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

5047

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law and the administrative code of the city of New York, in relation to the deregulation of rents for high-income rent regulated tenants

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

Section 1. Paragraph 12 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 116 of the laws of 1997, is amended to read as follows:

(12) upon issuance of an order by the division, housing accommodations which are[: (1)] occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars per annum [in each of] FOR the two preceding calendar years, as defined in and subject to the limitations and process set forth in section five-a of this act[; and (2) have a legal regulated rent of two thousand dollars or more per month.] Provided however, that this exclusion shall not apply to housing accommodations which became or become subject to this act (a) by virtue of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred eighty-nine of the real property tax law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of section four hundred twenty-one-a of the real property tax law, or (b) by virtue of article seven-C of the multiple dwelling law.

S 2. Section 5-a of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as added by chapter 253 of the laws of 1993, subdivision (b) and

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

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paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 5-a. High income rent decontrol. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation for which the legal regulated rent is two thousand dollars or more per month may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall identify all persons referred to in subdivision (a) of this section and shall certify whether the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law, and shall not require disclosure of any information other than whether the aforementioned threshold has been exceeded. Such income certification form shall clearly state that: (i) [only tenants residing in housing accommodations which had a legal regulated rent of two thousand dollars or more per month are required to complete the certification form; (ii) that] tenants have protections available to them which are designed to prevent harassment; [(iii) that] AND (II) tenants are not required to provide any information regarding their income except that which is requested on the form and may contain such other information the division deems appropriate. The tenant or tenants shall return the completed certification to the owner within thirty days after service upon the tenant or tenants. In the event that the total AVERAGE annual income as certified is in excess of one hundred seventy-five thousand dollars in each such year, the owner may file the certification with the state division of housing and community renewal on or before June thirtieth of such year. Upon filing such certification with the division, the division shall, within thirty days after the filing, issue an order providing that such housing accommodation shall not be subject to the provisions of this act upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSIDY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR

RENTAL ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN LITIGATION COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN WHICH THE AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPIENTS OF AID TO DEPENDENT CHILDREN.

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars in each of the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants that such tenant or tenants named on the lease must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars [in each such year] FOR THE TWO PRECEDING CALENDAR YEARS. The division's notification shall require the tenant or tenants to provide the information to the division within sixty days of service upon such tenant or tenants and shall include a warning in bold faced type that failure to respond will result in an order being issued by the division providing that such housing accommodations shall not be subject to the provisions of this act.

2. If the department of taxation and finance determines that the total annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have thirty days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of this act upon expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION SHALL PROMULGATE REGULATIONS WHICH SET FORTH THE MANNER IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

3. In the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order providing that such housing accommodation shall not be subject to the provisions of this act upon the expiration [or] OF the current lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

(d) This section shall apply only to paragraph twelve of subdivision a of section five of this act.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 3. Paragraph (m) of subdivision 2 of section 2 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(m) upon the issuance of an order of decontrol by the division, housing accommodations which[: (1)] are occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars [in each of] PER ANNUM FOR the two preceding calendar years, as defined in and subject to the limitations and process set forth in section two-a of this law[; and (2) have a maximum rent of two thousand dollars or more per month].

S 4. Section 2-a of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as added by chapter 253 of the laws of 1993, subdivision (b) and paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 2-a. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the sublessor shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation [for which the maximum rent is two thousand dollars or more per month] WHICH IS OCCUPIED BY A TENANT OR TENANTS WHOM THE OWNER IN GOOD FAITH BELIEVES HAS A TOTAL AVERAGE ANNUAL INCOME IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall identify all persons referred to in subdivision (a) of this section and shall certify whether the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law and shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded. Such income certification form shall

clearly state that: (i) [only tenants residing in housing accommodations which had a maximum rent of two thousand dollars or more per month are required to complete the certification form; (ii) that] tenants have protections available to them which are designed to prevent harassment; [(iii) that] AND (II) tenants are not required to provide any information regarding their income except that which is requested on the form and may contain such other information the division deems appropriate. The tenant or tenants shall return the completed certification to the owner within thirty days after service upon the tenant or tenants. In the event that the total AVERAGE annual income as certified is in excess of one hundred seventy-five thousand dollars in each such year, the owner may file the certification with the state division of housing and community renewal on or before June thirtieth of such year. Upon filing such certification with the division, the division shall, within thirty days after the filing, issue an order of decontrol providing that such housing accommodations shall not be subject to the provisions of this law as of the first day of June in the year next succeeding the filing of the certification by the owner. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSIDY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR RENTAL ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN LITIGATION COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN WHICH THE AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPIENTS OF AID TO DEPENDENT CHILDREN.

