

REPEALED NEW YORK STATE TAX ON GAINS DERIVED FROM CERTAIN REAL PROPERTY TRANSFERS

The gains tax was repealed for transfers of real property occurring on or after June 15, 1996. The gains tax provisions, summarized in the 1996 Diary, remain in effect for transfers that occurred prior to that date. Moreover, for partial or successive transfers, including cooperative and condominium plans, special closeout provisions apply to the final computation of tax on such transfers.

The repealed Real Property Transfer Gains Tax, unpopularly known as the "Cuomo Tax," was a 10 percent tax on the gain derived from the transfer of real property located in New York State. The tax applied to a broad range of real estate transfers, including transfers of interests in entities owning real estate, where the aggregate consideration for the transfer exceeded \$1,000,000.

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

Summary by

Seth W. Pinsky, President

New York City Economic Development Corporation (NYCEDC) is the City's primary vehicle for promoting economic growth in each of the five boroughs. NYCEDC works to stimulate investment in New York and broaden the City's tax and employment base, while meeting the needs of businesses large and small. To realize these objectives, NYCEDC uses its real estate and financing tools to help companies that are expanding or relocating anywhere within the City. NYCEDC also manages improvements to the City's transportation infrastructure.

For companies seeking a new location, NYCEDC promotes the City's central business districts and when appropriate sells and leases vacant City-owned property throughout the five boroughs. In addition, NYCEDC encourages the use of strategic and/or underutilized property for economic development purposes. NYCEDC's other real estate related activities include: conducting plan-

ning and feasibility studies, performing financial analyses, guiding projects through necessary public approvals and packaging city programs and incentives.

NYCEDC also helps eligible businesses meet their financing needs for property acquisition, new equipment, renovation, working capital and other purposes through low-cost tax-exempt bonds. Double and triple tax-exempt revenue bonds are issued by the New York City Industrial Development Agency, an entity administered by NYCEDC, for various types of organizations and transactions.

To help improve the distribution of goods within and outside the five boroughs, NYCEDC manages the redevelopment of the city's rail freight lines, food markets, and maritime and aviation facilities.

For more information on how NYCEDC can help your business, call (212) 312-3600 or contact us by e-mail at info@nycedc.com.

City Environmental Quality Review (CEQR)

CEQR is New York City's implementation of New York State's Environmental Quality Review Act (SEQRA). Local government agency actions such as zoning changes and special permits must be reviewed for their impact on the environment. Among the impacts studied are the effect on air quality, natural resources, solid waste, noise, infrastructure, energy, transportation, historic and archaeological resources, open space and neighborhood character. The agency principally responsible for approving the proposed action is the "lead agency" (which for most land use

actions is the City Planning Commission) and it determines the environmental significance of the action. For most land use actions, the applicant will be required to submit to the lead agency an environmental assessment statement, which forms the basis for the agency's determination as to whether or not an environmental impact statement ("EIS") is required. An EIS, typically a substantial undertaking, will be required when the lead agency determines that the action "may have a significant adverse affect on the environment".

TAX EXEMPTIONS AND ABATEMENTS For Industrial and Commercial Structures

by Joel R. Marcus, Esq.
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The industrial and Commercial Incentive Program (ICIP) was created in 1984 to encourage new construction and renovation of existing industrial and commercial buildings throughout the City. While the ICIP enabling law expired on June 30, 2008, it was recently

extended to govern applications filed prior to July 1, 2008 where the first building permit for the project has been issued by the Department of Buildings prior to August 1, 2008. The first building permit in this case may include a demolition permit. Any application filed for

industrial and commercial construction benefits after June 30, 2008 will no longer qualify for benefits under ICIP but may qualify for benefits under a successor benefit program known as the Industrial and Commercial Abatement Program (ICAP). While many of the features of ICIP have been retained in the successor program, there are a variety of significant differences between the 2 programs.

Determination of Appropriate Exemption:

The ICIP temporarily exempts from the real property tax the portion of a property's assessed value attributable to new construction or renovation. The ICAP abatement base is generally equal to the difference between the assessed value of the building after completion of construction and 115 percent of the building's assessed value on the tax roll with a taxable status date preceding the issuance of the building permit for the project. The amount of ICIP tax exemption and ICAP abatement and the length of the exemption period is determined by the type and location of the project.

A. Commercial Projects:

For commercial projects, the city is divided into the following six basic development areas, described below.

1. Deferral Area:

ICIP applications filed prior to January 1, 1993 applicable to new construction south of 96th Street in Manhattan were limited to the area bound by 59th Street, the Hudson River, Liberty Street, Church Street, Fulton Street, the East River, and a line running west between 33rd and 34th Streets to a point 150 feet west of 6th Avenue, north to a point between 41st and 42nd Streets, west to a point 150 feet west of 8th Avenue, and north to 59th Street.

* Taxes on the assessed value of new construction (the "exemption base") in the above described section of Manhattan were fully deferred for three years. Beginning in the fourth year, the deferral is reduced by one fifth of the exemption base for each of the following five years. Deferred taxes are later repaid in 10 annual payments beginning in the 11th year of the program.

