

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Proposed Rules

Notice of Opportunity to Comment on Proposed Rules Governing
Tax Exemption under §420-c, 421-a, 421-b, 421-g 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)(c) and in accordance with the requirements of §1043 of the New York City Charter that the Department of Housing Preservation and Development intends to modify the rules governing tax exemption under §§420-c, 421-a, 421-b, 421-g and 489 of the Real Property Tax Law of the State of New York. Additions to the rules are underlined and proposed deletions are [bracketed].

Written comments regarding these rules may be sent to the Department of Housing Preservation and Development, Attention: Elaine R. Toribio, TIP Director, 100 Gold Street, Room 3-Z1, New York, New York 10038, on or before. A public hearing shall be held from 9:00 AM to 12:00 PM. on October 26, 2009 at 100 Gold Street, 9th floor, Room 9-P10, New York, New York 10038. Persons seeking to testify are requested to notify the TIP Director at the foregoing address. Written comments and an audiotape of oral comments received at the hearing will be available for public inspection, within a reasonable time after receipt, between the hours of 9:00 A.M. and 5:00 P.M. at the office of the TIP Director.

The proposed rule amendments were included in HPD's 2009-10 Regulatory Agenda.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are requested to notify the TIP Director at the foregoing address by October 10, 2009.

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

Section one. Title 28 of the Rules of the City of New York is amended by adding a new chapter 37 to read as follows:

CHAPTER 37

Revocation of Tax Benefits

§37-01 Definitions. As used in this chapter, the following terms shall have the following meanings:

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City of New York.

Application. "Application" shall mean, collectively, any application for Tax Benefits submitted to HPD and all documents submitted therewith.

Assistant Commissioner. "Assistant Commissioner" shall mean an Assistant Commissioner of HPD who has jurisdiction over Tax Benefit programs or such other person as may be designated in writing by the Commissioner of HPD.

Cause. "Cause" shall mean any Violation, Misrepresentation, Omission, Failure, or Discrimination, without regard to the date upon which HPD discovers such Violation, Misrepresentation, Omission, Failure, or Discrimination.

Cause Date. "Cause Date" shall mean the first date upon which any Cause occurred, without regard to the date upon which such Cause was discovered by HPD.

Comments. "Comments " shall mean any written comments and/or information that the Taxpayer submits to HPD during the Comment Period regarding the alleged Cause for Revocation of a Tax Benefit.

Comment Period. "Comment Period" shall mean a period specified in the Initial Notice during which the Taxpayer may submit Comments to HPD.

Cure Agreement. "Cure Agreement" shall mean an agreement with a Taxpayer (i) requiring such Taxpayer to cure a Cause for Revocation, and (ii) providing that the Tax Benefit will remain in place if the Taxpayer and any successors or assigns comply with all of their respective obligations thereunder; provided, however, that such agreement may provide for the partial or temporary Revocation of a Tax Benefit in the event of a partial cure or a cure that does not rectify a period of non-compliance.

Determination Notice. "Determination Notice" shall mean a written notice from HPD to the Taxpayer delivered after the Hearing or, if there is no Hearing, after the Comment Period stating the determination of the Assistant Commissioner regarding whether a Tax Benefit will be Revoked or will remain in effect. Any Determination Notice stating that a Tax Benefit will be Revoked shall specify the Revocation Date.

DHCR. "DHCR" shall mean the Division of Housing and Community Renewal of the State of New York or any successor agency.

Discrimination. "Discrimination" shall mean the direct or indirect denial to any person of any housing accommodations in the Property receiving the Tax Benefit, or any of the privileges or services incident to occupancy of such housing accommodations, in violation of any local, state or federal law prohibiting discrimination on the basis of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or eligibility for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. 1437 et. seq., or the senior citizen rent increase exemption program, pursuant to either chapter seven or section five hundred nine of title twenty-six of the Administrative Code; provided however, that "Discrimination" shall not include any act for which the applicable Law does not permit the Revocation of the Tax Benefit. The term "disability" as used in this subdivision shall have the meaning set forth in §8-102 of the Administrative Code.

DOF. "DOF" shall mean the Department of Finance of the City of New York or any successor agency.

Expiration Date. "Expiration Date" shall mean the date upon which a Tax Benefit would expire pursuant to applicable Law.

Factual Issue. "Factual Issue" shall mean one or more issues of fact which, if resolved in favor of the Taxpayer, would require the conclusion that Cause for Revocation does not exist.

Failure. "Failure" shall mean the failure to (i) keep, preserve or make available upon request by HPD any Records required to be kept and maintained pursuant to § 37-07 herein or pursuant to any other provision of this title or any Law, (ii) appear before HPD at any time or place named in a summons, or (iii) give testimony under oath as may be relevant or material to HPD's inquiry relating to a Tax Benefit.

Hearing. "Hearing" shall mean an administrative hearing regarding one or more Factual Issues to determine whether there is Cause to revoke a Tax Benefit, at which administrative hearing the Taxpayer may be represented by counsel and may present witnesses and other evidence.

Hearing Notice. "Hearing Notice" shall mean a written notice from HPD to the Taxpayer stating the date, time, and location of a Hearing, identifying one or more Factual Issues to be addressed at such Hearing, and informing the Taxpayer that he or she may be represented by counsel and may present witnesses and other evidence at such Hearing.

Hearing Officer. "Hearing Officer" shall mean a person designated by HPD.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York or any successor agency.

Initial Notice. "Initial Notice" shall mean a written notice from HPD to the Taxpayer stating the intention to Revoke a Tax Benefit for Cause and the proposed Revocation Date, identifying the Property and Tax Benefit affected, briefly describing the alleged Cause for Revocation of such Tax Benefit, stating the Comment Period, and providing an address for the submission of Comments during the Comment Period.

Law. "Law" shall mean, collectively, the Real Property Tax Law, any provision of the Administrative Code enacted pursuant thereto, and any rule of the City of New York promulgated pursuant thereto.

