

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**Notice of Adoption**

Notice is hereby given that pursuant to sections 467-m and 485-x of the Real Property Tax Law, and in accordance with sections 1043 and 1802 of the City Charter, the Department of Housing Preservation and Development (HPD) is amending chapter 39 of Title 28 of the Rules of the City of New York to implement the enforcement provisions for the Affordable Neighborhoods for New Yorkers Tax Incentive Benefits program and for the Affordable Housing from Commercial Conversions Tax Incentive Benefits program, both adopted by the New York State Legislature in Chapter 56 of the Laws of 2024.

A notice of proposed rulemaking was published in the City Record on December 5, 2024. A public hearing was held on January 10, 2025.

Commissioner Adolfo Carrion, Jr.

March 3, 2025.

Statement of Basis and Purpose

In 2024, the Legislature amended the New York State Real Property Tax Law (“RPTL”) to add a new section 467-m, which established the Affordable Housing from Commercial Conversions Tax Incentive Benefits program (“AHCC Program Benefits”) to provide real property tax exemptions for the conversions of non-residential buildings, other than a hotel or other class B multiple dwelling, to residential use. AHCC Program Benefits are available to eligible multiple dwellings, as that term is defined at section 467-m(1)(m), that contain six or more dwelling units, where the conversion commenced after December 31, 2022, and on or before June 30, 2031, and completed on or before December 31, 2039. Eligible multiple dwellings must be operated as rental housing to receive AHCC Program Benefits. Also in 2024, the Legislature amended the RPTL by adding a new section 485-x to provide exemptions from real property taxes to housing developments that meet certain affordability thresholds. That legislation created the Affordable Neighborhoods for New Yorkers Tax Incentive Benefits program (“ANNY Program Benefits”). ANNY Program Benefits are available to housing created from the construction of new buildings or certain eligible conversions. ANNY Program Benefits are not available to properties that are used as hotels. To receive ANNY Program Benefits, an eligible multiple dwelling, as that term is defined at section 485-x(1)(r), must contain six or more dwelling units and construction must have started after June 15, 2022, and on or before June 15, 2034, and be completed on or before June 15, 2038.

Sections 467-m and 485-x confer authority on HPD to revoke AHCC Program Benefits and ANNY Program Benefits for cause. In addition, HPD also has been given the authority to impose penalties for violations of certain program requirements after the AHCC Program Benefits or ANNY Program Benefits, as applicable, expire. The statutes also provide consequences for failure to pay penalties, including criminal prosecution (RPTL § 467-m(17)(d)) and imposition of liens (RPTL

§ 485-x(21)(b)). The purpose of these penalties is to ensure that those property owners who receive AHCC Program Benefits or ANNY Program Benefits adhere to the applicable program requirements after the expiration of the applicable benefits when revocation is no longer practical. The adopted amendments establish the procedures for penalty imposition.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter, and sections 467-m and 485-x of the Real Property Tax Law.

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. The title of chapter 39 of Title 28 of the Rules of the City of New York is amended to read as follows:

Chapter 39

Revocation of Tax Benefits and Penalty Provisions for Certain Violations of Real Property Tax Law Sections 467-m and 485-x

§ 2. Sections 39-01 and 39-02 of chapter 39 of Title 28 of the Rules of the City of New York are amended to read as follows:

§ 39-01 Definitions.

As used in this chapter, the following terms shall have the following meanings[:]. Capitalized terms not otherwise defined herein shall have the meaning set forth in the AHCC Act or the ANNY Act, as applicable.

Administrative Code. “Administrative Code” [shall mean] means the Administrative Code of the City of New York.

Affordability Requirements Violation. “Affordability Requirements Violation” means any non-compliance with the requirements established pursuant to subdivision 6 of the AHCC Act or subdivision 8 of the ANNY Act, as applicable, on or after the Expiration Date.

Application. “Application” [shall mean] means, collectively, any application for Tax Benefits submitted to HPD and all documents submitted therewith.

Approval Date. “Approval Date” [shall mean] means the date upon which HPD approves the Certificate of Eligibility as stated therein.

Assistant Commissioner. “Assistant Commissioner” [shall mean] means an Assistant Commissioner of HPD who has jurisdiction over Tax Benefit programs or such other person as may be designated in writing by the Commissioner of HPD.

AHCC Act. “AHCC Act” means section 467-m of the Real Property Tax Law.

ANNY Act. “ANNY Act” means section 485-x of the Real Property Tax Law.

Cause. “Cause” [shall mean] means any Violation, Misrepresentation, Omission, Failure, or Discrimination, without regard to the date upon which HPD discovers such Violation, Misrepresentation, Omission, Failure, or Discrimination.