As of January 1, 1993, the deferral area was eliminated. With the exception of "smart office buildings" in lower Manhattan new commercial construction south of 96th Street in Manhattan is ineligible for ICIP and ICAP benefits.

2. Renovation Area (South of 59th Street Only):

ICIP benefits applicable to renovation construction work are available anywhere south of 59th Street.

Taxes attributable to renovation construction

in the renovation area are fully exempt for eight years after an owner receives a certificate of eligibility for the program. The full exemption is followed by a four year partial exemption beginning at 80 percent of the exemption base and declining by 20 percentage points each year.

Under ICAP, the renovation area of Manhattan is divided into 3 distinct areas. Projects in the area of lower Manhattan bounded generally by Murray Street, South Street, Battery Place and West Street and the Special Garment Center District may qualify for a 12-year abatement which is equal to 100 percent of the abatement base for eight years followed by a four year phase-out at 20 percent per year for years 9-12. Projects in the remainder of the renovation area are eligible for a 10-year abatement which is equal to 100 percent of the abatement base for 5 years which declines by 20 percent annually for years 6-9 and is equal to 20 percent of the abatement base for both years 9 and 10. Retail space in excess of 5% of the building's floor area in both the Garment District and the remainder of the renovation area other than lower Manhattan, is not eligible for ICAP benefits. There is no restriction on retail space in the lower Manhattan renovation area.

3. Excluded Area:

No commercial construction benefits are available under either ICIP or ICAP for projects in the area of Manhattan south of 96th Street and North of 59th Street.

4. Regular Benefit Area:

Portions of Manhattan north of 96th Street and in the four other boroughs are defined as a regular benefit area under ICIP and ICAP. Under ICIP eligible new construction or renovation in this area is fully exempt from the real property tax for eleven years. Beginning in the twelfth year, the exemption base falls by 20 percentage points per year until the exemption is over.

Under ICAP, eligible projects will qualify for full abatement benefits for 11 years decreasing by 20 percent per year for years 12-15.

5. Special Benefit Area:

Certain economically distressed areas, such as portions of Harlem, the South Bronx, Bedford-Stuyvesant and South Jamaica are deemed special exemption areas. Under ICIP, eligible construction or renovation in these areas receive a full exemption for sixteen years. The exemption base then declines by ten percentage points each year until the exemption is over.

Under ICAP, commercial construction work in a special area is eligible for a 25-year abate-

ment. If the building contains more than 10 percent retail space, the excess retail space is eligible for a 15-year abatement benefit. In both cases, annual increases in the building's assessed value in excess of 5 percent during years 2-13 of the benefit period (so-called inflation protection) are also included in the abatement.

6. New Construction Area (Lower Manhattan):

ICIP benefits applicable to new construction of a "smart" office building are available only in Lower Manhattan. Taxes attributable to new construction in these areas are fully exempt for four years, with the exemption base then declining twenty percentage points a year until the exemption is over.

Under ICAP, the benefit is 100 percent of the abatement base for the first 4 years and then declines by 20 percent per year for the final 4 years.

B. Industrial Projects

All industrial projects in any area of the city receive a full ICIP tax exemption for sixteen years. The exemption base then declines by ten percentage points each year until the exemption is over. In addition, for applications filed on or after July 1, 1995, property owners are eligible for an abatement of real estate taxes as follows: for the first tax year after completion of construction as well as the next three years, an abatement equal to fifty percent of the taxes in the tax year prior to the certificate of eligibility. The abatement shall then decrease every two years, starting in the fifth year, by ten percent (years 5 and 6, 40% years 7 and 8, 30%, etc.)

Under ICAP, industrial projects throughout the City are eligible for a 25-year abatement for all industrial space and for the first 10 percent of all retail space. Retail space in excess of 10 percent of the building's floor area on completion of construction is eligible for a 15-year abatement. In either case, annual increases in the building's billable assessed value in excess of 5 percent are also included in the abatement base. As in ICIP, industrial projects that meet a higher capital expenditure threshold may qualify for an additional 12-year abatement benefit based upon the same percentages of the initial pre-construction tax.

C. Revitalization Area

Under the Commercial Expansion Program, properties in the revitalization area (any area of the city, except south of 96th Street in Manhattan, zoned C4, C5, C6, M1, M2, or M3) qualify for ICIP benefits, as follows:

1. Commercial Exemption

Commercial exemption benefits are avail-

able for a property where more than 15% of the total net square footage has been used for manufacturing during the two years prior to filing an application. Previously, owners would have needed to wait two years (four years in Long Island City) to apply for these benefits.

2. Industrial Abatement

A pro rata industrial abatement is available for buildings with less than 75% but at least 25% of its total square footage used, or immediately available for manufacturing use. The amount of space held for industrial use may not be less after the renovation, however. Previously, 75% of its total square footage had to be devoted to manufacturing for a building to qualify for the industrial abatement.