Misrepresentation. "Misrepresentation" shall mean the submission of an Application which contains incorrect, misleading or fraudulent information.

Omission. "Omission" shall mean the submission of an Application which omits material information.

Pre-Hearing Notice. "Pre-Hearing Notice" shall mean a written notice from HPD to the Taxpayer stating (i) that the Taxpayer may request a Hearing prior to Revocation regarding one or more Factual Issues identified in such notice, (ii) the date by which such written request must be received by HPD, and (iii) an address for the submission of such written request.

Property. "Property" shall mean the real property receiving a Tax Benefit, including the land and all improvements thereon.

Records. "Records" shall mean all books, papers, records or other data which may be relevant or material to any Application or Tax Benefit, including an annual schedule of rents for each dwelling unit in the Property where so required by the Law governing any Tax Benefit.

Revocation or Revoke. "Revocation" or "Revoke" shall mean any partial or total suspension, reduction, termination or revocation of any Tax Benefit which takes effect as of a date which precedes the Expiration Date of such Tax Benefit.

Revocation Date. "Revocation Date" shall mean the date as of which HPD proposes to Revoke, or does Revoke, a Tax Benefit. The Revocation Date may be upon such date as HPD may determine, but shall not precede the Cause Date.

Tax Benefit. "Tax Benefit" shall mean any exemption from or abatement of real property taxation pursuant to Law with respect to which HPD makes determinations of eligibility.

Taxpayer. "Taxpayer" shall mean (i) the individual or entity located at the address to which DOF sends tax bills for the applicable Property, (ii) any current holder of fee title to such Property whose interest is clearly recorded in the office of the City Register in the applicable borough, and (iii) any current mortgagee of such Property whose mortgage interest in such Property is clearly recorded in the office of the City Register in the applicable borough.

Violation. "Violation" shall mean any non-compliance with applicable Law.

§37-02 Revocation of Tax Benefits for Cause.

(a) HPD may Revoke a Tax Benefit for Cause at any time through the procedure set forth in this section.

(b) HPD shall deliver an Initial Notice to the Taxpayer by the method provided herein for delivery of notices.

(c) The Taxpayer may submit Comments to HPD during the Comment Period. HPD may thereafter meet with such Taxpayer if such Comments contain either (i) credible evidence that a Factual Issue exists, or (ii) a proposed cure for the alleged Cause for Revocation which HPD determines may be reasonably practicable.

(e) If HPD determines that the alleged Cause for Revocation of the Tax Benefit is curable and that the Taxpayer has proposed a practicable cure, HPD may enter into a Cure Agreement with such Taxpayer. HPD may require the Taxpayer to record any such Cure Agreement against the Property receiving such Tax Benefit.

(f) If HPD does not enter into a Cure Agreement with the Taxpayer and either receives no Comments during the Comment Period or determines after reviewing such Comments that there is no Factual Issue concerning the Cause for Revocation, HPD shall deliver a Determination Notice to the Taxpayer by the method provided herein for delivery of notices stating that the Tax Benefit has been Revoked as of the Revocation Date set forth therein.

(g) If HPD determines that a Factual Issue exists, HPD shall deliver a Pre-Hearing Notice to the Taxpayer by the method provided herein for delivery of notices.

(h) If the Taxpayer requests a Hearing, HPD shall schedule a Hearing and shall deliver a Hearing Notice to the Taxpayer by the method provided herein for delivery of notices. Notwithstanding any provision of these rules to the contrary, a Taxpayer may waive its right to a Hearing.

(i) At the Hearing, the Taxpayer will have an opportunity to present witnesses and other evidence regarding any Factual Issue specified in the Hearing Notice.

(j) Upon conclusion of any Hearing, the Hearing Officer shall issue a written report containing findings regarding the Factual Issue(s) and a recommendation regarding whether or not the Tax Benefit should be Revoked.

(k) The Hearing Officer shall forward such report and recommendation, together with the record of the Hearing, to the Assistant Commissioner.

(l) The Assistant Commissioner shall review the report and recommendation of the Hearing Officer, shall determine whether or not the Tax Benefit should be Revoked and shall thereafter deliver a Determination Notice to the Taxpayer by the method provided herein for delivery of notices.

§37-03 Requirements of Law Survive Revocation. The Revocation of a Tax Benefit pursuant to this chapter shall not exempt any housing accommodations in the applicable Property from continued compliance with the requirements of the Law pursuant to which such Tax Benefit was granted, including, but not limited to, any provision of such Law regarding rent control or rent stabilization. Such housing accommodations shall be operated in compliance with such requirements of such Law until the Expiration Date or for such longer period as may be specified by Law.

§37-04 Rent Stabilization. At any Hearing, the information contained in DHCR's database shall be definitive evidence of whether any housing accommodations have been registered with DHCR.

§37-05 Notices. HPD shall deliver all Initial Notices, Pre-Hearing Notices, Hearing Notices, and Determination Notices to the Taxpayer by mail to (i) the address to which DOF delivers real property tax bills, and (ii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding fee title to or a mortgage on the Property that is the subject of such notice. Any such notice shall be deemed to have been given upon the third day after such notice has been deposited in the United States mail.

§37-06 Voluntary Withdrawal. A Taxpayer shall not voluntarily surrender, terminate, or cause the Revocation of a Tax Benefit without the prior written consent of HPD. HPD shall not consent to any voluntary surrender, termination, or Revocation of Tax Benefits unless:

(a) no housing accommodations on such Property have been rented to residential tenants on or before the date of the granting of such consent and the owner repays, with all interest accrued thereon, all taxes which would have been owed in the absence of the Tax Benefit; or

(b) such Property is the subject of a regulatory agreement with or approved by HPD and begins receiving an exemption from or abatement of real property taxation pursuant to another statute not later than one week following such voluntary surrender, termination, or Revocation of the Tax Benefit.

