

Private Housing Finance Law 11-244

§ 11-244 Tax exemption and abatement for rehabilitated buildings. a. As used in this section, the following terms shall have the following meanings:

1. "Eligible real property" shall mean:

(i) any class B multiple dwelling;

(ii) any class A multiple dwelling used for single room occupancy pursuant to section two hundred forty-eight of the multiple dwelling law which contains no more than twenty-five percent class A dwelling units which contain lawful sanitary and kitchen facilities within the dwelling unit, provided that in the case of a multiple dwelling containing ten dwelling units or less, up to forty percent of the dwelling units may be class A units;

(iii) not-for-profit institutions with sleeping accommodations.

Notwithstanding the foregoing, eligible real property shall not include college and school dormitories, club houses, or residences whose occupancy is restricted to an institutional use such as housing intended for use primarily or exclusively by the employees of a single company or institution. A building is an eligible real property only if it qualifies as such after completion of the eligible improvements, but need not have been an eligible real property prior to the eligible improvements.

2. "Eligible improvements" shall be limited to the following categories of work, provided further that such work shall be in conformity with all applicable laws:

(i) replacement of a boiler or burner or installation of an entire new heating system;

(ii) replacement or upgrading of electrical system;

(iii) replacement or upgrading of elevators;

(iv) installation or replacement or upgrading of the plumbing system, including water main and risers;

(v) replacement or installation of walls, ceilings, floors or trim where necessary;

(vi) replacement or upgrading of doors, installation of security devices and systems;

(vii) installation, replacement or upgrading of smoke detectors, fire alarms, fire escapes, or sprinkler systems;

(viii) replacement or repair of roof, leaders and gutters;

(ix) replacement or installation of bathroom facilities;

(x) installation of wall and pipe insulation;

(xi) replacement or upgrading of street connections for water or sewer services;

(xii) replacement or installation of windows, or installation of window gates or guards;

(xiii) installation or replacement of boiler smoke stack;

(xiv) pointing, waterproofing and cleaning of entire building exterior surface;

(xv) improvements designed to conserve the use of fuel, electricity or other energy sources;

(xvi) work necessary to effect compliance with all applicable laws including but not limited to the multiple dwelling law, the New York city housing maintenance code and the building code; and

(xvii) improvements unique to congregate living facilities, as defined by rules and regulations promulgated by the department of housing preservation and development.

3. "Existing dwelling" shall mean any eligible real property in existence prior to the commencement of eligible improvements, for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year immediately preceding the commencement of construction of such eligible improvements.

4. "Commencement of eligible improvement" shall mean the beginning of any physical operation undertaken for the purpose of making eligible improvements to eligible real property.

5. "Completion of eligible improvement" shall mean the conclusion or termination of any physical operation referred to in the preceding paragraph, to an extent or degree which renders an eligible property capable of use for the purpose for which the improvements were intended.

6. "Permanent resident" shall mean a person who has resided in eligible real property for six months or more; has a lease or other rental agreement for a term of six or more months; or has requested a lease pursuant to the provisions of the rent stabilization code for housing accommodations located in hotels.

b. Any increase in the assessed valuation of eligible real property shall be exempt from taxation for local purposes for a period of thirty-two years to the extent such increase results from eligible improvements, provided that:

(i) the eligible improvements are commenced after July first, nineteen hundred eighty, and prior to December thirty-first, two thousand eleven, and are completed within thirty-six months from commencement;

(ii) the department of housing preservation and development determines and certifies the cost, qualification and eligibility of any improvement for benefits of this section;

(iii) the exemption may commence no sooner than the July first following the filing with the department of finance of a certification of eligibility issued by the department of housing preservation and development for benefits of this section; provided, however, that if the rehabilitation is carried out with substantial government assistance as part of a program for affordable housing the exemption may commence no sooner than the July first following the commencement of construction of eligible improvements;

