

THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

NOTICE OF RULE MAKING

Pursuant to the power vested in me as Commissioner of Finance by New York City Administrative Code section 11-322(b)(4) and sections 1043 and 1504 of the New York City Charter, I hereby promulgate the within amendments to the Rules Relating to the Sale of Tax Liens. These rules were published in proposed form on June 4, 2014. A hearing for public comment was held on July 8, 2014.

S/S

Jacques Jiha Commissioner of Finance

Statement of Basis and Purpose

Section 11-322(b) of the Administrative Code of the City of New York authorizes owners of real property to enter into agreements with the New York City Department of Finance and the New York City Department of Environmental Protection for the payment in installments of delinquent real property taxes and other property-related charges, including water and sewer charges, that are liens on the property. The law further requires that the proposed sale of tax liens on a property be cancelled when such an installment agreement has been executed for the property.

Local Law 147 of 2013 amended section 11-322(b) to allow, in addition to property owners, other eligible persons to enter into installment agreements which would prevent the sale of tax liens on real property. The local law also requires the Department of Finance and Department of Environmental Protection to promulgate, no later than June 1, 2014, rules governing the eligibility of a property owner or other eligible person acting on behalf of the owner to enter into installment agreements. Specifically, the local law provides that "other eligible person" must include a fiduciary, and directs any rules defining "other eligible person" to include the means by which a beneficiary of real property for which an installment agreement is sought may meet the definition.

These amendments to the Rules Relating to the Sale of Tax Liens carry out the requirements of section 11-322(b) as amended by Local Law 147 by:

- amending references in the rules to property owners who may enter into installment agreements, by adding references to other eligible persons who may enter into such installment agreements;
- adding to the rules a definition of the "other eligible person" who can enter into an installment agreement, which includes (1) a fiduciary (a) administering the property of an estate of a decedent who owned the real property for which an installment agreement is sought, or (b) acting on behalf of a beneficiary of such real property from such estate, and (2) such estate beneficiary; and
- listing the documentation required to verify the eligibility of fiduciaries and estate beneficiaries to enter into installment agreements.

The Department of Finance's authority for these rules is found in New York City Administrative Code §11-322(b) and New York City Charter §§ 1043 and 1504.

New material is underlined.

[Deleted material is in brackets.]

“Shall” 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.

Amendments to Rules Relating to the Sale of Tax Liens

Section 1. Subdivisions (a), (b), (c), (d), (e), (f) and (g) of section 40-03 of title 19 of the Rules of the City of New York are amended to read as follows:

§40-03 Installment Agreements.

(a) *Generally.* A property owner, or other eligible person as defined in subdivision (i) of this section, may enter into an installment agreement with the Department of Finance that allows for the payment in installments of any delinquent real property taxes or any charges that are made a lien on real property under Chapter 3 of Title 11 of the Administrative Code, excluding any delinquent sewer rents, sewer surcharges and water rents that are collected by the New York City Water Board. Except as provided in subdivision (g) of this section, when a property owner or other eligible person enters into an agreement with the Department of Finance for the payment of any such lien(s), any proposed sale of a tax lien(s) on a property will be cancelled.

(b) *Down payment.* The property owner or other eligible person is not required to remit a down payment for an installment agreement with the Department of Finance. However, the property owner or other eligible person may elect to remit a down payment in any amount.

(c) *Payment schedule.* An installment agreement must provide that the property owner or other eligible person make payments on a quarterly or monthly basis as determined by the Commissioner.

(1) Monthly installments: If an installment agreement requires monthly payments, then payments must be made by the first day of each month.

(2) Quarterly installments: If an installment agreement requires quarterly payments, then payments must be made by January 1, April 1, July 1 and October 1.

(d) *Term of agreement.* Installment agreements are for a term that is no less than eight years and no more than ten years. However, a property owner or other eligible person may elect for a term that is less than eight years.

(e) *Default.*

(1) Definition of default:

The property owner or other eligible person will be in default of such agreement, if any installment required under an installment agreement remains unpaid for a period of six months from the date payment is required to be made under subdivision (c) of this section, or if any other tax or charge that becomes due on the property during the term of such agreement remains unpaid in whole or in part for a period of six months.