§ 37-07 Record Keeping, Subpoenas and Oaths. For any Application granted on or after October 1, 2009, the Taxpayer shall keep and maintain all Records until the Expiration Date and shall make such Records available for inspection by HPD upon written request therefor. For any Application granted before October 1, 2009, the Taxpayer shall keep and maintain all Records required by the Law pursuant to which the Tax Benefit was granted or by any other applicable law or rule. At any time subsequent to the filing of an Application and prior to the Expiration Date of any Tax Benefit, HPD may (i) examine any Records, and (ii) summon any person, including, but not limited to, the Taxpayer or an officer, director, member or employee of the Taxpayer, or any person having, or having had, possession, custody or control of Records requested or granted, or any person or firm that participated in the construction, conversion or rehabilitation of the Property that requested or was granted the Tax Benefit, to appear before HPD at the time or place designated in the summons or to produce such Records, and to give such testimony under oath as may be relevant or material to the Tax Benefit requested or granted.

§2. Subparagraph (ii) of paragraph (3) of subdivision (f) of Section 5-03 of Chapter 5 of Title 28 of the Rules of the City of New York is amended to read as follows:

(ii) As specified in Section 37-03, [R]rent regulation shall not be terminated by the waiver or revocation of tax benefits.

§3. Section 5-07 of Chapter 5 of Title 28 of the Rules of the City of New York is amended to read as follows:

§5-07 [Record Keeping:] Revocation of Tax Exemption/Tax Abatement for Failure to Substantiate Claimed Costs and Declaratory Rulings.

(a) [*Subpoenas, oaths, books and records.* For the purpose of determining the correctness of any application or certificate, the Commissioner may:

(1) Examine any books, papers, records or other data which may be relevant or material to such inquiry;

(2) Summon any person, including the owner or an officer or any employee of the owner, or any person having possession, custody or care of books, papers or records relating to the correctness of the application, to appear before the Commissioner or his designate at any time or place named in the summons or to produce such books, papers, records or other data and to give such testimony under oath, as may be relevant or material to such inquiry; and

(3) Take such testimony under oath as may be relevant to such inquiry.] Reserved.

(b) [*Retention of books and records.* All books, records and documents listed in §5-05, together with all other documents, which in accordance with generally accepted auditing standards, may be used to substantiate entries in the applicant's books and records shall be kept at all times available for inspection by the Office and shall be retained for a period of at least three years from the date on which an applicant collects a Certificate of Eligibility except that (1) where an audit has been initiated and a final determination has not been rendered, such records shall be retained until such determination has been made and (2) where an applicant has entered into

an installment arrangement with respect to payment for work comprising all or a part of the project, such records shall be retained until the later of (i) three years from the date on which the applicant collects the Certificate of Eligibility and (ii) one year following payment in full for the work comprising the project.] Reserved

(c) [*On-going program review.* To ensure that the Office will have sufficient current data to properly evaluate the program of tax exemption and tax abatement and effectively administer the program, the Office may, during the period of tax exemption and abatement, require owners to submit rental data, construction data and such other information as the Office deems necessary to carry out the functions delegated to it pursuant to the Act.] Reserved.

(d) [*Preservation and inspection of records.* Records of each application shall be maintained by the Office. Records of approved applications are available for inspection and copying upon prior written request to the Office. Copies of records are available upon payment in advance of twenty-five cents (\$0.25) per page.] Reserved.

(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 of this title, the Commissioner may[, after notice pursuant to §5-07(g),] 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[, after notice of an opportunity to be heard and a request to produce documentation of claimed costs,] 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.

(2) Tax benefits will not be revoked for failure to substantiate the amount of claimed costs after the expiration of three years from the date on which the applicant collects the Certificate of Eligibility from the Office, except that (1) where an audit has been initiated within the three-year period, but a final determination has not been rendered, or (2) where the applicant has not made payment in full for the work comprising the project within two years after the applicant has collected the Certificate of Eligibility, then such benefits may be revoked subsequent to such three year period.

(3) [Tax benefits may be revoked in whole or in part at any time during the tax benefit period if there has been fraud or misrepresentation or for any violation of the Act or this chapter.] All books, records and documents, which in accordance with generally accepted auditing standards, may be used to substantiate entries in the applicant's books and records relating to claimed costs, shall be kept at all times available for inspection by the Office and shall be retained for a period of at least three years from the date on which an applicant collects a

Certificate of Eligibility except that (1) where an audit has been initiated and a final determination has not been rendered, such records shall be retained until such determination has been made and (2) where an applicant has entered into an installment arrangement with respect to payment for work comprising all or a part of the project, such records shall be retained until the later of (i) three years from the date on which the applicant collects the Certificate of Eligibility and (ii) one year following payment in full for the work comprising the project.

(4) If an institutional lender has become a successor in interest to the original owner of such building or structure, and, after diligent efforts to obtain original contracts, checks and other records normally reviewed by the Office to verify claimed costs, is unable to obtain part or all of such records, the Office shall permit the substitution, in whole or in part, of documentation certified by the institutional lender showing the amounts advanced by the institutional lender pursuant to the mortgage loan to finance such alterations or improvements along with such other documentation as the Office may require.

(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 of this title. Notwithstanding the foregoing, if, after HPD delivers an Initial Notice in accordance with chapter thirty-seven 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.

(f) [*Additional grounds for revocation.* The Commissioner of the Department of Finance or the Commissioner of the Department of Housing Preservation and Development shall withdraw tax exemption and tax abatement granted to a building pursuant to the Act upon the happening of any of the following events:

(1) The building is operated for commercial or hotel or transient hotel use as indicated by, but not limited to, a lease or agreement for occupancy for periods of less than one year. Revocation shall be effective from the first tax period the prohibited use began.

(2) The real estate taxes and other charges having tax lien status with respect to the building (and land) total \$1,000 or more and remain unpaid for one year after the same are due and payable to the City and the applicant or his or her predecessor in title has not entered into an installment agreement with the City which provides for the payment of delinquent taxes, assessments or other legal charges pursuant to §11-401 et seq. of the Administrative Code or has entered into an installment agreement but all payments required by said installment agreement have not been paid when due.

