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VIA EMAIL:
Department of Finance, Legal Affairs Division
375 Pearl Street, 30th Floor
Attn: Timothy Byrne
New York, New York 10038
DOFRules@finance.nyc.gov

Re: Comments on the Proposed Pied-à-Terre Tax Rules

Dear Mr. Byrne:

Since 1975, Rosenberg & Estis, P.C. has represented owners, developers, cooperative and condominium boards, managing agents, and other stakeholders in connection with New York City real estate matters. As the largest law firm in New York City focused exclusively on real estate law, we have extensive experience with the legal, practical, and administrative issues affecting New York City property owners. I submit these comments based on my experience representing taxpayers in New York City property tax matters, including thousands of appearances before the New York City Department of Finance and the New York City Tax Commission.

On behalf of our property-owner and tax-paying clients, we respectfully submit these comments regarding the Department of Finance ("DOF")'s proposed rules implementing *City Surcharge on Property That Does Not Serve as a Primary Residence* (the "Pied-à-Terre Tax"). While we appreciate DOF's efforts to establish a framework for administering the surcharge, as well as efforts to provide clarity and structure to the program, we urge several revisions to ensure the Pied-à-Terre Tax does not create significant compliance challenges, and risk unintended consequences for property owners and the City's housing market. Below is a summary of our key points:

1. Add an Innocent Purchasers Provision

Issue

Absent an exception, a buyer who acquires a covered property during a taxable year and uses it as a primary residence may nevertheless be subjected to surcharge liability based entirely on the prior owner's non-primary-residence use of the property.

Concern

Without clearer standards, buyers could face uncertainty regarding prior noncompliance, filing obligations, or surcharge liability attributable to a previous owner. DOF has addressed similar concerns in other contexts. For example, its RPIE regulations protect innocent purchasers from certain penalties arising from a prior owner's failure to comply with filing requirements. See 19 RCNY § 33-

03(a)(7). We therefore urge DOF to adopt a similar safe-harbor provision here, protecting bona fide purchasers who acquire property without actual or constructive notice of a prior owner's noncompliance.

Requested Revision
To prevent inequitable results, the Department of Finance should create a new section in the Rules to create an "Innocent Purchaser" carve-out similar to 19 RCNY § 33-03(a)(7). For example:

> "Where title to a covered property is transferred, and the purchaser, at the time of acquisition, neither knew nor reasonably should have known that such property was subject to the surcharge imposed by this chapter, the Commissioner may exempt such purchaser from liability for the surcharge for the remainder of such tax year and may waive or cancel any associated penalty, interest, or lien. Such relief shall be available only upon application, in the form and manner prescribed by the Department, filed no later than thirty days after the purchaser receives notice that the property is a covered property subject to such surcharge. The purchaser shall have the burden of demonstrating reasonable lack of knowledge and the absence of participation in any prior noncompliance."

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2. Continuing Exclusion Certification for Pied-à-Terre Tax

Issue
Primary residency is an annual determination and property owners who have already established their eligibility for an exclusion apparently must repeatedly file substantially identical documentation each year to maintain that exclusion based on the following, as example:

- Primary residency of an immediate family member;
- Primary residency of a tenant;
- Primary residency of a sole beneficiary where the property is held in trust; or
- Primary residency of the majority-interest owner of a corporate entity owner.

Concern
The current process appears to require repeated submission and review of documents that have already been examined and approved in prior years. Even when there has been no change in ownership, occupancy, residency status, or any other material fact, property owners are seemingly required to undergo an annual review process and receive a new determination notice. This results in unnecessary administrative costs and burdens for both taxpayers and the DOF.

Requested Revision
Once the Department determines that a property qualifies for exclusion, instead of requiring a new submission annually, the covered owner should be permitted to submit a Certification of Continued

Use (CCU), similar to the process used by DOF for ICIP, ICAP, and Not-for-Profit tax benefits. For example:

> "Once the Department has determined that a property qualifies for exclusion under the Pied-à-Terre Tax and has approved the covered owner's exclusion, such exclusion shall remain in effect from year to year unless there is a material change in the ownership, occupancy, use, or other facts relevant to eligibility. In lieu of filing a new exclusion submission annually, an owner of an excluded property shall submit a Certification of Continued Use ("CCU") in a form prescribed by the Department."

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3. Limit Power of Attorney Requirements for Licensed Attorneys

Issue
The proposed rules require that a determination challenge submitted by a person other than the covered owner be accompanied by an executed power of attorney. This requirement appropriately addresses non-attorney representatives, but imposes an unnecessary administrative burden when the submission is made by a licensed attorney.

