S T A T E O F N E W Y O R K

5723

2011-2012 Regular Sessions

I N S E N A T E

June 14, 2011

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the real property tax law, in relation to tax exemption for new multiple dwellings (Part A); to amend chapter 576 of the laws of 1974 amending the emergency housing rent control law relating to the control of and stabilization of rent in certain cases, the emergency housing rent control law, chapter 329 of the laws of 1963 amending the emergency housing rent control law relating to recontrol of rents in Albany, chapter 555 of the laws of 1982 amending the general business law and the administrative code of the city of New York relating to conversion of residential property to cooperative or condominium ownership in the city of New York, chapter 402 of the laws of 1983 amending the general business law relating to conversions of rental residential property to cooperative or condominium ownership in certain municipalities in the counties of Nassau, Westchester and Rockland and the rent regulation reform act of 1997, in relation to extending the period of effectiveness thereof (Part B); and 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 of rent regulated housing accommodations (Part C)

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

Section 1. This act enacts into law major components of legislation relating to real property tax exemptions and rent control. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and

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

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refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. The opening paragraph of item (A) of subparagraph (iv) of paragraph (a) of subdivision 2 of section 421-a of the real property tax law, as amended by chapter 618 of the laws of 2007, is amended to read as follows:

Unless excluded by local law, in the city of New York, the benefits of this subparagraph shall be available in the borough of Manhattan for new multiple dwellings on tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street [which] THAT commence construction after July first, nineteen hundred ninety-two and before December twenty-eighth, two thousand [ten] TWENTY-TWO only if:

S 2. Subparagraph (ii) of paragraph (c) of subdivision 2 of section 421-a of the real property tax law, as amended by chapter 618 of the laws of 2007, is amended to read as follows:

(ii) construction is commenced after January first, nineteen hundred seventy-five and before December twenty-eighth, two thousand [ten] TWENTY-TWO provided, however, that such commencement period shall not apply to multiple dwellings eligible for benefits under subparagraph (iv) of paragraph (a) of this subdivision;

S 3. Paragraph (d) of subdivision 2 of section 421-a of the real property tax law, as amended by chapter 692 of the laws of 1995, is amended to read as follows:

(d) [As of July first, nineteen hundred seventy-five] FOR ANY BUILDING GRANTED TAX EXEMPTION PURSUANT TO THIS SECTION BY THE LOCAL HOUSING AGENCY ON OR SUBSEQUENT TO JULY FIRST, NINETEEN HUNDRED SEVENTY-ONE, if the aggregate floor area of commercial, community facility and accessory use space exceeds twelve [per cent] PERCENT of the aggregate floor area, as defined herein, [of any building granted tax exemption pursuant to this section on or subsequent to July first, nineteen hundred seventy-one] OF SUCH BUILDING, tax exemption shall be reduced by an amount equal to the [per cent] PERCENT of the aggregate floor area by which the aggregate floor area of commercial, community facility and accessory use space exceeds twelve [per cent] PERCENT of the aggregate floor area of the building provided, however, that accessory use space shall not include accessory parking located not more than twenty-three feet above the curb level and provided, further, that whenever a building containing two or more separately assessed parcels of real property has commercial, community facility and accessory use space in excess of such twelve percent, the tax arising out of the reduction in exemption for such excess space shall not be apportioned pro rata among all of the separately assessed parcels in the building but shall be applied first to those separately assessed parcels which are unrelated to the residential use of the building; and only after such unrelated parcels are fully taxable shall the remainder of such tax be apportioned pro rata among the remaining separately assessed parcels and provided further, that no such exemption for commercial, community facility and accessory use space shall be applicable prior to July first, nineteen hundred seventy-five. To be eligible for exemption under this section such construction shall take place on land which, thirty-six months prior to the commencement of such construction, was vacant, predominantly vacant, under-utilized, or improved with a non-conforming use, provided that if

such new multiple dwelling displaces or replaces a building or buildings containing more than twenty-five occupied dwelling units in existence on December thirty-first, nineteen hundred seventy-four and administered under the local emergency housing rent control act, the rent stabilization law of nineteen hundred sixty-nine, or the emergency tenant protection act of nineteen seventy-four, such new multiple dwelling shall not be eligible in the city of New York unless a certificate of eviction has been issued for any of the displaced or replaced units pursuant to the powers granted by the city rent and rehabilitation law, and that the sale, transfer or utilization of air rights over residential buildings that were not demolished shall not be construed as a displacement or replacement of the dwelling units contained within those buildings within the meaning of this subdivision.

