



Legislation Text

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Int. No. 1143-A

By Council Members Dromm, Yeger, Powers, Chin, King, Holden, Levin, Barron and Miller (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to installment agreements for the payment of real property taxes, assessments and other charges

Be it enacted by the Council as follows:

Section 1. Chapter 3 of title 11 of the administrative code of the city of New York is amended by adding a new section 11-322.1 to read as follows:

§ 11-322.1 Hardship installment agreements. a. Definitions. For purposes of this section, the following terms have the following meanings:

Applicant. The term “applicant” means a property owner who files an application for an installment agreement under this section. Such term includes a property owner who has entered into an installment agreement after filing such an application.

Default. The term “default” means that an installment payment required under the installment agreement entered into under this section remains unpaid in whole or in part for six months from the date payment is required to be made, or any other tax or charge that becomes due on the property during the term of such agreement remains unpaid in whole or in part for six months.

Department. The term “department” means the department of finance.

Dwelling unit. The term “dwelling unit” means a unit in a condominium used primarily for residential purposes.

Fair market value. The term “fair market value” means the fair market value of property as determined

by the department or the fair market value as determined by an appraisal obtained by the applicant pursuant to paragraph 4 of subdivision g of this section, provided that such appraisal shall be subject to review, and may be rejected, by the department.

Income. The term “income” means the adjusted gross income for federal income tax purposes as reported on an applicant’s federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions; provided that if no such return was filed for the applicable income tax year, “income” means the adjusted gross income that would have been so reported if such a return had been filed.

Income tax year. The term “income tax year” means the most recent calendar year or fiscal year for which an applicant filed a federal or state income tax return.

Net equity. The term “net equity” means the fair market value of property minus any liabilities outstanding against such property, such as mortgages, outstanding property taxes, water and sewer charges, and any other liens on such property.

Property. The term “property” means real property classified as class one pursuant to section 1802 of the real property tax law or a dwelling unit in a condominium.

Property owner. The term “property owner” means an owner of real property classified as class one pursuant to section 1802 of the real property tax law or of a dwelling unit in a condominium, or other eligible person, as defined in subdivision (i) of section 40-03 of title 19 of the rules of the city of New York, acting on behalf of such owner.

b. A property owner who satisfies the requirements described in subdivision c and d, e or f of this section may enter into an agreement with the department pursuant to this section for the payment in installments of real property taxes, assessments or other charges that are made a lien subject to the provisions of this chapter, except for sewer rents, sewer surcharges or water rents. The entry into an installment agreement pursuant to this section shall not suspend the accrual of interest charged against the property pursuant to section

11-301. A property owner may only have one installment agreement with the department in effect at any one time.

c. Eligibility requirements for an installment agreement under this section. To be eligible to enter into an installment agreement pursuant to this section, an applicant must demonstrate that the following requirements are met:

1. The applicant is a property owner.

2. The property shall have been the primary residence of the applicant for an uninterrupted period of not less than one year immediately preceding the date the application for the installment agreement is submitted and continues to be the primary residence of the applicant through the date the installment agreement is entered into. Hospitalization or a temporary stay in a nursing home or rehabilitation facility for a period of not more than three years shall not be considered a change in primary residence.

3. The combined income of the applicant and of all the additional property owners may not exceed \$58,399 for the income tax year immediately preceding the date of the application for the installment agreement. The department shall promulgate rules that establish a process for an applicant to seek an exception from the requirement that income information from all additional property owners be provided in cases of hardship.

d. Eligibility requirement for senior low-income installment agreement. In addition to the requirements set forth in subdivision c of this section, to be eligible to enter into a senior low-income installment agreement pursuant to subdivision l, an applicant must be 65 years of age or older when the application is submitted.

e. Eligibility requirement for fixed length income-based installment agreement. To be eligible to enter into a fixed length income-based installment agreement pursuant to subdivision m, an applicant must satisfy the requirements set forth in subdivision c of this section.

f. Eligibility requirements for extenuating circumstances income-based installment agreement. In addition to the requirements set forth in subdivision c of this section, for an applicant to be eligible to enter into

an extenuating circumstances income-based installment agreement pursuant to subdivision n of this section, the department must make a finding of extenuating circumstances pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York.

g. Initial application procedure. 1. An initial application for an installment agreement under this section shall include:

(a) for installment agreements that provide for the payment of taxes and charges that will accrue after the date of the installment agreement, a title search identifying all mortgages and other liens on the property; and

(b) the signature of a primary resident of the property, and if such primary resident does not hold an ownership interest of at least 50 percent in the subject property, the signature of any other owner of the property who, in combination with such primary resident, holds an ownership interest of at least 50 percent in such property, consenting to the application for an installment agreement.

