

## DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

### Notice of Adoption of Rule Amendments

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Sections 1043 and 1802 of the City Charter and Section 420-c of the Real Property Tax Law, HPD is adopting amendments to Chapter 6 of Title 28 of the Rules of the City of New York (the "420-c Rules").

A public hearing was held on August 3, 2015.

New material is underlined.  
[Deleted material is in brackets.]

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New material in the following rule is underlined, deleted material is in [brackets].

Section one. Subdivision (a) of Section 31-01 of Chapter 31 of Title 28 of the Rules of the City of New York is amended to read as follows:

(a) *Scope.* [These Rules] Sections 31-01 through 31-06 of this chapter shall govern the grant of tax exemption pursuant to §420-c of the Real Property Tax Law, including the procedure for filing an application for tax exemption and the issuance of Certificates of Eligibility by the Office, for all such applications approved by the Department before September 28, 2004. Except as otherwise provided for in the definitions of "Housing Accommodations" in Sections 31-01 and 31-07 of this chapter, Sections 31-07 through 31-12 of this chapter shall govern the grant of tax exemption pursuant to § 420-c of the Real Property Tax Law, including the procedure for filing an application for tax exemption and the issuance of Certificates of Eligibility by the Office, for all such applications approved by the Department on or after September 28, 2004.

§ 2. The definitions of "Application Date", "Department", "Housing Accommodations", "Initial Filing Date", "Housing Credit Agency", "Real Property" and "Rules" contained in subdivision (b) of Section 31-01 of Chapter 31 of Title 28 of the Rules of the City of New York are amended to read as follows:

**Application Date.** "Application Date" shall mean the date of submission to the Office of a completed application (including all required documentation), as determined by the office for benefits under §§ 31-01 through 31-06 of this chapter.

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

**Housing Accommodations.** "Housing Accommodations" shall mean Real Property used for (i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs; (ii) ancillary residential purposes including management, administrative and social service offices and facilities used to provide social services (including Job Training) primarily for Persons or Families of Low Income residing in such Housing Accommodations; or (iii) for projects with an Initial Filing Date on or after July 1, 2004 and before the effective date of the rule adding §§ 31-07 through 31-12 of this chapter, community facility uses that (A) provide services to individuals who reside in the area, (B) limit any fees charged for such community facility uses to fees that are affordable to individuals whose household incomes do not exceed sixty percent (60%) of the area median income adjusted for family size, and (C) are located on the same Real Property as the dwelling units that constitute such Housing Accommodations. Notwithstanding the foregoing, any portion of the combined floor area of such ancillary residential purposes and/or community facility uses which exceeds twenty-five percent (25%) of the Aggregate Floor Area of the Real Property shall not qualify as Housing Accommodations.

**Initial Filing Date.** [The term] "Initial Filing Date" shall mean the date an initial application is submitted to the [office (which application may be incomplete)] Office.

**Housing Credit Agency.** "Housing Credit Agency" shall mean the New York State Division of Housing and Community Renewal or the City's Department of Housing Preservation and Development or such other agency as shall be designated as a housing credit agency in the city [for] by the State of New York under §42 of the Code.

**Real Property.** [The term] "Real Property" shall mean the land, buildings and other improvements subject to taxation pursuant to §102 of the Real Property Tax Law which are the subject of an application under §31-04 of these Rules.

**Rules.** "Rules" shall mean [these Rules] §§ 31-01 through 31-06 of this chapter.

§ 3. Paragraph 3 of subdivision (b) of Section 31-02 of Chapter 31 of Title 28 of the Rules of the City of New York is amended to read as follows:

(3) If the Allocation Document submitted with the application for the Certificate of Eligibility was either a determination of credit eligibility or a binding [or non-binding] reservation [or determination of eligibility] for [low income housing] tax credits [or a credit carry over allocation issued pursuant to Section 42(h)(1)(E) of the Code], then a United States Treasury Form 8609, Part I of which [Part I of said form] is to be completed by a Housing Credit Agency, must be submitted for the Real Property to the Office within thirty-six months of the Initial Filing Date of the application. [In all cases the application file must ultimately contain a copy of Form 8609.]