S 4. Subdivision 3 of section 421-a of the real property tax law, as amended by chapter 857 of the laws of 1975, the opening paragraph as amended by chapter 655 of the laws of 1978, paragraph (iv) as amended by chapter 703 of the laws of 1976, and such section as renumbered by chapter 110 of the laws of 1977, is amended to read as follows:

3. Application forms for exemption under this section shall be filed with the [assessors between February first and March fifteenth and, based on the certification of the local housing agency as herein provided, the assessors shall certify to the collecting officer the amount of taxes to be abated] LOCAL HOUSING AGENCY, WHICH SHALL ISSUE A CERTIFICATE CERTIFYING THE APPLICANT'S ELIGIBILITY PURSUANT TO SUBDIVISIONS TWO AND FOUR OF THIS SECTION. If there be in a city of one million population or more a department of housing preservation and development, the term "housing agency" shall mean only such department of housing preservation and development. [No such application shall be accepted by the assessors unless accompanied by a certificate of the local housing agency certifying the applicant's eligibility pursuant to subdivisions two and four of this section.] No such certification of eligibility shall be issued by the local housing agency until such agency determines the initial adjusted monthly rent to be paid by tenants residing in rental dwelling units contained within the multiple dwelling and the comparative adjusted monthly rent that would have to be paid by such tenants if no tax exemption were applicable as provided by this section. The initial adjusted monthly rent will be certified by the local housing agency as the first rent for the subject dwelling units. A copy of such certification with respect to such units shall be attached by the applicant to the first effective lease or occupancy agreement. The initial adjusted monthly rent shall reflect the full tax exemption benefits as approved by the agency.

The agency shall determine the amount of the initial adjusted monthly rent as follows:

(i) The total project cost shall be determined by adding the following items:

(a) Land acquisition cost or purchase price, if purchased within two years prior to the date on which construction or alteration is commenced; or land acquisition cost or purchase price or an appraisal prepared by a qualified independent appraiser, in such form as is acceptable to the agency, if purchased more than two years prior to such date. Land acquisition cost or purchase price, where used, shall be certified to by an independent certified public accountant;

(b) Costs incurred in the process of preparing the site for construction, including but not limited to operating losses, relocation expenses, demolition expenses and carrying charges, such costs to be

certified by an independent certified public accountant to a date not more than ninety days prior to the filing of an application for certification of eligibility and the balance of such costs to be estimated;

(c) Construction costs for constructing or rehabilitating the multiple dwelling as determined by the agency in accordance with subdivision four of this section, plus such amount, if any, representing unique and special costs as may be allowed by the agency for a particular multiple dwelling;

(d) An allowance for estimated off-site costs, including but not limited to architects, engineers and legal fees, interest and taxes during construction, insurance, title and mortgage fees, as determined by the agency in accordance with subdivision four of this section, and

(e) such other amounts as are ordinarily and customarily incurred in connection with the construction or rehabilitation of a multiple dwelling, as determined by the agency in accordance with subdivision four of this section.

(ii) The total expenses of the multiple dwelling shall be determined by adding the following items:

(a) The amount that the agency determines to be the reasonable annual costs for the continuing maintenance and operation of the multiple dwelling in accordance with subdivision four of this section;

(b) The amount that the agency determines to be an appropriate annual provision for vacancies, contingency reserves and management fees in accordance with subdivision four of this section.

(c) The projected real property taxes to be levied on the multiple dwelling and the land on which it is situated at the time of estimated initial occupancy;

(d) Fourteen (14) [per cent] PERCENT of the total project cost, as hereinabove defined, which amount will include all expenses for debt service; and

(e) Deducting from said total the estimated annual income to be derived from any commercial, community facility or accessory use space in the building.

