

New York City Department of Finance

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?

The New York City Department of Finance (“NYC Department of Finance”, or “Department”) is proposing to amend rules related to the taxpayer-initiated Request for Review process, and the clerical error administrative review process. These rule amendments are designed to reorganize and consolidate the ways that taxpayers may challenge the assessment and taxation of their property.

When and where is the hearing? NYC Department of Finance will hold a public hearing on the proposed rule. The public hearing will take place at 12:00 PM on Friday, November 22, 2024. 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 550 6209; If prompted for a password, please enter the following: RFR CER2024. You can also participate in the hearing via telephone by calling 1-646-992-2010 (New York City); or 1-408-418-9388. The meeting access code is 2346 550 6209.

This location has the following accessibility option(s) available:

Simultaneous transcription for people who are deaf or hard of hearing and audio-only access

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

- **Website.** You can submit comments to the NYC Department of Finance through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to DOFRules@finance.nyc.gov.
- **Mail.** You can mail comments to NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, NY 10038, Attn: Timothy Byrne.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Timothy Byrne, 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. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? The deadline to submit written comments is Friday, November 22, 2024.

What if I need assistance to participate in the hearing? You must contact NYC Department of Finance’s Office of Legal Affairs 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 tell us by mail at the address given above. You may also tell us by telephone at Joan Best at (212) 748-7214.

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 location has the following accessibility option(s) 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 rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a video recording of oral comments concerning the proposed rule will be available on the DOF website. Copies of these documents may also be reviewed at NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, N.Y. 10038.

What authorizes NYC Department of Finance's to make this rule? Sections 1043(a), 1504 and 1512 of the City Charter and New York City Administrative Code § 11-206 authorize the Department to make 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 the agenda.

Where can I find the NYC Department of Finance's rules? The NYC Department of Finance's rules are in title 19 of the Rules of the City of New York. See the link below. <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-34211>

What laws govern the rulemaking process? NYC Department of Finance must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The New York City Department of Finance (“DOF”) is proposing the following rule change pursuant to its authority as set forth in New York City Charter (“Charter”) §§ 1043(a), 1504, and 1512 as well as New York City Administrative Code § 11-206. This rule change would amend several sections of Title 19 of the Rules of the City of New York (“RCNY”) to reorganize and consolidate the administrative processes by which taxpayers may challenge or seek to amend the assessment and taxation of their property.

Taxpayer-Initiated Requests for Review

Sections one and two of this rule would modify the process for taxpayer-initiated requests for review (“RFR”) of tentative assessments of real property. Charter § 1512 allows DOF to adjust the tentative assessments of parcels during certain time periods and requires that DOF provide notice to taxpayers when such an adjustment takes place. See Charter § 164-b(b) (containing certain exceptions). Since 1992, DOF has provided a process for taxpayer-initiated RFRs in the RCNY. See City Record, at 2145 (Dec. 13, 1991). In practice, the RFR process provides a taxpayer with a reasonable opportunity to request that DOF fix ministerial errors or errors related to the valuation of a property for a limited time period before the tax roll closes.

DOF is proposing amendments to the rules for the RFR process in 19 RCNY § 37-06 because some provisions in the section are out of date. The current text of subdivisions (a), (b) and (c) of this section also includes RFR submission timeframes that are no longer consistent with actual practice. Further, subdivision (d) includes procedures that are out of step with how RFRs are customarily submitted. This rule would bring these provisions up to date by clarifying the RFR submission timelines and procedures.

19 RCNY § 37-06(e) contemplates a process by which taxpayers requesting RFRs may attend conferences with DOF. Such procedures are not conducted frequently in practice. This rule would repeal this outdated subdivision and add new provisions 19 RCNY § 37-06(e) and (e-1), which would clarify that the RFR process may be used to correct an error in the valuation of a property, a clerical error that is purely ministerial in nature, or an error of description of a property that is purely ministerial in nature or the result of a mistaken conclusion of fact. Such errors based on a mistaken conclusion of fact could be remedied through this process if they can be unambiguously resolved by reference to documents or information on the DOF website.

This rule would provide that DOF would not correct any error resulting from a discretionary act, an act based in whole or in part on an individual’s judgment, or an interpretation of law, regulation or policy. This rule change would eliminate outmoded regulatory provisions and clarify that only requests relating to valuation and technical errors may be addressed through the RFR process. Any other dispute should be addressed through the Tax Commission and the tax certiorari process.

Correction of Certain Errors and Errors of Description Affecting an Assessment or Tax on Real Property Pursuant to 19 RCNY ch. 53.

