

ICAP Would Trim Developers' Incentives

The Industrial and Commercial Incentive Program is New York City's largest commercial real estate incentive program, with approximately 15,000 applications filed since its 1984 inception. ICIP provides partial real estate tax exemptions for new and renovated industrial and commercial buildings in most areas of the city. While the program's renewal seems certain, it's likely to undergo significant legislative revisions.



Under the proposed ICAP legislation, retail facilities benefits would be dramatically reduced.

Critics contend that ICIP operates at a substantial fiscal loss for the city, with approximately \$371 million in real estate tax revenues foregone in 2006 alone. The city demands reforms to the current ICIP. Specifically, they want to restrict benefits to commercial and manufacturing buildings in geographic areas that truly require special real estate tax incentives to encourage construction, stimulate employment and foster significant new economic activity. Most knowledgeable developers disagree with restricting the program's benefits and eligibility and want the program extended unchanged. In the proposed legislation, three elements are particularly noteworthy:

1. Abatement vs. Exemption. The current ICIP offers tax exemption for new and renovated buildings based upon building assessment increases directly attributable to construction, i.e. "physical increases" described in the application. Industrial and commercial buildings located in special exemption areas also qualify for exemption from assessment increases arising from inflation or market value appreciation, i.e. "equalization increases."

It appears ICIP amendments will provide a tax abatement rather than an exemption. For that reason, the revised legislation is generally referred to as the Industrial and Commercial Abatement Program. While exemptions reduce the amount of assessment subject to real estate taxation, abatements are tax credits that directly reduce tax liabilities imposed upon the property. A project's abatement base will reflect the difference between the assessed value of the completed building and 115% of its pre-construction assessed value.

2. Reduction of Retail Eligibility. Under the proposed new

ICAP legislation, benefits for retail facilities would be dramatically reduced and would depend upon the type of project and its location. Critics of ICIP contend that new retail facilities frequently displace sales from existing locations in the city rather than create new economic activity. Retail space within newly constructed or renovated commercial buildings in Manhattan south of City Hall would remain eligible for ICAP benefits. Commercial buildings in Manhattan between City Hall and 59th Street would not be eligible for abatement benefits on any retail space greater than 5% of the total floor area. In regular commercial benefit areas, retail space in excess of 10% of the building's floor area would not qualify for abatement benefits.

3. Reduction of Eligible Construction Period. The old ICIP program called for commercial or industrial construction work to be performed between the date the first building permit is issued and the sixth taxable status date (Jan. 5) thereafter. Failure to meet these construction benchmarks would not mean denial of benefits but merely serves as a cap on the exemption base.

Under ICAP, owners generally would have to complete new buildings within five years of the permit date and renovation projects within two years of the permit date. Failure to complete construction within these periods would mean revocation of all abatement benefits granted from inception. The abatement base would be limited to physical assessment increases within three years after the permit date for new buildings and one year after the permit date for renovations. ICAP would reduce the ICIP construction period from almost six years to one to three years, depending upon whether the project is a new or renovated structure.

Clearly, ICAP offers far less generous benefits than those available under ICIP. To capture ICIP benefits, owners must 1) file a preliminary application with the New York City Department of Finance prior to June 30, 2008 and 2) obtain a building permit no later than July 31, 2008. These dates are critical if owners want to qualify their projects under ICIP rather than ICAP.—RMW

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