

New York City Department of Finance
Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Department of Finance is proposing rules concerning a childcare center tax abatement for real property taxes. The proposed rule would establish a new Chapter 60 of Title 19 of the Rules of the City of New York, to effectuate Title 6 of Article 4 of the NYS Real Property Tax Law (“RPTL”), as added by Part HH of Chapter 59 of the Laws of 2022.

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 **February 9, 2023**. The hearing will be conducted remotely through Webex Event Center. To participate in the public hearing, enter the Webex URL <https://nycdof.webex.com>. If prompted to provide the meeting number, please enter: 2346 435 4793; If prompted for a password, please enter the following: ZmpkEP83Cu2. You can also participate in the hearing via telephone by calling 646-992-2010 (New York City); or 408-418-9388.

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: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to DOFRules@finance.nyc.gov.
- **Mail.** You can mail written comments to NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, NY 10038, Attn: Dara Jaffee.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Dara Jaffee, at (212) 748-6981.
- **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 (212) 748-7214. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline to submit written comments is February 9, 2023.

What if I need assistance to participate in the hearing?

Please contact DOF’s Legal Affairs Division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can make any accommodation request by mail at the address given above. You may also make such request by contacting Joan Best by telephone at (212) 748-7214; TTY (212) 504-4115, or by email at bestj@finance.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please provide at least 72 hours’ notice prior to the hearing to ensure availability.

This hearing has the following accessibility options available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted 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, 375 Pearl Street, 30th Floor , New York , N.Y. 10038.

What authorizes Department of Finance to adopt this rule? Section 499-ffff of the RPTL and sections 1043(a) and 1504 of the New York City Charter (“Charter”) authorize the Department of Finance to adopt this proposed rule. This proposed rule was not included in the Department’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published its agenda.

Where can I find the Department of Finance’s rules? The Department of Finance’s rules can be found in Title 19 of the Rules of the City of New York. See the link below.
<https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-41374>

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

Statement of Basis and Purpose of Proposed Rule

Sections 499-aaaa through 499-ffff of title 6 of article 4 of the NYS Real Property Tax Law (“RPTL”) requires that the Department of Finance provide an abatement of real property taxes for certain buildings where construction, conversion, alteration or improvement that is completed on or after April 1, 2022 results in the creation of a new childcare center or an increase in the maximum number of children allowed in an existing childcare center, as such number is specified in a permit issued by the Department of Health and Mental Hygiene.

The childcare center tax abatement may be provided to an eligible building beginning in the tax year commencing July 1, 2023, and may be applied to the real property tax liability of an eligible building for a period of up to five years, subject to certain limitations provided in title 6 of article 4 of the RPTL. The amount of the abatement will be determined in accordance with section 499-bbbbb of the RPTL, and is subject to certain limitations, including that it may not exceed the real property tax liability of the eligible building for any tax year for which the abatement is provided. An enhanced childcare center tax abatement, in an amount higher than the childcare center tax abatement, will be provided to an owner of an eligible building located within a “childcare desert,” or an area of the City where there are a disproportionate number of children under five as compared to the number of available childcare slots.

Specifically, the proposed rule would provide information to owners of eligible buildings relating to eligibility, and the application for, and approval of, the childcare center tax abatement or the enhanced childcare center tax abatement, including information to supplement the requirements and limitations relating to the abatement provided in title 6 of article 4 of the RPTL.

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. Title 19 of the rules of the city of new York is amended to add a new chapter 60 to read as follows:

§ 60-01. Definitions.

When used in this chapter, the following terms have the following meanings:

Abatement period. “Abatement period” means the tax year or tax years in which the abatement is applied by the department to the real property tax liability of an eligible building, provided that such abatement may not be applied to the real property tax liability of such building during more than five tax years.

Applicant. “Applicant” means an owner who files an application for tax abatement.

Childcare center. “Childcare center” means a childcare program for which a permit to operate such program has been issued by the Department of Health and Mental Hygiene pursuant to the NYC Health Code.

Childcare desert. “Childcare desert” means a census tract in New York City where, at the time of an application for tax abatement, there are three or more children under five years of age for each available childcare slot, or where there are no available childcare slots, as of the most recently published determinations by the NYS Office of Children and Family Services.

