

New York City Department of Finance

Notice of Adoption

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Finance by section 1043 of the New York City Charter and section 467-a of the Tax Law, as amended by Chapter 422 of the Laws of 2021, the New York City Department of Finance (“DOF or “Department”) promulgates and adopts amendments to Chapter 50 of Title 19 of the Rules of the City of New York, regarding the real property tax abatement for dwelling units in real property held in the cooperative or condominium form of ownership.

The amendments to Chapter 50 were published on February 22, 2022. A public hearing was held on March 24, 2022. As a result of written comments received by DOF concerning the definition of “building service employee”, DOF revised the definition of “building service employee” in section 50-02 to provide that a “building service employee” is an employee who performs a classification of work identified on the building service employee schedule of wages and supplemental benefits published by the New York City Comptroller.

Statement of Basis and Purpose

Section 467-a of the New York State Real Property Tax Law provides for an abatement from real property taxes for dwelling units in real property held in the cooperative or condominium form of ownership that meet the qualification criteria of this law. Chapter 422 of the laws of 2021 (“Chapter 422”) amended section 467-a to require that prevailing wages be paid to building staff at various real properties (i.e., buildings) in order for these buildings to qualify for the abatement under section 467-a. Building staff includes but is not limited to watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, elevator operator and starter, and window cleaner.

Chapter 422 also requires the New York City Commissioner of Finance to issue a rule requiring the unit owner or shareholder of a dwelling unit to certify that such dwelling unit is the primary residence of the unit owner or shareholder. The rule amends Chapter 50 of Title 19 of the Rules of the City of New York to implement the amendments to section 467-a with respect to:

- Requiring unit owners and shareholders to certify their primary residence status to the board of directors of a building held in the cooperative form of ownership or the board of managers of a building held in the condominium form of ownership (hereinafter “the board of a building”) or to an authorized agent of such board and authorizing such board or authorized agent to indicate the primary residence status of unit owners and shareholders on the application;
- Establishing an interim procedure for compliance with the primary residence certification requirement for fiscal year 2022/23 that requires the board of a building, or an authorized agent of such board, to report primary residence status of unit owners and shareholders through the Abatement Initial Application or the Abatement Renewal and Change Form;
- Requiring submission of an affidavit to certify the payment of the prevailing wage as provided in section 467-a;
- Establishing dates for submission of the affidavit regarding the payment of the prevailing wage for fiscal year 2022/23 and future fiscal years; and

- Providing guidance for compliance with the obligation to pay prevailing wage and prevailing supplemental benefits based on the building service employee prevailing wage schedule of the City Comptroller's Office and customary practice in the industry.

In addition, the rule updates the presumption of primary residence in paragraph (1) of subdivision (b) of section 50-06 of Title 19 to include a dwelling unit for which the owner of such dwelling unit receives the STAR credit under subsection (eee) of section 606 of the Tax Law.

New material is underlined

[Deleted material is bracketed]

"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.

Section 1. Section 50-01 of title 19 of the rules of the city of New York is amended to read as follows:

§ 50-01. Purpose and scope of rules.

Section 467-a of the Real Property Tax Law, originally enacted in 1996, established an abatement from real property taxes for dwelling units in real property held in the cooperative or the condominium form of ownership that meet the qualification criteria of the law. This law was amended in 2013 to change certain provisions relating to eligibility and application for the abatement for fiscal years beginning in 2012, 2013 and 2014. Section 467-a was again amended in 2021 to add certain requirements regarding the payment of prevailing wage to building service employees and the certification and verification of the primary residence status of an owner. Section 467-a authorizes the Commissioner of Finance of the City of New York to promulgate rules necessary to effectuate the purposes of the law. These rules are intended to clarify the criteria for eligibility for the abatement and the requirements concerning application for the abatement [for fiscal years beginning in 2012, 2013 and 2014].

§ 2. Section 50-02 of title 19 of the rules of the city of New York is amended to read as follows:

§ 50-02. Definitions.

