

2633

2011-2012 Regular Sessions

I N A S S E M B L Y

January 19, 2011

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.