

**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 City Charter, I hereby promulgate the within Rules Relating to the Real Property Tax Surcharge on Certain Class One Properties. The rules were published in proposed form on November 26, 2003, and a hearing for public comment was held on January 5, 2003.

**Rules Relating to the Real Property Tax Surcharge  
on Certain Class One Properties**

Section 1. A new chapter 46 is added to Title 19 of the Compilation of the Rules of the City of New York (Rules Relating to the Real Property Tax Surcharge on Certain Class One Properties), to read as follows:

**Chapter 46**

**The Real Property Tax Surcharge  
on Certain Class One Properties**

**§46-01. Definitions.** Unless the context requires otherwise, as used in these rules:

“Administrative Code” means the Administrative Code of the City of New York.

“Basic STAR” means the school tax relief exemption from real property taxes as defined in paragraph (a) of subdivision 2 of section 425 of the Real Property Tax Law.

“Class one property” means real property classified as class one property pursuant to section 1802 of the Real Property Tax Law.

“Commissioner” means the Commissioner of Finance of the City of New York or the designee of the Commissioner.

“Department” means the New York City Department of Finance.

“Fiscal year” means the period beginning July 1 and ending the following June 30.

“Real property tax surcharge” or “surcharge” means the real property tax surcharge imposed under section 307-a of the Real Property Tax Law and section 11-238 of the Administrative Code.

“STAR exemption” means the school tax relief exemption from real property taxes pursuant to section 425 of the Real Property Tax Law.

**§ 46-02. Certification.**

**(a) Certification of exclusion from surcharge; timing of application.**

(1) Property to which surcharge applies. As provided for by New York State Real Property Tax Law §307-a and New York City Administrative Code §11-238, a real property tax surcharge is imposed on certain class one property, excluding vacant land, that provides rental income and is not the primary residence of the owner or owners of such class one property or the primary residence of the parent or child of such owner or owners. The surcharge shall be a lien on the subject property, and may be collected in

any manner provided by law. The property shall be deemed to be the primary residence of the owner or owners if the property would be eligible to receive the STAR exemption, regardless of whether the property is currently receiving the exemption. Property owners who have registered to receive the STAR exemption (or other exemption from real property tax administered by the Department of Finance for which primary residency is a requirement) are not required to file an additional certification under paragraph (2) of this subdivision in order to be excluded from the surcharge.

(2) Who must file certification. In order to obtain exclusion from the surcharge, property owners not registered to receive the STAR exemption (or other exemption from real property tax administered by the Department of Finance for which primary residency is a requirement) who are eligible for exclusion from the surcharge as set forth in Administrative Code §11-238 or New York State Real Property Tax Law §307-a shall complete an application on which they certify to the Commissioner that their property is eligible for exclusion from the requirement of the surcharge based on the use of the property as of the applicable taxable status date for the fiscal year for which exclusion from the surcharge is sought. This application and certification of eligibility for exclusion shall be on a form provided by the Department of Finance.

(3) Timing of certification. A certification of eligibility for exclusion from the surcharge must be filed with the Department no later than March 15 immediately prior to the fiscal year for which the owner is applying for exclusion from the surcharge. The Commissioner may, from time to time in the discretion of the Commissioner, require re-certification from the owner.

(4) Special rule for fiscal year 2004. Notwithstanding any other provision of this subdivision, a certification of eligibility for exclusion from the surcharge for fiscal year 2004 (which begins July 1, 2003 and ends June 30, 2004) must be filed with the Department no later than March 15, 2004, and must be based on the use of the property as of the date of the certification.

(5) Certification upon conveyance of property or interest therein. The Department may make the form for certification under these rules a part of the real property transfer tax return or an attachment thereto and in such case a certification shall be completed and filed with any such return that is filed with the Department.

(b) Certification Requirements.

(1) By application provided pursuant to paragraph (2) of subdivision (a) of this section, the owner shall certify that the class one property is the primary residence of at least one owner.

(2) If the subject property is not the primary residence of at least one owner, then the owner must certify, and may be required to provide proof as set forth under subdivision (b) of section 46-03 of these rules, that such property is the primary residence of such owner's or owners' parent or child. Such owner or owners may also be required to provide certification as to the resident's or residents' relationship to the owner or owners and such proof of the relationship as the Commissioner deems acceptable.

(3) If the subject property is not so used as provided for in paragraphs (1) and (2) of this subdivision, the owner or owners must certify that such owner or owners receive no rental income of any kind, or in any manner or form, whatsoever, from the use of such property. The Department of Finance may require that the owner provide the Commissioner with a copy of the owner's or owners' most recent federal or New York State or New York City personal income tax return(s) together with this certification.

(4) Owners making the above listed certification(s) to the Department of Finance shall make such certifications under penalty of perjury, subject to audit and subject to the penalties set forth in Administrative Code §11-238(d), including the imposition of an additional penalty tax of \$500.00 against the subject property.