Unless the context requires otherwise, as used in this chapter:

[(a)] "**Abatement**" means the partial tax abatement for residential real property held in the cooperative or condominium form of ownership authorized by § 467-a of the Real Property Tax Law. As used in this chapter, the term "abatement" includes both the "primary residence abatement" and the "non-primary residence abatement."

[(b)] "**Administrative Code**" means the Administrative Code of the City of New York.

[(c)] “**Assessed value**” means the actual assessed value of real property, which is not reduced by any exemption from real property taxes.

“**Authorized agent**” means any person authorized by the board to act on the board’s behalf with respect to an application for an abatement, including, but not limited to, a managing agent.

[(d)] “**Board**” means, in the case of real property held in the cooperative form of ownership, the board of directors of the cooperative, and in the case of real property held in the condominium form of ownership, the board of managers of the condominium.

“**Building service employee**” means any person who is regularly employed at a building who performs work in connection with the care or maintenance of such building. “Building service employee” includes, but is not limited to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, elevator operator and starter, and window cleaner, provided that the classification of work performed by such person is identified on the building service employee schedule, and provided, further, that “building service employee” shall not include persons regularly scheduled to work fewer than eight hours per week in the building.

“**Building service employee schedule**” means the schedule of wage rates and supplemental benefit rates for building service employees published by the Comptroller on an annual basis pursuant to paragraph (a) of subdivision 1 of § 234 of the Labor Law.

[(e)] “**Commissioner**” means the Commissioner of Finance of the City of New York and any employee of the Department of Finance authorized by the Commissioner to act on his or her behalf.

“**Comptroller**” means the Comptroller of the City of New York.

“**Department**” means the Department of Finance of the City of New York.

“**Designated property**” means real property designated as class two, pursuant to § 1802 of the Real Property Tax Law, held in the cooperative or condominium form of ownership.

[(f)] “**Dwelling unit**” means a unit used primarily for residential purposes in residential real property designated as class two real property under § 1802 of the [real property tax law] Real Property Tax Law that is held in the cooperative or condominium form of ownership, and does not include a unit used primarily for professional or commercial purposes or used solely for parking vehicles or for storage.

[(g)] “**Fiscal year 2011/12**” means the fiscal year that begins on July 1, 2011 and ends on June 30, 2012.

[(h)] “**Fiscal year 2012/13**” means the fiscal year that begins on July 1, 2012 and ends on June 30, 2013.

[(i)] “**Fiscal year 2013/14**” means the fiscal year that begins on July 1, 2013 and ends on June 30, 2014.

[(j)] “**Fiscal year 2014/15**” means the fiscal year that begins on July 1, 2014 and ends on June 30, 2015.

“Fiscal year 2021/22” means the fiscal year that begins on July 1, 2021 and ends on June 30, 2022.

“Fiscal year 2022/23” means the fiscal year that begins on July 1, 2022 and ends on June 30, 2023.

“Fiscal year 2023/24” means the fiscal year that begins on July 1, 2023 and ends on June 30, 2024.

[(j-1)] “Law enforcement officer” means anyone who is, or was, employed as a federal, state or local judge, prosecutor, state or local police or peace officer or federal law enforcement officer as defined by the United States Code.

[(k)] “Owner” means the owner, in whole or in part, of a dwelling unit in real property held in the condominium form of ownership, or a tenant-stockholder of a cooperative apartment corporation who owns, in whole or in part, a dwelling unit, as represented by his or her shares of stock in such cooperative apartment corporation. For purposes of these rules, with respect to any dwelling unit, or the shares representing a dwelling unit, held in trust solely for the benefit of a person or persons who would otherwise be eligible for an abatement pursuant to these rules were such person or persons the owner or owners of such dwelling unit, such person or persons are each deemed to be an “owner” of the dwelling unit. With respect to any dwelling unit, or the shares representing a dwelling unit, held in trust, the trustee or trustees of the trust are each deemed to be an “owner” of the dwelling unit. The holder or holders of a life estate in a dwelling unit are deemed to be “owner(s)” of the dwelling unit. An “owner” can only be an individual and cannot be a corporation, limited liability company, partnership or other entity, unless a waiver is granted pursuant to subdivision (d) of section 50-05 for a limited liability company or limited partnership.