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars in each such year. The division's notification shall require the tenant or tenants to provide the information to the division within sixty days of service upon such tenant or tenants and shall include a warning in bold faced type that failure to respond will result in an order of decontrol being issued by the division for such housing accommodation.

2. If the department of taxation and finance determines that the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have thirty days within which to comment on such verifica-

tion results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order of decontrol providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the filing of the owner's petition with the division. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE REGULATIONS WHICH SET FORTH THE MANNER IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

3. In the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order of decontrol providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the last day on which the tenant or tenants were required to provide the information required by such paragraph. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

(d) This section shall apply only to paragraph (m) of subdivision two of section two of this law.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 5. Section 26-504.1 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

S 26-504.1 Exclusion of accommodations of high income renters. Upon the issuance of an order by the division, "housing accommodations" shall not include housing accommodations which[: (1)] are occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars per annum for each of the two preceding calendar years, as defined in and subject to the limitations and process set forth in section 26-504.3 of this chapter[; and (2) have a legal regulated rent of two thousand dollars or more per month]. Provided, however, that this exclusion shall not apply to housing accommodations which became or become subject to this law (a) by virtue of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred

eighty-nine of the real property tax law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of section four hundred twenty-one-a of the real property tax law, or (b) by virtue of article seven-C of the multiple dwelling law.

S 6. Section 26-504.3 of the administrative code of the city of New York, as added by chapter 253 of the laws of 1993, subdivision (b) and paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 26-504.3 High income rent decontrol. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation [for which the legal regulated rent is two thousand dollars or more per month] WHICH IS OCCUPIED BY A TENANT OR TENANTS WHOM THE OWNER IN GOOD FAITH BELIEVES HAS A TOTAL AVERAGE ANNUAL INCOME IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall identify all persons referred to in subdivision (a) of this section and shall certify whether the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law and shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded. Such income certification form shall clearly state that: (i) [only tenants residing in housing accommodations which have a legal regulated rent of two thousand dollars or more per month are required to complete the certification form; (ii) that] tenants have protections available to them which are designed to prevent harassment; [(iii) that] AND (II) tenants are not required to provide any information regarding their income except that which is requested on the form and may contain such other information the division deems appropriate. The tenant or tenants shall return the completed certification to the owner within thirty days after service upon the tenant or tenants. In the event that the total AVERAGE annual income as certified is in excess of one hundred seventy-five thousand dollars in each such year, the owner may file the certification with the state division of housing and community renewal on or before June thirtieth of such year. Upon filing such certification with the division, the division shall, within thirty days after the filing, issue an order providing that such housing accommodation shall not be subject to the provisions of this [act] LAW upon the expiration of the existing lease. A copy of such

order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSIDY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR RENTAL ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN LITIGATION COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN WHICH THE AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPIENTS OF AID TO DEPENDENT CHILDREN.

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars in each such year. The division's notification shall require the tenant or tenants to provide the information to the division within sixty days of service upon such tenant or tenants and shall include a warning in bold faced type that failure to respond will result in an order being issued by the division providing that such housing accommodation shall not be subject to the provisions of this law.

2. If the department of taxation and finance determines that the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have thirty days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE REGULATIONS WHICH SET FORTH THE MANNER IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

3. In the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division

shall issue, on or before December first of such year, an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the current lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

(d) This section shall apply only to section 26-504.1 of this code.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 7. Subparagraph (j) of paragraph 2 of subdivision e of section 26-403 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(j) Upon the issuance of an order of decontrol by the division, housing accommodations which[: (1)] are occupied by persons who have a total AVERAGE annual income in excess of one hundred seventy-five thousand dollars per annum [in each of] FOR the two preceding calendar years, as defined in and subject to the limitations and process set forth in section 26-403.1 of this chapter[; and (2) have a maximum rent of two thousand dollars or more per month]. Provided however, that this exclusion shall not apply to housing accommodations which became or become subject to this law by virtue of receiving tax benefits pursuant to section four hundred eighty-nine of the real property tax law.

S 8. Section 26-403.1 of the administrative code of the city of New York, as added by chapter 253 of the laws of 1993, subdivision (b) and paragraphs 1 and 2 of subdivision (c) as amended and subdivision (e) as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 26-403.1 High income rent decontrol. (a) For purposes of this section, annual income shall mean the federal [adjusted] gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence other than on a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the sublessor shall be considered.