(iii) The total expenses shall be divided by the room count to provide the adjusted monthly rent per room per month.

(iv) The adjusted monthly rent per room per month shall be multiplied by the room count of each rental dwelling unit to provide the initial adjusted monthly rent for such dwelling unit. The agency may allow adjustments in the initial adjusted monthly rent for any particular dwelling units provided that the total of the initial adjusted monthly rents for all of the rental dwelling units in a multiple dwelling shall not exceed the total expenses of such multiple dwelling.

The agency shall determine the estimated comparative adjusted monthly rent that would have to be paid if no tax exemption were applicable as provided by this section by adding to the adjusted monthly rent for each dwelling unit as hereinabove computed an amount equal to (a) the difference between the projected real property taxes which would be levied on the multiple dwelling and the land on which it is situated at the time estimated initial occupancy if no tax abatement were applicable as provided by this section and the projected real property taxes hereinabove utilized in connection with the computation of total expenses; (b) divided by the room count of the building as per this section; and (c) multiplied by the applicants approved room count of each such dwelling unit.

The local housing agency may promulgate rules and regulations to carry out the provisions of this section, not inconsistent with the provisions

hereof, [and may require a reasonable filing fee in an amount provided by such rules and regulations] INCLUDING, BUT NOT LIMITED TO, RULES AND REGULATIONS RELATING TO THE FILING FEE AUTHORIZED PURSUANT TO PARAGRAPH B OF SUBDIVISION FOUR OF THIS SECTION. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW, THE LOCAL HOUSING AGENCY IN A CITY OF ONE MILLION OR MORE MAY REQUIRE THAT APPLICATIONS FOR EXEMPTION UNDER THIS SECTION THAT ARE FILED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT BE FILED ELECTRONICALLY.

S 5. Paragraph b of subdivision 4 of section 421-a of the real property tax law, as added by chapter 744 of the laws of 2004, is amended to read as follows:

b. The local housing agency [may] SHALL require a filing fee not to exceed the greater of (i) four-tenths of one percent of the total project cost, or (ii) if the building will be owned as a cooperative or condominium, four-tenths of one percent of the total project cost or four-tenths of one percent of the total project sell-out price stated in the last amendment to the offering plan accepted for filing by the attorney general of the state, at the option of the applicant. Such total project cost or total project sell-out price shall be determined pursuant to rules promulgated by the local housing agency. Notwithstanding the foregoing, the local housing agency may promulgate rules imposing an additional fee if an application, or any part thereof, or submission in connection therewith, is defective and such defect delays the processing of such application or causes the local housing agency to expend additional resources in the processing of such application.

S 6. Subparagraph (i) of paragraph (a) of subdivision 6 of section 421-a of the real property tax law, as added by chapter 110 of the laws of 2005, is amended to read as follows:

(i) "Covered project." (A) A new building located within the Greenpoint - Williamsburg waterfront exclusion area, (B) two or more buildings which are part of one contiguous development entirely located within the Greenpoint - Williamsburg waterfront exclusion area, (C) two or more buildings which are located within the Greenpoint - Williamsburg waterfront exclusion area and are part of a single development parcel specifically identified in section [62-831] 62-931 of the local zoning resolution, or (D) where so authorized in writing by the local housing agency, one or more buildings located within the Greenpoint - Williamsburg waterfront exclusion area and one or more buildings located outside the Greenpoint - Williamsburg waterfront exclusion area but within Community District Number One in the borough of Brooklyn. The cumulative number of affordable units located outside the Greenpoint - Williamsburg waterfront exclusion area in all covered projects described in clause (D) of this subparagraph shall not exceed two hundred. A building located outside the Greenpoint - Williamsburg waterfront exclusion area which is part of a covered project described in clause (D) of this subparagraph shall not contain any affordable units with respect to which an application pending before a governmental entity on the effective date of this subdivision or a written agreement in effect on the effective date of this subdivision provided for the development of such affordable units.