(2) Consequences of default; cure of default:

In the event of default of an installment agreement pursuant to paragraph (1) of this subdivision, the agreement may be cancelled and the tax lien(s) on the property that were required to be paid under the agreement, including any tax liens that became due during the term of the agreement, may be sold.

However, such default may be cured upon [property owner's] payment, prior to the date of the first tax lien sale that occurs following a default, of all past due installments required by the agreement, and all other charges that became due during the term of the agreement that are past due and unpaid at the time of the default, including interest and fees.

(3) Bar from executing future installment agreements:

If a default is not cured as described in paragraph (2) of this subdivision prior to the date of the first tax lien sale that occurs following such default, the owner of the affected property and any other eligible person acting on behalf of the owner will not be eligible to enter into an installment agreement with the Department of Finance for the affected property for five years from the date of such sale, unless there is a finding of extenuating circumstances by the Department of Finance as described in paragraph (4) of this subdivision.

(4) "Extenuating circumstances" for purposes of paragraph (3) of this subdivision:

(i) "Extenuating circumstances" shall mean (1) the death of the signatory to the agreement, of any person named on the deed for the property or of a contributing household member, (2) a loss of income to the signatory, to any person named on the deed for the property or to a contributing household member due to his or her involuntary absence from the property for any consecutive period of six months or more for treatment of an illness, for military service, or pursuant to a court order, that results in a default of the agreement or inability to cure the default prior to the date of sale of the tax lien or tax liens or (3) a loss of income to the signatory to the agreement, to any person named on the deed for the property or to a contributing household member due to his or her unemployment for any consecutive period of six months or more that results in a default of the agreement or inability to cure the default prior to the date of sale of the tax lien or tax liens.

(ii) For purposes of this paragraph, "contributing household member" shall mean any person eighteen years of age or older who has lived in the property that is the subject of the installment agreement at least since the execution of the agreement and has paid household expenses since the execution of the agreement in an amount equal to at least fifty percent of each installment amount due under the agreement.

(iii) An application for a finding of extenuating circumstances may be made only on a form prepared by the Commissioner or his or her designee and shall include a certification by the applicant that extenuating circumstances exist. The Department of Finance may require additional documentation to support a claim of extenuating circumstances by a property owner or other eligible person. If the Department of Finance determines that the applicant has provided inaccurate information in the application, any installment agreement entered into based on the finding of extenuating circumstances shall be revoked and the property owner and other eligible person shall not be eligible to enter into an installment agreement with the Department for the subject property for five years from the date of sale. The determination on an application for a finding of extenuating circumstances or on the accuracy of such application will be made by the Payment Operations Division of the Department of Finance. If the application is denied or if the information in the application is determined to be inaccurate, the property owner or other eligible person may appeal the determination within 30 days to the Commissioner or his or her designee.

(iv) No signatory to an installment agreement who has defaulted on such agreement and who, as a result of a finding of extenuating circumstances, has been allowed to enter into a second installment agreement for the subject property, shall be eligible to enter into any subsequent agreement on the subject property by applying for a finding of extenuating circumstances for the default of such second installment agreement. The

same restriction shall apply to any other person whose change of circumstances was the basis, in whole or in part, for the original finding of extenuating circumstances.

(f) *Information regarding exemptions.* Before a property owner or other eligible person enters into an installment agreement, the Department of Finance will give the owner or other eligible person information regarding eligibility for real property tax exemption programs. The Department of Finance may give such information to the owner or other eligible person in a manner that may include, but is not limited to, providing the information within the text of an installment agreement and with lien sale notices.

(g) *Property with multiple qualifying tax liens; installment agreements with the Department of Environmental Protection.* Notwithstanding the execution of an installment agreement with the Department of Finance, any tax liens that are not made subject to the installment agreement with the Department of Finance will remain subject to the laws regarding eligibility for the sale of tax liens.

Example:

Under the Administrative Code, real property tax liens that are on property classified as class two, that is not a condominium or cooperative, may be sold if the real property tax liens are at least one year past due. Also under the Administrative Code, for the same type of class two property, tax liens for water and sewer charges may be sold if the liens have been unpaid for at least one year and total at least \$1,000.

