose by the Department of Finance or, in the discretion of the Commissioner of Finance, may be submitted electronically under procedures established by the Commissioner of Finance for that purpose.

(2) An amnesty application must be postmarked by the United States postal service or received by the Department of Finance by the last day of the amnesty period. For purposes of this paragraph, all references to postmarks shall include the recordings or markings by a designated delivery service treated as postmarks under the taxes specified in subdivision (b) of §1-19 for which amnesty is being requested. An amnesty application submitted by electronic means must be received by midnight, *i.e.*, 12:00 am, of the day following the last day of the amnesty period.

(c) **Payment.** (1) The taxpayer must pay the tax due and required interest prior to the end of the amnesty period, or by the date stated on any tax amnesty bill sent to the taxpayer.

(i) Except as provided in the following sentence, "tax due" means, for purposes of this subchapter, the amount of tax shown to be due in the assessment document, or, in the absence of an assessment document, the amount the taxpayer shows to be due on returns filed with the application. If the taxpayer files with the amnesty application a previously unfiled return for a designated tax that also is the subject of an assessment document issued by the Department, the "tax due" shall mean the amount shown as due on the return filed by the taxpayer. The amount of tax that a return filed under amnesty shows to be due, or the amount of tax that a return would

have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing the return. If a taxpayer withdraws from, or discontinues, an administrative proceeding or litigation to obtain amnesty for a designated tax, or stipulates that it will withdraw from or discontinue a proceeding or litigation upon the granting of amnesty, the tax due shall mean the amount shown to be due in the assessment document that is the subject of the administrative proceeding.

(ii) “Required Interest” for purposes of this subchapter, the required interest payment for each designated tax means the excess of:

(A) interest calculated as provided by the Administrative Code to the date of payment, over

(B) interest, if any, calculated as provided by the applicable provisions of the Administrative Code for the designated tax to the date three years prior to the first day of the amnesty program established by the Commissioner of Finance under subdivision (a) section 127 of the Administrative Code.

Example 1: The amnesty program begins on November 1, 2003. A taxpayer applies for amnesty with respect to general corporation tax for the tax years ending on December 31, 1999 and 2000 and files returns showing a liability for each year of the minimum tax. On December 15, 2003, the taxpayer pays the tax. The required interest with respect to the 1999 tax year would be calculated by determining the interest accrued from the day the tax was due, March 15, 2000, to the date the tax is paid, December 15, 2003, and subtracting the amount of interest for the period beginning March 15, 2000 through November 1, 2000, the date three years prior to the amnesty start date. With respect to the 2000 calendar tax year, the interest would be calculated by determining the interest accrued from March 15, 2001 to December 15, 2003, the date the tax is paid. No reduction in interest is available for this taxable year under the amnesty program.

Example 2: A taxpayer was issued a notice of determination with respect to the general corporation tax for the calendar year 1995 for \$2,000, plus interest and penalty, on June 21, 1998.

If the taxpayer did not timely file a petition with the New York City Tax Appeals Tribunal or request a conference with the Conciliations Bureau, the amount of general corporation tax became finally assessed on September 20, 1998. If the taxpayer timely filed a petition for a hearing or timely filed a request for a Conciliation conference and is awaiting a hearing or conference, the taxpayer must withdraw from the administrative proceeding to obtain amnesty. In either event, a proper payment under amnesty is the \$2,000 shown to be due on the notice of determination, plus the required interest as calculated in subparagraph (ii) of paragraph (1) of subdivision (c) of this section.

(2) If a taxpayer has paid a portion of the tax or interest due prior to the amnesty period, only the remaining unpaid amount of tax due and required interest, if any, must be paid.

(3) If a taxpayer does not calculate interest, or otherwise underpays the amount of tax due and required interest, the Commissioner of Finance will bill the taxpayer for the amount due under amnesty.

(4) Payment of the full amount of tax due and required interest as defined in paragraph (1) of this subdivision (c) is a condition of amnesty. Failure to pay the amount of tax due and required interest by the date specified in paragraph (1) of this subdivision (c) will result in a denial of amnesty.

(5) A taxpayer may not request amnesty with respect to any designated tax that is the subject of an offer in compromise accepted by the Department of Finance. A taxpayer that has made an offer in compromise that is pending with the Department may withdraw the offer and apply for amnesty. If a taxpayer requests amnesty with respect to a designated tax that is the subject of an offer in compromise pending with the Department of Finance, the taxpayer must withdraw the offer, or the offer will be deemed to have been withdrawn, and payment of the full amount of tax due and required interest as described in paragraph (1) of this subdivision will be required as a condition of amnesty.