Childcare center tax abatement. “Childcare center tax abatement” means a tax abatement granted pursuant to sections 499-aaaa through 499-ffff of title 6 of article 4 of the RPTL and this chapter.

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

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

Department of Health and Mental Hygiene or DOHMH. “Department of Health and Mental Hygiene” or “DOHMH” means the New York City Department of Health and Mental Hygiene.

Eligible building. “Eligible building” means a class one, class two or class four property, as such classes of property are defined in section 1802 of the RPTL, provided that, for any such property held in the condominium form of ownership, “eligible building” shall mean a tax lot in such property.

Enhanced childcare center tax abatement. “Enhanced childcare center tax abatement” means a childcare center tax abatement provided to an owner of an eligible building that is located in a childcare desert pursuant to sections 499-aaaa through 499-ffff of title 6 of article 4 of the RPTL and this chapter.

Owner. “Owner” means the owner of an eligible building, or with respect to an eligible building held in the cooperative form of ownership, the board of directors of a cooperative apartment corporation, or, with respect to an eligible building held in the condominium form of ownership, an owner of a tax lot in such building or the board of managers of such building.

Premises. “Premises” means the location of a childcare center as specified on the permit for the operation of such center issued by the Department of Health and Mental Hygiene pursuant to the NYC Health Code.

RPTL. “RPTL” means the New York State Real Property Tax Law.

§ 60-02 Eligibility for Childcare Center Tax Abatement or Enhanced Childcare Center Tax Abatement

a. An owner of an eligible building shall receive a childcare center tax abatement, or an owner of an eligible building that is located in a childcare desert shall receive an enhanced childcare center tax abatement, as provided in title 6 of chapter 4 of the RPTL and this chapter.

b. In accordance with title 6 of chapter 4 of the RPTL, the Department shall provide:

1. A childcare center tax abatement to an owner of an eligible building for construction, conversion, alteration or improvement work that is completed on or after April 1, 2022 and that results in: (i) the creation of a premises of a childcare center; or (ii) an increase in the maximum number of children allowed on the premises of an existing childcare center when such center is in operation, as such number is specified in the permit issued by the Department of Health and Mental Hygiene to operate such center; or

2. An enhanced childcare center tax abatement to an owner of an eligible building located within a childcare desert for construction, conversion, alteration or improvement work that is completed on or after April 1, 2022 and that results in: (i) the creation of a premises of a childcare center; or (ii) an increase in the maximum number of children allowed on the premises of an existing childcare center when such center is in operation, as such number is specified in the permit issued by the Department of Health and Mental Hygiene to operate such center.

c. Such childcare center tax abatement or enhanced childcare center tax abatement shall be provided for a tax year commencing on or after July 1, 2023 and ending on June 30, 2030. No such childcare center tax abatement or enhanced childcare center tax abatement shall be provided for any tax year ending on June 30, 2023 or commencing on or after July 1, 2030.

§ 60-03 Application.

a. Submission of application. To obtain a childcare center tax abatement or an enhanced childcare center tax abatement, an applicant must submit a completed application to the Department on a form prescribed by the Commissioner. Such application must be submitted no later than the March 15 immediately preceding July 1 of the tax year for which the abatement is sought, as follows:

1. To receive such an abatement for the tax year commencing July 1, 2023, an application must be submitted no later than March 15, 2023.

2. To receive such an abatement for the tax year commencing July 1, 2024, an application must be submitted no later than March 15, 2024.

3. To receive such an abatement for the tax year commencing July 1, 2025, an application must be submitted no later than March 15, 2025.

b. In no event may an application be submitted later than March 15, 2025.

c. The application will be available on the website of the Department, and must be submitted electronically to the Department by the applicant or the applicant's designated representative.

d. Content of application. In addition to any other information or supporting documentation that the Department may require, an application for a childcare center tax abatement or an enhanced childcare center tax abatement must:

1. Include all information required by subdivision 2 of section 499-cccc of the RPTL;

2. Indicate whether the eligible building is located within a childcare desert according to the most recently published determinations by the NYS Office of Children and Family Services;