§ 4. The introductory language of subdivision (a) of Section 31-05 of chapter 31 of Title 28 of the Rules of the City of New York is amended to read as follows:

(a) *Effective date of exemption.* Tax exemption under §§ 31-01 through 31-06 of this chapter shall commence on the latter of: (i) the date of acquisition of the eligible property by the qualified owner, (ii) the effective date of a regulatory agreement, or (iii) the date of issuance of an Allocation Document, except as follows:

§ 5. Chapter 31 of Title 28 of the Rules of the City of New York is amended by adding six new sections, §§ 31-07 through 31-12, to read, respectively, as follows:

**§31-07 Definitions.**

For purposes of §§ 31-07 through 31-12 of this chapter, the following terms shall have the following meanings:

**Aggregate Floor Area.** "Aggregate Floor Area" shall mean the sum of the gross areas of the several floors of a building, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

**Allocation Document.** "Allocation Document" shall mean a document issued by the Housing Credit Agency with respect to Real Property indicating either (i) that such Real Property has received a determination of credit eligibility, (ii) that such Real Property has received a binding reservation for tax credits or (iii) that such Real Property has been allocated tax credits pursuant to § 42 of the Code.

**Application Date.** "Application Date" shall mean the date of submission to the Office of a completed application (including all required documentation), as determined by the Office, for benefits under §§ 31-07 through 31-12 of this chapter.

**Certificate of Eligibility.** "Certificate of Eligibility" shall mean the certificate issued by the Office pursuant to § 31-10(d) of these Rules.

**Charitable Organization.** "Charitable Organization" shall mean (i) an entity formed for purposes that include providing Housing Accommodations for Persons and Families of Low Income and that has received written recognition of exemption pursuant to section 501(c)(3) or section 501(c)(4) of the Code, from the United States Internal Revenue Service, or any successor agency, or (ii) a corporation, partnership or limited liability company wholly owned and wholly controlled by an entity formed for purposes that include providing Housing Accommodations for Persons and Families of Low Income and that has received written recognition of exemption pursuant to section 501(c)(3) or section 501(c)(4) of the Code, from the United States Internal Revenue Service, or any successor agency

**City.** "City" shall mean the City of New York.

**Code.** "Code" shall mean the United States Internal Revenue Code of 1986, as amended, or any successor statute.

**Commissioner.** "Commissioner" shall mean the commissioner of HPD or the commissioner of any successor agency or her or his designee.

**Department of Finance.** "Department of Finance" shall mean the Department of Finance of the City or any successor agency.

**Eligible Entity.** "Eligible Entity" shall mean a corporation, partnership or limited liability company at least fifty percent of the controlling interest of which is held by a Charitable Organization.

**Eligible Owner.** "Eligible Owner" shall mean one or more Eligible Entities that holds (i) legal and beneficial title to Eligible Real Property, or (ii) a legal and beneficial leasehold interest with a term of not less than thirty years in Eligible Real Property.

**Eligible Real Property.** "Eligible Real Property" shall mean Real Property that (i) provides Housing Accommodations for Persons and Families of Low Income, and (ii) participates in or has participated in the Tax Credit Program. If a portion of Real Property is not Eligible Real Property, tax exemption shall be apportioned in accordance with § 31-09(b) of this chapter.

**Housing Accommodations.** "Housing Accommodations" shall mean Real Property used for (i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs; or (ii) ancillary residential purposes including management, administrative and, for projects with an Initial Filing Date on or after the effective date of the rule adding this section, community facility uses that are authorized under use groups 3 and 4 of the Zoning Resolution. Notwithstanding the foregoing, any portion of the combined floor area of such ancillary residential purposes which exceeds twenty-five percent (25%) of the Aggregate Floor Area of the Real Property shall not qualify as Housing Accommodations.

**Housing Credit Agency.** "Housing Credit Agency" shall mean the State Division of Housing and Community Renewal or HPD or such other agency as shall be designated as a housing credit agency in the City by the State under § 42 of the Code.

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

**Initial Filing Date.** The term "Initial Filing Date" shall mean the date an initial application is submitted to the Office.

**Office.** "Office" shall mean the Tax Incentive Programs Unit of HPD or any successor thereto authorized to administer these Rules.

**Persons and Families of Low Income.** "Persons and Families of Low Income" shall mean persons or families who are in low income groups and who cannot afford to pay enough to cause private enterprise in their municipality to build a sufficient supply of adequate, safe and sanitary dwellings as set forth in § 2 of the Private Housing Finance Law.

**Real Property.** "Real Property" shall mean the land, buildings and other improvements subject to taxation pursuant to § 102 of the Real Property Tax Law which are the subject of an application under § 31-10 of these Rules.

