

NOTICE OF ADOPTION OF RULE

Pursuant to the authority vested in the Commissioner of Finance by sections 1043 and 1504 of the New York City Charter and section 11-322.1 of the Administrative Code of the City of New York, the Commissioner of Finance has adopted amendments to Chapter 40 of Title 19 of the Rules of the City of New York concerning hardship installment payment agreements. A proposed version of the amendments was published in the City Record on January 27, 2020. A public hearing was held on February 27, 2020.

Jacques Jiha Commissioner of Finance

S/S

STATEMENT OF BASIS AND PURPOSE

Local Law 45 of 2019 amended the Administrative Code of the City of New York by adding a new section 11-322.1. This local law created three forms of hardship installment payment agreements for eligible one-to-three family residential property owners and condominium property owners that may be entered into where such a property serves as the primary residence of the property owner. The three forms of hardship installment payment agreements authorized by Local Law 45 of 2019 are: a senior low-income installment agreement, a fixed length income-based installment agreement, and an extenuating circumstances income-based installment agreement. As described below, this rule change implements various aspects of Local Law 45 of 2019.

Combined Income Calculation (Bill Section 1 adding Subdivision (k) to Section 40-03 of Title 19 of the Rules of the City of New York). In addition to various other preconditions, an applicant is only eligible to enter into a hardship installment payment agreement if the combined income of all property owners does not exceed \$58,399 during the preceding income tax year. Section 11-322.1 of the Administrative Code requires the Department of Finance to create exceptions to the requirement that applicants provide income information for all property owners for the purposes of determining the combined income of such property owners. This amendment seeks to implement this requirement. First, this amendment does not require an applicant for a hardship installment payment agreement who is a victim of domestic violence to provide income information for any spouse, ex-spouse, or domestic partner who no longer resides at the property where a court has issued an order of protection against the spouse, ex-spouse, or domestic partner. Second, this amendment does not require an applicant for a hardship installment payment agreement to provide income information for an individual who is a partial owner of a property where the property is part of an estate of a decedent, such individual is a beneficiary of such estate, and such individual cannot be located.

Installment Agreement Conversion (Bill Section 1 adding Subdivision (l) to Section 40-03 of Title 19 of the Rules of the City of New York). This amendment establishes a process by which existing installment agreements may be converted into hardship installment payment agreements.

Department of Finance Appeals Procedure (Bill Section 1 adding Subdivision (m) to Section 40-03 of Title 19 of the Rules of the City of New York). This amendment establishes a process by which the Department of Finance must notify an applicant of a determination

relating to his or her application. This amendment also establishes a process by which an applicant may appeal such a determination to the Commissioner of the Department of Finance.

Rules Not Applicable to Hardship Installment Payment Agreements (Bill Section 1 adding Subdivision (n) to Section 40-03 of Title 19 of the Rules of the City of New York). This amendment clarifies that certain provisions of Section 40-03 of Title 19 of the Rules of the City of New York are inapplicable to hardship installment payment agreements, specifically. This amendment also clarifies several definitions applicable to these rules.

AMENDMENT TO RULES IMPLEMENTING PROCEDURES RELATING TO HARDSHIP INSTALLMENT PAYMENT AGREEMENTS

Section 1. Section 40-03 of Title 19 of the Rules of the City of New York is amended by adding new subdivisions (k) through (n) to read as follows:

(k) Hardship installment payment agreement combined income exclusions. For the purposes of determining an applicant's eligibility to enter into a hardship installment payment agreement or a renewal hardship installment payment agreement, or in order to calculate the combined income of all property owners for any other purpose set forth in section 11-322.1 of the Administrative Code, an applicant may submit a written request to the Department of Finance to exclude from such combined income calculation the income information of one or more property owners pursuant to the procedures set forth below. Such request shall be made on a form prescribed by the Department of Finance. The Commissioner may request additional information concerning the basis for exclusion if the Commissioner deems such information relevant to approving such a request.