§1-23 Refunds or Credits. (Administrative Code §11-127(g)) (a) No refund or credit shall be granted of any designated tax or interest paid under this amnesty program unless the Commissioner of Finance redetermines the amount due on his or her own motion.

(b) No refund or credit shall be granted of any penalty or interest paid prior to the time a taxpayer makes a timely request for amnesty. (Administrative Code §11-127(f)) Whether a payment has been applied to a tax, penalty or interest shall be determined under the Commissioner of Finance's current procedures.

§1-24 Denial or Revocation of Amnesty. (a) Amnesty will be denied or revoked if a taxpayer:

(1) is ineligible;

(2) fails to pay all of the designated tax and required interest; See §1-22(c), supra;

(3) requests amnesty for a tax or period not described in subdivision (b) of §1-19, supra; or

(4) fails to withdraw from or discontinue an administrative proceeding or civil litigation, with prejudice. See §1-22(a)(4), supra.

(b) General Procedure for Denial. (1) If amnesty is denied for any of the reasons set forth in subdivision (a) of this section, the Commissioner of Finance will issue a statement stating that the application for amnesty has been denied and the reason for the denial (the "denial letter"). The denial letter is the only evidence that a timely application was made for the designated tax, and must be produced by the taxpayer to substantiate any subsequent claims for amnesty for that designated tax. See subparagraph (ii) of paragraph (1) of subdivision (c) of this section, infra. If a taxpayer's amnesty is revoked,

the Commissioner of Finance will issue a letter stating that amnesty has been revoked and the reason for the revocation (“letter of revocation”).

(2) All payments made in connection with an amnesty application are final and will not be returned upon a denial or revocation of amnesty. Payments made in connection with a denied or revoked amnesty application will be credited to the taxpayer's liability for the designated tax or any other liability of the taxpayer as permitted by law.

(3) Except as provided in subdivision (c) of this section, the application for amnesty and returns submitted of a taxpayer ineligible for amnesty or for whom amnesty is denied or revoked, will not be returned. A taxpayer who is ineligible pursuant to paragraph (3) of subdivision (a) of §1-21, *supra*, (a taxpayer that is the subject of criminal litigation) is not permitted to make an application for amnesty for the designated tax involved. If such an ineligible taxpayer nevertheless makes an application, the application and returns will not be returned and they will be treated as if received apart from an amnesty application. Moreover, the retention by the Department of any amount paid with an amnesty application submitted by a taxpayer that is the subject of a pending criminal litigation and whose amnesty application is denied on that basis will not constitute a settlement, compromise or any other agreement by the Department to discontinue or forego any criminal prosecution of the taxpayer.

(4) If a taxpayer disagrees with a denial or revocation of amnesty, the taxpayer must submit a statement of disagreement setting forth all relevant facts within 30 days after the date of the letter of denial or revocation. The letter should be sent to the New York City Department of Finance at the following address:

Office of Legal Affairs
345 Adams Street
Brooklyn, NY 11201
Attn: Amnesty Appeals

(c) *Denial of amnesty due to pending criminal investigation.* (1) If a taxpayer is the subject of a pending criminal investigation, the Commissioner of Finance shall indicate on the denial letter sent to the applicant that such application was timely received, but is denied due to a pending criminal investigation. In the case of an application that is denied because of a pending criminal investigation, all materials submitted other than any payment will be returned to the applicant and no identifiable information submitted in connection with the application shall be kept by the Commissioner of Finance. The return of any application or returns submitted under the amnesty program shall not be considered a rejection of returns for any other purpose. Moreover, the retention by the Department of any amount paid with an amnesty application submitted by a taxpayer that is the subject of a pending criminal investigation and whose amnesty application is denied on that basis will not constitute a settlement, compromise or any other agreement by the Department to discontinue or forego any criminal investigation of the taxpayer.

(2) The Commissioner of Finance shall not be required to disclose the particulars of a pending criminal investigation upon which an amnesty denial was based. The Commissioner of Finance shall, however, upon a protest under paragraph (4) of subdivision (b) of this section, confirm that the taxpayer is on the confidential list described in paragraph (2) of subdivision (a) of §1-21 *supra*, and that amnesty was properly denied, and so certify to the taxpayer.

(3) Upon a subsequent finding of no criminal liability, whether through a prosecution not resulting in a conviction or by the investigating agency otherwise terminating the investigation, the applicant will be notified and will have 30 days to apply for amnesty for the amount of designated tax previously denied. If the taxpayer has not been officially notified of the termination of the criminal investigation, the resubmission must be within five years and 30 days of the date of the denial letter. The applicant must re-submit its application and returns, make any payment if not previously made, and submit a copy of the denial letter.

