

2633

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 19, 2011

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Introduced by M. of A. FITZPATRICK, McDONOUGH -- 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     as amended by chapter 422 of the laws of 2010, is amended to read as  
4     follows:  
5     (10) Housing accommodations not occupied by the tenant, not including  
6     subtenants or occupants, as his or her primary residence, as determined  
7     by a court of competent jurisdiction. For PURPOSES OF DETERMINING  
8     PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE FAILURE TO FILE A NEW  
9     YORK CITY RESIDENT INCOME TAX RETURN FOR THE TWO PRECEDING CALENDAR  
10    YEARS (SETTING FORTH THE HOUSING ACCOMMODATION AS HIS OR HER RESIDENCE)  
11    BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN  
12    A FINDING THAT THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY  
13    RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN  
14    INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX, OR  
15    WHO IS NOT REQUIRED TO FILE A RESIDENT INCOME TAX RETURN, OR WHERE ANY  
16    OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN;  
17    PROVIDED FURTHER, THAT THE TIMELY FILING OF THE RETURN, ALONE, SHALL NOT  
18    RESULT IN A PRESUMPTION THAT THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS  
19    OR HER PRIMARY RESIDENCE OR THAT THE FILING OF AN ACTION TO DETERMINE A  
20    TENANT'S PRIMARY RESIDENCE SHALL NOT PRECLUDE SUCH TENANT FROM FILING AN  
21    AMENDED TAX RETURN PROVIDED THAT SUCH AMENDED RETURN IS FILED WITHIN  
22    SIXTY DAYS OF THE COMMENCEMENT OF THE ACTION. FURTHER, FOR the purposes  
23    of determining primary residency, a tenant who is a victim of domestic  
24    violence, as defined in section four hundred fifty-nine-a of the social  
25    services law, who has left the unit because of such violence, and who  
26    asserts an intent to return to the housing accommodation shall be deemed

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

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1 to be occupying the unit as his or her primary residence. No action or  
2 proceeding shall be commenced seeking to recover possession on the  
3 ground that a housing accommodation is not occupied by the tenant as his  
4 or her primary residence unless the owner or lessor shall have given  
5 thirty days notice to the tenant of his or her intention to commence  
6 such action or proceeding on such grounds.

7 S 2. Subparagraph (f) of paragraph 1 of subdivision a of section  
8 26-504 of the administrative code of the city of New York, as amended by  
9 chapter 422 of the laws of 2010, is amended to read as follows:

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

42 S 3. Paragraph 11 of subdivision a of section 5 of section 4 of chap-  
43 ter 576 of the laws of 1974, constituting the emergency tenant  
44 protection act of nineteen seventy-four, as amended by chapter 422 of  
45 the laws of 2010, is amended to read as follows:

46 (11) housing accommodations which are not occupied by the tenant, not  
47 including subtenants or occupants, as his or her primary residence, as  
48 determined by a court of competent jurisdiction. For the purposes of  
49 determining primary residency, a tenant who is a victim of domestic  
50 violence, as defined in section four hundred fifty-nine-a of the social  
51 services law, who has left the unit because of such violence, and who  
52 asserts an intent to return to the housing accommodation shall be deemed  
53 to be occupying the unit as his or her primary residence. FURTHER, FOR  
54 PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS USED IN THIS CHAPTER, THE  
55 FAILURE TO FILE A NEW YORK STATE RESIDENT INCOME TAX RETURN FOR THE TWO  
56 PRECEDING CALENDAR YEARS (SETTING FORTH THE HOUSING ACCOMMODATION AS HIS

1 OR HER RESIDENCE) BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A  
2 RETURN, SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT OCCUPY THE  
3 UNIT AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT THIS  
4 PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN EXTEN-  
5 SION OF TIME FOR PAYMENT OF TAX, OR WHO IS NOT REQUIRED TO FILE A RESI-  
6 DENT INCOME TAX RETURN, OR WHERE ANY OTHER FACTOR EXISTS WHICH WOULD  
7 EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER, THAT THE TIME-  
8 LY FILING OF THE RETURN, ALONE, SHALL NOT RESULT IN A PRESUMPTION THAT  
9 THE INDIVIDUAL DOES OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE OR  
10 THAT THE FILING OF AN ACTION TO DETERMINE A TENANT'S PRIMARY RESIDENCE  
11 SHALL NOT PRECLUDE SUCH TENANT FROM FILING AN AMENDED TAX RETURN  
12 PROVIDED THAT SUCH AMENDED RETURN IS FILED WITHIN SIXTY DAYS OF THE  
13 COMMENCEMENT OF THE ACTION. For the purposes of this paragraph, where a  
14 housing accommodation is rented to a not-for-profit hospital for resi-  
15 dential use, affiliated subtenants authorized to use such accommodations  
16 by such hospital shall be deemed to be tenants. No action or proceeding  
17 shall be commenced seeking to recover possession on the ground that a  
18 housing accommodation is not occupied by the tenant as his or her prima-  
19 ry residence unless the owner or lessor shall have given thirty days  
20 notice to the tenant of his or her intention to commence such action or  
21 proceeding on such grounds.

22 S 4. The tax law is amended by adding a new section 171-v to read as  
23 follows:

24 S 171-V. VERIFICATION OF RESIDENCE FILING ADDRESS. (1) THE COMMISSION-  
25 ER IS AUTHORIZED TO VERIFY TO OWNERS OF MULTIPLE DWELLINGS COVERED BY  
26 THE CITY RENT AND REHABILITATION LAW, THE RENT STABILIZATION LAW OF  
27 NINETEEN HUNDRED SIXTY-NINE AND/OR THE EMERGENCY TENANT PROTECTION ACT  
28 OF NINETEEN SEVENTY-FOUR WHETHER OR NOT, IN A GIVEN CALENDAR YEAR, A NEW  
29 YORK CITY OR NEW YORK STATE RESIDENT INCOME TAX RETURN WAS FILED BY AN  
30 INDIVIDUAL WHO IS A TENANT IN THE OWNER'S MULTIPLE DWELLING AND, IF SO,  
31 THE RESIDENCE ADDRESS WHICH IS SET FORTH ON THE TAX RETURN. SUCH  
32 VERIFICATION SHALL BE IN WRITING AND SHALL BE CONSIDERED A CERTIFICATE  
33 OR AFFIDAVIT FOR THE PURPOSES OF RULE FORTY-FIVE HUNDRED TWENTY OF THE  
34 CIVIL PRACTICE LAW AND RULES.

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

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

40 S 5. This act shall take effect immediately; provided that the amend-  
41 ment to section 26-403 of the city rent and rehabilitation law made by  
42 section one of this act shall remain in full force and effect only so  
43 long as the public emergency requiring the regulation and control of  
44 residential rents and evictions continues, as provided in subdivision 3  
45 of section 1 of the local emergency housing rent control act and  
46 provided further that the amendment to section 26-504 of chapter 4 of  
47 title 26 of the administrative code of the city of New York made by  
48 section two of this act shall expire on the same date as such law  
49 expires and shall not affect the expiration of such law as provided  
50 under section 26-520 of such law; and provided further that the amend-  
51 ment to section 5 of the emergency tenant protection act of nineteen  
52 seventy-four made by section three of this act shall expire on the same  
53 date as such act expires and shall not affect the expiration of such act  
54 as provided in section 17 of chapter 576 of the laws of 1974.