2. A complete application must be submitted to, and approved by, the department.

3. An applicant may select a monthly or quarterly payment schedule and may also select the amount that is required to be paid under the applicable installment agreement pursuant to the options available pursuant to subdivision l, m or n.

4. An applicant who is the property owner of a dwelling unit in a condominium may submit an appraisal obtained by such applicant of the fair market value of such dwelling unit provided that:

(a) the valuation date of such appraisal is a date within, and such appraisal shall have been prepared no more than, twelve months prior to submission of an application;

(b) the cost of such appraisal shall be borne by such applicant; and

(c) the cost of such appraisal may not be included in the amount subject to the installment agreement.

h. Renewal. 1. An installment agreement under this section shall terminate unless an applicant files a renewal application each year. At least 60 days before one year from the date such installment agreement was

entered into or renewed, the department shall mail each applicant a renewal application, provided, however, that upon any such renewal application being made by the applicant, any installment agreement then in effect with respect to such applicant shall be deemed renewed until such time as the department shall have found such applicant to be either eligible or ineligible for the renewal of the installment agreement but in no event for more than six additional months.

2. To renew an installment agreement under this section, an applicant must submit a renewal application to the department on or before one year from the date such installment agreement was entered into and each year thereafter for which renewal is sought. To be eligible to renew such agreement, an applicant must demonstrate that:

(a) the property continues to be the primary residence of such applicant and such residence has been uninterrupted since the date the initial installment agreement was entered into; and

(b) the combined income of such applicant and of all the additional property owners does not exceed \$58,399 for the income tax year immediately preceding the date of the renewal of such installment agreement, except that an applicant for the renewal of a fixed length income-based installment agreement pursuant to subdivision m of this section is not required to submit income information.

i. Effects of installment agreement on tax lien and tax lien sale. 1. The execution of an installment agreement pursuant to this section shall not suspend the accrual of liens, interest and other charges against the property, which continue to accrue in accordance with applicable law.

2. A property for which an application has been submitted that contains proof of income and, for a senior low-income installment agreement described in subdivision 1, proof of age, and that is signed, but is otherwise incomplete, shall be withdrawn from the next tax lien sale. Such property, however, may be included in the tax lien sale subsequent to the next tax lien sale if a completed application is not submitted within 45 days from the date of the additional information request notice sent to the applicant by the department or if the completed application is denied.

j. Amount subject to installment agreement. 1. Each approved installment agreement shall set forth terms of repayment, including (i) the frequency of payments, (ii) the percentage of the taxes and charges that forms the basis of the required payment for the senior low-income installment agreement described in subdivision l, or the percentage of the combined income of the property owners for the income tax year immediately preceding the initial application that forms the basis of the required payment for the installment agreement for the fixed length income-based and the extenuating circumstances income-based installment agreements described in subdivision m and n respectively, (iii) the payment schedule and (iv) the payment amount.

2. A lien sold in a tax lien sale before the date of an application for an installment agreement is not eligible to be included in an installment agreement under this section.

3. The applicant may choose to include the cost of the title search required to be submitted with an application pursuant to subparagraph (a) of paragraph 1 of subdivision g of this section in the amount subject to the installment agreement. If an applicant chooses to include such cost, the applicant may either select a title company to conduct the required search and present documentation to the department of the cost, or direct the department to use a title company selected by the department. The department shall pay the cost of the title search and be reimbursed by the applicant through the addition of the cost to the amount subject to the installment agreement. The applicant shall make such reimbursement in the first year of the installment agreement, in monthly or quarterly payments, consistent with the payment frequency selected for the installment agreement. The cost of the title search shall bear interest at the same rate as the interest on unpaid real property tax as provided in section 11-224.1 of the code.

4. (a) Any time the amount of the liens on a property subject to an installment agreement under this section exceeds 25 percent of the net equity in such property, the applicant shall pay all taxes and charges imposed against the property that exceed 25 percent of the net equity in the property as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement.

