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Expanded Eligibility Under the New J51 Law

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FOR MORE than 30 years, owners of multiple dwellings have relied upon the J51 real estate tax abatement/tax exemption program to help them pay for needed major capital improvements to their buildings. Over the years the law has evolved into a program that encourges rehabilitation of existing multiple dwellings and assists owners of rental properties, cooperatives and condominiums to preserve and expand the housing stock within the City of New York. This valuable incentive program has now been extended by law for an additional six years.

On Aug. 7, 1992 §489 of the New York Real Property Tax Law was amended and statutory authority was given to the city to extend the J51 law. The City Council extended and amended it and on June 14, 1993, Mayor Dinkins signed into law, Local Law 49 of 1993, which extends the J51 real estate tax exemption/tax abatement program to cover eligible conversions, alterations and improvements completed by Dec. 31 1999.

"J51" as the program is known to the members of the real estate bar, was the abbreviated name for former §J51-2.5 of the Administrative Code. With the recodification of the Administrative Code in the 1980's the J51 law was renumbered as §11-243, but it continues to be known under its traditional codification. J51 was originally conceived in the 1950s as a tax incentive program designed to upgrade substandard rental units.

The program has evolved into one of the Department of Housing Preservation and Development's (HPD) showcase programs designed to preserve and expand the city's existing housing stock by means of real estate tax exemptions and tax abatements. It is the rare major capital improvement that is today performed in a city multiple dwelling that has not utilized J51 Benefits.

Although criticized by its opponents as a "give away" to the real estate industry, it has been a major success in preserving multi-family housing at a relatively small cost to the city, since the physical work is always performed by the private sector at a fraction of the cost that the equivalent work would be performed by governmental agencies.

It also has a beneficial side effect of pumping millions of dollars into the city's economy by generating jobs for the workers that manufacture and then install the major capital improvements that are the backbone of the program.

An owner who performs eligible improvements to his building will receive a J51 tax abatement as an offset against future real estate tax payments. In most cases, this abatement takes the form of an annual reduction of real estate taxes equivalent to one-twelfth of the certified reasonable cost of the improvement as determined by the HPD, which abatement is credited against the annual real estate taxes until 90 percent of the reasonable cost has been depleted.

However, depending on the location of the building, the type of improvement and whether there is government financial assistance, the tax abatement can range from 50 percent to 150 percent of the approved reasonable cost. In addition, if the assessed value of the building is increased as a direct result of the alteration or improvement, an exemption from the additional assessed valuation may be granted for a period of either 14 or 34 years.

Co-ops and Condos

Cooperatives and condominiums that complete eligible improvements within three years of the initial closing date of the cooperative or condominium are eligible for J51 without any additional preconditions.

One of the major changes in the new law was the liberalization of the eligibility provisions for cooperatives and condominiums that complete qualifying work more than three years after their initial closing date.

Under the new law, where eligible work is commenced after Aug. 7, 1992, these buildings will be eligible if they meet a twofold test.

First, the actual assessed valuation of the building must be less than an average of $40,000 per dwelling unit. The prior law restricted eligibility to buildings that were assessed at less than $30,000 per dwelling unit.

When the original liberalization of cooperative and condominium eligibility was enacted under Local Law 41 of 1988, the $30,000 cap was imposed due to an Aug. 7, 1987 amendment to Real Property Tax Law §489. This 1987 New York State enabling amendment was further based upon HPD's stated intention to include middle income cooperatives in the J51 program.

Unfortunately, HPD had conceived the $30,000 assessed valuation test in 1986, immediately before the massive increase in cooperative assessed valuations that occurred in 1987 and 1988 and thus pushed above the eligibility threshold many of the buildings that were supposed to be included. The new amendment brings those middle income buildings back into the eligible category.

The second test of cooperative eligibility is based on a formula that requires the average per *room* sales price in a cooperative and condominium for the three years prior to the commencement of eligible J51 work to be no greater than 35 percent of the maximum mortgage amount for a single family home eligible for purchase by the Federal National Mortgage Association.

This amount is presently set at $203,150 which under the formula translates to be approximately $71,100 per room. This per room sales price requirement is unchanged from the existing law.

However, due to increases by the Federal National Mortgage Association in the maximum mortgage amounts, the per room sales price requirement has increased by over $20,000 per room since 1988. The old law required that if less than the 10 percent of the units in a building had

sold during the three years prior to commencement of qualifying work, then the average assessed value per dwelling unit be must be less than $25,000 at the commencement of work.

The new law provides that if less than 10 percent of the units have sold, then the average assessed value at the time of commencement of work must be less than $40,000 per dwelling unit.

There is a limitation of benefits for cooperatives and condominiums that complete qualifying work more than three years after their initial closing date. The provision, which remains unchanged from the prior law, limits cooperatives and condominiums for work completed after the initial three-year period from receiving abatement benefits in excess of $2,500 per dwelling unit.

In addition to revising the conditions of eligibility for cooperatives and condominiums, there was also a liberalization as to the type of work that cooperatives and condominiums could perform and still receive J51 benefits. These buildings will now be eligible for any item of work defined in HPD's regulations as a major capital improvement.