(3) The building ceases to be subject to the rent regulatory provisions of law set forth in §5-03(f)(1), unless the building is exempt from such provisions pursuant to §5-03(f)(2).

(4) During the periods prescribed by §5-07(b), the owner of any building receiving tax exemption or tax abatement, or any employee or agent of such owner, fails to appear and produce books, papers, records or other data required by §5-07(a) after being duly summoned to appear.

(5) Benefits granted hereunder shall not be withdrawn if within thirty (30) days after notice of a breach or omission pursuant to §5-07(g), the purported breach or omission has been cured or

the owner has established to the satisfaction of the Office or the Department of Finance that it did not occur.] Reserved.

(g) [*Notice of revocation or reduction.* Prior to revocation or reduction of tax exemption and tax abatement hereunder, notice of the breach or omission shall be given either by the Office or by the Department of Finance to the applicant by regular mail to the address to which the Department of Finance sends tax bills or to such other address for the applicant on record with the Department of Finance, and to the mortgagee if registered to receive tax bill from the Department of Finance. Benefits shall not be withdrawn if within thirty (30) days after notice of breach or omission the owner establishes that such breach or omission did not occur.] Reserved.

(h) [*Non-discrimination.* No owner of any dwelling which is receiving the benefits of the Act, nor any agent, employee, manager, or officer of such owner shall directly or indirectly deny dwelling accommodations in such property, or any of the privileges or services incident to occupancy in violation of §11-243(k) of the Administrative Code.] Reserved.

(i) *Declaratory rulings.* A declaratory ruling with respect to an analysis of a specific or hypothetical site, project, fact pattern or document or an interpretation of the applicability of a specific provision of §489 of the Real Property Tax Law or §11-243 of the Administrative Code or these rules to an actual or hypothetical site, project, fact pattern or document or any other issue related to eligibility may be given in the discretion of the Office upon payment of a non-refundable fee in the amount of seven hundred fifty dollars (\$750) payable at the time such declaratory ruling is requested in writing. In no event shall a declaratory ruling bind the Office as to the overall eligibility of a project for J-51 benefits. At the discretion of the Commissioner, this fee may be waived for projects supervised or funded by HPD or any other New York City or New York State agency or instrumentality.

(j) [The Department of Finance shall use the following procedure to effect revocation and reinstatement of tax benefits for non-payment of real estate taxes:

(1) In January of each calendar year, the Department of Finance shall notify the owner of such outstanding real estate taxes (as defined in paragraph 2 of §5-07(f)) pursuant to §5-07(g) of these Rules. Following the date of this notification, the owner shall have sixty (60) days to pay such outstanding taxes. This shall constitute the first cure period.

(2) If the owner has paid such outstanding taxes during the first cure period (or entered into a valid installment agreement with the City), the tax exemption and/or abatement benefits shall continue on the property. If the owner has not paid such outstanding taxes before the expiration of the first cure period, the Department of Finance shall revoke all tax exemption and/or abatement benefits for the tax year commencing July 1 after the date of the beginning of the first cure period.

(3) Following the expiration of the first cure period, the Department of Finance shall again notify the owner of such outstanding real estate taxes (as defined in paragraph 2 of §5-07(f)) pursuant to §5-07(g) of these Rules. Following the date of this notification, the owner shall have ninety (90) days to pay such outstanding taxes. This shall constitute the second cure period.

(4) If the owner has paid such outstanding taxes during the second cure period (or entered into a valid installment agreement with the City), the Department of Finance shall, upon notification by the taxpayer, reinstate tax exemption and/or abatement benefits to the property for the tax

year commencing July 1 after the date of the beginning of the first cure period. If the owner has not paid such outstanding taxes before the expiration of the second cure period, the property shall irrevocably lose all tax exemption and/or abatement benefits for such tax year, and the Department of Finance shall also revoke all tax exemption and/or abatement benefits for all tax years commencing on or after the second July 1 that follows the date of the beginning of the first cure period.

(5) Following the expiration of the second cure period, the Department of Finance shall again notify the owner of such outstanding real estate taxes (as defined in paragraph 2 of §5-07(f)) pursuant to §5-07(g) of these Rules. Following the date of this notification, the owner shall have one-hundred and eighty (180) days to pay such outstanding taxes. This shall constitute the third cure period.

(6) If the owner has paid such outstanding taxes during the third cure period (or entered into a valid installment agreement with the City), the Department of Finance shall reinstate the tax exemption and/or abatement benefits to the property for all tax years commencing on or after July 1 after the date of the beginning of the first cure period. If the owner has not paid such outstanding taxes before the expiration of the third cure period, the property owner shall irrevocably lose all J-51 tax exemption and/or abatement benefits awarded by HPD for such tax years.

(7) The Commissioner may exempt projects assisted with Substantial Governmental Assistance or projects supervised or monitored by HPD from the procedures in this subdivision by giving notice in writing to the Department of Finance, Attn: Director of Exemptions, provided, further, that projects exempted from these procedures shall continue to have tax exemption and/or abatement benefits revoked for the period of their tax delinquency for failure to pay real estate taxes pursuant to the provisions of §5-07(f)(2).

(8) All claims for reinstatement of J-51 tax exemption and/or abatement benefits resulting from revocations made prior to the effective date of these Rules must be made in writing to the Department of Finance, Property Exemption Unit, within one year of the effective date of these Rules.] Reserved.

(k) As specified in Section 37-03, [T]the revocation of benefits for noncompliance with the Act or this chapter shall not exempt any unit from continued compliance with the requirements of the Act or this chapter.

§4. 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 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 [pursuant to §6-07(e)(5) herein] in accordance with the procedures established pursuant to chapter thirty-seven 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.

§5. Section 6-07 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

§6-07 Reserved. [Record Keeping; Revocation of Tax Exemption; Discrimination Prohibited.