“Prevailing wage” means the rate of wages and supplemental benefits paid in the locality to workers in the same trade or occupation and annually determined by the Comptroller in accordance with the provisions of § 234 of the Labor Law.

[(l)] “Primary residence” means the dwelling unit in which the owner of the dwelling unit actually resides and maintains a permanent and continuous physical presence.

“Qualified property” means (i) a designated property with an average unit assessed value of less than or equal to \$60,000; or (ii) a designated property with an average unit assessed value of more than \$60,000 and less than or equal to \$100,000, and less than 30 dwelling units; or (iii) a designated property with respect to which an applicant has submitted an affidavit required under § 467-a of the Real Property Tax Law certifying that all building service employees employed or to be employed at the property shall receive the applicable prevailing wage for the duration of such property’s tax abatement.

“Regularly employed” means employed for a period of at least 90 days.

[(m)] “Sponsors” means persons or business entities who make or take part in a public offering or sale of securities consisting primarily of shares or investments in real estate, including condominium units and other cooperative interests in realty. Sponsors will be deemed to include successors who succeed to the rights and assume the obligations of sponsors.

[(n)] “Taxable status date” for a fiscal year means the January 5 that immediately precedes the commencement of such fiscal year. The taxable status date is the date as of which the condition

and ownership of real property is considered for the purposes of determining the eligibility of a dwelling unit for the abatement for such fiscal year.

§ 3. Section 50-03 of title 19 of the rules of the city of New York is amended by adding a new subdivision (g) to read as follows:

(g) Qualified property requirement. For fiscal year 2022/23 and all subsequent fiscal years, no dwelling unit in a designated property other than a qualified property shall be eligible to receive an abatement.

§ 4. Section 50-05 of title 19 of the rules of the city of New York is amended by adding a new subdivision (b-1) to read as follows:

(b-1) Application for fiscal years subsequent to fiscal year 2014/15.

For any fiscal year subsequent to fiscal year 2014/15, the deadline for filing an application for an abatement for the fiscal year commencing on July 1 is February 15 of the same calendar year.

§ 5. Subdivision (e) of section 50-05 of title 19 of the rules of the city of New York is amended to read as follows:

(e) Owner designated as applicant. [For purposes of paragraph (a) of subdivision 1 of section 467-a of the Real Property Tax Law, an owner is designated as an applicant.] The owner shall be designated as an applicant for the limited purpose of submitting information to verify the primary residence of the owner.

§ 6. Section 50-05 of title 19 of the rules of the city of New York is amended by adding new subdivisions (f) and (g) to read as follows:

(f) Certification. (1) The owner is required to certify the primary residence of such owner in the dwelling unit. Such certification must be in the form and manner prescribed by the Commissioner and must be submitted to the board or an authorized agent of the designated property where the dwelling unit is situated. The board or authorized agent must indicate the primary residence status of the owner of each dwelling unit in the application.

(2) Notwithstanding paragraph (1) of this subdivision, the owner will not be required to certify the primary residence of such owner for fiscal year 2022/23, provided that the board or authorized agent reports primary residence status for such owner on the Abatement Initial Application or the Abatement Renewal and Change Form. The Department may request information from an owner to verify the primary residence status of such owner.

(3) The board or the authorized agent is responsible for maintaining the certifications required by paragraph (1). The Department shall have the right to inspect and review the certifications.

(g) Documentation of authority of authorized agent. The Commissioner may require any authorized agent to submit documentation, of the type and in the form acceptable to the Commissioner, affirming the authorized agent's authority to act on behalf of the board with respect to the application for abatement.

