



Legislation Text

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Preconsidered Int. No. 599

By the Speaker (Council Member Miller), Council Members Weprin, Comrie, DeBlasio, Yassky, Fidler, Avella and Nelson

A Local Law to amend the administrative code of the city of New York, in relation to the certification for the imposition of a real property tax surcharge on certain class one properties.

Be it enacted by the Council as follows:

Section 1. Legislative Findings. The Council hereby finds that the Department of Finance must implement the surcharge on the real property tax owed by “absentee landlords” in a manner that effectuates the state legislature’s and Council’s intent that such surcharge only be imposed on landlords of class one properties in cases where those properties are not the primary residences of such owners and where the owners derive rental income from such properties from tenants other than a child or parent. Class one homeowners who are eligible for the School Tax Relief (STAR) program are not subject to the absentee landlord surcharge because to be eligible for STAR property tax exemption, a property must be the primary residence of its owner. However, the Council further finds that in the years since the inception of the STAR program, there has been insufficient outreach to homeowners to apprise them of this exemption, leading to a situation in which the participation rate for the STAR program is substantially lower than it should be. While it remains the intent of the City to ensure full participation by homeowners in the STAR program so that homeowners take advantage of the property tax reduction offered by this program, the Council does not intend to allow homeowners, who have not been enrolled in the STAR program, to be billed for an absentee landlord surcharge that does not apply to them, without substantial efforts being made to reach these homeowners through a meaningful certification process. Although state law authorizing the “absentee landlord” surcharge deems property to be the primary

residence of the owner and thus not subject to the surcharge if such property would be eligible for the STAR exemption, the authorizing legislation also provides that the Council may, by local law, prescribe a certification providing for proof of primary residence and the resident's relationship to the owner and the absence of rental income.

So as not to create a situation in which failure to apply for a tax reduction program results in the erroneous imposition of a tax surcharge, the Council hereby finds that the Department of Finance must undertake the following certification process for the first year in which the surcharge is in effect: First, the billing for the surcharge must occur in a separate and delayed billing no earlier than March 1, 2004. Second, all class one property owners from whom the department does not already have proof that they are not subject to the surcharge must be sent a simple certification form that need be no more than a few checkboxes or "yes/no" response boxes and a signature space prior to being billed for the surcharge as well as with the actual bill for the surcharge. Finally, since mortgage escrow agents pay the real property taxes for many class one homeowners, these agents should be required to send out to their customers the same simple checklist in their bills or billing statements. If the Department receives a certification from a homeowner prior to the bill being sent out, then neither the owner nor the mortgage escrow agent would be billed for the surcharge. If the Department receives a valid completed certification after the billing date but prior to the due date of the surcharge, the surcharge amount indicated on the bill need not be paid by those owners who pay their property taxes directly to the department; for those whose surcharge was already billed to, and paid by, a mortgage escrow agent, such taxpayers would be entitled to a refund or credit of the surcharge.

§2. Subdivision b of section 11-238 of the administrative code of the city of New York, as added by local law number 47 for the year 2003, is amended to read as follows:

b. Rental income, primary residence and/or relationship to owner or owners. 1. The property shall be deemed to be the primary residence of the owner or owners thereof, if such property would be eligible to receive the real property tax exemption pursuant to section four hundred twenty-five of the real property tax

law, regardless of whether such owner or owners has filed an application for, or the property is currently receiving, such exemption. Proof of primary residence and the resident's or residents' relationship to the owner or owners and the absence of rental income shall be in the form of a certification with response boxes to the questions concerning primary residence, relationship of residents, and rental income [as required by the rules of the commissioner], and subject to the provisions of paragraphs 2 and 3 of this subdivision.

2. For the first fiscal year in which the real property tax surcharge provided in this section is imposed, the department of finance shall mail certification forms to the owners of all class one properties for which the department does not have proof that such properties are the primary residences of such owners before any such surcharge becomes due and payable in accordance with subparagraphs (a) and (b) below:

(a) A certification form shall be sent at the time of the real property tax billing following the amendment and restatement of the property tax fixing resolution for such fiscal year by the council or, if the local law that added this paragraph shall not have become a law by such date, within ten days of the effective date of this local law. Such certification form shall state that in order to avoid paying the surcharge, a valid certification certifying non-applicability of the surcharge must be received by the department: (i) in the case of property owners who are billed for their real property taxes directly by the department of finance, prior to the date on which the surcharge is due (including any grace period); and (ii) in the case of property owners for which the real property taxes are held in escrow and paid to the department by a mortgage escrow agent, prior to March first.

(b) A certification form shall be sent at the time of the billing for the surcharge provided in this section, which billing shall not occur prior to March first of the first fiscal year for which such surcharge is imposed. In the case of property owners who are billed for their real property taxes directly by the department of finance, the certification form required pursuant to this subparagraph shall constitute the bill for such surcharge, or shall be made a part of such bill, and shall clearly state that if the conditions necessary to certify non-applicability of the surcharge are not marked and the certification is not signed and returned prior to the

due date (including any grace period), the surcharge amount indicated on the bill would be due and payable. In the case of property owners for which the real property taxes are held in escrow and paid to the department by a mortgage escrow agent, the certification form required pursuant to this subparagraph shall state that if such property owners have not previously submitted a valid certification, submission of this certification certifying non-applicability of the surcharge could entitle them to a credit or refund of the surcharge if already paid by their mortgage escrow agent.

3. In addition, in the case of any class one property to which this paragraph applies for which the real property taxes are held in escrow and paid to the department by a mortgage escrow agent, the department of finance shall require such mortgage escrow agent to include, in at least one mortgage payment bill, or where a homeowner does not receive a mortgage payment bill, in at least one statement or notice, the certification form required pursuant to subparagraph a of paragraph 2 of this subdivision, which shall be returnable to the department of finance prior to March first of the first fiscal year in which this surcharge is imposed. This certification form shall be required to be sent subsequent to the date of the certification form required pursuant to subparagraph a of paragraph 2 of this subdivision, but in no event later than February first of such year. Such certification form shall be accompanied by the statement in bold print that failure of the property owner to return the certification to the department prior to March first may result in the payment by the escrow agent of the surcharge and the liability of the property owner for such payment. The department of finance shall not bill the surcharge to any mortgage escrow agent on behalf of a property owner if a valid certification certifying non-applicability of the surcharge has been received from such property owner prior to March first.

4. Nothing in this section or in any rules promulgated pursuant hereto shall limit the rights of any property owner to pursue any remedy otherwise available by law to obtain a credit or refund of such surcharge if such owner would not have been subject to such surcharge had he or she timely submitted such certification.

§ 3. Should any provision or application of this local law be determined to be unlawful or unenforceable, all other provisions and applications of this local law shall nevertheless continue in full force and effect.

§ 4. This local law shall take effect immediately.