(b) Notwithstanding subparagraph (a) of this paragraph and provided that section 581 of the real property tax law is in effect in the same form as such section was in effect as of the effective date of the local law that added this section, for property that is a dwelling unit in a condominium subject to an installment agreement under this section and for which an appraisal has not been obtained pursuant to paragraph 4 of subdivision g of this section, any time the amount of the liens subject to such agreement exceeds 50 percent of the net equity in such property, the applicant shall pay all taxes and charges imposed against such property that exceed 50 percent of the net equity in such property as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement. For property that is a dwelling unit in a condominium and for which an appraisal has been obtained pursuant to paragraph 4 of subdivision g of this section, any time the amount of the liens subject to an installment agreement under this section exceeds the higher of (i) 50 percent of the net equity in such property based on the fair market value determined by the department; or (ii) 25 percent of the net equity in such property based on the fair market value determined by the appraisal obtained by the applicant, the applicant shall pay all taxes and charges imposed against such property that exceed the higher of the amounts described by clause (i) and (ii) of this subparagraph as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement.

(c) The department shall provide each applicant with a written projection at the time the installment agreement is entered into as to when the 25 or 50 percent threshold, as determined pursuant to subparagraphs (a) and (b) of this paragraph, will be exceeded. The department shall also notify each property owner in writing when the amount of the liens exceeds such threshold. Failure by the department to provide an applicant with such projection or to notify a property owner when the amount of the liens exceeds the applicable threshold, however, shall not affect the validity of the installment agreement that has been entered into, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to provide such projection or such notification.

5. If at any time the department determines that the fair market value of a property subject to an

installment agreement under this section has increased, an applicant may request that the net equity in such property be recalculated and the net equity amount included in such installment agreement be adjusted to reflect the recalculated net equity in such property.

6. If the combined income of all of the property owners exceeds \$58,399 for the income tax year immediately preceding the date of making a renewal application pursuant to subdivision h of this section, the applicant shall pay all taxes and charges imposed against the property after the date of such renewal application as such taxes and charges become due, in addition to the payment amount set forth in such installment agreement.

k. Termination of installment agreement. 1. An installment agreement shall be terminated when any of the following occurs:

(a) The property whose liens are the subject of such installment agreement is no longer the primary residence of the applicant. An applicant whose installment agreement has been terminated because of such reason may apply to enter into an installment agreement pursuant to section 11-322.

(b) The fixed term of the installment agreement expires. An applicant whose installment agreement has been terminated because of such expiration may apply to enter into an installment agreement pursuant to section 11-322 or to this section.

(c) The applicant is deceased.

(d) The applicant opts out of an installment agreement without a fixed term as described in paragraph 1 of subdivision l of this section. An applicant who opts out of such agreement may apply to enter into an installment agreement pursuant to section 11-322 or to this section.

(e) The applicant does not file a timely renewal application in accordance with the provisions of subdivision h of this section.

(f) The applicant is in default and has not cured such default as provided in subparagraph (a) of paragraph 3 of this subdivision prior to the next tax lien sale.

(g) The applicant has defaulted on the installment agreement and has cured such default by entering into a new installment agreement pursuant to clause (2) or (3) of subparagraph (a) of paragraph 3 of this subdivision.

2. If an installment agreement is terminated, all taxes and charges that accrued before such termination are required to be paid. If such taxes and charges are not paid within nine months of such termination, the tax lien or tax liens on such property may be sold. Notwithstanding the preceding sentence, if an agreement is terminated pursuant to subparagraph (c) of paragraph 1 of this subdivision, a surviving spouse has 18 months from the death of the applicant to pay all taxes and charges on such property before the tax lien or tax liens on such property may be sold. If such surviving spouse is a property owner he or she may enter into a separate installment agreement pursuant to section 11-322 or subdivision l, m or n of this section, as long as he or she meets the eligibility requirements for the respective installment agreement.

3. Cure of default. (a) An applicant may cure a default by:

(1) bringing all installment payments and all current charges, including but not limited to any interest and fees, that are outstanding at the time of the default to a current status prior to the date of the tax lien sale;

(2) entering into a new installment agreement with a down payment of 20 percent, or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of such sale; or

(3) entering into a new installment agreement under this section if the department has made a finding of extenuating circumstances pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York.