§ 7. Subdivision (b) of section 50-06 of title 19 of the rules of the city of New York is amended to read as follows:

(b) *Presumption of primary residence.* (1) Except as provided in paragraph (2) of this subdivision, a dwelling unit will be presumed to serve as the primary residence of one or more of the owners of the dwelling unit for a particular fiscal year if such owner certifies primary residence status pursuant to subdivision (f) of § 50-05 of this title and either:

(A) the dwelling unit receives a real property tax exemption pursuant to § 425 of the Real Property Tax Law for such fiscal year or the owner of the dwelling unit receives a tax credit pursuant to subsection (eee) of § 606 of the Tax Law; or

(B) an owner of the dwelling unit entered the address of the dwelling unit as such owner's permanent home address on a New York State Resident Income Tax Return filed during the calendar year immediately preceding the calendar year in which such fiscal year commences.

(2) Notwithstanding the presumption provided in this subdivision, the Commissioner may determine based on additional facts that a dwelling unit is not the primary residence of one or more of the owners of the dwelling unit.

(3) If the Commissioner determines that a dwelling unit will not be presumed to serve as the primary residence of one or more of the owners of the dwelling unit because the dwelling unit does not meet [either of] the criteria contained in paragraph (1) of this subdivision the owner may file a supplemental application as described in subdivision (c) of § 50-05 of this title to prove eligibility for the primary residence abatement.

§ 8. Section 50-07 of title 19 of the rules of the city of New York is amended to read as follows:

§ 50-07. Denial or revocation of abatement [for property in arrears].

(a) *Unpaid charges requiring denial or revocation of abatement.* An application for the abatement will be denied, and an abatement granted will be revoked retroactively, in the event that the Commissioner determines that there are arrears in real property taxes, water and sewer charges, assessments, payments in lieu of taxes and/or other municipal charges, including interest on any of the aforementioned amounts, and including tax liens that have been sold by the City:

(1) on a condominium dwelling unit totaling in the aggregate at least \$1,000; or

(2) on cooperative apartment corporation property, totaling in the aggregate at least \$25,000. For purposes of this subdivision, taxes and/or charges that are in arrears do not include any taxes and/or charges that are included in a written agreement to pay such taxes and/or charges in installments with the Department of Finance or, in the case of water and sewer charges, the New York City Department of Environmental Protection or the New York City Water Board, if all payments that have become due under such agreement have been made.

(a-1) Denial or revocation of abatement upon a final determination of the Comptroller regarding the payment of prevailing wage for building service workers.

(1) The Comptroller shall have the power to conduct an investigation and hearing and file a final determination as to the payment of wages owed by an owner, successor, or any employer of building service employees as provided in subdivisions 1, 4, 5, 6, 8 and 9 of § 235 of the Labor Law.

(2) An application for abatement will be denied, and an abatement granted will be revoked

retroactively, where the Commissioner is notified in writing that:

(A) the Comptroller has issued a final determination, pursuant to subdivision (10) of § 467-a of the Real Property Tax Law, as to the payment of wages owed by an owner, successor, or any employer of building service employees that (i) requires such owner, successor or other employer to make a payment, and such owner, successor or other employer has failed to make such payment within 120 calendar days of receiving such final determination; (ii) finds a willful failure to pay prevailing wage, and two or more such determinations have been issued within a six-year period for the same designated property; or (iii) finds a willful failure to pay prevailing wage that involves a falsification of payroll records or the kickback of wages or supplements; and
(B) there is no relevant proceeding for judicial review pending relating to such final determination, and the period for initiation of such proceeding has expired.

(3) The written notification described in paragraph (2) of this subdivision may be in a form and manner as required by the Commissioner, including in an electronic form.

