

## New York City Department of Finance

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

**What are we proposing?** The Department of Finance is proposing rules governing the real property tax abatement for major capital improvements (“MCI”) for rent regulated class 2 properties.

**When and where is the hearing?** The Department of Finance will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on May 16, 2018. The hearing will be in the Department of Finance hearing room at 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201.

**How do I comment on the proposed rule?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Finance through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [laroset@finance.nyc.gov](mailto:laroset@finance.nyc.gov).
- **Mail.** You can mail comments to NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201, Attn: Timothy LaRose.
- **Fax.** You can fax comments to NYC Department of Finance, Attn: Timothy LaRose, at (718) 403-3650.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (718) 488-2007. You can sign up in the hearing room before the hearing begins on May 16, 2018. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** The deadline to submit written comments is May 16, 2018.

**What if I need assistance to participate in the hearing?** The meeting will be held at 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201. The back entrance is accessible to persons using wheelchairs and others with disabilities. Accessible restrooms are available. You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. Materials in alternative formats, ASL, interpreters, real-time captioning and other accommodations will be made available upon request. You can tell us by mail at the address given above. You may also tell us by telephone by calling Joan Best at (718) 488-2007; Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by May 11, 2018.

The location has the following accessibility option available:

Wheelchair Accessible

**Can I review the comments made on the proposed rule?** You can review the comments made online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3<sup>rd</sup> Floor, Brooklyn, N.Y. 11201.

**What authorizes Department of Finance to adopt this rule?** Sections 1043 and 1504 of the City Charter, paragraph 6 of subdivision c of section 26-511 and subparagraph g of paragraph 1 of subdivision g of section 26-405 of the Administrative Code of the City of New York, Real Property Tax Law Section 467-i, and section 65 of chapter 20 of the New York State Laws of 2015 authorize the Department of Finance to make this proposed rule.

**Where can I find the Department of Finance's rules?** The Department of Finance's rules are in Title 19 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department of Finance must meet the requirements of § 1043 of the Charter when creating or amending rules. This notice is made according to the requirements of § 1043 of the Charter.

### **STATEMENT OF BASIS AND PURPOSE**

The purpose of this proposed rule is to set forth which rent-regulated class two real properties are eligible for a Major Capital Improvement ("MCI") tax abatement, as well as how such abatement shall be calculated. An MCI is a rent increase for a building wide improvement for a rent-regulated class two property which has been approved by the New York State Division of Housing and Community Renewal ("DHCR"). A building is eligible for this tax abatement if it is subject to either the emergency housing rent control law or to the rent and rehabilitation law of the city of New York enacted pursuant to the emergency housing rent control law or to the emergency tenant protection act of 1974.

The MCI tax abatement is intended to partially offset the economic loss imposed upon eligible building owners due to the recent changes in the amortization period for major capital improvements. The amortization schedule for major capital improvements has been increased from 7 to 8 years for eligible buildings with 35 units or less and has been increased from 7 to 9 years for eligible buildings with more than 35 units. The formula used to calculate the value of the MCI tax abatement will provide eligible building owners with a tax abatement equal to 50% of the economic loss due to the changes in the MCI amortization schedule. Property owners must submit an application for a MCI tax abatement no later than five years after the date of the order issued by the New York State Division of Housing and Community Renewal granting an MCI rent increase.

The Department of Finance's authority for these rules is found in sections 1043 and 1504 of the New York City Charter and paragraph 6 of subdivision c of section 26-511 and subparagraph g of paragraph 1 of subdivision g of section 26-405 of the administrative code of the City of New York. The enabling legislation for MCI tax abatements is set forth in Real Property Tax Law Section 467-i, sections 29, 31-32, 64-a and 65 of chapter 20 of the New York State Laws of 2015. A new chapter 56 is being added to Title 19 of the Rules of the City of New York to set forth the rules for MCI tax abatements.

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.

**§ 1. Title 19 of the Rules of the City of New York is amended by adding a new Chapter 56, to read as follows:**

Chapter 56

REAL PROPERTY TAX ABATEMENT FOR MAJOR CAPITAL IMPROVEMENTS FOR  
CERTAIN CLASS 2 PROPERTIES

**§ 56-01 Definitions.**

(a) “Class two building” means any building in a special assessing unit classified as class two pursuant to subdivision 1 of section 1802 of the Real Property Tax Law.

(b) “Commissioner” means the Commissioner of Finance of the City of New York.

(c) “Department” means the Department of Finance of the City of New York.

(d) “DHCR” is the New York State Division of Housing and Community Renewal.

(e) “DRIE” is the Disability Rent Increase Exemption program.

(f) “Eligible Building” means a class two building that is subject to either:

i) the emergency housing rent control law; or

ii) the rent and rehabilitation law of the city of New York enacted pursuant to the emergency housing rent control law or to the emergency tenant protection act of nineteen seventy-four.

(g) “J-51 Program” is the tax exemption and abatement program governed by section 489 of the Real Property Tax Law, section 11-243 of the Administrative Code of the City of New York and Chapter 5 of Title 28 of the Rules of the City of New York.

(h) “Major Capital Improvement” (“MCI”) – is an improvement or installation to a building subject to either the emergency housing rent control law or the rent and rehabilitation law of the City of New York enacted under the local emergency housing rent control law or under the emergency tenant protection act of 1974 for which DHCR has granted approval for a rent increase to a building owner. MCI increases apply to building-wide improvements, not to individual apartment improvements.

(i) “SCRIE” is the Senior Citizen Rent Increase Exemption program.

**§ 56-02 Amount of Abatement.**

An eligible building shall receive an abatement of real property taxes as provided in these rules.