Under the old law, a cooperative or condominium that was more than three year's beyond their initial closing date had to perform a system-wide improvement as a precondition of eligibility. This requirement to perform a system-wide improvement has now been eliminated.

Rental Properties

Local Law 41 of 1988 had imposed assessed value restrictions for owners of rental properties when it limited eligibility to buildings assessed at less than $30,000 per dwelling unit at the time of commencement of work. The newly enacted legislation raises the assessed valuation cap to $40,0000 per dwelling unit and puts back into the program many deserving rental buildings in Riverdale, Forest Hills, and in Manhattan that had been eliminated under the old test.

Asbestos Abatement

Asbestos abatement was legislatively addressed for the first time under the new legislation. In 1989, HPD, under its regulatory authority, added asbestos abatement under certain narrow circumstances pursuant to Administrative Code §11-243b. which allows J51 tax abatement where the work is necessary to "eliminate existing unhealthy or dangerous conditions."

The new law mandates that HPD grant tax abatement benefits for the abatement of asbestos to the extent such asbestos abatement is required by federal, state or local law. Thus, unless liberalized by HPD pursuant to regulation, the voluntary removal of asbestos from a building without the performance of a related capital improvement will continue to be ineligible for J51 benefits.

Exemption Time Limits

There was a major change in the law in determining the duration of J51 exemption benefits. Many buildings received J51 tax exemption benefits in the early 1980s pursuant to alterations and gut rehabilitations. The owners of these buildings which have had a period of 12 years with little or no real estate taxes now find themselves thrown back on the tax rolls paying taxes at a level equivalent or higher than other comparable buildings.

This has particularly hit hard cooperatives and condominiums that have not adequately understood or prepared for the expiration of their J51 benefits.

As a response to this perceived problem, the State Legislature amended Real Property Tax Law §489 and mandated that any local legislation from the New York City Council which renewed the J51 law must extend the J51 exemption period from 12 to 14 years or from 32 to 34 years, whichever was applicable.

The law was designed to be revenue neutral, because in exchange for the "stretch out" of the exemption, the J51 exemption is now reduced to 80 percent in the 11th (or 31st year) and 60 percent in the 12th year (or 32nd year).

In the two additional years of exemption, the exemption is set at 40 percent in the next to last year and 20 percent in the final year.

This change in the law will unlikely cause any real cushioning of the onslaught of new real estate taxes for those buildings that are losing their J51 exemptions. For many buildings, their remaining abatements will be used up earlier than originally anticipated. For other buildings, the change in the law will simply mean that the increase in taxes on the building will commence at an earlier period than originally anticipated.

Many cooperatives that have been planning for the commencement of real estate taxes will find that a small tax burden commences two years earlier than originally anticipated. For rental owners that registered their apartments with the New York State Division of Housing and Community Renewal in order to receive J51 benefits, they will find they are required to keep their units stabilized for two additional years.

If the situation was not confusing enough, the Department of Finance issued a tentative assessment roll on Jan. 15, 1993 which reduced J51 exemptions from 100 percent to 80 percent for those buildings that will be entering the 11th year of tax exemption benefits commencing with the 1993/94 assessment roll. The Department of Finance however made no adjustment for those buildings that will be entering their twelfth year of J51 exemption for 1993/94.

This inconsistent position is even more bizarre when one realized that there was no law in effect on Jan. 15, 1993 that authorized the Department of Finance to reduce the exemption for these 11th year J51 buildings. (Mayor Dinkins only signed the local law on June 14, 1993).

Obviously the Department of Finance had a crystal ball and they were able to predict that the City Council would approve such a bill and the Mayor would sign it. It is interesting to ponder why this law has retroactively effected buildings that qualified for J-51 benefits in 1982 and it was not made prospective when traditionally J51 legislation only effected buildings prospectively unless the law stated otherwise.

There were a number of changes in the new law designed to help certain low income projects that are receiving substantial government assistance. Private dwellings (meaning one or two family homes) have now been made eligible for J51 benefits where the private dwelling has received a grant, loans or subsidy from any federal, state or local agency or instrumentality.

The statutory requirements of starting and completing all J51 eligible work within a three year time period has been extended to 60 months if the building has received grants, loan or subsidies from any federal, state or local agency or instrumentality and the date an application for J51 benefits can be filed has been extended from four years from commencement of construction to 72 months also for those projects that are receiving grants, loans or subsidies from any federal, state or local agency or instrumentality.

Finally, the moderate rehabilitation notice requirements that are so strictly construed against private developers need not be given by the developer where HPD has provided notice to the tenants.

This most recent series of amendments to the law continues the trend of giving greater leeway and larger benefits where government assistance is involved. In a period of budget shortfalls and an increasing cry for less government spending, it truly is a disincentive for a developer to seek to perform a rehabilitation without government assistance, when it is only with government assistance that a developer can look forward to 34-year tax exemptions, 150 percent tax abatements and extended filing periods. This part of the J51 law is something that should be looked at when the law is up for renewal in 1999. Perhaps the 1999 Law Journal article will report that a new version of the law has placed the tax incentives where they properly belong.

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