Concern
Licensed attorneys are authorized to act on behalf of their clients and are bound by the New York Rules of Professional Conduct. Requiring a separately executed power of attorney solely for the submission of a challenge or supporting documentation is unnecessary and duplicative.

Requested Revision
The Department should distinguish between licensed attorneys and non-attorney representatives for purposes of the power of attorney requirement. For example:

> "A challenge, application, certification, or other submission made on behalf of a covered owner by a licensed attorney admitted to practice in the State of New York shall not be required to be accompanied by a power of attorney. A submission signed by a licensed attorney shall constitute sufficient evidence that the attorney is authorized to act on behalf of the covered owner with respect to the matter submitted. A power of attorney shall be required for any representative who is not a licensed attorney. Nothing herein shall limit the Department's authority to request additional documentation reasonably necessary to verify a representative's authority to act on behalf of a covered owner."

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4. Create a Contemplated Use Exclusion

Issue
Absent an exception, a taxpayer who acquires a covered property during a taxable year with the intent to use it as a primary residence may nevertheless be subject to the surcharge if the property is not yet occupied due to the acquisition process, necessary renovations, or relocation.

Concern
As drafted, the proposed rules create a gap period during which a covered owner has purchased a residence for use as a primary residence but is unable to satisfy the occupancy requirements because the property is not yet ready for occupancy or the relocation process has not been completed.

Requested Revision
The Department should adopt a contemplated-use standard similar to that used in not-for-profit exemptions. For example:

> "A covered owner shall be eligible for a contemplated-use exclusion upon demonstrating an intent to occupy the property as a primary residence within one year of acquisition. Such intent may be established through documentation including, but not limited to:
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> - A contract of purchase or deed;
> - Building permits or construction contracts; and
> - Evidence of relocation, including employment-related transfers or lease terminations."

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5. Clarification on Class One Property Primary Residency Determination

Issue
Although the proposed rules appear to evaluate eligibility at the property level, they do not expressly address the treatment of Class One properties containing multiple units.

Concern
Specifically, it is unclear whether a property qualifies for the exclusion where one dwelling unit is used as a qualifying primary residence and another unit is not. Clarification on this point would help ensure consistent administration of the surcharge and provide certainty to covered owners.

Requested Revision
To provide clarity regarding the treatment of Class One properties containing multiple units. For example:

> "For purposes of the surcharge, a Class One property shall be deemed excluded for the applicable tax year if at least one dwelling unit within the property is occupied as a qualifying primary residence. Where such qualification is established, the exclusion shall apply to the entire property and not solely to the qualifying dwelling unit."

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6. Clarify § 62-02 to Address Evasion While Preserving Lawful Ownership Arrangements

Issue
Proposed 19 RCNY § 62-02 appears intended to prevent "gamesmanship" by denying "covered owner" status to individuals who hold a controlling interest in an entity that owns only a fractional share of a property. The proposed rule provides that a Class One property, a residential condominium dwelling unit, or cooperative shares are "held" by a partnership, corporation, or LLC only where that entity holds an undivided fee interest in the property or all of the cooperative shares, and that the majority partners, shareholders, or members of such entity will be deemed covered owners only in that circumstance. As drafted, however, the rule appears to impose a categorical 100%-entity-ownership requirement that is not expressly contained in Administrative Code § 11-3201's definition of "covered owner," which recognizes majority owners of partnerships, corporations, and LLCs as covered owners where the property or cooperative shares are held by such entity.

Concern
While DOF may properly seek to prevent abusive fractional ownership structures created for the purpose of avoiding the surcharge, proposed § 62-02 appears to sweep much more broadly. For example, if a property is owned 51% by A LLC and 49% by B LLC, and A LLC is wholly owned by John Smith, the proposed rule appears to prevent John Smith from being treated as a covered owner even if he, or an immediate family member, actually uses the property as a primary residence. That result would cause the surcharge to turn on the form of title rather than on the actual statutory question: whether the covered property serves as a primary residence. The same concern applies to legitimate joint ventures, tenants-in-common, family ownership structures, estate-planning structures, and financing structures that were not created to avoid the surcharge. The statute imposes the surcharge on covered property that is "not a primary residence," and defines primary residence to include use by a covered owner, an immediate family member of a covered owner, or a qualifying lessee/sublessee under a bona fide arm's-length lease of at least one year. A categorical rule that disregards actual majority beneficial ownership and actual primary-residence use would be overinclusive and could deny primary-residence treatment in non-abusive situations.

