Council of New York Cooperatives & Condominiums
INFORMATION, EDUCATION AND ADVOCACY
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Comments

Chapter 62 of Title 19 of the Rules of the City of New York relating to the "pied a terre tax" and entitled "Surcharge on Property that Does Not Serve as a Primary Residence"
July 7, 2026

The Council of New York Cooperatives and Condominiums, CNYC Inc., ("CNYC"), submits these comments in response to the Notice of Public Hearing and Opportunity to Comment on Proposed Rules issued by the New York City Department of Finance in connection with a proposed rule adding a new Chapter 62 of Title 19 of the Rules of the City of New York relating to the "pied a terre tax" and entitled "Surcharge on Property that Does Not Serve as a Primary Residence".

Who CNYC Is and Who CNYC Represents

CNYC is a member funded not-for-profit organization, providing information, education and advocacy to and for housing cooperatives and condominiums since 1975. CNYC's member buildings are home to shareholders and unit owners spanning the full economic spectrum; all have invested in their home, neighborhood and New York City. CNYC member buildings are located throughout all five boroughs, and range in size from two apartments to well over 3,000 apartments.

The Legislature's Intent in Enacting the Pied a Terre Tax

In proposing the pied a terre tax, in a release entitled "Proposal Will Help Close New York City's Budget Gap By Generating Needed Revenue Without Impacting New York City Residents", Governor Hochul's office stated that: "[t]he tax would ensure that those that own luxury homes, but do not live in the City or pay City income tax are still fairly contributing towards the funding of the essential services like policing and parks that make New York City a global destination. The tax would only apply to those homes that are not the primary residence of the owner or are not rented to a primary resident or occupied by the owner's family."[1]

The New York State Legislature, evidencing a similar desire that the pied a terre tax not impact New York City residents and instead be imposed on owners of second homes, in enacting the pied a terre tax found that "many of the city's most valuable homes are held as second homes, allowing the owners of those homes to reap considerable benefits from the city's broader economy, from city services, and from a vibrant real estate market. The legislature finds that it is prudent to impose a surcharge on the owners of these second homes to maintain important city services."[2]

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[1] https://www.governor.ny.gov/news/governor-hochul-announces-pied-terre-tax-proposal-luxury-second-homes-valued-5-million-or-more

[2] NYS Assembly Bill A-10009-C, Part HH, Section 1.

CNYC's Concerns with New York State's Pied a Terre Legislation and Implementation

Fundamentally, CNYC is not opposed to a pied a terre tax and supports the stated goal of securing needed funds without making housing less affordable for resident-homeowners who participate in stabilizing New York City's neighborhoods and pay New York City income taxes. However, CNYC notes that portions of the enacting legislation raise specific concerns, including:

(i) the requirement that cooperatives be held responsible for collecting and paying a tax surcharge on behalf of individual shareholders, an issue which is compounded by the lack of a provision providing satisfactory enforcement mechanisms to utilize if shareholders do not make timely payments,
(ii) the use of an imputed $1 million market value for inclusion in the pied a terre tax, when New York City's rolling sales data shows many of these same apartments have recently sold for less than $5 million, particularly in cooperatives and condominiums with fewer than 11 units given the lack of the exemption suggested in the NYC Comptroller's report for units appraised for less than $5 million[3],
(iii) critical ambiguities in the definition of a primary-resident and the failure to define statutory residents of New York City, who pay New York City income tax, as primary-residents, and
(iv) the retroactive nature of a tax of this magnitude, given the effective date of January 2026 for determining residency during this first year of the tax, which denied long-term homeowners the opportunity to weigh potential repercussions when making residency decisions.

CNYC recognizes that the Department of Finance cannot change the existing legislation. Therefore, for purposes of today, CNYC's comments do not address these legislative concerns, and focus solely on the draft rules in front of us. Given the above, it is essential that the rules promulgated by the Department of Finance are:

(i) consistent with the clearly articulated legislative intent to the fullest extent permitted by the legislation that the burden of the pied a terre tax fall on second homeowners of homes worth in excess of $5 million and not impact city residents who pay NYC income taxes,
(ii) clarify omissions and ambiguities in the existing legislation and
(iii) facilitate enforcement of the collection of the tax by subject housing cooperatives.