If such a class two property has real property tax liens that have been unpaid for at least one year, and also has water and sewer liens that have been unpaid for at least one year and total at least \$1,000, the Department of Finance will cancel the tax lien sale of those real property tax liens when the owner of the property or other eligible person enters into an installment agreement with the Department of Finance to pay the unpaid real property tax liens that are subject to the proposed tax lien sale. However, the water and sewer liens may still be sold in a tax lien sale unless they are paid or the owner or other eligible person enters into an installment agreement with the Department of Environmental Protection to pay those water and sewer liens pursuant to that agency's rules for installment agreements.

§2. New subdivisions (i) and (j) are added to section 40-03 of title 19 of the Rules of the City of New York to read as follows:

(i) Other eligible person. For purposes of section 11-322 of the Administrative Code and this section, an "other eligible person" who may enter into an installment agreement on behalf of an owner includes (1) a fiduciary acting (i) with respect to the administration of the property of an estate of a decedent who owned the real property as to which an installment agreement is sought, or (ii) on behalf of a beneficiary of such real property from such estate; and (2) such an estate beneficiary. A fiduciary may include an administrator, executor, preliminary executor, administrator d.b.n. (de bonis non), administrator c.t.a.d.b.n. (cum testamento annexo de bonis non), administrator c.t.a. (cum testamento annexo), ancillary executor, ancillary administrator and ancillary administrator c.t.a. (cum testamento annexo).

(j) Documentation verifying eligibility to execute a payment agreement. An other eligible person entering into an installment agreement under this section must submit to the

Department of Finance, prior to entering into such agreement, the following documentation to verify his or her eligibility.

(1) Fiduciary. A fiduciary entering into an installment agreement must submit a copy of a document issued by the Surrogate's Court that evidences his or her appointment as a fiduciary of the property of the estate of the decedent who owned the real property for which an installment agreement is sought. Such documents may include but are not limited to copies of Letters Testamentary or Letters of Administration.

(2) Estate beneficiary. A beneficiary of real property belonging to a decedent's estate and for which an installment agreement is sought, who is therefore an owner of the property, must submit:

(i) If the decedent had a will, a copy of the decedent's death certificate or other documentation which, in the determination of the Department of Finance, substantiates the death of the owner of the real property for which an installment agreement is sought, and:

(A) a copy of the will that indicates that the beneficiary was bequeathed the decedent's entire estate or a share thereof containing the real property for which an installment agreement is sought, or was devised the real property or a share of the real property for which an installment agreement is sought; or

(B) a notarized letter signed by the court-appointed fiduciary of the decedent's estate providing that the beneficiary has inherited from the estate the real property or a share of the real property for which an installment agreement is sought, together with a copy of a document issued by the Surrogate's Court, such as Letters Testamentary, that evidences the appointment of the fiduciary; or

(C) if there have been no documents filed with the Surrogate's Court and no fiduciary has been appointed by the Surrogate's Court with respect to the decedent's estate, documentation issued by a government agency which, in the determination of the Department of Finance, substantiates the beneficiary's claim that he or she inherited the real property or a share of the real property for which an installment agreement is sought, making such beneficiary an owner of the property.

(ii) If the decedent died without a will, a copy of the decedent's death certificate or other documentation which, in the determination of the Department of Finance, substantiates the death of the owner of the real property for which an installment agreement is sought, and:

(A) a copy of the document filed with or issued by the Surrogate's Court naming the beneficiary as an heir of the decedent's entire estate or a share thereof containing the real property for which an installment agreement is sought; or

(B) a notarized letter signed by the court-appointed fiduciary of the decedent's estate providing that the beneficiary is an heir of the real property or a share of the real property for which an installment agreement is sought, together with a copy of a document issued by the Surrogate's Court, such as Letters of Administration, that evidences the appointment of the fiduciary; or

(C) if there have been no documents filed with the Surrogate's Court and no fiduciary has been appointed by the Surrogate's Court with respect to the decedent's estate, documentation issued by a government agency which, in the determination of the Department of Finance, substantiates the claim that the beneficiary is an heir of the decedent and inherited the real property or a share of the real property for which an installment agreement is sought, making such beneficiary an owner of the property.