(iv) immediately prior to, and during, the construction of eligible improvements, not less than fifty percent of the dwelling units in such eligible real property are occupied by permanent residents; provided that such occupancy requirement shall not apply to a vacant, governmentally owned multiple dwelling which had been vacant for not less than two years prior to the commencement of construction of eligible improvements, nor to a vacant multiple dwelling where the eligible improvements are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing;

(v) no outstanding real estate taxes, water and sewer charges, payments in lieu of taxes or other municipal charges are due and owing as of the tax quarter immediately preceding the commencement of tax exemption pursuant to this section; provided that an applicant aided pursuant to the provisions of the private housing finance law shall have such application accepted by the tax commission if there are no outstanding real estate, water and sewer taxes due and owing as of the last day of the tax quarter preceding commencement of construction of eligible improvements;

(vi) except in the case of eligible real property which is receiving

or has received assistance pursuant to a governmental rent subsidy program or which is owned by a not-for-profit corporation or by a wholly owned subsidiary of a not-for-profit corporation and which is receiving or has received assistance pursuant to a governmental loan subsidy program, as defined by the rules and regulations promulgated by the department of housing preservation and development, for the construction of eligible improvements, the initial rent after completion of eligible improvements, for ninety percent of the total number of dwelling units occupied by permanent residents in a class A or class B multiple dwelling other than apartments shall not exceed the greater of either the amount of any governmental rental assistance received by an occupant or seventy-five percent of the rent which is permitted to be charged for zero-bedroom units on the moderate rehabilitation fair market rent schedule as determined by the United States department of housing and urban development for the housing assistance payments program under section eight of the national housing act;

(vii) no person residing in eligible real property prior to or during the construction of eligible improvements shall be required by the owner to vacate the eligible real property solely in order to perform the eligible improvements or any related work.

c. Eligible real property which qualifies for exemption from taxation for local purposes for eligible improvements shall also be eligible for an annual abatement of real property taxes in an amount not to exceed twelve and one-half percent of the reasonable cost of eligible improvements certified by the department of housing preservation and development, which abatement may commence on the first day of the first tax quarter following the filing with the department of finance of a certification of eligibility issued by the department of housing preservation and development for benefits of this section; provided, however, that if the rehabilitation is carried out with substantial government assistance as part of a program for affordable housing the abatement may commence no sooner than the first day of the first tax quarter following the commencement of construction of eligible improvements, provided further that:

(i) the annual abatement shall not exceed the amount of taxes otherwise payable in the corresponding year;

(ii) the period during which such abatement is effective shall not exceed twenty consecutive years from the date such abatement first becomes effective; and

(iii) the total abatement shall not exceed the lesser of one hundred fifty percent of the certified reasonable costs of eligible improvements or the actual costs as determined by the department of housing preservation and development pursuant to its rules and regulations.

d. During the period of tax exemption or abatement pursuant to this section, each of the following shall be a condition precedent to the continuation of the exemption and/or abatement:

(i) compliance with all applicable provisions of law, including but not limited to the multiple dwelling law, the building code and the housing maintenance code;

(ii) all dwelling units, except owner occupied units, shall be subject to the emergency housing rent control law or the local housing rent control act or the tenant protection act of nineteen hundred seventy-four, or any local laws enacted pursuant thereto or the rent stabilization law of nineteen hundred sixty-nine; provided, however, that the department of housing preservation and development may exempt from this requirement dwelling units that are not occupied by permanent residents in those buildings owned by a not-for-profit corporation and

which are improved with the aid of a rehabilitation loan from any government agency or instrumentality or operated pursuant to a contract with a governmental entity.

(iii) eligible real property receiving tax exemption or tax abatement benefits under this section shall not receive tax exemption or tax abatement for new construction or rehabilitation under any other provision of law;

(iv) the eligible improvements shall not be used as the basis for any application for rent increases and the owner shall file a statement to such effect with the department of housing preservation and development and with any appropriate rent regulatory agency, provided, however, that rents of units improved with the aid of a rehabilitation loan from any governmental agency or instrumentality may within the limitations established by this section be increased pursuant to the rules and regulations of the department of housing preservation and development.