Requested Revision
DOF should withdraw or narrow proposed § 62-02 so that it targets only abusive fractional ownership arrangements, without disqualifying legitimate ownership structures. The rule should provide that a natural person may be treated as a covered owner where that person directly or indirectly owns or controls a majority beneficial interest in the covered property, whether through one or more entities, unless DOF determines that the ownership structure was created or maintained for the principal purpose of avoiding the surcharge. DOF should also clarify that § 62-02 does not limit the separate statutory tenant primary-residence exemption, so that a property owned by multiple entities, tenants-in-common, or joint-venture participants may still be treated as a primary residence where it is occupied by a natural-person lessee or sublessee pursuant to a bona fide, arm's-length lease with a term of not less than one year. For example:

> "For purposes of determining whether an individual is a covered owner under Administrative Code § 11-3201, DOF may consider direct and indirect beneficial ownership of the covered property, including ownership through one or more partnerships, corporations, limited liability companies, trusts, or other entities. An individual who directly or indirectly holds a majority beneficial interest in a covered property shall not be denied covered-owner status solely because the covered property is owned by more than one person or entity, unless DOF determines, based on credible evidence, that the ownership structure was created or maintained for the principal purpose of avoiding the surcharge. Nothing in this section shall limit an owner's ability to establish that a covered property or residential cooperative dwelling unit is the primary residence of a qualifying lessee or sublessee under Administrative Code § 11-3201."

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7. Clarify Cooperative Collection Obligations for Unit-Specific Surcharges

Issue
The proposed rules should clarify the collection rights and obligations of cooperative corporations when a Pied-à-Terre surcharge is imposed with respect to a particular residential cooperative dwelling unit. Administrative Code § 11-3205(f) provides that, "notwithstanding any provision of law to the contrary," where the Department adds a surcharge for a residential cooperative dwelling unit to the statement of account of a residential cooperative property, "each such surcharge shall be collected by the cooperative corporation from the tenant-stockholder" whose shares are allocated to that dwelling unit. However, the proposed rules do not specify how the cooperative corporation is to bill, collect, or enforce payment of that unit-specific surcharge from the responsible tenant-stockholder.

Concern
Without a clarifying rule, tenant-stockholders who are assessed the surcharge may argue that the cooperative corporation lacks authority under its proprietary lease, by-laws, offering plan, or other governing documents to charge the surcharge back to the affected unit-owner or to pursue collection remedies if the surcharge is not paid. That uncertainty creates a serious practical problem. The surcharge is imposed because of the status of a particular residential cooperative dwelling unit, but it is added to the statement of account of the cooperative corporation. If the responsible tenant-stockholder refuses to pay, the cooperative corporation remains exposed to City collection remedies, including interest, liens, tax lien enforcement, and other proceedings, and the economic burden may be shifted unfairly to all other shareholders. That result would be inconsistent with the statutory command that each such surcharge be collected from the tenant-stockholder whose interest is represented by the shares allocated to the subject dwelling unit. It would also create unnecessary disputes between co-op boards and shareholders, and may create hardship on cooperative corporations.

Requested Revision
DOF should add a new rule expressly confirming that, to the fullest extent permitted by Chapter 32 of Title 11 of the Administrative Code, a cooperative corporation is authorized and required to bill and collect each residential cooperative dwelling unit surcharge from the tenant-shareholder whose shares are allocated to that dwelling unit, notwithstanding any contrary or inconsistent provision in a proprietary lease, by-laws, house rules, offering plan, or other governing document. The rule should further state that the tenant-shareholder is responsible for the surcharge, together with any interest, penalties, and reasonable costs incurred by the cooperative corporation by reason of that tenant-shareholder's failure to pay, and that the cooperative corporation may collect the amount as a unit-specific charge or assessment collectible through the same billing and collection procedures the cooperative corporation uses for maintenance, assessments, real estate tax charges, or other amounts payable by tenant-shareholders. For example:

> **§ 62-08 Collection of surcharge by residential cooperative corporations.** Where the department adds to the statement of account of a residential cooperative property a surcharge imposed with respect to a residential cooperative dwelling unit pursuant to Administrative Code § 11-3205(a), such surcharge shall be billed to and collected from the tenant-shareholder whose interest in such residential cooperative dwelling unit is represented by shares of stock in the cooperative corporation. Such obligation shall apply notwithstanding any contrary or inconsistent provision in any proprietary lease, by-laws, offering plan, house rules, or other governing document of the cooperative corporation. The cooperative corporation may bill such surcharge as a separate unit-specific charge or assessment and may collect such amount, together with any applicable interest, penalties, and reasonable costs of collection, through the same billing and collection procedures available to the cooperative corporation for maintenance, assessments, real estate tax charges, or other amounts payable by tenant-shareholders, to the fullest extent permitted by law. Nothing in this section shall limit the

> obligation of a cooperative corporation to pay any surcharge added to the statement of account of the residential cooperative property or the authority of the department to administer and enforce the surcharge pursuant to Administrative Code Chapter 32.