In that connection CNYC presents the following comments on the proposed rules:

Death of Owners of [and Certain Primary Residents of] Covered Property or a Residential Cooperative Dwelling Unit

Upon the death of a New York City resident owner, that owner ceases to be a primary resident of the covered property or residential cooperative dwelling unit. As a result, the estate of a person who has resided and paid income taxes in New York City, possibly for decades, and has never had a

[3] https://comptroller.nyc.gov/reports/the-pied-a-terre-tax-and-its-potential-revenues/ See Legal Framework

second home, may become subject to the pied a terre tax, depending on the date of death, the occupancy of the apartment, and status of the apartment on January 5, contrary to the intent of the legislation establishing the pied a terre tax. This may also impact the heirs of the decedent who may themselves also be taxpaying New York City residents.

If a covered property[4] is jointly owned by a married couple / domestic partners and is occupied by an immediate family member of one of the owners as a primary residence, upon the death of the owner who is related to the occupant, the covered property would cease to be a primary residence as defined by these rules. This could impose the pied a terre tax on the remaining owner who is providing housing to a New York City resident who pays income tax. In addition, it could force a surviving spouse /domestic partner to cease providing housing to the family member of the deceased, certainly an unintended result.

If covered property is not jointly owned by a married couple / domestic partners, then upon the death of an owner of covered property which is a primary residence because it is occupied by a member of the immediate family of the owner that property will often cease to be a primary residence and become subject to the pied a terre tax. Even if the immediate family member of the deceased owner is also an immediate family member of the heir of the decedent, the pied a terre tax could apply until the estate is settled, potentially indirectly imposing tax on a taxpaying New York City resident.

Finally, the untimely death of the immediate family member using the covered property as a primary residence could also result in the imposition of tax, inadvertently harming owners, including tax paying New York City residents, who are providing homes to ill or elderly members of their immediate family, who are also taxpaying New York City residents.

Fortunately, the Legislature, in passing the pied a terre tax, gave the Department of Finance the authority to introduce additional rules to avoid unintended consequences, such as those highlighted above. Section 1354(e)(1)(A) of the New York State Tax Law specifically authorizes the Department of Finance to promulgate rules "to address a change in ownership of a covered property or a residential cooperative dwelling unit, **or illness or death of an owner of a covered property or residential cooperative dwelling unit**" (emphasis added). In addition, pursuant to Section 1354(e)(1) of the New York State Tax Law, the Department of Finance is authorized to promulgate any rules necessary to administer the pied a terre tax.

Accordingly, we respectfully urge the Department of Finance to promulgate a rule which provides in substance that (i) ownership by an estate shall be deemed ownership by the related decedent and if covered property (or a residential cooperative dwelling unit) would not have been subject to the pied a terre tax when owned by the decedent, it will not be subject to the pied a terre tax while owned by the estate; [and] (ii) if covered property (or a residential cooperative dwelling unit) which is jointly owned by spouses / domestic partners was the primary residence of a member of the immediate family of one spouse / domestic partner, then, notwithstanding the death of such spouse / domestic partner, the covered property (or residential cooperative dwelling unit) shall continue to be treated as a primary residence as if the immediate family member was a member of

[4] References to covered property are also references to residential cooperative dwelling units in covered property unless otherwise indicated

the immediate family of the surviving spouse / domestic partner; [and (iii) if covered property (or a residential co-operative dwelling unit) was the primary residence of a member of the immediate family of an owner then such covered property or residential co-operative dwelling unit) shall remain a primary residence for 180 days after the death of such immediate family member.

We believe that by promulgating such a rule related to the illness or death of an owner of a covered property or residential cooperative dwelling unit, the Department of Finance will be following the intent of the legislation establishing the pied a terre tax and prevent it inadvertently being a burden on income tax paying New York City residents

Transfers of Covered Property or A Residential Cooperative Dwelling Unit

Purchasers often wish to, or need to, undertake substantial renovations. These renovations can take a significant period of time and regularly delay the date upon which the purchaser(s) can move into the apartment. The duration is typically outside of the control of the purchaser. In the interim, the purchaser will often reside at their prior residence.