Cause Date. “Cause Date” [shall mean] means the first date upon which any Cause occurred, without regard to the date upon which such Cause was discovered by HPD.

Certificate of Eligibility. “Certificate of Eligibility” [shall mean] means a written final determination by HPD, issued on the basis of an Application, that a Property is eligible for the Tax Benefit. A Certificate of Eligibility shall not include a declaratory ruling or any other preliminary or informal communication regarding an actual or prospective Application.

Comments. “Comments” [shall mean] means any written comments and/or information that the Taxpayer or Respondent submits to HPD during the Comment Period regarding the alleged Cause for Revocation of a Tax Benefit or alleged Affordability Requirements Violation and/or Rent Stabilization Requirements Violation.

Comment Period. “Comment Period” [shall mean] means a period specified in the Initial Notice during which the Taxpayer may submit Comments to HPD.

Cure Agreement. “Cure Agreement” [shall mean] means an agreement with a Taxpayer (i) requiring such Taxpayer to cure a Cause for Revocation, and (ii) providing that the Tax Benefit will remain in place if the Taxpayer and any successors or assigns comply with all of their respective obligations thereunder; provided, however, that such agreement may provide for the partial or temporary Revocation of a Tax Benefit in the event of a partial cure or a cure that does not rectify a period of non-compliance.

Determination Notice. “Determination Notice” [shall mean] means: (a) with respect to Revocation, a written notice from HPD to the Taxpayer delivered after the Hearing or, if there is no Hearing, after the Comment Period stating the determination of the Assistant Commissioner regarding whether a Tax Benefit will be Revoked or will remain in effect[. Any Determination Notice stating that a], and if the Tax Benefit will be Revoked [shall specify], specifying the Revocation Date; and (b) with respect to imposition of a Penalty, a written notice from HPD to the Respondent delivered after the Hearing, or, if there is no Hearing, after the Comment Period stating the determination of the Assistant Commissioner regarding whether a Penalty shall be imposed, and if such Penalty shall be imposed, the specific Affordability Requirements Violation or Rent Stabilization Requirements Violation, as applicable, and specifying the Penalty amount and deadline for payment of such Penalty.

DHCR. “DHCR” [shall mean] means the Division of Housing and Community Renewal of the State of New York or any successor agency.

Discrimination. “Discrimination” [shall mean] means the direct or indirect denial to any person of any housing accommodations in the Property receiving the Tax Benefit, or any of the privileges or services incident to occupancy of such housing accommodations, in violation of any local, state or federal law prohibiting discrimination on the basis of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or eligibility for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. §§ 1437 et seq., or the senior citizen rent increase exemption program, pursuant to either Chapter 7 of Title 26 or § 26-509 of the Administrative Code; provided however, that “Discrimination” shall not include any act for which the applicable

Law does not permit the Revocation of the Tax Benefit. The term “disability” as used in this subdivision shall have the meaning set forth in § 8-102 of the Administrative Code.

DOF. “DOF” [shall mean] means the Department of Finance of the City of New York or any successor agency.

Effective Date. “Effective Date” [shall mean] means the date upon which a Tax Benefit commences pursuant to applicable Law.

Expiration Date. “Expiration Date” [shall mean] means the date upon which a Tax Benefit would expire pursuant to applicable Law.

Factual Issue. “Factual Issue” [shall mean] means one or more issues of fact which, if resolved in favor of (a) the Taxpayer, with respect to an alleged Cause for Revocation, would require the conclusion that Cause for Revocation does not exist; or (b) the Respondent, with respect to imposition of a Penalty, would require the conclusion that the alleged Affordability Requirements Violation or Rent Stabilization Requirements Violation, as applicable, does not exist.

Failure. “Failure” [shall mean] means the failure to (i) keep, preserve or make available upon request by HPD any Records required to be kept and maintained pursuant to [28 RCNY] § 39-06 of this chapter or pursuant to any other provision of this title or any Law, (ii) appear before HPD at any time or place named in a summons, or (iii) give testimony under oath as may be relevant or material to HPD’s inquiry relating to a Tax Benefit.

Hearing. “Hearing” [shall mean] means an administrative hearing regarding one or more Factual Issues to determine whether there is Cause to revoke a Tax Benefit, or whether there is an Affordability Requirements Violation or a Rent Stabilization Requirements Violation, as applicable, at which administrative hearing the Taxpayer or Respondent, as applicable, may be represented by counsel and may present witnesses and other evidence.

Hearing Notice. “Hearing Notice” [shall mean] means a written notice from HPD to the Taxpayer or Respondent, as applicable, stating the date, time, and location of a Hearing, identifying one or more Factual Issues to be addressed at such Hearing, and informing the Taxpayer or Respondent, as applicable, that he or she may be represented by counsel and may present witnesses and other evidence at such Hearing.

