

New York City Office of Administrative Tax Appeals

Notice of Adoption of Final Rule

Notice is hereby given pursuant to the authority vested in the New York City Tax Commission (“Tax Commission”) by section 1043 and section 164 of the City Charter that the Tax Commission has promulgated and adopted amendments to sections 4-12 and 4-13 of Title 21 of the Rules of the City of New York by adding new sections 4-12(l) and 4-13(d).

Written comments regarding the rules were received in accordance with the notice published in the City Record August 17, 2022. No comments were received.

Statement of Basis and Purpose of Rule

The rules that the Tax Commission is seeking to amend are contained within Chapter 4 of Title 21 of the Rules of the City of New York, relating to “Determinations”. The amended rules clarify the Tax Commission’s longstanding practice of issuing, in connection with its processing of exemption applications, only final determinations signed by the President. The Tax Commission does not issue the recommended determinations of hearing officers on exemption applications. The need for clarification in the Tax Commission’s rules of its longstanding practice of issuing only final exemption determinations is in light of the Appellate Division’s decision in Drug Policy Alliance v. NYC Tax Commission, 191 A.D.3d 405 (1st Dept. 2021).

Exemption applications and valuation claim applications are treated differently under sections 4-12 and 4-13 based on long-standing policy. The Tax Commission processes more than 57,000 valuation claim applications each year. To issue timely offers on these applications, and more efficiently use resources to process them, offers on valuation claims are not final determinations and may be revoked by the Tax Commission.

In contrast, the Tax Commission processes approximately 140 exemption applications per year. Unlike valuation claims, exemption determinations must be reviewed and approved by the President before they can be issued as offers to the applicant. Exemption applications are first reviewed by a hearing officer who submits a recommended determination to the President for approval and signature. These recommended exemption determinations are not final and cannot be issued as offers until they are signed by the President.

The rules do not change an existing policy or practice before the Tax Commission, but merely clarify what has been the longstanding practice. That is, only final determinations on exemption applications as defined by sections 165 and 166 of the Charter, and which are signed by the President of the Tax Commission, may be issued as offers to applicants pursuant to Section 4-12 of the Tax Commission Rules. Where an exemption application includes a valuation claim, a final determination of the exemption application, signed by the President, is also a final determination of the valuation claim and, therefore, constitutes a final determination of both claims. As a final determination, the offer extended by the Tax Commission on an exemption application may only be revoked by the Tax Commission within the six-year period described in section 4-12(k)(2) on the grounds stated in that provision.

The rules also state that Section 4-13 does not apply to determinations on exemption applications, making it clear that applicants cannot request reconsideration of the merits of a final exemption determination by a showing of manifest and substantial error. Unlike determinations on valuation

claims, which are not final determinations and may be revoked by the Tax Commission, exemption determinations are final determinations approved and signed by the President for which reconsideration is unavailable.

A public hearing was held on the proposed rule on September 19, 2022. No comments were received.

The Tax Commission's authority for these rules is found in section 164 of the New York City Charter.

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.

Section 1. Section 4-12 of Title 21 of the Rules of the City of New York is amended by adding a new subdivision (l), to read as follows:

§4-12 Offer and Acceptance.

(l) This section shall not apply to determinations on applications claiming full or partial exemption, except to final determinations signed by the President. Paragraph (1) of subdivision (k) does not apply to final determinations described in this subdivision.

§2. Section 4-13 of Title 21 of the Rules of the City of New York is amended by adding a new subdivision (d), to read as follows:

§4-13 Reconsideration for Manifest and Substantial Error.

(d) This section shall not apply to determinations on applications claiming full or partial exemption, regardless of whether the application also claims a reduction in assessed value.