Sections three, four, five, and six of this rule would amend Chapter 53 of Title 19 of the RCNY (“Chapter 53”), which implements the power of the Commissioner of Finance to correct certain errors affecting an assessment or tax on real property pursuant to Administrative Code § 11-206 through the clerical error review (“CER”) process. As described below, this proposed rule would revise the categories of errors that can be corrected pursuant to Chapter 53.

Section 53-01(a)(1) would be amended to provide that a request for administrative review pursuant to Administrative Code § 11-206 can only be filed by a filer who, during the applicable tax year, owned the property subject to the request or had the status of an “other qualified filer.” (The term “other qualified filer” would be defined elsewhere in this rule.) The purpose of this provision is to prevent applications filed pursuant to Chapter 53 by people who did not suffer any injury as a result of an eligible clerical error or error of description, but who instead hold possession of a property for which an error occurred under prior ownership. Chapter 53 is intended to provide relief under limited circumstances where DOF determines correction of a clerical error or error of description is appropriate to remedy an injury to the person who suffered the injury. In recent years, Chapter 53 has been misapplied to seek windfall benefits for past errors that new owners discover after taking possession of a property.

The rule would also amend 19 RCNY § 53-01(a)(3) to adjust the time-period in which an application pursuant to Chapter 53 may be filed. Since 2016, this provision has allowed DOF to correct eligible errors that occurred within six years prior to the date of application. See City Record at 2343-44 (June 16, 2016). This lengthy time period to file an application has resulted in certain unintended consequences. Some property owners, including real estate developers and other institutional owners, have used the six-year period as an opportunity to relitigate assessment and taxation matters after receiving an unsatisfactory outcome in a prior tax certiorari action, or to challenge the same issue in multiple forums. The City, however, needs finality in real property taxation matters and has a strong policy interest in preventing the relitigation of the same issues in multiple forums.

To address these issues and balance the needs of DOF and taxpayers, this proposed rule would allow DOF to correct eligible errors that occurred during the tax year in which an application for correction of errors was submitted or during the two directly preceding tax years. This time limitation would contain limited exceptions: applications could still be submitted pursuant to Chapter 53 outside of this time period where DOF determines that correcting such error would not unduly prejudice DOF and where extenuating circumstances apply.

In keeping with the goals of ensuring finality in taxation matters and preventing the relitigation of the same issues in multiple forums, new paragraphs 19 RCNY § 53-01(a)(5) and (6) are proposed to be added, which would provide that DOF will not correct any error for which an owner or other qualified filer submitted an application for correction of an assessment with the Tax Commission or sought judicial intervention (including but not limited to a challenge via Article 7 of the Real Property Tax Law or Article 78 of the Civil Practice Law and Rules) and received a decision on the merits. In order to ensure compliance, this rule would require the submission of sworn statements and accompanying documentation with each application. This section would also define the term “other qualified filer” to mean any person who would be entitled to file an application with the Tax Commission.

Lastly, this rule would repeal and replace 19 RCNY § 53-02. Similar to the proposed amendments to the RFR process, discussed above, this section would clarify that clerical errors and errors in description only include errors that are purely ministerial in nature or that are the result of a mistaken conclusion of fact that could be unambiguously resolved by reference to documents on the DOF website. These proposed amendments would continue to prohibit taxpayers from using Chapter 53 to review a broader range of disputes over property assessment that should be addressed through the Tax Commission or tax certiorari process.

These rule changes clarify the scope of Chapter 53 consistent with the intent of the Legislature in enacting what has now become Administrative Code § 11-206, which authorizes DOF to

correct clerical errors and errors of description. Administrative Code § 11-206 derives from state legislation enacted in 1915 amending the Greater New York Charter (the “1897 Charter”), the predecessor to the modern City Charter. Ch. 592 of the Laws of 1915. Prior to the 1915 amendments, the City’s taxing authority was the Department of Taxes and Assessment (“DTA”), which was headed by a five-member Board of Taxes and Assessments (“BTA”). 1897 Charter §§ 884, 885. DTA conducted annual assessments for all taxable property. *Id.* §§ 887, 889. The City’s assessment rolls were “open for examination and correction” for about four months each year. *Id.* § 892. Claims arising from final assessment rolls were to be challenged via tax certiorari under certain circumstances. *Id.* § 906.

Directly prior to its amendment in 1915, the 1897 Charter permitted the BTA to make certain reductions to final assessments within one year after finalization of the assessment rolls. *Id.* § 897. In 1915, the Legislature amended this section to allow the BTA and the City Comptroller to correct an assessment more than one year after finalization of the assessment rolls in case of “a clerical error, or to an error of description of any parcel of real estate.” Ch. 592 of the Laws of 1915. This new authority to correct clerical errors and errors of description remained separate from the BTA’s pre-existing authority to correct “excessive or erroneous” assessments. In 1968, the power to correct excessive or erroneous assessments was transferred to the Tax Commission. See Local Law 10 of 1968. The narrower authority to correct clerical errors and errors of description ultimately was codified in Administrative Code § 11-206, with such authority conferred on DOF. See Chapter 929 of the Laws of 1937; Chapter 100 of the Laws of 1963; Local Law 10 of 1968; Chapter 907 of the Laws of 1985.