(b) If a default is not cured prior to the date of the tax lien sale, such applicant shall not be eligible to enter into an installment agreement for the subject property for five years, unless the department has made a finding of extenuating circumstances pursuant to the process described in paragraph (4) of subdivision (e) of

section 40-03 of title 19 of the rules of the city of New York.

(c) Notwithstanding the prohibition in subparagraph (b) of this paragraph against entering into an installment agreement for the subject property for five years, an applicant who has defaulted on an installment agreement and whose lien has been sold and, after the sale of the lien, whose property on which the lien was sold is subject to another tax lien that is eligible to be sold, may apply to enter into another installment agreement with respect to such other lien before the end of such five-year period, provided that such applicant makes a down payment of 20 percent, or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of the tax lien sale. An applicant shall not be eligible to enter an installment agreement with a down payment under this subparagraph more than once for the subject property.

(d) If a property owner who has entered into an installment agreement with the department pursuant to this section fails to make a payment pursuant to such agreement, the department shall, after the first missed payment, mail a letter or send an email, when such address is known, to the property owner stating that such owner is at risk of being in default of such agreement. The letter or email shall be sent after the first missed payment if the department has not received payment within two weeks of the due date. Failure by the department to mail such letter or send such email, however, shall not affect the validity of the installment agreement that has been entered into, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to mail such letter or send such email.

1. Senior low-income installment agreement. 1. At the option of the applicant, a senior low-income installment agreement may provide for payments for a fixed period of time or for payments without a fixed period of time. If the applicant selects an installment agreement with a fixed time period, the applicant may select the term of the agreement. The applicant may switch from an installment agreement without a fixed time period to an installment agreement with a fixed time period, or from an installment agreement with a fixed time

period to an installment agreement without a fixed time period, at any point.

2. A senior low-income installment agreement shall provide for the payment of both a percentage of taxes and charges that have accrued, if any, and a percentage of taxes and charges that will accrue after the date of the installment agreement. The applicant may elect to pay an installment amount based on zero percent, 25 percent, 50 percent or 75 percent of the annual taxes and charges that have accrued, if any, and that will accrue. If the applicant selects an agreement with a fixed time period, the required payment shall be based on the percentage selected and the term selected. If the applicant selects an agreement without a fixed time period, the required payment shall be based on the percentage selected for prospective taxes and charges and a partial or full payment of the percentage of taxes and charges that have accrued, if any. The applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

m. Fixed length income-based installment agreement. 1. At the option of the applicant, a fixed length income-based installment agreement pursuant to this subdivision may provide for the payment of (i) only taxes and charges that have accrued or (ii) taxes and charges that have accrued and taxes and charges that will accrue over the next fiscal year. If option (i) is selected, the applicant shall pay all taxes and charges that become due on the property after the installment agreement is entered into in addition to the payment schedule provided in the installment agreement. If option (ii) is selected, the applicant shall pay all taxes and charges that will accrue on the property after the installment agreement has been in effect for one year in addition to the payment schedule provided in the installment agreement.

2. The annual payment amount required pursuant to an installment agreement described by this subdivision shall be based on a percentage of the combined income of all of the property owners for the income tax year immediately preceding the initial application for such installment agreement. The applicant may select a percentage of two percent, four percent, six percent or eight percent of such combined income. The installment payment shall be calculated by dividing the annual payment amount by 12 or four, depending on

whether a monthly or quarterly payment schedule is selected. The term of the agreement shall be calculated by dividing the taxes and charges included in the agreement pursuant to paragraph 1 of this subdivision by the installment payment determined by the calculation described in this paragraph.

3. An applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

n. Extenuating circumstances income-based installment agreement. 1. An extenuating circumstances income-based installment agreement shall provide for the payment, during the period of such agreement, of a percentage of taxes and charges that have accrued on the property and taxes and charges that accrue after the date of the installment agreement.

2. The annual payment amount required pursuant to an installment agreement described by this subdivision shall be based on a percentage of the combined income of all of the property owners for the income tax year immediately preceding the initial application for an installment agreement. The applicant may select a percentage of two percent, four percent, six percent, or eight percent of such combined income. Such installment payment shall be calculated by dividing the annual payment amount by 12 or four, depending on whether a monthly or quarterly payment schedule is selected. The installment agreement shall be for a term of one year but may be extended on a yearly basis if the department determines that the extenuating circumstances continue.