The Revitalization Area and its special provisions relating to partial industrial abatement and prior manufacturing use are not applicable to any ICAP project.

Eligibility and General Provisions

In order to qualify for benefits under both ICIP and ICAP, a minimum capital investment (minimum required expenditure or MRE) is required. For industrial construction work or for commercial construction work in a special exemption area or a regular exemption area, the new capital investment must equal 10 percent of the assessed value. However, for industrial projects applying for an abatement of real estate taxes, the new capital investment must equal at least 25 percent of the assessed value.

After receiving a certificate of eligibility for the program, one-half of the minimum required expenditure must be made within 30 months, while the full minimum required expenditure must be completed within 60 months. For renovation construction south of 59th Street, one-half of the minimum required expenditure equal to 20 percent of the assessed value of the existing tax lot must be made within 18 months of receipt of a certificate of eligibility while the full minimum required expenditure must be made within 36 months. Finally, for new construction benefits for "smart" buildings in Manhattan, the foundation must be completed within 12 months of the effective date of the certificate of eligibility and the building must be complete within 36 months of the effective date.

Under ICAP, all applications for commercial and industrial abatement benefits require a MRE of 30 percent of the billable assessed value of the project site in the tax year in which the first building permit for the project is issued. The MRE must be made within 4 years from the permit date. However, for the additional industrial abatement benefit, the

MRE is 40 percent.

Any person or corporation responsible for the payment of the property's taxes is eligible to apply to the program. In addition to other information, an application must include plans certified by a professional engineer or architect and cost estimates or bids for the proposed project. The ICIP is limited to industrial, commercial and the commercial portion of certain mixed use properties.

The ICAP benefit is also limited to industrial, commercial and the first 5 percent of retail space in the renovation areas other than in Lower Manhattan. Retail space in every other area of the City is eligible for ICAP benefits although retail space in special commercial and industrial areas are subject to varying abatement schedules depending on the percentage of the property that is dedicated to retail use.

A project is not eligible if construction or reconstruction has commenced prior to receiving approval.

Applicants for ICAP benefits must submit two applications—a Preliminary Application for Certificate of Eligibility and a Final Application for Certificate of Eligibility. A Preliminary Application may be filed between July 1, 2008 and February 28, 2011.

Applicants must submit a Preliminary Ap-

plication before obtaining a building permit, or if no building permit is required for the project, applicant must submit a notarized letter from the project's architect or engineer notifying the Department of Finance of this fact within 30 days of commencement of construction.

If the first building permit for a project is issued prior to the filing of the Preliminary Application or commencement of construction, where on permit is required, the entire project will be ineligible for benefits under ICAP.

The Final Application must be filed within one year of the permit date or commencement of construction, where no permit is required.

ICAP benefits will be denied for any property that has failed to file the RPIE for all tax years covering the initial tax year through and including the tax year in which construction is completed.

Interim construction reports must be submitted to the Department of Finance semi-annually throughout the construction period. Property owners who receive ICAP benefits must file a certificate of Continuing Use every 2 years with the Department of Finance on or before the taxable status date, January 5.

For further information, please contact: Department of Finance, 66 John Street, New York, New York 10038, (212) 361-7167.

REAL PROPERTY TAX LAW – SECTION 421-a Partial Exemption for Newly Constructed Multiple Dwellings

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General Applicability:

The 421-a Program was originally created in 1971 to encourage construction of new multiple dwellings by granting a partial tax exemption to the owner of the property. The enabling law governing the program (Section 421-a of the Real Property Tax Law) was scheduled to expire on December 31, 2007 but has been amended and extended through December 27, 2010 by the New York State Legislature. However, while projects commenced on or prior to June 30, 2008 will continue to be governed by the current law and rules, the amended enabling law provides for significant changes affecting projects commenced after June 30, 2008.

Commencement of construction, as interpreted by HPD, is the date on which excavation and the initial pouring of at least a single footing for the foundation wall occurs pursuant to a full building permit issued by the Department of Buildings, provided construction proceeds in good faith, without undue delay. HPD has defined undue delay as failure to complete construction within 36 months. Extenuating circumstances such as

fires, labor stoppages and industry-wide material shortages may be considered by HPD.

New multiple dwellings are defined as buildings which serve as the residence of three or more families. Newly constructed three family dwellings commenced after June 30, 2008 will no longer qualify for 421-a benefits unless the building contains affordable housing units. Conversion, alteration or improvement of pre-existing buildings or structures may also qualify as a new multiple dwelling for 421-a purposes if at least 51% of the floor area of the completed multiple dwelling results from the new residential construction. Hotels are not eligible for 421-a benefits.

Eligibility Requirements:

Many of the basic eligibility criteria for projects remain the same and are unaffected by the new legislation. All projects, whether commenced before or after June 30, 2008 must satisfy the following requirements:

1. If the building contains 100 dwelling units or more, ten percent of the dwelling units must contain four and one-half rooms and, in addition, fifteen