(a) *Collection of data; subpoenas; testimony*. At any time subsequent to the filing of an application and during the period of tax exemption, the Department may:

(1) Examine any books, papers, records or other data which may be relevant or material to the tax exemption requested or granted;

(2) Summon any person, including, but not limited to, the owner or an officer, director, member or employee of the owner, or any person having, or having had, possession, custody or control of books, papers or records relating to the tax exemption requested or granted, or any person or firm that participated in the construction of the building, to appear before the Commissioner or his or her designee at the time or place designated in the summons or to produce such books, papers or records or other data, and to give such testimony under oath as may be relevant or material to the tax exemption requested or granted.

(b) *Availability of books and records; revocation*. All books, records and documents required by §6-05 herein, or which relate to or support the application made pursuant to this chapter as well as an annual schedule of rents for each unit in the building, as required by §6-04(c) herein, shall be kept by the owner and made available for inspection by the Department until the expiration of the tax exemption requested or granted. Failure to make books, records or documents, including an annual schedule of rents for each unit in the building, available upon request may result in the prospective or retroactive revocation of tax exemption benefits.

(c) *Preservation of records*. The Department shall maintain a complete file of all records, documents, notices and correspondence relating to each application. Pursuant to the provisions of the Freedom of Information Law, these records shall be open to public inspection upon prior written request to the Department of Housing Preservation and Development, Freedom of Information Record Access Officer, 100 Gold Street, 9th Floor, New York, N.Y. 10038. Records are available for inspection by members of the general public and a copy of an application or any part thereof, shall be furnished to any person upon payment of the prevailing charge.

(d) *False or misleading applications; revocation*. If the applicant has furnished information which is incorrect or misleading in any substantial respect or which fails to comply with this chapter or requirements imposed by the New York State Division of Housing and Community Renewal and if the breach or omission has not been cured within the time prescribed in §6-07(h), below, the

Department may revoke any Preliminary or Final Certificate of Eligibility, retroactively or prospectively.

(e) *Additional grounds for revocation.* The Commissioner of the Department of Finance or the Commissioner of the Department of Housing Preservation and Development may withdraw tax exemption granted to a building pursuant to the Act upon the happening of any of the following events:

(1) The multiple dwelling is operated primarily for commercial, hotel, or single room occupancy use. Revocation shall be effective from the first tax quarter in which the prohibited use began;

(2) The real estate taxes or water or sewer charges with respect to the building (and land) remain unpaid for one year after the same are due and payable to the City unless the applicant or his, her or its predecessor in title has entered into an installment agreement with the City which provides for the payment of delinquent taxes, assessments or other legal charges pursuant to §11-401 et seq. of the Administrative Code and all payments required by said installment agreement have been paid when due. Revocation shall be effective from the first tax quarter in which taxes were unpaid;

(3) The building ceases to be subject to the provisions of law set forth in §6-02(g)(2) unless the building is exempt from such provisions pursuant to §6-02(g)(3). Revocation shall be effective on the date of such cessation;

(4) Any person subject to be summoned by virtue of §6-07(a) fails to appear and produce books, papers, records or other data as required by said section, after being duly summoned to appear. Revocation shall be retroactive to start of construction;

(5) The applicant fails to satisfy any time requirement set forth herein. Revocation shall be retroactive to start of construction.

(6) The applicant fails to establish to the satisfaction of the Department that affordable units created to qualify a building for the benefits of the Act which have not been transferred to a qualified not-for-profit organization are being maintained as affordable and in a habitable condition pursuant to the requirements of §6-08 herein.

(7) The multiple dwelling qualified for the benefits of the Act on the basis of Negotiable Certificates, and the Department finds that the units which were the basis for the issuance of the Negotiable Certificates which have not been transferred to a qualified not-for-profit organization are not being maintained as affordable and in a habitable condition pursuant to the requirements of §6-08 herein.

(8) The Department finds that a rental building located in the geographic exclusion area which qualified for the benefits of the Act pursuant to §6-08(b) herein has been converted to cooperative or condominium ownership prior to the expiration of the partial tax exemption.

(f) *Discrimination prohibited: revocation.* No owner of a multiple dwelling which is receiving the benefits of the Act, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy thereto in violation of the anti-discrimination provisions of §8-107 of the Administrative Code. The practice of any discrimination as described herein shall result in the revocation of benefits under the Act, retroactive to the date of such

practice. Nothing contained in this subdivision (f) shall restrict such consideration in the development of housing accommodations for the lawful purpose of providing for the special needs of a particular group.

(g) *Initial occupancy of designated units not by persons of low and moderate income or not affordable; revocation.* No owner of a multiple dwelling located within the geographic exclusion area, which is receiving the benefits of the Act only because the requisite number of affordable units has been created, nor any employee, manager, or officer of such owner shall, at initial occupancy, or upon vacancy, directly or indirectly, rent such affordable unit to any person ineligible for such occupancy or, at any time during the tax benefit period, rent fewer than the number of units required by the Department pursuant to §6-08 herein at a cost affordable to persons of low and moderate income. Any such practice shall result in the revocation of benefits under the Act, retroactive to commencement of construction.

(h) *Notice and procedure upon revocation.* The Department shall serve, by ordinary mail, a Notice of Revocation or Reduction on the applicant and any subsequent owner or mortgagee, which has previously registered with the Department for the receipt of such notice, that said applicant, owner or mortgagee has furnished incorrect or misleading information of a substantial nature, or has omitted information of a material nature, or is in violation of one or more provisions of the Act or this chapter. The notice will provide a brief description of the violation alleged. The applicant, owner or mortgagee shall have ninety (90) days to cure the violation or, alternatively, may request an informal hearing within thirty (30) days from the date of the notice to rebut the allegations therein. Upon the applicant's, owner's or mortgagee's failure to cure or rebut within the time prescribed, the Department shall advise the Department of Finance that a Certificate of Eligibility has been revoked or that the amount of exemption is to be reduced. The Department of Finance shall retroactively or prospectively withdraw or reduce tax exemption granted to an eligible multiple dwelling. In the case of a retroactive revocation, the Department of Finance shall reinstate the amount of taxes which have been exempted and charge interest at the rate prescribed by the Administrative Code to be calculated from the day on which such taxes would have been payable but for the exemption.]