(v) A minimum of seventy-five percent of the dwelling units shall be rental units occupied by permanent residents; provided, however that the department of housing preservation and development may exempt from this requirement those buildings improved with the aid of a rehabilitation loan from any governmental agency or instrumentality or operated pursuant to a contract with a governmental entity.

e. During the period of tax exemption or abatement pursuant to this section, the owner shall submit an annual certification to the department of housing preservation and development in the form prescribed by such department. Failure to submit such certification in any given year may result in the revocation of benefits. The certification shall include the following:

(i) the total number of dwelling units within the eligible real property and the total number of dwelling units occupied by permanent residents;

(ii) the number of dwelling units subject to the provisions of the emergency housing rent control act, the emergency tenant protection act of nineteen hundred seventy-four or any local laws enacted pursuant thereto; the emergency housing rent control law or the rent stabilization law of nineteen hundred sixty-nine; and

(iii) all such other information required by the department of housing preservation and development.

f. Any tax exemption or tax abatement authorized pursuant to this section may be revoked or reduced by the department of housing preservation and development or by the department of finance of the city of New York at any time during the authorized term of such tax exemption or tax abatement upon a finding by either department that:

(i) the application for benefits pursuant to this section or the annual certification required hereunder contains a false statement or false information as to a material matter, or omits a material matter, in which case the revocation or reduction may be retroactive to the commencement of benefits pursuant to this section;

(ii) real estate taxes, water, sewer or other municipal charges, or payments in lieu of said taxes or charges are, and have remained, due and owing for more than one year, in which case the revocation or reduction may be retroactive to the commencement of benefits pursuant to this section, provided that in no event shall revocation be effective prior to the date such taxes or charges were first due and payable; or

(iii) the eligible real property fails to comply with one or more of the provisions or requirements of this section.

g. Application forms for the benefits of this section shall be filed with the tax commission within the time periods to be established by

rules and regulations promulgated by the department of housing preservation and development, pursuant to subdivision i of this section. The tax commission shall certify to the department of finance the amount of taxes to be abated, pursuant to the certification of the department of housing preservation and development as herein provided. No such application shall be accepted unless accompanied by a copy of the certificate of the department of housing preservation and development both as to reasonable cost and as to eligibility as provided in subdivision b of this section.

h. No owner of a dwelling to which the benefits of this section apply, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, sex, disability, marital status, age, religion or sexual orientation any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision shall mean a physical, mental or medical impairment resulting from anatomical, physiological, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques. Nothing in this subdivision shall restrict such consideration in the availability of housing accommodations for the purpose of providing for the special needs of a particular group.

i. The department of housing preservation and development shall determine and certify the reasonable cost of any such conversions, alterations or improvements and eligibility for the benefits of this section and for that purpose may adopt rules and regulations, administer oaths to and take the testimony of any person, including, but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such bills, books, papers or other documents as it shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such conversions, alterations or improvements, may establish maximum allowable costs of specified units, fixtures or work in such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements before the start thereof. Applications for certification shall include all bills and other documents showing the cost of construction or such other evidence of such cost as shall be satisfactory to the department of housing preservation and development, including, without limitation, certification of cost by a certified public accountant in accordance with generally accepted accounting principles. Each additional agency to which functions are assigned by this section may adopt and promulgate rules and regulations for the effectuation of the purposes of this section.

j. The department of housing preservation and development may require a filing fee in an amount as provided by the rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision i of this section.

k. Any person who shall knowingly and wilfully make any false statements as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days, or both.

l. If any provision of this section or its application to any person shall be held invalid, the remainder of this section and the applicability of its provisions to other persons or circumstances shall not be affected thereby.