**Regulatory Agreement.** "Regulatory Agreement" shall mean a regulatory agreement with or approved by the City that requires the provision of Housing Accommodations for Persons and Fam-

ilies of Low Income; requires units currently or formerly assisted under the Tax Credit Program be rented in accordance with the income requirements of the Tax Credit Program; imposes the income and occupancy restrictions established by the Tax Credit Program on at least seventy percent (70%) of the dwelling units in such Eligible Real Property; provides that any of the dwelling units in such Eligible Real Property that are not subject to the income and occupancy restrictions established by the Tax Credit Program must be rented, upon vacancy, to persons and families whose incomes do not exceed one hundred sixty-five percent (165%) of area median income; and is recorded against the Eligible Real Property and binds all parties in interest to the Eligible Real Property and their respective successors and assigns. A regulatory agreement may include such other terms and conditions as the City shall determine, including, but not limited to, provisions requiring payments in lieu of taxes.

**Tax Credit Program.** "Tax Credit Program" shall mean the federal low-income housing tax credit program established pursuant to § 42 of the Code.

**Rules.** "Rules" shall mean §§31-07 through 31-12 of this chapter.

**State.** "State" shall mean the State of New York.

**Zoning Resolution.** "Zoning Resolution" shall mean the Zoning Resolution of the City, as amended.

#### **§31-08 Eligibility Requirements.**

(a) Eligibility. Real Property may be eligible for an exemption from real property taxes as set forth in § 31-11 if:

(1) It is bound by a Regulatory Agreement; and

(2) An Allocation Document has been issued for the Real Property; and

(3) It is owned, at the Application Date and for the duration of such exemption, by an Eligible Owner; and

(4) It constitutes Housing Accommodations for Persons and Families of Low Income as set forth in the Regulatory Agreement or Allocation Document; and

(5) It participates in or has participated in the Tax Credit Program.

(b) Time Requirements.

(1) An application for a Certificate of Eligibility must contain all documentation required by § 31-10(b) and be completed within twenty-four months of the Initial Filing Date with the Office or the application may be deemed withdrawn.

(2) If the Allocation Document submitted with the application for the Certificate of Eligibility was either a determination of credit eligibility or a binding reservation for tax credits, then a United States Treasury Form 8609, Part I of which is to be completed by a Housing Credit Agency, must be submitted for the Real Property to the Office within thirty-six months of the Initial Filing Date of the application.

#### **§31-09 Ineligible Portions of Projects.**

Tax exemption is not available for portions of Real Property not used for Housing Accommodations for Persons and Families of Low Income, as determined by the Office.

**§31-10 Application Procedure and Documentation.**

(a) Application forms and filing for Certificate of Eligibility. Prescribed forms and applications are available from the Office. All applications must be submitted to the Office on forms approved by the Office.

(b) Documentation required of all applicants. All completed applications for tax exemption must include the following documentation:

(1) Original fully completed application form;

(2) Copy of the deed for the Real Property;

(3) Copy of any former and current Regulatory Agreements binding the Real Property to the Tax Credit Program income and other restrictions;

(4) Copy of the Allocation Document for the Real Property;

(5) Copy of the filed Certificate(s) of Incorporation, stock certificates, filed Certificate(s) of Limited Partnership and Limited Liability Companies, and partnership agreements, as applicable, evidencing that the applicant is an Eligible Owner;

(6) Schematic drawings of all proposed or completed buildings or improvements to the Real Property, including all floors thereof, that identify those portions of the Real Property which are not dwelling units and clearly specify (i) areas used for common residential or ancillary residential purposes which qualify as Housing Accommodations for Persons and Families of Low Income and (ii) all areas used for commercial and otherwise ineligible purposes which do not qualify as Housing Accommodations; indicate the square footage of each such space, all drawn to a scale acceptable to the Office which scale is clearly indicated on each drawing, provided, however, that the Office may waive schematics if there is no space not used for dwelling units or other residential purposes;

(7) A copy of the Temporary or Permanent Certificate of Occupancy, if issued;

(8) Written recognition of exemption for the applicable Charitable Organization pursuant to Section 501(c)(3) or Section 501(c)(4) of the Code, from the United States Internal Revenue Service, or any successor agency; and

(9) Any such additional documentation which the Office may require.

(c) An application may concern more than one building provided that each such building is part of a project, and is specified in the Regulatory Agreement(s) for such project; and provided further that there is a United States Treasury Form 8609, Part I of which has been completed by the Housing Credit Agency, for each such building.