§6. 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, [pursuant to §6-07(e)(6), (7) and (8) of this chapter,] benefits of the Act received by the multiple dwelling located in the geographic exclusion area shall be revoked retroactive to the start of construction. [Upon receipt of a Notice of Revocation pursuant to §6-07(h) of this chapter, the owner shall have a ninety day period to cure such violation.] Such revocation shall be conducted in accordance with the procedures established pursuant to chapter thirty-seven of this title.

§7. Paragraph (4) of subdivision (b) of Section 6-09 of Title 28 of the Rules of the City of New York is amended to read as follows:

(4) [In addition to the grounds for revocation provided pursuant to §6-07 of this chapter, the Commissioner of the Department of Finance or the Commissioner of the Department of Housing Preservation and Development may withdraw tax exemption granted to a building pursuant to the Act, retroactively or prospectively, upon its failure to comply with any of the provisions of this §6-09.] Reserved.

§8. Section 7-04 of Chapter 7 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 7-04 [Revocation of Tax Exemption.

(a) False or misleading application. If the applicant has furnished information which is incorrect or misleading in any substantial respect or which fails to comply with these regulations and if the breach or omission has not been cured within ninety (90) days, or such lesser time as may be designated by the Office, after notice has been given to the applicant and any subsequent owner or mortgagee of the private dwelling registered with the Office, the Office shall revoke a Preliminary or Final Certificate of Eligibility.

(b) Failure to complete within required time. If the applicant fails to complete construction or reconstruction within the time provided in paragraph (2) of § 7-03(b), the Office shall revoke a Preliminary Certificate of Eligibility.

(c) Non-conforming use. If the Office determines that a private dwelling is not being used for residential purposes at any time after two years of tax exemption received pursuant to these regulations, the Office shall revoke a Preliminary or Final Certificate of Eligibility.

(d) Procedure upon revocation. The Office shall advise the Department of Finance that a Preliminary or Final Certificate of Eligibility has been revoked. The Department of Finance shall prospectively withdraw tax exemption granted to an eligible project unless revocation occurred pursuant to § 7-04(a) in which case the Department of Finance shall reinstate the amount of taxes which have been exempted, together with interest, at the rate of fifteen (15%) percent per annum to be calculated from the day on which such taxes would have been payable but for the exemption.

(e) Criminal penalties. In addition to revocation of tax exemption, applicants who submit applications which contain false statements or false information may be subject to criminal penalties as provided in Article 175 of the Penal Law] Reserved.

§9. 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 [§ 31-06 of these rules] chapter thirty-seven of this title.

§10. Section 31-06 of Chapter 31 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 31-06 [Record Keeping; Revocation of Tax Exemption]Fees and Declaratory Rulings.

(a) [Subpoenas, Oaths, Books and Records. For the purpose of ascertaining the correctness of any application, the Commissioner may: (1) examine any books, papers, records or other data which may be relevant or material to such inquiry; (2) summon any person, including the owner or an officer or any employee of the owner, or any person having possession, custody or care of books, papers or records relating to the correctness of the application, to appear before the Commissioner or his or her designee at the time or place named in the summons or to produce such books, paper, records or other data and to give such testimony under oath, as may be relevant or material to such inquiry; and (3) take such testimony under oath as may be relevant to such inquiry.] Reserved.

(b) [Retention of Books and Records. All books, records and documents listed in § 31-04, together with all other documents which may be used to substantiate entries in the applicant's books and records shall be kept by the applicant at all times available for inspection by the Office and shall be retained for the duration of the tax exemption.] Reserved.

(c) [Preservation and Inspection of Records. Records of each application shall be maintained by the Office. Records of approved applications are available for inspection and copying upon prior written request to the Office. Copies of records are available upon payment in advance of an amount to be determined by the Office.] Reserved.

(d) [Suspension or Revocation of Tax Exemption.

(1) The Commissioner may suspend future tax exemptions if she or he finds reasonable evidence indicating that the application for tax exemption, including any substantiating documentation submitted or considered in connection with the application, contains a false statement or false information as to a material matter or omits a material matter. In the event the Commissioner determines, on the basis of the total available evidence, that the application contains false statements or false information as to a material matter or omits a material matter, all past and future benefits hereunder may be revoked.

(2) The Commissioner may revoke the tax exemption retroactively in whole or in part during the tax exemption period if there has been fraud or misrepresentation or for a failure to provide notice under § 31-06(f) hereof.

(3) The Commissioner shall revoke or revise, as applicable, tax exemptions prospectively in the event the Real Property or any portion thereof is no longer Eligible Property. An Eligible Property shall not be deemed "no longer an Eligible Property" for the purposes of this paragraph solely because the term of the Loan has expired.] Reserved.

(e) [Additional Grounds for Suspension or Revocation.

(1) The Commissioner may suspend tax exemptions prospectively in the event that the owner of the Real Property is in default under the terms of the Loan and/or the Regulatory Agreement. The suspension of tax exemption shall commence upon the date of the issuance of a notice of default from the City. In the event the default is not cured, the Commissioner shall revoke all future tax exemptions.

(2) If the Allocation Document for the Real Property submitted with the application for Certificate of Eligibility was not a United States Treasury Form 8609 of which Part I of said form has been completed by the Housing Credit Agency, the Commissioner may revoke past and future tax

exemption if the Applicant has not submitted such form 8609 within thirty-six months of the Initial Filing Date of the application. The Commissioner may revoke past and future tax exemptions if the Applicant has not submitted to the Office a Permanent Certificate of Occupancy for the Eligible Property within thirty-six months after the Initial Filing Date.] Reserved.