Hearing Officer. “Hearing Officer” [shall mean] means a person designated by HPD.

HPD. “HPD” [shall mean] means the Department of Housing Preservation and Development of the City of New York or any successor agency.

Initial Notice. “Initial Notice” [shall mean] means: (a) with respect to an alleged Cause for Revocation, a written notice from HPD to the Taxpayer stating the intention to Revoke a Tax Benefit for Cause and the proposed Revocation Date, identifying the Property and Tax Benefit affected, briefly describing the alleged Cause for Revocation of such Tax Benefit, stating the Comment Period, and providing an address for the submission of Comments during the Comment Period; and (b) with respect to imposition of a Penalty, a written notice from HPD to the Respondent stating the intention to impose a Penalty, identifying the Eligible Multiple Dwelling affected, briefly describing the alleged Affordability Requirements Violation or Rent Stabilization Requirements Violation, as applicable, stating the Comment Period, and providing an address for the submission of Comments during the Comment Period.

Law. “Law” [shall mean] means, collectively, the Real Property Tax Law, any provision of the Administrative Code enacted pursuant thereto, and any rule of the City of New York promulgated pursuant thereto.

Misrepresentation. “Misrepresentation” [shall mean] means the submission of an Application which contains incorrect, misleading or fraudulent information.

Noticed Property. “Noticed Property” [shall mean] means a Property that is the subject of an Initial Notice, Pre-Hearing Notice, Hearing Notice, or Determination Notice.

Omission. “Omission” [shall mean] means the submission of an Application which omits material information.

Penalty. “Penalty” means a monetary fine as set forth in subdivision 17 of the AHCC Act or subdivision 21 of the ANNY Act, as applicable.

Pre-Hearing Notice. “Pre-Hearing Notice” [shall mean] means a written notice from HPD to the Taxpayer or Respondent, as applicable, stating (i) that the Taxpayer or Respondent may request a Hearing prior to Revocation or imposition of a Penalty, as applicable, regarding one or more Factual Issues identified in such notice, (ii) the date by which such written request must be received by HPD, and (iii) an address for the submission of such written request.

Property. “Property” [shall mean] means the real property receiving a Tax Benefit, including the land and all improvements thereon.

Records. “Records” [shall mean] means all books, papers, records or other data which may be relevant or material to any Application or Tax Benefit, including an annual schedule of rents for each dwelling unit in the Property where so required by the Law governing any Tax Benefit.

Rent Stabilization Requirements Violation. “Rent Stabilization Requirement Violation” means any non-compliance with the requirements established pursuant to subdivision eight of the ANNY Act on or after the Expiration Date.

Respondent. “Respondent” means the owner of the Eligible Multiple Dwelling at the time of an Affordability Requirements Violation or a Rent Stabilization Requirements Violation, as applicable, with respect to such Eligible Multiple Dwelling.

Revocation or Revoke. “Revocation” or “Revoke” [shall mean] means any partial or total suspension, reduction, termination or revocation of any Tax Benefit which takes effect as of a date which precedes the Expiration Date of such Tax Benefit, except where State law specifically authorizes the termination of one Tax Benefit upon the commencement of another Tax Benefit.

Revocation Date. “Revocation Date” [shall mean] means the date as of which HPD proposes to Revoke, or does Revoke, a Tax Benefit. The Revocation Date may be upon such date as HPD may determine, but shall not precede the Cause Date unless the Property received a Tax Benefit before fulfilling all eligibility criteria for such Tax Benefit, in which case the Revocation Date may precede the Cause Date.

Tax Benefit. “Tax Benefit” [shall mean] means any exemption from or abatement of real property taxation pursuant to Law with respect to which HPD makes determinations of eligibility.

Taxpayer. “Taxpayer” [shall mean] means (i) the individual or entity located at the address to which DOF sends tax bills for the applicable Property, (ii) any current holder of fee title to such Property whose interest is clearly recorded in the office of the City Register in the applicable borough, and (iii) any current mortgagee of such Property whose mortgage interest in such Property is clearly recorded in the office of the City Register in the applicable borough.

Violation. "Violation" [shall mean] means any non-compliance with applicable Law.

§ 39-02 Revocation of Tax Benefits for Cause or Imposition of a Post-Benefit Penalty.