Evidence from the legislative histories of these provisions suggests that in 1915, the Legislature when enacting the precursor to today’s Administrative Code § 11-206, intended “clerical error” and “error of description” to refer only to ministerial mistakes. By 1915, the Court of Appeals had repeatedly construed “clerical error” to refer to a narrow class of inadvertent ministerial mistakes – errors of mere form, as opposed to errors of substance, merits, judgment, or law. See, e.g., *Hernance v. Board of Supervisors*, 71 N.Y. 481, 486 (1877); *People ex rel. Nostrand v. Wilson*, 119 N.Y. 515, 518 (1890). Cases in which courts in the early 20th century referred to something as an “error of description” similarly involved inadvertent ministerial errors of form. See, e.g., *People v. Prillen*, 173 N.Y. 67, 69 (1903); *Finch v. Unity Fee Co.*, 211 A.D. 430, 434 (1st Dep’t 1925). The 1915 Legislature understood these terms in the context of these appellate decisions. The Legislature’s tight pairing of “clerical error” with “error of description” suggests that both terms are intended to refer to partially overlapping classes of ministerial mistakes. Moreover, the Legislature specifically contrasted these types of errors with “excessive” or “erroneous” assessments, which involve substantive errors of judgment or law. The changes proposed in this rule would more clearly align Chapter 53 with the intent of the State laws authorizing the correction of clerical error and errors of description by clarifying that the Chapter 53 process only applies to correcting inadvertent clerical errors. Substantive challenges to property tax assessments on the merits continue to be heard by the Tax Commission or through a tax certiorari proceeding.

In sum, these rule changes would clarify the types of challenges that can be brought under the RFR or Chapter 53 process. Current rules have provided insufficient clarity on these distinctions, resulting in confusion and challenges to real property assessments in improper forums.

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 one. Subdivisions (a), (b), (c) and (d) of section 37-06 of Title 19 of the Rules of the City of New York are amended to read as follows:

(a) During the period beginning January 15th and ending [February 28th] March 15th of each year, an owner of real property defined as class one property pursuant to § 1802 of the Real Property Tax Law may apply to the Department for review of the tentative assessed valuation or taxation of such property for the succeeding fiscal year. [Any change made by the Department for the succeeding fiscal year must be made no later than March 15th of each year.]

(b) During the period beginning January 15th and ending [February 13th] March 1st of each year, an owner of real property defined as class two property pursuant to § 1802 of the Real Property Tax Law may apply to the Department for review of the tentative assessed valuation or taxation of such property for the succeeding fiscal year. [Any change made by the Department for the succeeding fiscal year must be made no later than March 1st of each year.]

(c) During the period beginning January 15th and ending April 1st of each year, an owner of non-residential real property may apply to the Department for review of the tentative assessed valuation or taxation of such property for the succeeding fiscal year. [Any change made by the Department for the succeeding fiscal year must be made no later than May 10th of each year.]

(d) (1) Any request for review [of assessed valuation] pursuant to this section must be filed with the [Equalization Unit of the] Property Division and received by the [Equalization Unit] Property Division on or before the applicable deadline provided in this section.

(2) [Except as hereinafter provided, any] Any such request must be made [in duplicate] on a form and in a manner prescribed by the Commissioner and include [an original and a photocopy of:

(i) a sworn Tax Commission application for correction of tentative assessed valuation, whether or not such application was filed with the Tax Commission. If such application was filed with the Tax Commission, a photocopy will be accepted. See 19 RCNY § 37-01 for a description of the effect on a property owner's rights relating to the application for correction with the Tax Commission;

(ii) a Tax Commission affidavit of sale (TC 230), when the application is based on a sale;

(iii) rent rolls, when the application is for commercial property; and

(iv)] any [other] information the Department deems necessary for the evaluation of the request.

[(3) Notwithstanding the foregoing provisions of this subdivision (d), in cases relating to real property defined as class one property, a letter and a photocopy thereof from the owner of the property or the owner's representative will be accepted in lieu of a request meeting the requirements of the foregoing provisions if such letter includes the following:

(i) the borough, block and lot of the property; and

(ii) an estimation of the market value of the property, including the basis for the estimation.]