The tax law, in the absence of any clarifying rules, would seem to provide the purchaser of covered property would be liable for the pied a terre tax with respect to such property during the period that renovations are being made to the property if the purchaser is not residing in the covered property. This would be true even if the purchaser is a New York City resident, paying New York City income taxes and moving from one New York City primary residence to another

We believe that subjecting this purchaser, especially if a tax-paying NYC resident, to the pied a terre tax in these circumstances is inconsistent with the legislative intent behind the pied a terre tax. Fortunately, the legislature foresaw the possibility of such unintended results and included Section 1354(e)(1)(A) of the New York State Tax Law which specifically authorizes the Department of Finance to promulgate rules **"to address a change in ownership of a covered property or a residential cooperative dwelling unit**, or illness or death of an owner of a covered property or residential cooperative dwelling unit" (emphasis added). In addition, pursuant to Section 1354(e)(1) of the New York State Tax Law, the Department of Finance is authorized to promulgate any rules necessary to administer the pied a terre tax.

Accordingly, we respectfully urge the Department of Finance to promulgate a rule which provides in substance that a purchaser of a covered property (or residential co-operative dwelling unit) who files a New York City resident income tax return during the relevant period may be deemed a primary resident of two residences if one of such residences was purchased in the past 18 months and this exemption is not used more than once every five years. Further, CNYC requests the Department of Finance promulgate a rule which provides in substance that the purchaser of a covered property (or residential co-operative dwelling unit) who does not file a New York City tax return, provides (i) an affidavit stating that they intend to occupy the covered property (or residential co-operative dwelling unit) as a primary residence upon the completion of renovations, (ii) a fully executed and dated contract for renovations to the covered property (or residential co-operative dwelling unit), and (iii) a utility bill in their name(s) for the covered property (or residential co-operative dwelling unit) may be deemed a primary resident for 6 months following the date of closing and provided that this exemption is not used more than once every five years.

A similar issue would exist when a bank forecloses on a covered property or residential cooperative dwelling unit. The tax law, in the absence of any clarifying rules, would seem to hold a lender liable for the pied a terre tax with respect to such property during the period from the foreclosure on the property or residential cooperative dwelling through the transfer, leasing or subleasing of the unit. This would likely see an increase in interest rates for apartments that qualify for the pied a terre tax, and in the case of a cooperative, would require the cooperative to collect the surcharge from the lender.

Accordingly CNYC respectfully requests the Department of Finance promulgate a rule which provides in substance that the lender who forecloses on a covered property (or residential co-operative dwelling unit) be deemed a primary resident for 18 months following the date of closing.

We believe that this suggested use by the Department of Finance of the power specifically granted by the legislature to promulgate rules to address a change in ownership of a covered property or a residential cooperative dwelling unit will serve to more fully effect the intent of the legislation establishing the pied a terre tax and prevent it inadvertently being a burden on tax-paying New York City residents.

Evidence of Primary Residence and Immediate Family Relationships

The proposed rules limit what evidence the Department of Finance may consider in determining primary residence and immediate family membership. We believe that these limitations will hinder the submission of the best evidence available, resulting in erroneous determinations by the Department of Finance, and lead to unnecessary expenses, uncertainty, and the unfair implementation of the pied a terre tax.

(1) Evidence of Primary Residence

Section 62.06(a)(2) of the rules proposed by the Department of Finance provides that, absent other credible information for tax years starting after July 1, 2027, the Department of Finance will rely on information in Federal and State tax returns filed by the owner of covered property (or a residential cooperative dwelling unit in covered property) which contain information that such property or unit was the primary residence of the owner.

We commend the Department of Finance for this rule and understand the timing issues related to implementing it for Fiscal Year 2027. However, we believe that a failure to preemptively consider tax return data in 2026 will greatly increase the chance of errors in determining primary residence during this initial implementation period. This concern is exacerbated by the 30-day deadline to reply to notification of residency status, with notification likely to be received over the course of the summer when many tax-paying New York residents are on vacation. As a result, CNYC respectfully requests that the Department of Finance promulgate a rule extending the initial response period for notices received by August 30, 2026 for an additional 60 days, and provide a second notice at the end of the first thirty days for those from whom a response has not been received.

(2) Evidence of Immediate Family Relationships

Section 62.06(b)(ii)(6) of the rules proposed by the Department of Finance provides that "[u]nless credible information in the possession of the department indicates otherwise, proof that an individual is an immediate family member of a covered owner includes either of the following: (A) one or more birth certificates indicating that such individual is an immediate family member of such covered owner; or (B) affidavits from both such covered owner and such individual indicating that such persons are immediate family members."