(d) *Denial of amnesty due to pending criminal prosecution.* If the taxpayer's application is denied due to a pending criminal prosecution, the taxpayer may resubmit the application if this criminal action does not result in conviction. The resubmission must be within 30 days of the conclusion of the prosecution. The applicant must re-submit its application and returns and make any payment if not previously made, and submit a copy of the denial letter.

(e) *Revocation of amnesty erroneously granted.* If, because of a taxpayer's failure to supply complete and accurate information, amnesty is erroneously granted to an ineligible applicant, as defined in §1-21, *supra*, amnesty will be revoked and, except with respect to an applicant who is ineligible for amnesty under paragraph (2) of subdivision (a) of §1-21, (a taxpayer under criminal investigation), materials submitted will be kept by the Commissioner of Finance and all materials will be treated as if they were received apart from an amnesty application. Furthermore, if the taxpayer submits a fraudulent return as part of its application for amnesty, amnesty may be revoked.

(f) *Effect of denial or revocation of amnesty.* If amnesty is denied or revoked, penalties will not be waived and any civil, administrative or criminal action or proceeding relating to the designated tax involved will not be barred.

§1-25 Secrecy. (a) No returns, applications or other documents filed under amnesty may be disclosed except as provided in the provisions relating to the secrecy of reports or returns under the chapters of the Administrative Code specified in subdivision (b) of §1-19 of this subchapter. (Administrative Code §11-127)

(b) Notwithstanding subdivision (a) of this section, to the extent the information received under amnesty is subject to an exchange agreement with the Internal Revenue Service, New York State Department of Taxation and Finance, or another state's tax administrator, the information may be disclosed consistent with such agreements.

§1-26 Bed and Breakfast Amnesty Program.

(a) A three-month amnesty program will commence on such date as designated by the Commissioner for all operators of hotels having fewer than ten rooms, including but not limited to bed and breakfast establishments and hotels operated in private residences.

This amnesty program shall apply with respect to liabilities for hotel room occupancy tax on hotel occupancies occurring prior to the day the amnesty program under this section begins. Except as provided in this section, all of the provisions applicable to the amnesty program established under §1-19, *supra*, shall apply to the amnesty program established under this section.

(b) In addition to the other requirements of this subchapter, an operator seeking amnesty under this section must register with the Department as a hotel operator if such person has not already done so. An amnesty program established under this section shall provide that upon submission of such written application and upon evidence of payment to the city of hotel room occupancy taxes and interest as provided in subdivision (c) of this section:

(1) the Commissioner of Finance shall waive any applicable penalties, and no civil, administrative or criminal action or proceeding shall be brought against such operator with respect to the taxes so paid,

(2) the Commissioner of Finance shall waive any liability of such operator for taxes required to be collected by such operator for hotel room occupancies occurring prior to the first day of the twelfth month preceding the day the amnesty program established under this section begins, in hotels having fewer than ten rooms, including but not limited to bed and breakfast establishments and hotels operated in a private residence, and any applicable interest.

(c) To be eligible under this section, an operator is required to pay hotel room occupancy taxes, and interest thereon, that such operator was required to collect for all hotel room occupancies in hotels having fewer than ten rooms, including but not limited to bed and breakfast establishments and hotels operated in a private residence, during the period commencing on the first day of the twelfth month preceding the day the amnesty program established under this section begins. Failure to pay all such taxes and interest shall result in a denial of amnesty.

(d) Notwithstanding any provision of subdivision (a) of §1-21, *supra*, amnesty may be granted under this section to any taxpayer who had an audit of hotel room occupancy tax pending with the Department of Finance on March 10, 2003 and to any taxpayer who is a party to an administrative proceeding or civil litigation commenced in the Department's conciliation bureau, the tax appeals tribunal or any court of this state with respect to any hotel room occupancy tax audit pending with the Department on March 10, 2003, provided the taxpayer withdraws from or discontinues such proceeding or litigation, with prejudice, prior to the granting of amnesty. See §1-21(a)(6), *supra*.

BASIS AND PURPOSE OF RULES

These rules are necessary to fully implement the tax amnesty programs authorized by section 11-127 of the Administrative Code of the City of New York, as enacted by Chapter 63 of the Laws of New York of 2003, and to provide guidance to taxpayers and their representatives in applying for amnesty under those programs. Pursuant to the finding of Martha E. Stark, Commissioner of Finance, (published below) immediate implementation of these rules is necessary.