

4526

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 4, 2009

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Introduced by M. of A. FITZPATRICK, McDONOUGH, ERRIGO -- Multi-Sponsored  
by -- M. of A. WALKER -- read once and referred to the Committee on  
Housing

AN ACT to amend the administrative code of the city of New York and the  
emergency tenant protection act of nineteen seventy-four, in relation  
to determining primary residency; and to amend the tax law, in  
relation to verification of residence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,  
DO ENACT AS FOLLOWS:

1     Section 1. Clause 10 of subparagraph (i) of paragraph 2 of subdivision  
2     e of section 26-403 of the administrative code of the city of New York  
3     is amended to read as follows:  
4     (10) Housing accommodations not occupied by the tenant, not including  
5     subtenants or occupants, as his or her primary residence, as determined  
6     by a court of competent jurisdiction. FOR PURPOSES OF DETERMINING PRIMA-  
7     RY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW YORK  
8     CITY RESIDENT INCOME TAX RETURN FOR THE TWO PRECEDING CALENDAR YEARS  
9     (SETTING FORTH THE HOUSING ACCOMMODATION AS HIS OR HER RESIDENCE) BY AN  
10    INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN A  
11    FINDING THAT THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY  
12    RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN  
13    INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX, OR  
14    WHO IS NOT REQUIRED TO FILE A RESIDENT INCOME TAX RETURN, OR WHERE ANY  
15    OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN;  
16    PROVIDED FURTHER, THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT  
17    RESULT IN A PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS  
18    OR HER PRIMARY RESIDENCE OR THAT THE FILING OF AN ACTION TO DETERMINE A  
19    TENANT'S PRIMARY RESIDENCE SHALL NOT PRECLUDE SUCH TENANT FROM FILING AN  
20    AMENDED TAX RETURN PROVIDED THAT SUCH AMENDED RETURN IS FILED WITHIN  
21    SIXTY DAYS OF THE COMMENCEMENT OF THE ACTION. No action or proceeding  
22    shall be commenced seeking to recover possession on the ground that a

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 housing accommodation is not occupied by the tenant as his or her primary  
2 residence unless the owner or lessor shall have given thirty days  
3 notice to the tenant of his or her intention to commence such action or  
4 proceeding on such grounds.

5 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section  
6 26-504 of the administrative code of the city of New York is amended to  
7 read as follows:

8 (f) not occupied by the tenant, not including subtenants or occupants,  
9 as his primary residence, as determined by a court of competent juris-  
10 diction[, provided, however that no]. FOR PURPOSES OF DETERMINING  
11 PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW  
12 YORK CITY RESIDENT INCOME TAX RETURN FOR THE TWO PRECEDING CALENDAR  
13 YEARS (SETTING FORTH THE HOUSING ACCOMMODATION AS HIS OR HER RESIDENCE)  
14 BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN  
15 A FINDING THAT THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY  
16 RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN  
17 INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX, OR  
18 WHO IS NOT REQUIRED TO FILE A RESIDENT INCOME TAX RETURN, OR WHERE ANY  
19 OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF A RETURN;  
20 PROVIDED FURTHER, THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT  
21 RESULT IN A PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS  
22 OR HER PRIMARY RESIDENCE OR THAT THE FILING OF AN ACTION TO DETERMINE A  
23 TENANT'S PRIMARY RESIDENCE SHALL NOT PRECLUDE SUCH TENANT FROM FILING AN  
24 AMENDED TAX RETURN PROVIDED THAT SUCH AMENDED RETURN IS FILED WITHIN  
25 SIXTY DAYS OF THE COMMENCEMENT OF THE ACTION. NO action or proceeding  
26 shall be commenced seeking to recover possession on the ground that a  
27 housing accommodation is not occupied by the tenant as his or her primary  
28 residence unless the owner or lessor shall have given thirty days  
29 notice to the tenant of his or her intention to commence such action or  
30 proceeding on such grounds. For the purposes of this subparagraph where  
31 a housing accommodation is rented to a not-for-profit hospital for resi-  
32 dential use, affiliated subtenants authorized to use such accommodations  
33 by such hospital shall be deemed to be tenants, or

34 S 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-  
35 ter 576 of the laws of 1974, constituting the emergency tenant  
36 protection act of nineteen seventy-four, as amended by chapter 940 of  
37 the laws of 1984, is amended to read as follows:

38 (11) housing accommodations which are not occupied by the tenant, not  
39 including subtenants or occupants, as his primary residence, as deter-  
40 mined by a court of competent jurisdiction. FOR PURPOSES OF DETERMINING  
41 PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW  
42 YORK STATE RESIDENT INCOME TAX RETURN FOR THE TWO PRECEDING CALENDAR  
43 YEARS (SETTING FORTH THE HOUSING ACCOMMODATION AS HIS OR HER RESIDENCE)  
44 BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN  
45 A FINDING THAT THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY  
46 RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN  
47 INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX, OR  
48 WHO IS NOT REQUIRED TO FILE A RESIDENT INCOME TAX RETURN, OR WHERE ANY  
49 OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN;  
50 PROVIDED FURTHER, THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT  
51 RESULT IN A PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS  
52 OR HER PRIMARY RESIDENCE OR THAT THE FILING OF AN ACTION TO DETERMINE A  
53 TENANT'S PRIMARY RESIDENCE SHALL NOT PRECLUDE SUCH TENANT FROM FILING AN  
54 AMENDED TAX RETURN PROVIDED THAT SUCH AMENDED RETURN IS FILED WITHIN  
55 SIXTY DAYS OF THE COMMENCEMENT OF THE ACTION. For the purposes of this  
56 paragraph, where a housing accommodation is rented to a not-for-profit

1 hospital for residential use, affiliated subtenants authorized to use  
2 such accommodations by such hospital shall be deemed to be tenants. No  
3 action or proceeding shall be commenced seeking to recover possession on  
4 the ground that a housing accommodation is not occupied by the tenant as  
5 his primary residence unless the owner or lessor shall have given thirty  
6 days notice to the tenant of his intention to commence such action or  
7 proceeding on such grounds.

8 S 4. The tax law is amended by adding a new section 171-t to read as  
9 follows:

10 S 171-T. VERIFICATION OF RESIDENCE FILING ADDRESS. (1) THE COMMISSION-  
11 ER IS AUTHORIZED TO VERIFY TO OWNERS OF MULTIPLE DWELLINGS COVERED BY  
12 THE CITY RENT AND REHABILITATION LAW, THE RENT STABILIZATION LAW OF  
13 NINETEEN HUNDRED SIXTY-NINE AND/OR THE EMERGENCY TENANT PROTECTION ACT  
14 OF NINETEEN SEVENTY-FOUR WHETHER OR NOT, IN A GIVEN CALENDAR YEAR, A NEW  
15 YORK CITY OR NEW YORK STATE RESIDENT INCOME TAX RETURN WAS FILED BY AN  
16 INDIVIDUAL WHO IS A TENANT IN THE OWNER'S MULTIPLE DWELLING AND, IF SO,  
17 THE RESIDENCE ADDRESS WHICH IS SET FORTH ON THE TAX RETURN. SUCH  
18 VERIFICATION SHALL BE IN WRITING AND SHALL BE CONSIDERED A CERTIFICATE  
19 OR AFFIDAVIT FOR THE PURPOSES OF RULE FORTY-FIVE HUNDRED TWENTY OF THE  
20 CIVIL PRACTICE LAW AND RULES.

21 (2) THE DEPARTMENT MAY CHARGE A REASONABLE FEE, TO BE DETERMINED BY  
22 THE COMMISSIONER, IN PAYMENT TO THE DEPARTMENT FOR THE EXPENSE INCURRED  
23 IN VERIFYING THE FILING AND RESIDENCE ADDRESS.

24 (3) THE COMMISSIONER SHALL PROMULGATE SUCH RULES AND REGULATIONS AS IT  
25 DEEMS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

26 S 5. This act shall take effect immediately; provided that the amend-  
27 ment to section 26-403 of the city rent and rehabilitation law made by  
28 section one of this act shall remain in full force and effect only so  
29 long as the public emergency requiring the regulation and control of  
30 residential rents and evictions continues, as provided in subdivision 3  
31 of section 1 of the local emergency housing rent control act and  
32 provided further that the amendment to section 26-504 of chapter 4 of  
33 title 26 of the administrative code of the city of New York made by  
34 section two of this act shall expire on the same date as such law  
35 expires and shall not affect the expiration of such law as provided  
36 under section 26-520 of such law; and provided further that the amend-  
37 ment to section 5 of the emergency tenant protection act of nineteen  
38 seventy-four made by section three of this act shall expire on the same  
39 date as such act expires and shall not affect the expiration of such act  
40 as provided in section 17 of chapter 576 of the laws of 1974.