Limiting the evidence that may be offered to prove that an individual is an immediate family member of a covered owner to birth certificates and affidavits from both family members is problematic for multiple reasons.

People who are adopted[5] or have immigrated from other countries may not have access to their birth certificates. This is especially likely if the country from which a person emigrated was a less developed country or if the person who immigrated did so as a refugee or asylee. However, such people (or their parents) may often have other official documents such as adoption papers or immigration records, which are official documents evidencing a family relationship. Such documents should also be accepted as evidence.

Similarly, other official documents such as family court records, marriage licenses, evidence of joint property ownership as tenants by the entirely, green cards or other immigration records and other judicial or administrative records and proceedings may provide strong evidence of the existence of family relationships and should be admissible as evidence thereof. Such records may be more accessible to the Department of Finance than records from other countries issued in other languages. This is done in other contexts. The US Citizenship and Immigration Services agency accepts evidence of parent child relationships other than birth certificates.[6] Finally, federal or state tax returns which show joint filing as spouses or dependent relationships should be admitted as evidence of such relationships.

In addition, people other than the two directly involved may have sufficient knowledge to provide affidavits acceptable as proof. For example, other members of the immediate family may well have sufficient knowledge to certify as to the existence of the family relationship. As noted above, the US Citizenship and Immigration Services agency accepts third party affidavits to evidence family relationships.[7]

Given the six-year time frame for auditing primary residence status that the Department of Finance has included in Section 62.04(a) of the proposed rules., there may be a number of reasons why "affidavits from both such covered owner and such individual" may be impossible or impractical

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[5] Currently, in the United States it is the practice to issue an amended birth certificate upon adoption. Our understanding is that this is not the case in all other countries in which NYC residents may have been born. In addition, our understanding is that the practice of issuing a new birth certificate upon adoption didn't become universal in the United States until the early 1990s and accordingly, this issue may also impact residents of NYC with an adoption in their family where the adoptee was born in one of the states that was late to change its practices.

[6] https://www.uscis.gov/policy-manual/volume-4-part-c-chapter-4

[7] https://www.uscis.gov/policy-manual/volume-4-part-c-chapter-4

to obtain. These reasons include the death of one of the two people, the severe illness of one of the two people, the absence from the United States of one of the two people and the estrangement of the two people. While these conditions may make obtaining an affidavit impossible or impractical, none of them are probative of the presence or absence of a family relationship. For example, the tragic untimely death of a family member should not result in a tax payment that could have been easily avoided had the family member remained alive.

Similarly, the thirty-day time frame for appeals increases the problem of limiting proof other than affidavits from both the owner and immediate family member to birth certificates as it may not be possible to obtain relevant birth certificates within a thirty-day time frame. And in the case of illness or foreign travel it may not be possible to obtain affidavits from both specified people within the thirty-day time frame.

Accordingly, CNYC respectfully requests that the Department of Finance make clear that all of the documents we have referenced above, and any documents which are similarly probative, may constitute proof of an immediate family relationship and be offered as evidence to establish the same.

(3) Evidence of Primary Residency with Respect to Beneficiaries of a Trust

Section 62.06(b)(ii) of the rules proposed by the Department of Finance provides "that with respect to a beneficiary of a trust who is a covered owner pursuant to paragraph (iv) or a partner, shareholder or member who is a covered owner pursuant to paragraph (v) of the definition of covered owner in section 11-3201 of the administrative code, such appeal must also include proof set forth in subparagraph (iv) or (v) of paragraph (2) of this subdivision." Subparagraph (v) states that "[u]nless credible information in the possession of the department indicates otherwise, proof that that an individual is the sole beneficiary of a trust includes: (A) a copy of the trust agreement indicating that such individual is the sole beneficiary of such trust; and (B) an affidavit indicating the same from a trustee of such trust."

By implying the trust must be in the name of one beneficiary, the rules do not appear to match the intent of the legislation, which reads, "where real property classified as class one or a residential condominium dwelling unit is held, or shares of stock in a cooperative corporation are held, in trust, a beneficial owner or owners of such trust, provided that such beneficial owner or owners are the sole beneficiaries of such trust."