§ 2. Subdivision (e) of section 37-06 of Title 19 of the Rules of the City of New York, relating to conferences for changes in valuation initiated by property owners, is REPEALED and two new subdivisions (e) and (e-1) are added to read as follows:

(e) The Property Division may correct any tentative assessed valuation or taxation of real property that is the result of a review conducted pursuant to this section if such assessed valuation is erroneous due to:

(1) an error in the valuation of such property;

(2) a clerical error that is purely ministerial in nature; or

(3) an error of description of a property that is:

(i) purely ministerial in nature; or

(ii) the result of a mistaken conclusion of fact that can be unambiguously resolved by reference to documents or information posted on the website of the Department.

(e-1) For the purposes of subdivision (e) of this section, the Property Division will not correct any error that is a result of:

(1) a discretionary act or an act based in whole or in part on an individual's judgment; or

(2) an interpretation of law, regulation or policy.

§ 3. Paragraph (1) of subdivision (a) of section 53-01 of Title 19 of the Rules of the City of New York is amended to read as follows:

(1) Any request for administrative review concerning assessment or tax of real property pursuant to this section must be filed by the owner of the property or any [person who would be entitled to file a complaint pursuant to Section 163 of the Charter] other qualified filer with the Property Division of the Department of Finance, provided that such owner or other qualified filer may not file a request for administrative review for a tax year for which such filer neither owned such property nor held the status as an other qualified filer. Any such request must be made on an application form and in a manner prescribed by the Commissioner of Finance and include all required information.

§ 4. Paragraph (3) of subdivision (a) of section 53-01 of Title 19 of the Rules of the City of New York is amended to read as follows:

(3) The Department of Finance will only correct eligible errors that occurred [within six years of the date of submission of] during the tax year in which an application for correction of errors was submitted or during the two directly preceding tax years, except that the Department of Finance may correct eligible errors that occurred in an earlier tax year where the Department of Finance determines that correcting such error would not unduly prejudice the Department of Finance and one or more of the following extenuating circumstances apply:

(A) the owner of the property or other qualified filer, as applicable, could not submit a request at an earlier date because of a documented medical condition; or

(B) the owner of the property or other qualified filer, as applicable, could not submit a request at an earlier date because of a fire, flood or similar natural catastrophe.

§ 5. Subdivision (a) of section 53-01 of Title 19 of the Rules of the City of New York is amended by adding new paragraphs (5) and (6) to read as follows:

(5) (i) Notwithstanding any other provision of this chapter, for any property, the Department of Finance will not correct any error for which an owner or other qualified filer:

(A) filed an application for correction of an assessment with the Tax Commission pursuant to Section 163 of the Charter in connection with such property and received a determination described in 21 RCNY § 4-01(a)(3) or (4) or a determination described in 21 RCNY § 4-01(a)(2) where such determination was based on a substantive defect; or

(B) sought judicial review of the assessment or taxation of such property and received a decision on the merits or entered into a settlement agreement.

(ii) In each application submitted pursuant to this chapter, the property owner or other eligible filer shall submit a sworn statement:

(A) indicating whether such filer filed an application for correction of an assessment with the Tax Commission or sought judicial review and, if so, whether such filer received a determination described in clause (A) of subparagraph (i) of this paragraph, received a decision on the merits or entered into a settlement agreement, as applicable; and

(B) stating whether such property owner or other qualified filer included all relevant documentation associated with such application submitted to the Tax Commission or such judicial review.

(6) For the purposes of this section, the term “other qualified filer” means any person, other than the owner of a property, who would be entitled to file an application pursuant to Section 163 of the Charter.

§ 6. Section 53-02 of title 19 of the rules of the city of New York, relating to clerical errors and errors in description, is REPEALED, and a new section 53-02 is added to read as follows:

§ 53-02. Clerical Errors and Errors in Description.

(a) The Commissioner of Finance may correct any assessment or tax that is erroneous due to a clerical error that is purely ministerial in nature.

(b) The Commissioner of Finance may correct any assessment or tax that is erroneous due to an error of description of a property that is:

(1) purely ministerial in nature; or

(2) the result of a mistaken conclusion of fact that can be unambiguously resolved by reference to documents or information posted on the website of the Department of Finance.

(c) Notwithstanding any other provision of this chapter, a clerical error or error of description does not include:

(1) any discretionary act or an act based in whole or in part on an individual’s judgment;

or

(2) any interpretation of law, regulation or policy.

**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: Amendment of Rules Relating to Request for Review Process and Clerical Error Administrative Review Process

REFERENCE NUMBER: 2024 RG 098

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: October 18, 2024

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: Amendment of Rules Relating to Request for Review Process and Clerical Error Administrative Review Process

REFERENCE NUMBER: DOF-70

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

October 18, 2024
Date