(f) [Owner's Notification. Throughout the period of the exemption, if there is any material change in the information upon which the Office has relied in granting the Certificate of Eligibility, the owner of the Real Property benefiting from tax exemption shall notify the Office within one month of such changes. Such notification shall be by certified mail and in a form acceptable to the Office. Such material changes shall include, but not be limited to, changes in the use of any portion of the Eligible Property as Housing Accommodations and changes in any aspect of the ownership status or management of Applicant.] Reserved.

(g) [Notice of Suspension, Revocation or Reduction. Prior to suspension, revocation or reduction of tax exemption hereunder, notice of the breach or omission shall be given by the Office to the applicant by certified mail to the address of the owner or agent duly registered on the City Collector's Owner Registration File. Benefits shall not be suspended, revoked or reduced if, within thirty days after the date of the mailing of such notice, the owner establishes that such breach or omission did not occur.] Reserved.

(h) Fees and Declaratory Rulings. [For Applications received after the effective date of these Rules, the] The Office shall charge a filing fee of one hundred (\$100) dollars per Application. In addition, there shall be a charge of eighty (\$80) dollars per Class A dwelling unit and sixty (\$60) dollars per Class B dwelling unit, as applicable, due at the time of issuance of a Certificate of Eligibility. Such fee shall be non-refundable under any circumstances, including but not limited to the subsequent revocation or revision of a Certificate. A declaratory ruling with respect to an analysis of a specific fact pattern, document or organizational structure or an interpretation of the applicability of a specific provision of the 420-c statute or Rules to an actual or hypothetical site, project, fact pattern, document or organizational structure or any other issue related to eligibility may be given by the Office upon payment of a non-refundable fee of two hundred fifty (\$250) dollars payable at the time such declaratory ruling is requested in writing. In no event shall a prior ruling bind the Office as to the overall eligibility of a project for 420-c benefits.

§11. Section 32-06 of Chapter 32 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 32-06 [Certifying Continuing Use, Record Keeping; Revocation of Tax Exemption and Abatement; Discrimination Prohibited.

(a) Certifying continuing use.

(1) For the duration of the benefit period, the recipient shall file annually with the Department, on or before the taxable status date, a certificate of continuing use. Such certificate shall be on a form prescribed by the Department. The Department shall have the recipient authority to require such information as it deems necessary to determine whether the Recipient has established continuing eligibility for benefits.

(2) The Department shall have the authority to terminate benefits pursuant to the Act upon failure of the recipient to file such certificate by the taxable status date. The burden of proof shall

be on the recipient to establish continuing eligibility for benefits and the Department may require that statements made in such certificate shall be made under oath.

(3) The recipient shall, on the certificate of continuing use, state whether any charges alleging violation by the recipient or any person owning substantial interest (as herein defined as ownership and control of an interest of ten per cent (10%) or more in property or any person owning a property) in the property, or any officer, director, or general partner of the recipient or person owning a substantial interest in the property, or any person for whom the recipient or person owning a substantial interest in the property is an officer, director or general partner, of § 235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction, are pending.

(b) Collection of data; subpoenas; testimony. At any time subsequent to the filing of an application and during the benefit period, the Department may:

(1) Examine any books, papers, records, or other data which may be relevant or material to the tax exemption requested or granted;

(2) Administer oaths to and take the testimony of any person, including, but not limited to the owner of property which is the subject of an application for a certificate of eligibility or a certificate of eligibility pursuant to the Act and issue subpoenas requiring the attendance of persons and the production of such bills, books, papers, or other documents as it shall deem necessary.

(c) Availability of books and records, revocation. All books, records and documents required by § 32-03(a) herein, or which relate to or support the application made pursuant to the Act, shall be kept by the owner and made available for inspection by the Department until the expiration of the tax benefit requested or granted. Failure to make books, records, or documents, including an annual schedule of rents for each unit in the building available upon request for the benefit period may result in the termination or revocation of tax benefits.

(d) Preservation of records. The Department shall maintain a complete file of all records, documents, notice and correspondence relating to each application. Pursuant to the provisions of the Freedom of Information Law, these records shall be open to public inspection upon prior written request to the Department of Housing Preservation and Development, Records Access Officer, 100 Gold Street, New York, NY 10038.

(e) False or misleading documents; revocation.

(1) The Department may deny, reduce, terminate or revoke any exemption from or abatement of tax payments pursuant to the Act whenever:

(i) a recipient fails to comply with the requirements of the Act or the rules; or

(ii) an application, certificate, report or other document submitted by an applicant or recipient pursuant to the Act or these rules contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading. The Department may declare any applicant or recipient referred to in § 32-06(e)(1)(i) or § 32-06(e)(1)(ii) of these rules to be ineligible for future benefits pursuant to the Act for the same or other property.

(2) Notwithstanding any other law to the contrary, a recipient shall be personally liable for any taxes owed pursuant to the Act whenever such recipient fails to comply with the Act or these rules, or makes such false or misleading statement or omission, and the Department determines that such act was due to the recipient's willful neglect, or that under the circumstances such act constituted a fraud on the Department or a buyer or prospective buyer of the property. The remedy herein for an action in personam shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by any general, special or local law. Any lease provision which obligates a tenant to pay taxes which become due because of willful neglect or fraud by the recipient, or otherwise relieves or indemnifies the recipient from any personal liability arising hereunder, shall be void as against public policy except where the imposition of such taxes or liability is occasioned by actions of the tenant in violation of the lease.