Many long-term covered owners have put their residential condominium dwelling units, or shares of stock in a cooperative corporation into trusts, some of which are irrevocable. CNYC respectfully requests that the Department of Finance amend Subparagraph (v) to read,"[u]nless credible information in the possession of the department indicates otherwise, proof that that one or more individuals are the sole beneficiaries of a trust includes: (A) a copy of the trust agreement indicating that such individuals are the sole beneficiaries of such trust; and (B) an affidavit indicating the same from a trustee of such trust."

CNYC further requests that the Department of Finance promulgate a rule that in the event there are current and residual beneficiaries to a trust, it is a sufficient proof of primary residency if all the current beneficiaries reside in the covered property or residential cooperative unit, and such proof of residency not be required of residual beneficiaries.

Errors in Connection with Share Ownership

In the case of residential cooperative dwelling units in covered property the Department of Finance is required to allocate the market value it determines for the covered property among the residential cooperative dwelling units therein based on the relative number of shares attributable to each unit. This is not a procedure the Department of Finance needs to employ generally in calculating real estate taxes (although it is relevant to the Cooperative and Condominium Property Tax Abatement in the case of cooperatives).

The Department of Finance may not have correct or updated shareholding information for all residential cooperative dwelling units in covered property (especially in the case of cooperatives that have not recently taken advantage of the Cooperative and Condominium Property Tax Abatement) and the Department of Finance may have incorrect information about such shareholdings.

Accordingly, CNYC respectfully requests that the Department of Finance promulgate procedures for cooperatives (i) to provide information to the Department of Finance with respect to the number of shares attributable to each unit and the total number of shares outstanding if they have not done so and (ii) make any necessary corrections to information about shareholdings in the possession of the Department of Finance. Promulgating such rules will reduce the possibility for erroneous imposition of the pied a terre tax on those who should not legally be paying it.

Imposition of Penalties on Cooperative Corporations

Section 62.04(c) of the proposed rules provides for the imposition of penalties if "any certification or documentation submitted to the department in connection with the imposition of the surcharge on a covered property contains inaccurate or misleading information that: (A) is material to the determination of the imposition of such surcharge, including a determination relating to primary residence; and (B) was submitted negligently or in bad faith."

In the case of covered property which is owned by a cooperative corporation any penalties would be imposed on the cooperative. On the other hand, information may be submitted to the Department of Finance in connection with the imposition of the pied a terre tax on a covered property by both the cooperative and the affected shareholder of a residential cooperative dwelling unit in covered property.

Penalties should not be imposed on the cooperative for the actions of one of its shareholders over which the cooperative has no control and who have no authority to act on behalf of the cooperative. Doing so would be unfair and a gross violation of due process. This is true even if the cooperative might be able to recover the penalty from the shareholder.

Accordingly, CNYC respectfully urges the Department of Finance to promulgate a rule clarifying that no penalty may be imposed on a cooperative in connection with any certification or documentation submitted to the Department of Finance by someone other than the cooperative.

Penalizing Cooperative Corporations for Circumstances Beyond Their Control.

The legislation holds the cooperative corporation responsible for paying the pied-a-terre tax even before it might be able to collect it from a covered shareholder. In many cases in smaller cooperatives, this pied a terre tax is greater than the real estate taxes attributable to the unit, and in the case of some cooperatives, the pied a terre tax may exceed the taxes for the entire cooperative. As the burden of establishing primary residency falls on the "covered owner", CNYC respectfully urges the Department of Finance to take whatever steps it can under the current legislation to enable the cooperative to defer payment while the surcharge is contested and to facilitate collection of the surcharge by the cooperative from a delinquent shareholder.

Such steps might include allowing the cooperative corporation to bond the amount of any surcharge and thereby remove the lien from its property and avoid a default under its underlying mortgage; Despite the short time required for implementation, CNYC urges the department of finance to explore options such as this suggestion, and proposes it convene a group of New York City focused co-op/condo attorneys to analyze potential solutions with respect to cooperative governance.

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CNYC thanks the Department of Finance for the opportunity to comment on the proposed rules and appreciates the efforts of the Department of Finance in proposing these rules on short notice.

CNYC is available to discuss or clarify the issues raised in this letter. In the event that the Department of Finance wishes to engage in such discussion, CNYC may be contacted via the following email address: poole@cnyc.coop or telephone number: (212) 496-7400.

Respectfully submitted
The Council of New York Cooperatives and Condominiums (CNYC Inc.)