(1) If a property is owned in part by a spouse, ex-spouse, or domestic partner of an applicant, such spouse, ex-spouse, or domestic partner no longer resides at the property, and the applicant for a hardship installment payment agreement is a victim of domestic violence, then such spouse, ex-spouse, or domestic partner's income shall not be considered for the purposes of calculating the combined income of the property owners. An applicant will be deemed to be a victim of domestic violence if he or she has been issued either a temporary or final order of protection by a court of competent jurisdiction against such spouse, ex-spouse, or domestic partner and such applicant provides a copy of such temporary or final order of protection with his or her application or renewal application or as an addendum to such application.

(2) If the application for a hardship installment payment agreement or a renewal hardship installment payment agreement is for the property of an estate of a decedent, then the income of a beneficiary that cannot be located shall not be included for the purposes of calculating the combined income of the property owners. In order for the beneficiary's income to be excluded, the applicant must submit documentation in his or her application for the hardship installment payment agreement, and in all subsequent renewal applications, demonstrating that the applicant has exercised due diligence in attempting to locate such beneficiary and that the applicant has not been able to locate the beneficiary or communicate with the beneficiary during the period in which the property has been part of the estate.

(l) Hardship installment payment agreement conversion.

(1) Where an installment agreement is in effect pursuant to section 11-322 of the Administrative Code and no installment payments required under the agreement or current charges on the property are unpaid, a property owner may apply to convert the agreement into a hardship installment payment agreement.

(2) A property owner may have only one hardship installment payment agreement in effect at one time, but a property owner with a hardship installment payment agreement in effect may have other installment agreements in effect on other parcels of real property.

(3) A property owner may request that the type of hardship installment payment agreement in effect be changed to a different type of hardship installment payment agreement, but such a request may be made only once during any six month period. The terms of a hardship installment payment agreement may also be adjusted once during any six month period. Any request for a change or adjustment that is made during the two months immediately preceding the date that a renewal application is required to be submitted will take effect subsequent to the date that a renewal application is required to be submitted. In order to be eligible to change the type of hardship installment payment agreement in effect, no installment required under the existing installment agreement shall be unpaid, and the property owner shall meet the qualification requirements set forth in section 11-322.1 of the Administrative Code. Notwithstanding any contrary provision of this paragraph, an applicant who has entered into a senior low-income installment agreement pursuant to subdivision l of such section may switch from an installment agreement without a fixed time period to an installment agreement with a fixed time period, or from an installment agreement with a fixed time period to an installment agreement without a fixed time period, at any point.

(m) Hardship installment payment agreement determinations and appeals. The Department of Finance will notify an applicant in writing concerning any determination rendered by the Department of Finance regarding that applicant's hardship installment payment agreement application or hardship installment payment agreement renewal application. If such application is not approved, such notice will inform such applicant as to the reasons for the Department of Finance's determination. Such applicant may appeal a determination rendered by the Department of Finance on a form prescribed by the Department of Finance no later than 90 days after the date on the Departments' determination letter. Such appeal shall be considered by the Commissioner or his or her designee, and the Department of Finance shall notify such applicant in writing concerning the appeals determination rendered by the Commissioner or his or her designee. The Department of Finance's appeals determination is reviewable pursuant to Article 78 of the New York Civil Practice Law and Rules.

(n) Terminology and applicability of this rule to hardship installment payment agreements. (1) Subdivisions (b), (c), and (d) of this section shall not apply to hardship installment payment agreements.

(2) For the purposes of this subdivision and subdivisions (k) through (m) of this section:

(i) the terms "applicant," "income," "income tax year," "property," and "property owner" have the meanings provided for in section 11-322.1 of the Administrative Code; and

(ii) the term "hardship installment payment agreement" means an installment agreement entered into pursuant to section 11-322.1 of the Administrative Code.