(b) On or before the first day of May in each calendar year, the owner of each housing accommodation [for which the maximum rent is two thousand dollars or more per month] WHICH IS OCCUPIED BY A TENANT OR TENANTS WHOM THE OWNER IN GOOD FAITH BELIEVES HAS A TOTAL AVERAGE ANNUAL INCOME IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS may provide the tenant or tenants residing therein with an income certification form prepared by the division of housing and community renewal on which such tenant or tenants shall

identify all persons referred to in subdivision (a) of this section and shall certify whether the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each] FOR of the two preceding calendar years. Such income certification form shall state that the income level certified to by the tenant may be subject to verification by the department of taxation and finance pursuant to section one hundred seventy-one-b of the tax law and shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded. Such income certification form shall clearly state that: (i) [only tenants residing in housing accommodations which have a maximum rent of two thousand dollars or more per month are required to complete the certification form; (ii) that] tenants have protections available to them which are designed to prevent harassment; [(iii) that] AND (II) tenants are not required to provide any information regarding their income except that which is requested on the form and may contain such other information the division deems appropriate. The tenant or tenants shall return the completed certification to the owner within thirty days after service upon the tenant or tenants. In the event that the total AVERAGE annual income as certified is in excess of one hundred seventy-five thousand dollars in each such year, the owner may file the certification with the state division of housing and community renewal on or before June thirtieth of such year. Upon filing such certification with the division, the division shall, within thirty days after the filing, issue an order of decontrol providing that such housing accommodations shall not be subject to the provisions of this law as of the first day of June in the year next succeeding the filing of the certification by the owner. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY TENANT WHOSE RENT IS PAYABLE BY DIRECT GOVERNMENT HOUSING SUBSIDY, ANY CURRENTLY EFFECTIVE RENT INCREASE EXEMPTION FOR SENIOR CITIZENS OR PERSONS WITH DISABILITIES AUTHORIZED PURSUANT TO SECTION FOUR HUNDRED SIXTY-SEVEN-B OR FOUR HUNDRED SIXTY-SEVEN-C OF THE REAL PROPERTY TAX LAW, DIRECT PAYMENT OF RENT OR A TWO-PARTY CHECK ISSUED BY A SOCIAL SERVICES DISTRICT OR THE DEPARTMENT OF FAMILY ASSISTANCE, OR RENTAL ASSISTANCE THAT IS PAYABLE PURSUANT TO COURT ORDERS ISSUED IN LITIGATION COMMENCED IN NINETEEN HUNDRED EIGHTY-SEVEN IN A PROCEEDING IN WHICH THE AMOUNT OF SHELTER ALLOWANCE IS AT ISSUE ON BEHALF OF RECIPIENTS OF AID TO DEPENDENT CHILDREN.

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total AVERAGE annual income exceeds one hundred seventy-five thousand dollars in each such year. The division's notification shall require the tenant or tenants to provide the information to the division within sixty days of service upon such

tenant or tenants and shall include a warning in bold faced type that failure to respond will result in an order of decontrol being issued by the division for such housing accommodation.

2. If the department of taxation and finance determines that the total AVERAGE annual income is in excess of one hundred seventy-five thousand dollars [in each of] FOR the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have thirty days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order of decontrol providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the filing of the owner's petition with the division. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. WHERE THE DEPARTMENT OF TAXATION AND FINANCE IS UNABLE TO DETERMINE WHETHER THE TOTAL AVERAGE ANNUAL INCOME IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS, IT SHALL BE PRESUMED THAT THE TOTAL AVERAGE ANNUAL INCOME OF SUCH TENANT IS IN EXCESS OF ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS FOR THE TWO PRECEDING CALENDAR YEARS AND THE PROCEDURES OF THIS PARAGRAPH SHALL APPLY TO SUCH TENANT. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE REGULATIONS WHICH SET FORTH IN THE MANNER IN WHICH SUCH A TENANT MAY REBUT SUCH PRESUMPTION.

3. In the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order of decontrol providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the last day on which the tenant or tenants were required to provide the information required by such paragraph. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

(d) This section shall apply only to subparagraph (j) of paragraph two of subdivision e of section 26-403 of this code.

(e) Upon receipt of such order of decontrol pursuant to this section, an owner shall offer the housing accommodation subject to such order to the tenant at a rent not in excess of the market rent, which for the purposes of this section means a rent obtainable in an arm's length transaction. Such rental offer shall be made by the owner in writing to the tenant by certified and regular mail and shall inform the tenant that such offer must be accepted in writing within ten days of receipt. The tenant shall respond within ten days after receipt of such offer. If the tenant declines the offer or fails to respond within such period, the owner may commence an action or proceeding for the eviction of such tenant.

S 9. This act shall take effect immediately and shall first apply to income certification forms provided by owners to tenants on or after January 1, 2012, provided that:

(a) the amendments to the emergency tenant protection act of nineteen seventy-four made by sections one and two 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;

(b) the amendments to the emergency housing rent control law made by sections three and four of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided in subdivision 2 of section 1 of chapter 274 of the laws of 1946;

(c) the amendments to chapter 4 of title 26 of the administrative code of the city of New York made by sections five and six 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

(d) the amendments to the city rent and rehabilitation law made by sections seven and eight of this act shall remain in full force and effect only as 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.