

NOTICE OF RULE MAKING

Pursuant to the power vested in me as Commissioner of Finance by New York City Administrative Code section 11-206 and sections 1043 and 1504 of the New York City Charter, I hereby promulgate the rule concerning the correction of any assessment or tax which is erroneous due to a clerical error or error in description. This rule was published in the proposed form on February 29, 2016. A hearing for public comment was held on March 31, 2016.

S/S

Jacques Jiha Commissioner of Finance

STATEMENT OF BASIS AND PURPOSE

Section 11-206 of the Administrative Code of the City of New York gives the Commissioner of the Department of Finance the ability to correct any assessment or tax which is erroneous due to a clerical error or error in description. Historically, the authority granted under section 11-206 has been exercised narrowly, leaving unaddressed many categories of errors that could be corrected under this section. This rule significantly expands the categories of errors for which the Department of Finance will offer an opportunity to correct. Corrections would apply going forward, but could also apply to errors occurring up to six years prior to the date an application for a correction is submitted. These rules also specifically outline the types of errors that are correctible under section 11-206. A correction made according to this section is separate and apart from an appeal to the Tax Commission.

The rule sets forth:

- the types of assessment errors that are considered clerical errors and errors in description and that may be corrected administratively by the New York City Department of Finance, including specific examples, as well as the types of errors that are not subject to administrative correction.
- the procedures to request administrative review of assessment errors.

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.

§ 1. Title 19 of the Rules of the City of New York is amended by adding a new Chapter 53, to read as follows:

Chapter 53

POWER OF THE COMMISSIONER OF FINANCE TO CORRECT ERRORS CONCERNING ASSESSMENT OR TAX ON REAL PROPERTY

§ 53-01. Administrative Review Procedure

(a) *Application Procedures.* (1) Any request for administrative review concerning assessment or tax of real property pursuant to this section must be filed by the owner of the property or any person who would be entitled to file a complaint pursuant to section 163 of the New York City Charter with the Property Division of the Department of Finance. Any such request must be made on an application form prescribed by the Commissioner of Finance and include all required information.

(2) An eligible filer may submit an application pursuant to this section for administrative review of clerical errors and errors in description as defined in subdivisions (a) and (b) of section 53-02 of this chapter. An eligible filer is not restricted as to when an application may be submitted.

(3) The Department of Finance will only correct eligible errors that occurred within six years of the date of submission of an application.

(4) It will be within the sole discretion of the Department to determine whether additional documentation or an inspection is necessary to review the application for administrative review. If all requested documentation is not submitted within ninety days, the application will be denied.

§ 53-02. Clerical errors and Errors in Description

(a) *Clerical Errors.* The Commissioner of Finance may correct any assessment or tax that is erroneous due to a clerical error as defined in subdivision 2 of section 550 of the Real Property Tax Law. Clerical error will include but not be limited to the following:

(1) Failure to process partial exemption.

Example: Eligible senior citizen submits a completed application for the senior citizen homeowner exemption for the 2014/15 year and provides a certified mail receipt that is was submitted timely. The application is not approved or denied but is lost and the homeowner does not receive the exemption for 2014/15.

(2) Computer programming or inputting error resulting in value different than intended by assessor.

Example: Assessor values an office building at \$1,000,000 but the assessment roll mistakenly reflects a value of \$10,000,000 due to a computer programming or inputting error.

(b) *Errors in Description.* The Commissioner of Finance may correct any assessment or tax due to an error in description which will include but not be limited to the following:

(1) Incorrect tax classification on the assessment roll due to an inventory error concerning the records maintained by the Department of the physical characteristics of the property.

Example: Department records indicated that there were twelve units on the property when there were in fact ten units. The tax class will be changed from class 2 to subclass 2B (capped).

(2) Physical change not put on the assessment roll or put on as an equalization change.

Example: New construction was performed on the property but the assessment roll does not reflect a physical increase subsequent to the completion of the work).

(3) Physical change put on the assessment roll when no physical work was done.

Example: No construction work or alterations were performed on the property but the assessment roll reflects a physical increase in assessed value.

(4) Equalization change erroneously put on an assessment roll as a physical change.

Example: The value of the property increased due to increases in rental income, but no physical work was done on the property in the previous year. The assessment erroneously reflected a physical increase in assessed value instead of an equalization increase in assessed value.

(5) In progress assessment erroneously not removed from the assessment roll.

Example: Construction has commenced on a commercial building for a year but it is not ready for occupancy by April 15th. Therefore the assessment on the improvement should be removed from the assessment roll. The failure to remove the assessment based on the partial completion will be corrected.

(6) Incorrect entry on the assessment roll of the assessed value of an improvement which was destroyed or removed prior to the taxable status date.

Example: House on the property was demolished prior to January 5th, but the assessment roll indicates a building assessed value for the property.

(7) Incorrect entry on the assessment roll of the assessed value of an improvement which was not in existence or which was present on a different parcel.

Example: House assessed for the property at 100 Main Street (vacant land) when the house existed on the property at 110 Main Street.

(8) Assessment based on incorrect square footage.

Example: Owner-occupied warehouse is valued based on 10,000 square feet when it has 5,000 square feet and the assessed value would have been lower if the correct square footage had been used.

(9) Assessment based upon incorrect number of units.

Example: Retail property is valued using four rental units when it has two rental units, and the assessed value would have been lower if the correct number of units had been used.

(10) Inaccurate building class that affected assessed value.

Example: Warehouse property (building class E1) erroneously had a K1 retail building class that resulted in higher income being applied and an assessed value that was too high.

(11) Erroneous calculation of transitional assessment or statutory limitation on assessment increases.

Example: Class one property has an equalization increase in assessed value of 10% from the previous year, which exceeds the statutory cap of 6% per year.

(12) Incorrect apportionment of parcel on the tax map.

Example: Parcel was requested to be apportioned 50% to the old owner and 50% to the new owner. The tax map erroneously apportioned 70% of the parcel to the old owner and its assessed value would have been lower if the apportionment had been done correctly.

(13) Land incorrectly deemed developable.

Example: Property is protected wetlands and cannot be developed, but is valued as if it were vacant land subject to development.

(14) Correction of defective changes by notice.

Example: The assessed value of a commercial property is increased prior to May 10th, the end of the change by notice period, but the 10-day notice required pursuant to statute is not mailed. The increase is therefore defective and the assessed value should be restored to the prior amount.

(c) Errors Not Subject to Administrative Correction. The following errors will not be subject to administrative correction:

(1) Overvaluation due to inappropriate comparables or attributed income:

Example: Condominium was valued using comparable income from rentals in a different neighborhood rather than rentals from the same neighborhood.

(2) Incorrect valuation model utilized.

Example: Retail property was valued using an 8% capitalization rate, but it was determined in subsequent models that a 9% capitalization rate was more appropriate for this type of property in this location.

(3) Error in land/building ratio.

Example: The land assessed value for a class one single-family house is 40% of the total assessed value, but it is subsequently determined that the land proportion of the total assessed value should be 50%.

(4) Incorrect calculation of exemption based on error in application of the statute (inclusion of additional year in exemption calculation previously held by court not to be a clerical error).

Example: a J-51 exemption was incorrectly calculated to include equalization increase for four years instead of three years as per the statute.

(d) Nothing in this section shall limit the authority of the department to make changes pursuant to the change by notice procedures described in section 1512 of the New York City Charter or the request for review procedures described in section 37-06 of Title 19 of the rules of the City of New York.