(a) The amount of such tax abatement shall be calculated as follows:

(i) 0.5, multiplied by  
(ii) the total approved cost of the MCI order issued by DHCR, multiplied by  
(iii) a fraction, where the numerator equals the increase, of the amortization schedule of the improvement established by the rent act of 2015, measured in months, and where the denominator equals the total new amortization period for the MCI established by the rent act of 2015 applied to the eligible building, measured in months.

(b) For eligible buildings with 35 or fewer residential units, the new amortization schedule for an MCI order increases from 7 to 8 years. For example: The property owner replaces a boiler of an eligible building, which costs the owner \$10,000.

$0.5 \times \$10,000$  [approved cost of MCI order] = \$5,000.

$\$5,000 \times (12 \text{ months}) / (96 \text{ months})$  [8 year amortization schedule] =

$\$5,000 \times 0.125 = \$625.$

The MCI tax abatement for the building is \$625.

(c) For eligible buildings with more than 35 residential units, the new amortization schedule for an MCI order increases from 7 to 9 years. For example: The property owner replaces a boiler of an eligible building, which costs the owner \$10,000.

$0.5 \times \$10,000$  [approved cost of MCI order] = \$5,000.

$\$5,000 \times (24 \text{ months} / 108 \text{ months})$  [9 year amortization schedule] =

$\$5,000 \times 0.222 = \$1,111.$

The MCI tax abatement for the building is \$1,111.

(d) The department will adjust the amount of the abatement if the DHCR MCI order is amended in the future. However, the original owner will not receive an adjustment in the abatement amount if the MCI was amended after the sale of the real property. If an MCI is amended after the sale, the new owner may apply for an adjustment to the abatement.

(e) The department will adjust the amount of the abatement if a subsequent assessment reduction by the New York City Tax Commission or a court of appropriate jurisdiction changes the amount of the abatement that would have been calculated under these rules.

### **§ 56-03 Application for Abatement.**

- (a) Except as allowed by paragraph (b) of this subdivision, an MCI tax abatement application must be submitted electronically to the department by the building owner or his or her designated representative and include all information requested by the department. The submission must follow the format required by the department and follow the instructions for submission of the application as described on the department's website. The information required by the application will include, but is not limited to:
- i. the amount of the MCI order approved by DHCR
  - ii. the number of residential units in the eligible building.

(b) Request for waiver of electronic filing requirement. The Commissioner may waive the requirement of an electronic filing for good cause. A request for waiver of the electronic filing requirement must be made in writing. Any filing in paper format must be filed with the department at the address designated by the department.

(c) The department may request, in writing, additional information from an MCI tax abatement applicant concerning their application. The applicant will be notified in a written notice whether their application is granted or denied. If the MCI tax abatement application is denied, the notice will mention the reasons for the department's decision and inform the applicant of their right to appeal the decision. The appeal must be submitted by the applicant or his or her designee to the Commissioner within 60 days of the posting of notice by mail.

(d) Building owners must submit MCI tax abatement applications for MCI tax abatements within five years after the date of the order issued by DHCR granting an MCI rent increase. After this period, a building owner will not be eligible for any MCI tax abatement benefits for that MCI order.

(e) An MCI tax abatement application may not be submitted and an MCI tax abatement will not be granted for MCI orders dated prior to June 15, 2015.

(f) If multiple MCI orders are issued by DHCR for an eligible building the building owner must submit a separate application to the department for each MCI order .

(g) A building owner may withdraw an MCI tax abatement application submitted to the department prior to May 15th of a calendar year. Applications which are not withdrawn by May 15th will be reviewed by the department.

#### **§ 56-04 Administration of Abatement.**

(a) An MCI tax abatement will be for a term of one tax year and is not renewable for any subsequent tax years. An MCI tax abatement or a portion thereof cannot be carried over to the next tax year if the MCI tax abatement reduces the tax liability to an amount below \$0. An MCI tax abatement is not refundable but applied only as a credit.

(b) The date an approved MCI tax abatement is applied depends on the date the MCI tax abatement application is received by the department. An approved application received by the department before May 15th of a calendar year will be applied in the tax year starting on July 1st of that calendar year. Approved applications received on or after May 15th of a calendar year will be applied in the tax year starting on July 1st of the following calendar year.

(c) An MCI tax abatement will not reduce or offset any other tax benefit provided, calculated or approved by the city of New York or the state of New York. The MCI tax abatement will be applied prior to the application of SCRIE or DRIE credits or J-51 program abatements.

(d) An MCI tax abatement is compatible with other tax benefits unless specifically prohibited by statute. A building is not eligible to receive an abatement if it receiving benefits under sections 420-c, 421-a, and 421-g of the Real Property Tax Law, or any other provision that prohibits the receipt of other benefits.

(e) If multiple applications are submitted for the same tax lot, the MCI tax abatement will be calculated using the number of units specified in the MCI order issued by DHCR applicable to the building that is the subject of the individual application.

(f) If an MCI tax abatement is approved for a building that is included within multiple tax lots, each lot will be allocated a fraction of the abatement proportional to each lot's percentage of the total combined value of the lots for the tax year that the abatement is applied.

(g) If an apportionment or merger occurs after an MCI order is issued by DHCR, the department will make the appropriate allocation of the MCI tax abatement to the successor tax lots.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Real Property Tax Abatement for Major Capital Improvements on Rent Regulated Class 2 Properties

**REFERENCE NUMBER:** 2017 RG 079

**RULEMAKING AGENCY:** Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: November 28, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Real Property Tax Abatement for Major Capital Improvements on Rent  
Regulated Class 2 Properties**

**REFERENCE NUMBER: DOF-33**

**RULEMAKING AGENCY: Department of Finance**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Josselin Milloz  
Mayor's Office of Operations

December 1, 2017  
Date