S 7. The legislature finds and takes notice that there has been a significant decrease in the construction of affordable housing and in construction employment in New York city since the program established in section 421-a of the real property tax law lapsed. It is in the best interest of the state and the city to promote timely completion of affordable housing while at the same time maximizing the benefits of the

public subsidy provided through such program to private owners. In an effort to accomplish the foregoing objective the New York city department of housing preservation development shall administer a pilot project to require section 421-a of the real property tax law applicants as a condition of receipt of benefits in the borough of Manhattan to enter into a private project labor agreement for the construction of affordable housing.

An applicant as a condition of the receipt of benefits under such section for any new construction commenced after November 1, 2012 for any tax lots in the borough of Manhattan shall negotiate a private project labor agreement for any new construction project which consists of more than 150 dwelling units. Such project labor agreement shall be provided to the local housing agency prior to final approval. Such applicant may apply for a waiver from such condition from the local housing agency in the event that the applicant demonstrates it is impossible to achieve an agreement based on the principles of fairness and equity or it negatively impacts the ability of the applicant to provide the affordable housing.

As used in this section "project labor agreement" shall mean a pre-hire collective bargaining agreement between the applicant and a building and construction trade labor organization establishing such labor organization as the collective bargaining representative for all persons performing work on the project.

The local housing agency shall prepare a report no later than February 1, 2013 which shall examine the impact of private project labor agreements on the program established pursuant to section 421-a of the real property tax law and in particular on timely completion, maximization of the public subsidy provided and costs of construction of the affordable housing.

S 8. This act shall take effect immediately, provided, however, that the amendments to item (A) of subparagraph (iv) of paragraph (a) of subdivision 2 and subparagraph (ii) of paragraph (c) of subdivision 2 of section 421-a of the real property tax law made by sections one and two of this act shall be deemed to have been in full force and effect as of December 28, 2010.

PART B

Section 1. Section 17 of chapter 576 of the laws of 1974, amending the emergency housing rent control law relating to the control of and stabilization of rent in certain cases, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

S 17. Effective date. This act shall take effect immediately and shall remain in full force and effect until and including the fifteenth day of June [2011] 2023; except that sections two and three shall take effect with respect to any city having a population of one million or more and section one shall take effect with respect to any other city, or any town or village whenever the local legislative body of a city, town or village determines the existence of a public emergency pursuant to section three of the emergency tenant protection act of nineteen seventy-four, as enacted by section four of this act, and provided that the housing accommodations subject on the effective date of this act to stabilization pursuant to the New York city rent stabilization law of nineteen hundred sixty-nine shall remain subject to such law upon the expiration of this act.

S 2. Subdivision 2 of section 1 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

2. The provisions of this act, and all regulations, orders and requirements thereunder shall remain in full force and effect until and including June 15, [2011] 2023.

S 3. Section 2 of chapter 329 of the laws of 1963, amending the emergency housing rent control law relating to recontrol of rents in Albany, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

S 2. This act shall take effect immediately and the provisions of subdivision 6 of section 12 of the emergency housing rent control law, as added by this act, shall remain in full force and effect until and including June 15, [2011] 2023.

S 4. Section 10 of chapter 555 of the laws of 1982, amending the general business law and the administrative code of the city of New York relating to conversion of residential property to cooperative or condominium ownership in the city of New York, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

S 10. This act shall take effect immediately; provided, that the provisions of sections one, two and nine of this act shall remain in full force and effect only until and including June 15, [2011] 2023; provided further that the provisions of section three of this act shall remain in full force and effect only so long as the public emergency requiring the regulation and control of residential rents and evictions continues as provided in subdivision 3 of section 1 of the local emergency housing rent control act; provided further that the provisions of sections four, five, six and seven of this act shall expire in accordance with the provisions of section 26-520 of the administrative code of the city of New York as such section of the administrative code is, from time to time, amended; provided further that the provisions of section 26-511 of the administrative code of the city of New York, as amended by this act, which the New York City Department of Housing Preservation and Development must find are contained in the code of the real estate industry stabilization association of such city in order to approve it, shall be deemed contained therein as of the effective date of this act; and provided further that any plan accepted for filing by the department of law on or before the effective date of this act shall continue to be governed by the provisions of section 352-eeee of the general business law as they had existed immediately prior to the effective date of this act.

