120 W.70 Owners Corp.
120 West 70th Street
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Testimony to the New York City Department of Finance
Proposed Rules: Surcharge on Non-Primary Residences

attn: http://rules.cityofnewyork.us, DOFRules@finance.nyc.gov

Position: Opposition to Proposed Rules relating to new NYC Administrative Code Chapter 32, Imposing a Surcharge on Certain Residential Properties that Do Not Serve as Primary Residence

We submit this testimony on behalf of the residents of 120 W.70 Owners Corp., a 38-unit cooperative on the Upper West Side. Our building became a housing cooperative in 1979 and the residents include a broad mix of young and old working poor, middle class, professional working class families, including individuals who have lived in this building for more than 50 years. The market re-valuation of the taxable value of our entire building for New York City taxes that is contemplated by the so-called "pied a terre tax" is a looming economic disaster for the residents of our building – and, of course, many others in this City.

There are several issues – immediately and in the longer term -- presented by the proposed DOF rules.

Co-ops Are Inappropriately Forced to Shoulder a Tax Collection Function and/or Become Guarantors of Individual Shareholder Obligations: A cooperative building is a single tax lot. Shareholders do not own units. They own shares in a corporation that holds title to the entire building. The proposed rules add the non-primary residence surcharge to the cooperative corporation's consolidated tax bill. The corporation is then expected to identify which shareholder/s triggered the liability and recover the money from them. Under the proposed rules, cooperative corporations are legally responsible for remitting the pied a terre tax directly to the City, even though it is the individual shareholder's liability. This is a tax collection function that is being placed inappropriately on the cooperative corporation. If a non-primary resident shareholder fails to pay the surcharge, DOF can place a tax lien on the entire building.

Violation of Underlying Building Mortgage Covenants and Reimbursement Nightmares: Under the proposed rules, cooperative boards are being forced to shoulder the administrative and legal costs of chasing down delinquent shareholders for reimbursement of funds that the corporation must pay to prevent liens from being assessed against the cooperative property. Boards must engage in this activity in order to avoid violating the terms of any building mortgage that is in place securing the corporation's obligations to the mortgage holder.

Unclear Valuation Rules: The tax is designed to cover residences with a fair market value of $5 million or more. However, DOF believes that the assessed market value of cooperative and condominium apartments is currently much lower than the fair market value. Thus, the proposed rules adopt a two-phase approach to taxing cooperative and condominium apartments. During the first phase (effective until June 30, 2028), the tax applies to co-op units with an assessed market value of $1 million or more. During the two-year period, the DOF plans to implement a new valuation methodology for cooperative and condominium apartments by using comparable sales to bring the assessed market value up to fair market value. the rules for translating current assessed values into actual market values are complex and have generated significant uncertainty, The entire revaluation process DOF contemplates is currently entirely unclear and appears not to contemplate any stakeholder involvement. It is important to note that the City has simply not ever been able to come up with a methodology for valuing condos and co-ops based on comparable sales for over 30 years. We respectfully suggest that DOF use the documented sale prices from the City's property register to ensure that only co-op and condo apartments that sold for $5 million or more would be potentially subject to the tax.

Primary Residence Disputes: The burden of proving an apartment is a primary residence relies heavily on New York City tax filings. DOF also retains the authority to audit any primary-residence certification for up to six years from the date it was submitted. The rules' reliance on concepts like "permanent home address" and days spent at the specific property – rather than the broader income tax residency framework – raises an important threshold question about exactly which owners are exposed to this tax in the first place. Among the lack of clarity that the proposed rules do nothing to address is whether the state intended to essentially double-tax people with a primary residence outside New York City, but who are considered "statutory residents" because they are in the city at least 183 days a year and, as statutory residents, already pay New York City residence taxes.

The core problem with this tax is that it was written for condominiums; a cooperative is not a condominium, and DOF rules must reflect that difference.

A cooperative board's relationship with its shareholders is defined entirely by the proprietary lease. It can impose charges specifically enumerated in the lease document. It cannot create new categories of financial obligation. Because the surcharge attaches as a lien on the cooperative building as a whole, every shareholder in the building is exposed to the consequences of any one shareholder's inability, or failure, to pay an assessed tax. This is a foreseeable structural consequence of billing the corporation rather than the individual, and the proposed rules do nothing to address it. Innocent shareholders must not bear the financial risk of one shareholder's delinquency.

We urge DOF to take these concerns into consideration before adopting any final rules concerning new part 32 to the NYC Administrative Code.

Respectfully submitted,

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