3. Include both (i) proof that the applicant has entered into a lease or other agreement with a person to operate a childcare center in the eligible building, and (ii) a copy of the new or amended permit issued to the childcare center by the Department of Health and Mental Hygiene for such operation, except that where the applicant is also the operator of the childcare center as indicated on such new or amended permit, the applicant is only required to submit a copy of such new or amended permit and is not required to submit proof that such applicant has entered into a lease or other agreement with a person to operate a childcare center in the eligible building; and

4. Where an application is submitted for an abatement for construction or other work that has resulted in an increase in the maximum number of children allowed on the premises of an existing childcare center when such center is in operation, such application must include: (i) a copy of the permit for the childcare center that indicates the maximum number of children that were allowed on the premises of such childcare center prior to completion of such construction or other work; and (ii) a copy of the new or amended permit for the childcare center demonstrating that the maximum number of children allowed on the premises of the childcare center has increased following completion of such construction or other work.

§ 60-04 Approval of Application for Childcare Center Tax Abatement or Enhanced Childcare Center Tax Abatement

a. Pursuant to subdivision 4 of section 499-cccc of the RPTL, upon a determination by the Department that an applicant has submitted proof acceptable to the Department that the requirements for obtaining a childcare center tax abatement or an enhanced childcare center tax abatement have been satisfied, the application of such applicant shall be approved.

b. Upon approval of an application for a childcare center tax abatement or enhanced childcare center tax abatement, such abatement shall be applied to the real property tax liability of the eligible building for the tax year for which the abatement was sought, provided that there are no

outstanding real property taxes, water and sewer charges, payments in lieu of taxes or other municipal charges with respect to such eligible building.

§ 60-05 Amount of the Tax Abatement

a. Abatement amount. The Department shall provide the childcare center tax abatement or the enhanced childcare center tax abatement to an eligible building in the amount and manner, and subject to the applicable limitations, as provided in title 6 of article 4 of the RPTL and this section, including the limitation on the aggregate amount of all childcare center tax abatements and all enhanced childcare center tax abatements in any tax year set forth in paragraph (c) of subdivision 2 of section 499-bbbbbb of the RPTL.

b. In accordance with section 499-bbbbbb of the RPTL, if the amount of the childcare center tax abatement or enhanced childcare center tax abatement exceeds the real property tax liability of the eligible building for any tax year during the abatement period, any amount of the abatement remaining may be applied to the real property tax liability for the eligible building for a succeeding tax year, provided the abatement must be applied in one or more of the four such succeeding tax years.

c. Any abatement that requires adjustment as a result of an allocation required by paragraph (b) of subdivision 2 of section 499-bbbbbb of the RPTL shall be final and shall be reflected in the amended real property tax bill, statement of account or other similar bill or statement that is prepared.

§ 60-06 Revocation

a. A childcare center tax abatement or enhanced childcare center tax abatement provided pursuant to this chapter may be revoked in accordance with title 6 of article 4 of the RPTL or this section.

b. Revocation for ceased operations. In accordance with paragraph (a) of subdivision 1 of section 499-eeeeee of the RPTL, the Department shall revoke, in whole or in part, a childcare center tax abatement or enhanced childcare center tax abatement whenever the Department receives notice from DOHMH that the childcare center in the eligible building for which such abatement was approved has ceased operation as a childcare center for a period exceeding one hundred eighty (180) days during the abatement period.

c. Revocation for false or misleading statement. In accordance with paragraph (b) of subdivision 1 and subdivision 4 of section 499-eeeeee of the RPTL, a childcare center tax abatement or enhanced childcare center tax abatement shall be revoked, in whole or in part, whenever the Department determines that an application, certification, report or any other document submitted to the Department by the owner contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statement therein not false or misleading.

d. Notice of revocation. Where an abatement is revoked pursuant to title 6 of article 4 of the RPTL or this section, the Department shall provide written notice of the revocation of the abatement to the owner of the eligible building. The written notification described in this subdivision may be in a form and manner as determined by the Commissioner, including in an electronic form.

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

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

RULE TITLE: Real Property Tax Abatement for Construction or Enlargement of Childcare Facilities

REFERENCE NUMBER: DOF-60

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/ Francisco X. Navarro
Mayor's Office of Operations

January 5, 2023
Date

**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 Construction or Enlargement of Childcare Facilities

REFERENCE NUMBER: 2022 RG 093

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: January 3, 2023