

What taxpayers need to know about the proposed NYC pied-à-terre tax rules

By Glenn Newman, Esq., Greenberg Traurig LLP*

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New York City has proposed rules to implement a pied-à-terre tax surcharge on certain high-value residential properties (with a market value of \$5 million or more) that do not serve as a primary residence.

The proposed rules look beyond direct ownership to include economic interests held through partnerships, limited liability companies, corporations, and trusts.

The New York State budget added Article 30-C to the Tax Law “Surcharge On Property That Does Not Serve As a Primary Residence” and added Chapter 32 to Title 11 of the New York City Administrative Code. The proposed rules set out detailed standards and procedures for determining ownership, audit authority, and — critically — whether a property qualifies as a primary residence.

The proposed rules do not address a challenge to the department’s valuation of the residential unit. Presumably, the actual sale at fair market value, an appraisal, or comparable sales analysis would be needed to successfully challenge the value determined by the Department of Finance.

The commissioner would have broad authority to audit covered properties and verify primary residence certifications for up to six years.

The proposed rules place significant weight on objective documentation and would create a structured process for annual determinations, appeals, and enforcement. As a result,

affected property owners should evaluate both their ownership structures and supporting records in light of the proposed framework.

Ownership and scope

The proposed rules look beyond direct ownership to include economic interests held through partnerships, limited liability companies, corporations, and trusts. In certain cases, majority interest holders may be treated as “covered owners,” depending on how the property is held (e.g., through undivided fee interests or complete ownership of shares).

The proposed rules prioritize objective evidence over subjective intent in determining primary residence status.

Transfers of ownership interests would be tied to the date of deed conveyance or interest transfer, providing clarity on when responsibility for the surcharge would attach.

Audit authority and penalties

The commissioner would have broad authority to audit covered properties and verify primary residence certifications for up to six years. This authority includes the ability to subpoena documents and testimony.

Indirect ownership through entities or trusts can still trigger the surcharge.

The penalty framework is significant. Taxpayers may face additional surcharges where certifications are inaccurate due to negligence or bad faith, including heightened penalties for undervaluation or structuring transactions to avoid the tax. The proposed rules also provide formal procedures for hearings and appeals, but strict timelines would apply.

Primary residence determination

A central feature of the proposal is the determination of whether a property qualifies as a primary residence. The department would rely first on tax return data identifying the property as the owner's primary home. Where that information is unavailable, taxpayers would be required to provide alternative documentation.

Annual determinations and short appeal windows (30 days) require taxpayers to monitor notices and maintain consistent documentation.

Acceptable proof would generally include:

- (1) A tax return listing the property as the taxpayer's primary residence, or
- (2) At least two supporting documents, such as a driver's license, voter registration, or other government-issued identification showing the property address.

Additional documentation would be required in certain situations, including:

- (1) **Family members:** birth certificates or affidavits
- (2) **Lessees or sublessees:** arm's length lease agreements and proof of occupancy (e.g., utility bills or insurance)

- (3) **Entity owners:** governing documents and affidavits confirming ownership interests
- (4) **Trusts:** trust agreements and trustee certifications

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Key takeaways (if the proposed rules take effect)

- (5) **Documentation will be critical.** The proposed rules prioritize objective evidence over subjective intent in determining primary residence status.
- (6) **Entity structures may create exposure.** Indirect ownership through entities or trusts can still trigger the surcharge.
- (7) **Enforcement would likely be robust.** The proposed audit and penalty framework increases the risk of scrutiny and financial exposure.
- (8) **Proactive planning is essential.** Annual determinations and short appeal windows (30 days) require taxpayers to monitor notices and maintain consistent documentation.

About the author



Glenn Newman is an attorney at **Greenberg Traurig LLP** where he handles tax planning, controversy, audits and litigation involving a range of state and local taxes. Prior to re-entering private practice, he was president of the New York City Tax Commission and the NYC Tax Appeals Tribunal. He is based in New York and can be reached at newmang@gtlaw.com. This article was originally published June 9, 2026, on the firm's website. Republished with permission.

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