

# STATE OF NEW YORK

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6123

2019-2020 Regular Sessions

## IN ASSEMBLY

February 28, 2019

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Introduced by M. of A. FITZPATRICK, TAGUE, SALKA -- Multi-Sponsored by  
-- M. of A. MANKTELOW -- 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 Assem-  
bly, 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

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

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1 of determining primary residency, a tenant who is a victim of domestic  
2 violence, as defined in section four hundred fifty-nine-a of the social  
3 services law, who has left the unit because of such violence, and who  
4 asserts an intent to return to the housing accommodation shall be deemed  
5 to be occupying the unit as his or her primary residence. No action or  
6 proceeding shall be commenced seeking to recover possession on the  
7 ground that a housing accommodation is not occupied by the tenant as his  
8 or her primary residence unless the owner or lessor shall have given  
9 thirty days notice to the tenant of his or her intention to commence  
10 such action or proceeding on such grounds.

11 § 2. Subparagraph (f) of paragraph 1 of subdivision a of section  
12 26-504 of the administrative code of the city of New York, as amended by  
13 chapter 422 of the laws of 2010, is amended to read as follows:

14 (f) not occupied by the tenant, not including subtenants or occupants,  
15 as his or her primary residence, as determined by a court of competent  
16 jurisdiction[~~, provided, however that no~~]. For purposes of determining  
17 primary residency, as used in this chapter, the failure to file a New  
18 York city resident income tax return for the two preceding calendar  
19 years (setting forth the housing accommodation as his or her residence)  
20 by an individual required by law to file such a return, shall result in  
21 a finding that the tenant does not occupy the unit as his or her primary  
22 residence; provided, however, that this provision shall not apply to an  
23 individual who has requested an extension of time for payment of tax, or  
24 who is not required to file a resident income tax return, or where any  
25 other factor exists which would excuse the timely filing of a return;  
26 provided further, that the timely filing of the return, alone, shall not  
27 result in a presumption that the individual does occupy the unit as his  
28 or her primary residence or that the filing of an action to determine a  
29 tenant's primary residence shall not preclude such tenant from filing an  
30 amended tax return provided that such amended return is filed within  
31 sixty days of the commencement of the action. further, no action or  
32 proceeding shall be commenced seeking to recover possession on the  
33 ground that a housing accommodation is not occupied by the tenant as his  
34 or her primary residence unless the owner or lessor shall have given  
35 thirty days notice to the tenant of his or her intention to commence  
36 such action or proceeding on such grounds. For the purposes of determin-  
37 ing primary residency, a tenant who is a victim of domestic violence, as  
38 defined in section four hundred fifty-nine-a of the social services law,  
39 who has left the unit because of such violence, and who asserts an  
40 intent to return to the housing accommodation shall be deemed to be  
41 occupying the unit as his or her primary residence. For the purposes of  
42 this subparagraph where a housing accommodation is rented to a not-for-  
43 profit hospital for residential use, affiliated subtenants authorized to  
44 use such accommodations by such hospital shall be deemed to be tenants,  
45 or

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

50 (11) housing accommodations which are not occupied by the tenant, not  
51 including subtenants or occupants, as his or her primary residence, as  
52 determined by a court of competent jurisdiction. For the purposes of  
53 determining primary residency, a tenant who is a victim of domestic  
54 violence, as defined in section four hundred fifty-nine-a of the social  
55 services law, who has left the unit because of such violence, and who  
56 asserts an intent to return to the housing accommodation shall be deemed

1 to be occupying the unit as his or her primary residence. Further, for  
2 purposes of determining primary residency, as used in this chapter, the  
3 failure to file a New York state resident income tax return for the two  
4 preceding calendar years (setting forth the housing accommodation as his  
5 or her residence) by an individual required by law to file such a  
6 return, shall result in a finding that the tenant does not occupy the  
7 unit as his or her primary residence; provided, however, that this  
8 provision shall not apply to an individual who has requested an exten-  
9 sion of time for payment of tax, or who is not required to file a resi-  
10 dent income tax return, or where any other factor exists which would  
11 excuse the timely filing of the return; provided further, that the time-  
12 ly filing of the return, alone, shall not result in a presumption that  
13 the individual does occupy the unit as his or her primary residence or  
14 that the filing of an action to determine a tenant's primary residence  
15 shall not preclude such tenant from filing an amended tax return  
16 provided that such amended return is filed within sixty days of the  
17 commencement of the action. For the purposes of this paragraph, where a  
18 housing accommodation is rented to a not-for-profit hospital for resi-  
19 dential use, affiliated subtenants authorized to use such accommodations  
20 by such hospital shall be deemed to be tenants. No action or proceeding  
21 shall be commenced seeking to recover possession on the ground that a  
22 housing accommodation is not occupied by the tenant as his or her prima-  
23 ry residence unless the owner or lessor shall have given thirty days  
24 notice to the tenant of his or her intention to commence such action or  
25 proceeding on such grounds.

26 § 4. The tax law is amended by adding a new section 171-w to read as  
27 follows:

28 § 171-w. Verification of residence filing address. (1) The commission-  
29 er is authorized to verify to owners of multiple dwellings covered by  
30 the city rent and rehabilitation law, the rent stabilization law of  
31 nineteen hundred sixty-nine and/or the emergency tenant protection act  
32 of nineteen seventy-four whether or not, in a given calendar year, a New  
33 York city or New York state resident income tax return was filed by an  
34 individual who is a tenant in the owner's multiple dwelling and, if so,  
35 the residence address which is set forth on the tax return. Such  
36 verification shall be in writing and shall be considered a certificate  
37 or affidavit for the purposes of rule forty-five hundred twenty of the  
38 civil practice law and rules.

39 (2) The department may charge a reasonable fee, to be determined by  
40 the commissioner, in payment to the department for the expense incurred  
41 in verifying the filing and residence address.

42 (3) The commissioner shall promulgate such rules and regulations as it  
43 deems necessary to carry out the provisions of this section.

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

1 date as such act expires and shall not affect the expiration of such act  
2 as provided in section 17 of chapter 576 of the laws of 1974.