S 5. Section 4 of chapter 402 of the laws of 1983, amending the general business law relating to conversions of rental residential property to cooperative or condominium ownership in certain municipalities in the counties of Nassau, Westchester and Rockland, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

S 4. This act shall take effect immediately; provided, that the provisions of sections one and three of this act shall remain in full force and effect only until and including June 15, [2011] 2023; and provided further that any plan accepted for filing by the department of law on or before the effective date of this act shall continue to be governed by the provisions of section 352-eee of the general business law as they had existed immediately prior to the effective date of this act.

S 6. Subdivision 6 of section 46 of chapter 116 of the laws of 1997, constituting the rent regulation reform act of 1997, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

6. sections twenty-eight, twenty-eight-a, twenty-eight-b and twenty-eight-c of this act shall expire and be deemed repealed after June 15, [2011] 2023;

S 7. This act shall take effect immediately.

PART C

Section 1. Clause 10 of subparagraph (i) of paragraph 2 of subdivision e of section 26-403 of the administrative code of the city of New York, as amended by chapter 422 of the laws of 2010, is amended to read as follows:

(10) Housing accommodations not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. FOR PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THE FOLLOWING SHALL APPLY: (I) THE FAILURE TO FILE A CITY RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER, THAT THE TIMELY FILING OF SUCH RETURN SHALL NOT, IN AND OF ITSELF, RESULT IN A DETERMINATION THAT THE INDIVIDUAL DOES OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE OR (II) A VOTE IS CAST BY A TENANT DURING THEIR TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION LOCATED IN THE CITY SHALL RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE. No action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds.

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

(f) not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THE FOLLOWING SHALL APPLY: (I) THE FAILURE TO FILE A CITY RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS WHICH

WOULD EXCUSE THE TIMELY FILING OF SUCH RETURN; PROVIDED FURTHER, THAT THE TIMELY FILING OF SUCH RETURN SHALL NOT, IN AND OF ITSELF, RESULT IN A DETERMINATION THAT THE INDIVIDUAL DOES OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE OR (II) A VOTE CAST BY A TENANT DURING TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION LOCATED IN THE CITY SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT OCCUPY THE UNIT AS HIS OR HER PRIMARY RESIDENCE. NO action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds. SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEEDING IS COMMENCED PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE COMMENCEMENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED TO A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. For the purposes of this subparagraph where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants, or

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

(11) housing accommodations which are not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction. FOR PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS ACT, THE FOLLOWING SHALL APPLY: (I) THE FAILURE TO FILE A STATE RESIDENT INCOME TAX RETURN BY AN INDIVIDUAL REQUIRED BY LAW TO FILE SUCH A RETURN, SHALL RESULT IN A DETERMINATION THAT THE TENANT DOES NOT OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT APPLY TO AN INDIVIDUAL WHO HAS REQUESTED AN EXTENSION OF TIME FOR PAYMENT OF TAX OR WHERE ANY OTHER FACTOR EXISTS WHICH WOULD EXCUSE THE TIMELY FILING OF THE RETURN; PROVIDED FURTHER, THAT THE TIMELY FILING OF SUCH RETURN SHALL NOT, IN AND OF ITSELF, RESULT IN A DETERMINATION THAT THE INDIVIDUAL DOES OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE OR (II) A VOTE CAST BY A TENANT DURING TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION LOCATED IN THE CITY OF NEW YORK SHALL RESULT IN A FINDING THAT THE TENANT DOES NOT OCCUPY THE HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE. SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEEDING IS COMMENCED PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE COMMENCE-

MENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED TO A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. For the purposes of this paragraph, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants. No action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds.

S 4. This act shall take effect immediately; provided that the amendment to section 26-403 of the city rent and rehabilitation law made by section one of this act shall remain in full force and effect only so long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act; and provided further that the amendment to section 26-504 of the rent stabilization law of nineteen hundred sixty-nine made by section two of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law; and provided further that the amendment to section 5 of the emergency tenant protection act of nineteen seventy-four made by section three of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974, as amended.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through C of this act shall be as specifically set forth in the last section of such Parts.