(b) Restoration of taxes upon revocation of abatement. If an abatement is revoked retroactively pursuant to subdivision (a) or (a-1) of this section, then the real property taxes that were abated will be restored and must be paid to the Commissioner [of Finance] no later than the due and payable date provided on a notice of the amount payable, which may be in the form of a statement of account or an amended bill for real property taxes. Such notice will be mailed by the Commissioner to the address for the affected condominium unit or cooperative apartment corporation property on record with the Department for mailing statements of account or real property tax bills. The amount payable will constitute a tax lien on the affected cooperative apartment corporation property or condominium unit as of the due and payable date provided on such notice. If the amount payable is not paid by such due and payable date, interest at the rate applicable to delinquent real property taxes on the affected condominium unit or cooperative apartment corporation property will be imposed from the due and payable date provided on such notice to the date of payment, and such amount payable will be enforceable as a tax lien in accordance with provisions of chapters 3 and 4 of title 11 of the Administrative Code.

(c) Effective date of revocation of abatement. In no event will revocation of an abatement pursuant to this section be effective prior to the earliest date on which any of the unpaid taxes or charges that are the basis for the revocation were first due and payable. A revocation based on a final determination of the Comptroller as described in this section shall apply to an abatement for the fiscal year or fiscal years that are the subject of such final determination.

§ 9. Section 50-09 of title 19 of the rules of the city of New York is amended to read as follows:

§ 50-09. Audit authority.

The Commissioner may inspect or examine the books and records of the owner or the board, relevant to determining eligibility of a unit for the abatement, including the amount of abatement to which a unit may be entitled. The Comptroller shall have the power to conduct an investigation and hearing and file a final determination as provided in § 50-07 of this title.

§ 10. Chapter 50 of title 19 of the rules of the city of New York is amended by adding a new section 50-10 to read as follows:

§ 50-10. Required Affidavit for Qualified Property.

(a) Required affidavit. (1) With respect to any application for an abatement, other than (i) an abatement for a designated property with an average unit assessed value of less than or equal to \$60,000; or (ii) a designated property with an average unit assessed value of more than \$60,000 and less than or equal to \$100,000, and less than 30 dwelling units; an officer or authorized agent of the designated property must submit an affidavit certifying that all building service employees employed or to be employed at the designated property shall receive the applicable prevailing wage for the duration of such abatement. The requirement to submit such affidavit applies regardless of whether the designated property employs or will employ any building service employees.

(2) Such affidavit must be submitted to the Department as part of an application or renewal application for an abatement for fiscal year 2022/23 and all subsequent fiscal years, in a form and manner, including an electronic form or through a web-based application, as required by the Commissioner, on or before the due date for submission of the application for an abatement for such fiscal year as provided in subdivision (b-1) of § 50-05 of this title.

(3) The Department may accept an affidavit after the due date set forth in paragraph (2) of this subdivision, provided (i) a timely application for abatement for the designated property that is otherwise complete has been submitted and (ii) the board or the authorized agent has satisfied such other conditions as the Commissioner in his or her discretion may establish.

(b) Failure to submit affidavit. If the affidavit required under subdivision (a) of this section is not submitted or is not submitted in a form and manner required by the Commissioner, the designated property with respect to which such affidavit is required shall not constitute a qualified property.

(c) Prevailing wage. (1) The applicable prevailing wage and supplement rates for a building service employee are set forth in the building service employee schedule.

(2) The obligation to pay prevailing supplemental benefits may be discharged either by the provision of:

(A) bona fide fringe benefits that cost no less than the prevailing supplement rate in the applicable building service employee schedule;

(B) a supplement to the hourly wage in an amount no less than such prevailing supplement rate; or

(C) a combination of bona fide fringe benefits and wage supplements that, collectively, costs no less than such prevailing supplement rate. The provision of a dwelling unit free of a charge to a building service employee shall be considered a bona fide fringe benefit with a cost of no more than the value of prevailing rentals in the locality for comparable dwelling units.

(3) Notwithstanding any provision of paragraph (2) of this subdivision, the obligation to pay prevailing wage cannot be reduced or discharged through the provision of bona fide fringe benefits that cost more than the prevailing supplement rate in the building service employee schedule.

(d) The obligation to pay prevailing wage applies to any building service employee who performs building services at a designated property regardless of whether the owner of such designated property employs such employee.