Because this issue is central to the statute's administration, if DOF believes it lacks rulemaking authority to adopt the full clarification requested above, DOF should recommend a technical legislative amendment expressly providing that a unit-specific cooperative surcharge is deemed a charge payable by the tenant-shareholder to the cooperative corporation and is enforceable by the cooperative corporation notwithstanding any contrary proprietary lease, by-law, or other governing-document provision.

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8. Phase One Co-op/Condo Apartments Worth Less Than $5M

Issue
The proposed rules do not provide a mechanism for a Phase One cooperative or condominium apartment with a DOF "phase one market value" of $1 million or more to be excluded from the surcharge where the owner can prove that the apartment's actual sales-based market value is less than $5 million. This is an important gap because the Legislature expressly found that the surcharge is intended to apply to second homes "with values of $5 million or more when measured by the sales of comparable properties," while recognizing that Phase One uses existing DOF valuation methods only as a transitional measure. The proposed rules acknowledge the statutory Phase One thresholds but do not create a clear rebuttal process for owners whose DOF-derived Phase One value is at least $1 million even though comparable sales demonstrate that the apartment is below the $5 million market-value level that the law was designed to reach.

Concern
Without such a rule, the surcharge may be imposed on cooperative and condominium apartments that are not $5 million homes in the ordinary market sense. The $1 million DOF market value threshold for Phase One is a proxy, not a direct sales-based valuation, and it may over-identify apartments for the surcharge because DOF's current valuation methodology for co-ops and condos does not necessarily correspond to the price at which the apartment would sell. This overidentification is especially true for tax class 2C co-ops and condos. This creates a particularly unfair result during Phase One: a co-op or condo apartment with credible comparable-sales evidence showing a value below $5 million could be taxed solely because its DOF Phase One market value exceeds $1 million, while a Class One property with a market value below $5 million would not be taxed. That result is inconsistent with the Legislature's stated purpose and will likely increase unnecessary valuation disputes before DOF, the Tax Commission, and the courts. The statute already permits review where the market value determined for surcharge purposes is excessive or unlawful, including where the

property is not subject to the surcharge, and the rules should make clear how that review applies to apartments that fall below $5 million on a sales-comparable basis.

Requested Revision
DOF should revise the proposed rules to provide that, for fiscal years beginning July 1, 2026 and July 1, 2027, a residential condominium dwelling unit or residential cooperative dwelling unit with a Phase One market value of $1 million or more will be excluded from the surcharge if the owner, tenant-stockholder, cooperative corporation, or duly authorized representative proves that the apartment's sales-based market value is less than $5 million as of the applicable taxable status date. Acceptable proof should include, without limitation, a recent arm's-length sale or contract of sale, a certified appraisal, and/or comparable sales of similar cooperative or condominium apartments, with appropriate adjustments for location, size, condition, building attributes, views, outdoor space, amenities, restrictions, maintenance/common charges, financing limitations, and other relevant market factors. If such proof is accepted, DOF should remove the unit from the surcharge roll, withdraw any notice of surcharge, and refund or credit any surcharge already paid. For example:

> "For fiscal years beginning on July 1, 2026 and July 1, 2027, a residential condominium dwelling unit or residential cooperative dwelling unit shall not be subject to the surcharge if the owner, tenant-stockholder, cooperative corporation, or duly authorized representative establishes to the satisfaction of the department, or upon review by the Tax Commission, that the sales-based market value of such dwelling unit is less than five million dollars as of the applicable taxable status date, notwithstanding that the Phase One market value determined by the department is equal to or greater than one million dollars. This subdivision provides an additional, non-exclusive method for proving that the Phase One market value determined by the department is excessive and does not limit or preclude any owner, tenant-shareholder, cooperative corporation, condominium board, or duly authorized representative from relying on any other competent evidence, valuation method, appraisal analysis, allocation method, or legal ground to prove that the market value determined by the department is excessive or unlawful."