### **§46-03. Proof of Primary Residency.**

(a) Generally. Where requested, the burden shall be on the owner or owners to establish that the property is their primary residence. While a person may have one or more residences, there can be only one primary residence, and the owner, upon request, must establish that the subject property is an owner's or owners' primary residence.

(b) Where an owner certifies that a property is an owner's or owners' primary residence, or the primary residence of the owner's or owners' parent or child, the Department of Finance may request, and such owner or owners shall be required to furnish, proof of primary residency. Forms of proof that will be considered by the Commissioner shall include, but are not limited to the following:

1. a valid driver's license;
2. copy of a federal or New York State Personal Income Tax Return;
3. a copy of a utility bill or 911 service listing;
4. a voter registration card;
5. a social security statement;
6. an automobile registration;
7. a recent tax bill addressed to the owner at the property address;
8. a recent bank statement; and
9. other forms of proof that the Commissioner deems acceptable.

In determining whether an owner has demonstrated primary residency, the Commissioner need not base the determination on any single factor and, in addition to the above forms of proof, the Commissioner may consider the length of time the person has resided on the property, and other conduct and behavior that provide evidence as to which property is the owner's or owners' primary residence.

(c) Failure to furnish proof of primary residency promptly and to the satisfaction of the Commissioner, upon request, shall result in the denial of the application for exclusion from the surcharge due to primary residency and, as a result, the imposition of the surcharge plus any interest accrued from the date on which the surcharge would have been due and payable but for the filing of the application for exclusion, plus any penalties that may be imposed as set forth in Administrative Code §11-238(d), including the imposition of an additional

penalty tax of \$500.00 against the subject property. Any amounts imposed pursuant to this subdivision shall be a lien on the subject property, and may be collected in any manner provided by law.

(d) Where an owner makes a certification that the property is the primary residence of an owner's or owners' parent or child, the owner or owners making this certification may be required to furnish to the Department of Finance at least two forms of proof of residency of their parent or child as may be required under subdivision (b) of this section, plus any such proof deemed acceptable by the Commissioner as to the relationship of the owner or owners to such parent or child.

**§46-04. Audit.** The Department of Finance may audit such certifications and require and verify proof of residence or absence of rental income provided in connection with a certification. In the course of such audit, the Commissioner may request, consider and verify additional forms of proof of primary residence or absence of rental income. If following an audit, the Commissioner determines that an owner who provided a certification pursuant to paragraph (2) of subdivision (a) of section 46-02 of these rules should have been required to pay the surcharge, the surcharge shall be imposed on the property, together with interest accrued as of the date that the surcharge would have been due and payable but for the filing of the application and certification of eligibility for exclusion, plus any penalties that may be imposed as set forth in Administrative Code §11-238(d), including the imposition of an additional penalty tax of \$500.00 against the subject property. Any amounts imposed pursuant to this section shall be a lien on the subject property, and may be collected in any manner provided by law.

**§46-05. Change in eligibility.** (a) Notification to Commissioner. The owner or owners of the property shall notify the Commissioner in the event that (1) a property that was granted an exclusion from the surcharge based on its use as a primary residence of the owner or owners or the parent or child of the owner or owners ceases to be used as the primary residence of the owner or owners or the parent or child of the owner or owners, or (2) a property that was granted an exclusion based on the fact that it does not produce rental income begins to produce rental income.

(b) Effect of mid-year change in eligibility.

(1) Mid-year change in use of property excluded from surcharge. Where a determination that a property was eligible for exclusion was based on the status of the property prior to the commencement of a fiscal year for which exclusion was granted, then in the event that a cessation of use for an excluded purpose occurs prior to the end of such fiscal year, the property will remain excluded from the surcharge for the remainder of such fiscal year.

(2) Mid-year change in use of property subject to surcharge. In the event that a property that is subject to the surcharge for a fiscal year based on the status of the property prior to

the commencement of such fiscal year first meets the requirements for eligibility for exclusion based on a change in use prior to the end of such fiscal year, the property will remain subject to the surcharge for the remainder of such fiscal year, and the property will become eligible for exclusion for the next succeeding fiscal year, subject to the certification requirements of these rules.

## **Basis and Purpose of Rules**

The purpose of these rules is to inform property owners how the Department of Finance will implement the surcharge on real property tax for certain class one properties established by New York State Real Property Tax Law §307-a and New York City Administrative Code §11-238. This new chapter 46 of Title 19 of the Rules of the City of New York will instruct taxpayers how to provide a certification of eligibility for exclusion from the surcharge due to primary residency, or other qualification, to the Department of Finance to avoid the imposition of this statutory surcharge.

The rules provide that where a property owner has not already enrolled in the New York State STAR property tax relief program, or other exemption program for which primary residency is a requirement, eligible property owners must certify to the Department of Finance that the property is the primary residency of at least one owner or an owner's parent or child or that no rental income from the property is received. The rule further establishes the types of proof that a taxpayer may provide to demonstrate primary residency. This procedure will ensure that only those property owners who are required to pay the surcharge under the relevant State and local laws are charged.

---

Martha E. Stark  
Commissioner of Finance