(d) Completion of application. An application for a Certificate of Eligibility must contain all documentation required by subdivision (b) of this section and be completed within twenty-four months of the Initial Filing Date with the Office or the application may be deemed withdrawn. An application for a Certificate of Eligibility shall be deemed complete if the application includes all the documentation required in subdivision (b) of this section. Applicants must notify the Office of

any change of address and/or change of ownership of the premises and any change in the designated filing agent.

(e) Issuance of a Certificate of Eligibility.

(1) The Office shall issue a Certificate of Eligibility for all approved applications.

(2) Failure to produce documentation satisfactory to the Office or failure to comply with these Rules may result in the denial of a Certificate of Eligibility, and rejection of the application.

(3) Notwithstanding the issuance of a Certificate of Eligibility, the tax exemption may be revoked or revised pursuant to chapter 39 of this title.

(f) Implementation of benefit. Upon issuance of a 420-c Certificate of Eligibility and payment of outstanding fees, the Office will transmit the Certificate of Eligibility to the Department of Finance.

**§31-11 Tax Exemption: Effective Date, Duration and Amount.**

(a) Effective date of exemption. Tax exemption under §§ 31-07 through 31-12 of this chapter shall commence on the latter of: (i) the date of acquisition of the Eligible Real Property by the Eligible Owner or, (ii) the effective date of a Regulatory Agreement, or (iii) the date of issuance of an Allocation Document, except as follows:

(1) Where Eligible Real Property acquired after January 5 was exempt from Real Property taxation on the date of such transfer, the property shall remain exempt for the balance of the tax year in progress and for the next full tax year.

(2) Where dwelling units in the Real Property were formerly assisted under the Tax Credit Program and the Eligible Owner has agreed to continue to rent such units in accordance with the income and other requirements of the Tax Credit Program, the tax exemption under §§ 3-07 through 3-12 of this chapter shall commence on the latter of: (i) the date of acquisition of the Eligible Real Property by the Eligible Owner or, (ii) the effective date of a Regulatory Agreement in which such Eligible Owner has agreed to continue to subject the dwelling units in such Real Property to the restrictions of the Tax Credit Program.

(b) Duration of exemption. The exemption shall expire upon the expiration or termination of the Regulatory Agreement but in no event shall exceed sixty years.

(c) Amount of tax exemption. With respect to the portions of Real Property which are not Eligible Real Property, the Department of Finance will apportion assessed value between exempt portions of Real Property and non-exempt portions thereof (both as determined by the Office) based upon each portion's relative percentage of the entire parcel's full market value.

**§31-12 Fees and Declaratory Rulings.**

(a) The Office shall charge a filing fee of one hundred dollars (\$100) per Application. In addition, there shall be a charge of eighty dollars (\$80) per Class A dwelling unit and sixty dollars (\$60) per Class B dwelling unit, as applicable, due at the time of issuance of the Certificate of Eligibility. Such fees shall be non-refundable under any circumstances, including, but not limited to, the subsequent revocation or revision of a Certificate of Eligibility.

(b) 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 Real Property Tax Law Section 420-c or the 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 dollars (\$250) 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 Real Property Tax Law Section 420-c benefits.

### **Statement of Basis and Purpose of Adopted Rule**

New York Real Property Tax Law (RPTL) § 420-c was originally enacted to provide tax exemption for non-profit sponsors which develop affordable housing with federal low income housing tax credits. In 2004, RPTL § 420-c was amended by Chapter 522 of the Laws of 2004 to require that at least 50% of the controlling interest in an entity owning the property be held by a charitable or social welfare organization formed under 501(c)(3) or 501(c)(4) of the federal Internal Revenue Code. The 2004 amendments eliminated the prior governmental loan requirement for RPTL § 420-c benefits and provided that the municipality must sign or approve a regulatory agreement requiring that the real property be used to provide low income housing for the entire term of the RPTL § 420-c tax exemption. The 2004 amendments also authorized existing eligible projects to start receiving RPTL § 420-c tax benefits if they terminated any current tax benefits and executed new regulatory agreements.

The rule amendments add the 2004 statutory amendments to the current rules since the amendments apply to all RPTL § 420-c applications approved by HPD on or after September 28, 2004, the effective date of the amendments. They also make some technical changes to the existing § 420-c regulatory provisions.

Commissioner Vicki Been

August 21, 2015