If DOF concludes that it cannot create a full exclusion by rule, DOF should at minimum revise the rules to state expressly that comparable-sales evidence showing a value below $5 million is a valid basis for challenging the Phase One market value as excessive or unlawful under Administrative Code § 11-3206, and DOF should support a technical legislative amendment confirming that the Phase One $1 million co-op/condo threshold is rebuttable where the apartment's sales-based market value is below $5 million.

9. Phase One Co-op/Condo Market Value Shall Not Exceed 20% of the Sales-Based Value

[As a broader alternative to #8 above.]

Issue
The proposed rules should also provide that, for Phase One cooperative and condominium valuation challenges, credible sales-based evidence may be used as alternative proof that DOF's Phase One market value is excessive. The Legislature found that the surcharge is intended to apply to second homes with values of $5 million or more when measured by comparable sales, while permitting a temporary Phase One system using current valuation methods and corresponding surcharge rates. The statutory structure for cooperative and condominium apartments appears to translate sales-based value into a 20% Phase One proxy: $1 million, $3 million, and $5 million Phase One thresholds correspond to $5 million, $15 million, and $25 million sales-based thresholds, and the Phase One co-op/condo rates of 4.0%, 5.25%, and 6.5% are five times the corresponding Phase Two rates of 0.8%, 1.05%, and 1.3%.

Concern
If the Phase One DOF market value is treated as conclusive unless the owner proves a sales-based value below $5 million, then cooperative and condominium apartments may still be materially overtaxed during Phase One even when reliable sales evidence shows that DOF's Phase One value exceeds the statute's apparent 20% transitional proxy. For example, if a condominium apartment has a DOF Phase One market value of $2 million but credible comparable-sales evidence establishes that its actual sales-based market value is $9 million, the Phase One proxy value should be $1.8 million, not $2 million. Similarly, if a unit has a DOF Phase One market value slightly above $3 million but credible sales evidence supports a sales-based value below $15 million, the unit should not be pushed into the higher 5.25% surcharge tier. This approach also preserves the original below-$5 million exclusion request: if the proven sales-based value is less than $5 million, then 20% of that value is less than $1 million, and the unit should fall below the Phase One co-op/condo threshold. The Administrative Code expressly allows owners to challenge the surcharge market value as excessive or unlawful, but the proposed rules do not clearly state that comparable-sales evidence may be used for that purpose during Phase One.

Requested Revision
DOF should revise the proposed rules to provide that, for fiscal years beginning July 1, 2026 and July 1, 2027, the Phase One market value of a residential condominium dwelling unit or residential cooperative dwelling unit may be challenged as excessive by submitting credible evidence of the unit's sales-based market value. Where such evidence establishes that the unit's sales-based market value is less than five times the Phase One market value determined by DOF, the Phase One market value should be reduced to an amount not greater than 20% of the proven sales-based market value. If the

resulting Phase One market value is less than $1 million, the unit should not be subject to the surcharge for that fiscal year. For example:

> "For fiscal years beginning on July 1, 2026 and July 1, 2027, an owner of a residential condominium dwelling unit or residential cooperative dwelling unit, a cooperative corporation, or a duly authorized representative may establish that the Phase One market value determined by the department is excessive by submitting credible evidence of the sales-based market value of such dwelling unit. Such evidence may include, without limitation, a recent arm's-length sale or contract of sale, a certified appraisal, or comparable sales of similar residential condominium dwelling units or residential cooperative dwelling units. This subdivision provides an additional, non-exclusive method for proving that the Phase One market value determined by the department is excessive and does not limit or preclude any owner, tenant-shareholder, cooperative corporation, condominium board, or duly authorized representative from relying on any other competent evidence, valuation method, appraisal analysis, allocation method, or legal ground to prove that the market value determined by the department is excessive or unlawful. Upon a determination by the department, or upon review by the Tax Commission pursuant to Administrative Code § 11-3206, that the sales-based market value of such dwelling unit is less than five times the Phase One market value determined by the department, the Phase One market value shall be reduced to an amount not greater than twenty percent of such sales-based market value. If the resulting Phase One market value is less than one million dollars, such dwelling unit shall not be subject to the surcharge for such fiscal year."

Conclusion

We respectfully urge DOF to adopt rules in order to make the Pied-à-Terre Tax workable, fair, and aligned with the legislative intent of imposing a surcharge on covered owners who maintain high-value New York City residences as non-primary residences. We appreciate the opportunity to submit these comments and look forward to continued collaboration

Sincerely,

Benjamin M. Williams
Member