3. An applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

o. After an applicant has entered into an installment agreement with the department pursuant to this section, the department shall record the entry of such agreement on the automated city register information access system. Failure by the department to record such agreement, however, shall in no manner affect the validity of such agreement, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to record.

p. All installment agreements executed pursuant to this section on or after the effective date of the local law that added this subdivision shall include:

1. a statement that if payments required from an applicant pursuant to such an agreement are not made for a period of six months, such applicant shall be in default of such agreement, and the tax lien or tax liens on the subject property may be sold, provided, however, that such default may be cured upon such applicant's bringing all installment payments and all current charges that are outstanding at the time of the default to a current status, which shall include, but not be limited to, any outstanding interest and fees, prior to the date of the tax lien sale;

2. a notification that if such default is not cured prior to the date of the tax lien sale, such property owner shall not be eligible to enter into an installment agreement for the subject property for five years, unless a finding of extenuating circumstances has been made by the department pursuant to the process described in paragraph (4) of subdivision (e) of section 40-03 of title 19 of the rules of the city of New York;

3. the definition of extenuating circumstances pursuant to such paragraph;

4. a statement describing the conditions under which the property owner may be eligible, after default, to enter into another installment agreement in accordance with paragraph 3 of subdivision k of this section; and

5. the date by which the applicant must submit a renewal application each year.

q. No later than January 31, 2020 and every January 31 thereafter, the department shall submit to the speaker of the council a report on the usage of the installment agreements set forth in this section in the prior calendar year, including, but not limited to the following data, disaggregated by installment agreement type:

1. the number of new installment agreements executed;

2. the number of installment agreements in effect on December 31 of each year;

3. the number of applications for installment agreements received, the number of applications not approved, and the reasons for disapproval;

4. for the senior low-income installment agreements, the number of new installment agreements

executed at zero percent, 25 percent, 50 percent and 75 percent;

5. for the fixed length and extenuating circumstances income-based installment agreements, the number of new installment agreements executed at two percent, four percent, six percent or eight percent;

6. the average amount of property taxes and charges addressed by the installment agreement;

7. the number of installment agreements that entered into default, the number of defaults that were cured and the method by which they were cured;

8. the number of installment agreements that were terminated, by reason of termination;

9. the number of installment agreements that were renewed, including whether such renewal occurred before or during the six-month period described in paragraph 1 of subdivision h of this section; and

10. the number of installment agreements where the amount of liens on the subject property exceeded the applicable percent of the net equity in such property.

r. The department shall publicize the availability of the installment agreements set forth in this section so as to maximize public awareness of such agreements.

§ 2. Subdivision g of section 11-320 of the administrative code of the city of New York, as added by local law number 15 for the year 2011, is amended to read as follows:

g. No later than one hundred twenty days after the tax lien sale, the commissioner of finance shall submit to the council a list of all properties, identified by block and lot, noticed for sale pursuant to subdivision b of this section. Such list shall also include a description of the disposition of such properties that shall include, but not be limited to, whether an owner entered into a payment plan with the city pursuant to section 11-322 or 11-322.1 of this chapter, whether an owner satisfied the tax lien or liens, whether ownership of the property was transferred, provided that such information is available to the city, or whether the property was distressed, as defined in subdivision four of section 11-401 of this title, or removed from the sale pursuant to the discretion of the commissioner of the department of housing preservation and development.

§ 3. Paragraph iii of subdivision j of section 11-320 of the administrative code of the city of New York,

as added by local law 14 for the year 2015, is amended to read as follows:

(iii) installment agreement information, including informing attendees in such outreach sessions of their option to enter into an installment agreement for exclusion from the tax lien sale with no down payment, [and their option to enter such agreement for a term not more than ten years] with options for income-based installment agreements or installment agreements with a term of up to ten years;

§ 4. Section 11-321 of the administrative code of the city of New York, as amended by local law number 26 for the year 1996, is amended to read as follows:

§ 11-321 Continuation of sale; notice required. A sale of a tax lien or tax liens may be continued from time to time, if necessary, until all the tax liens on the property so advertised and noticed shall be sold unless such sale is canceled or postponed in accordance with section 11-322 or 11-322.1 of this chapter. If a sale of a tax lien or tax liens is continued, the commissioner of finance, or his or her designee, shall give such notice as is practicable of such continuation.

§ 5. This local law takes effect March 1, 2019, except that the department of finance may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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