- (a) HPD may Revoke a Tax Benefit for Cause [at any time] or impose a Penalty through the procedure set forth in this section.
- (b) HPD shall deliver an Initial Notice to the Taxpayer or Respondent, as applicable, by the method provided herein for delivery of notices.
- (c) The Taxpayer or Respondent, as applicable, may submit Comments to HPD during the Comment Period. HPD may thereafter meet with such Taxpayer or Respondent if such Comments contain either (i) credible evidence that a Factual Issue exists, or (ii) solely with respect to an alleged Cause for Revocation, a proposed cure for the alleged Cause for Revocation which HPD determines may be reasonably practicable.
- (d) Reserved.
- (e) If HPD determines that the alleged Cause for Revocation of the Tax Benefit is curable and that the Taxpayer has proposed a practicable cure, HPD may enter into a Cure Agreement with such Taxpayer. HPD may require the Taxpayer to record any such Cure Agreement against the Property receiving such Tax Benefit.
- (f) [If] With respect to an alleged Cause for Revocation, if HPD does not enter into a Cure Agreement with the Taxpayer and either (i) receives no Comments during the Comment Period; or (ii) determines after reviewing such Comments that there is no Factual Issue concerning the Cause for Revocation, HPD shall deliver a Determination Notice to the Taxpayer by the method provided herein for delivery of notices stating that the Tax Benefit has been Revoked as of the Revocation Date set forth therein.
- (f-1) With respect to imposition of a Penalty, if HPD either (i) receives no Comments during the Comment Period; or (ii) determines after reviewing any Comments that there is no Factual Issue concerning the imposition of a Penalty, HPD shall deliver a Determination Notice to the Respondent by the method provided herein for delivery of notices stating that the Penalty has been imposed and must be paid within ninety days. If Respondent fails to pay such Penalty within ninety days: (A) with respect to the AHCC Act, HPD shall refer the matter for criminal prosecution; or (B) with respect to the ANNY Act, HPD may impose a lien and exercise any other remedies as may be available pursuant to applicable law and regulation.
- (g) If HPD determines that a Factual Issue exists, HPD shall deliver a Pre-Hearing Notice to the Taxpayer or Respondent, as applicable, by the method provided herein for delivery of notices.
- (h) If the Taxpayer or Respondent, as applicable, requests a Hearing after receiving a Pre-Hearing Notice, HPD shall schedule a Hearing and shall deliver a Hearing Notice to the Taxpayer or Respondent, as applicable, by the method provided herein for delivery of notices. Notwithstanding any provision of these rules to the contrary, a Taxpayer or Respondent, as applicable, may waive its right to a Hearing.

- (i) At the Hearing, the Taxpayer or Respondent, as applicable, will have an opportunity to present witnesses and other evidence regarding any Factual Issue specified in the Hearing Notice.
- (j) Upon conclusion of any Hearing, the Hearing Officer shall issue a written report containing findings regarding the Factual Issue(s) and a recommendation regarding whether or not the Tax Benefit should be Revoked or the Penalty should be imposed, as applicable.
- (k) The Hearing Officer shall forward such report and recommendation, together with the record of the Hearing, to the Assistant Commissioner.
- (l) The Assistant Commissioner shall review the report and recommendation of the Hearing Officer, shall determine whether or not the Tax Benefit should be Revoked or the Penalty should be imposed, as applicable, and shall thereafter deliver a Determination Notice to the Taxpayer or Respondent by the method provided herein for delivery of notices.

§ 3. Section 39-05 of chapter 39 of Title 28 of the Rules of the City of New York is amended to read as follows:

§39-05 Notices.

HPD shall deliver all Initial Notices, Pre-Hearing Notices, Hearing Notices, and Determination Notices (a) to the Taxpayer with respect to an alleged Cause for Revocation, by mail to (i) the address to which DOF delivers real property tax bills for the Noticed Property, (ii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding fee title to the Noticed Property, (iii) the last address indicated in documents recorded in the office of the City Register for any Taxpayer holding a mortgage on the Noticed Property, (iv) the address of any owner registered for the Noticed Property in accordance with Article 2 of Subchapter 4 of Chapter 2 of Title 27 of the Administrative Code, and (v) the address of any agent registered for the Noticed Property in accordance with Article 2 of Subchapter 4 of Chapter 2 of Title 27 of the Administrative Code; and (b) to the Respondent with respect to the imposition of a Penalty, by mail to (i) the last address indicated in documents recorded in the office of the City Register for any owner holding fee title to the Noticed Property at the time of the alleged Affordability Requirements Violation or Rent Stabilization Requirements Violation, as applicable, and (ii) the address to which DOF delivered real property tax bills for the Noticed Property at the time of the alleged Affordability Requirements Violation or Rent Stabilization Requirements Violation, as applicable. Any [such] notice pursuant to this section shall be deemed to have been given upon the third day after such notice has been deposited in the United States mail.