(f) Additional grounds for termination or revocation. The Commissioner of Finance or the Commissioner of Housing Preservation and Development may terminate or revoke tax exemption and tax abatement granted to a building pursuant to the Act upon the happening of any of the following events:

(1) Any eligible multiple dwelling in which aggregate floor area is converted from the use authorized pursuant to the Act:

(i) where such conversion results in less than seventy-five per cent (75%) of the aggregate floor area of such property being used or held out for use for dwelling purposes, or

(ii) where such conversion results in more than twenty-five per cent (25%) of such aggregate floor area being used or held out for use for commercial, community facility or accessory use space, or

(iii) where such conversion in a building of 100,000 square feet or more of aggregate floor area that has a certificate of eligibility for partial exemption or partial abatement pursuant to § 32-04(b)(3) of these rules results in less than fifty per cent (50%) of such aggregate floor area being used or held out for use for dwelling purposes, shall cease to be eligible for benefits as of the last date upon which the eligible multiple dwelling met the requirements of the Act and the recipient proves by clear and convincing evidence that at least seventy-five per cent (75%) of the aggregate floor area of the property was used or held out for use for dwelling purposes, or twenty-five per cent (25%) or less of the aggregate floor area of such property was used or held out for use for commercial, community facility or accessory use space, or at least fifty per cent (50%) of the aggregate floor area of such property in a building of 100,000 square feet or more which is receiving partial exemption or abatement benefits was used or held out for use for dwelling purposes, respectively. Such recipient shall pay, with interest, any taxes for which benefits were claimed after such date, including the pro-rata share of tax for which any benefits were claimed during the tax year in which the property was converted to a use not eligible for benefits pursuant to the Act. Notwithstanding the foregoing, an eligible multiple dwelling shall not be subject to termination or revocation of benefits pursuant to this paragraph (1) by reason of the conversion of the use of space therein if such conversion results from the actions of a third party unaffiliated with the recipient, the lease or occupancy agreement with such third party contains a provision prohibiting such conversion, and the recipient is actively prosecuting enforcement of such provision.

(2) If, during the benefit period, any real property tax or water or sewer charge due and payable with respect to property receiving an exemption or abatement pursuant to the Act shall remain

unpaid for at least one year following the date upon which such tax or charge became due and payable, all exceptions and abatements granted pursuant to the Act with respect to such property shall be revoked, unless within thirty days from the mailing of a notice of revocation by the Department of Finance satisfactory proof is presented to the Department of Finance that any and all delinquent taxes and charges owing with respect to such property as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with the Department of Finance or other appropriate agency. Any revocation pursuant to this paragraph shall be effective with respect to real property tax which became due and payable following the date of such revocation.

(3) The eligible multiple dwelling ceases to be subject to the provisions of law set forth in § 32-05 of these rules unless the eligible multiple dwelling is exempt from such provisions.

Termination shall be effective on the date of such cessation;

(4) Any person subject to be summoned by virtue of § 32-06(b) of these rules fails to appear and produce books, papers, records, or other data as required by said section, after being duly summoned to appear. Revocation shall be retroactive to start of construction;

(5) The applicant fails to file the certificate of continuing use as described in § 32-06(a) of these rules by the taxable status date of a given year. Termination of benefits shall take effect July 1 of the tax year relating to such taxable status date.

(6) Any partial exemption from or partial abatement of real property taxes granted pursuant to the Act for a non-residential building of 100,000 square feet or more of aggregate floor area shall be revoked if completion of conversion of at least seventy-five per cent (75%) of the aggregate floor area of such non-residential building has not taken place within five years of commencement of conversion. Revocation shall be retroactive to the commencement of the benefit period.

(7) If any person described in the statement required by § 32-03(a)(8) or § 32-06(a)(3) of these rules is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to the Act and shall pay, with interest, any taxes for which benefits were claimed pursuant to the Act.

(g) Discrimination prohibited; revocation. No owner of a multiple dwelling that is receiving the benefits of the Act, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy thereto in violation of the anti-discrimination provision of § 8-107 of the Administrative Code. The practice of any discrimination as described herein shall result in the revocation of benefits under the Act, retroactive to the date of such practice. Nothing contained in this subdivision (g) shall restrict such consideration in the development of housing accommodations for the lawful purpose of providing for the special needs of a particular group.

(h) Notice and procedure upon reduction, suspension, termination or revocation. Prior to any reduction, suspension, termination or revocation of benefits under the Act, the Department shall serve, by ordinary mail, a Notice of Reduction, Suspension, Termination, or Revocation on the Eligible Multiple Dwelling, Attn: Managing Agent (or on such other person as the recipient may request in writing), stating that said recipient is in violation of one or more provisions of the Act or these rules. The notice will provide a brief description of the violation alleged. The recipient shall have ninety (90) days to cure the violation or, alternatively, may request an informal

hearing within (30) days from the date of the notice to rebut the allegations therein. Upon the recipient's failure to cure or rebut within the time prescribed, the Department shall advise the Department of Finance that the recipient's certificate of eligibility has been suspended, terminated, or revoked or that the recipient's exemption or abatement has been reduced. The Department of Finance shall take such action as is necessary to execute the penalty imposed by the Department. All taxes plus interest required to be paid retroactively pursuant to the Act or these rules shall constitute a tax lien as of the date that it is determined that such taxes would have been due but for the benefits claimed pursuant to the Act at three per cent (3%) above the applicable rate of interest imposed by such city generally for non-payment of real property tax with respect to such property for the period in question] Reserved.

Statement of Basis and Purpose. HPD is responsible for making eligibility determinations for exemptions from or abatements of real property taxation pursuant to Real Property Tax Law §§ 420-c, 421-a, 421-b, 421-g and 489, provisions of the City of New York Administrative Code enacted pursuant thereto, and rules of the City of New York promulgated pursuant thereto. The proposed rule amendments standardize HPD's procedures for any partial or total revocation, reduction, termination or cancellation of such tax benefits, and ensure that HPD meets the due process rights of beneficiaries of such tax exemptions and/or abatements in implementing such procedures. These rule amendments are not intended to make any substantive changes in the eligibility requirements for these tax benefit programs nor in the continuing obligations such programs impose on taxpayers upon the revocation or termination of their tax benefits.

Commissioner Rafael E. Cestero
September 21, 2009