S T A T E   O F   N E W   Y O R K

S. 1393 A. 3949

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 29, 2009

IN SENATE -- Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

IN ASSEMBLY -- Introduced by M. of A. KELLNER, BING, ROSENTHAL -- Multi-Sponsored by -- M. of A. GOTTFRIED, MAISEL, J. RIVERA, TOBACCO -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to creating tax abatements for certain commercial properties located within the Second Avenue subway project

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 4 of the real property tax law is amended by adding a new title 3-A to read as follows:

TITLE 3-A

TAX ABATEMENT FOR CERTAIN COMMERCIAL PROPERTIES LOCATED WITHIN THE SECOND AVENUE SUBWAY PROJECT

SECTION 496. DEFINITIONS.
496-A. REAL PROPERTY TAX ABATEMENT.
496-B. ELIGIBILITY REQUIREMENTS.
496-C. APPLICATION FOR CERTIFICATE OF ABATEMENT.
496-D. ENFORCEMENT AND ADMINISTRATION.
496-E. REPORTING REQUIREMENTS; REVOCATION OF ABATEMENTS.
496-F. TAX LIEN; INTEREST AND PENALTY.
496-G. CONFIDENTIALITY.

S 496. DEFINITIONS. WHEN USED IN THIS TITLE, THE FOLLOWING TERMS SHALL MEAN OR INCLUDE:

1. "ABATEMENT BASE." THE LESSER OF: (A) TWO DOLLARS AND FIFTY CENTS OR (B) FIFTY PER CENTUM OF THE TAX LIABILITY PER SQUARE FOOT.

2. "ABATEMENT ZONE." ANY AREA LOCATED WITHIN THE CONSTRUCTION AREA OF THE SECOND AVENUE SUBWAY PROJECT AS DEFINED BY THE COMMISSIONER OF THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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METROPOLITAN TRANSPORTATION AUTHORITY, WHICH HAS BEEN LOCATED IN SUCH AREA AND CONTINUALLY BEEN DOING BUSINESS IN SUCH AREA DURING THE YEAR TWO THOUSAND EIGHT AND DURING THE CURRENT TAXABLE YEAR.

3. "AGGREGATE FLOOR AREA." THE SUM OF THE GROSS AREAS OF THE SEVERAL FLOORS OF A BUILDING, MEASURED FROM THE EXTERIOR FACES OF EXTERIOR WALLS OR FROM THE CENTER LINES OF WALLS SEPARATING TWO BUILDINGS.

4. "APPLICANT." THE LANDLORD AND THE TENANT.

5. "BENEFIT PERIOD." THE PERIOD COMMENCING WITH THE FIRST DAY OF THE MONTH IMMEDIATELY FOLLOWING THE RENT COMMENCEMENT DATE AND TERMINATING NO LATER THAN SIXTY MONTHS THEREAFTER.

6. "BILLABLE ASSESSED VALUE." THE LESSER OF THE TAXABLE TRANSITIONAL OR THE TAXABLE ACTUAL ASSESSED VALUE OF THE ELIGIBLE BUILDING AND THE LAND ON WHICH THE ELIGIBLE BUILDING IS LOCATED FOR THE FISCAL YEAR IN WHICH THE BENEFIT PERIOD COMMENCES, AS COMPUTED PURSUANT TO SUBDIVISION THREE OF SECTION EIGHTEEN HUNDRED FIVE OF THIS CHAPTER.

7. "DEPARTMENT OF FINANCE." THE DEPARTMENT OF FINANCE OF THE CITY OF NEW YORK.

8. "ELIGIBLE BUILDING." A NON-RESIDENTIAL OR MIXED-USE BUILDING LOCATED IN THE ABATEMENT ZONE. SUCH ELIGIBLE BUILDING SHALL NOT INCLUDE ANY BUILDING OWNED BY A GOVERNMENTAL AGENCY.

9. "ELIGIBILITY PERIOD." THE PERIOD COMMENCING JANUARY FIRST, TWO THOUSAND EIGHT AND TERMINATING JUNE FIRST, TWO THOUSAND SIXTEEN.

10. "ELIGIBLE PREMISES." PREMISES LOCATED IN AN ELIGIBLE BUILDING WHICH ARE OCCUPIED OR USED AS OFFICES (INCLUDING ANCILLARY USES) OR ARE OCCUPIED OR USED AS RETAIL SPACE.

11. "FISCAL YEAR." THE FISCAL YEAR OF ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE.

12. "GOVERNMENTAL AGENCY." THE UNITED STATES OF AMERICA OR ANY AGENCY OR INSTRUMENTALITY THEREOF, THE STATE OF NEW YORK, THE CITY OF NEW YORK, ANY PUBLIC CORPORATION (INCLUDING A BODY CORPORATE AND POLITIC CREATED PURSUANT TO AGREEMENT OR COMPACT BETWEEN THE STATE OF NEW YORK AND ANY OTHER STATE), PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY OR OTHER POLITICAL SUBDIVISION OF THE STATE.

13. "LANDLORD." ANY PERSON WHO: (A) CONTROLS ALL NON-RESIDENTIAL PORTIONS OF AN ELIGIBLE BUILDING, INCLUDING, WITHOUT LIMITATION, THE RECORD OWNER, THE LESSEE UNDER A GROUND LEASE, ANY MORTGAGEE IN POSSESSION OR ANY RECEIVER, AND

(B) WHO GRANTS THE RIGHT TO USE OR OCCUPY ELIGIBLE PREMISES TO ANY TENANT, PROVIDED THAT LANDLORD SHALL NOT INCLUDE ANY LESSEE WHO AT ANY TIME DURING THE LEASE TERM OCCUPIED OR USED OR OCCUPIES OR USES ANY PART OF THE NON-RESIDENTIAL PORTIONS OF SUCH ELIGIBLE BUILDING, OTHER THAN PREMISES OCCUPIED OR USED BY SUCH LESSEE TO PROVIDE RENTAL OR MANAGEMENT SERVICES TO SUCH BUILDING.

14. "LEASE COMMENCEMENT DATE." THE DATE SET FORTH IN THE LEASE ON WHICH THE TERM OF THE LEASE COMMENCES.

15. "MIXED-USE BUILDING." A BUILDING USED FOR BOTH RESIDENTIAL AND COMMERCIAL PURPOSES, PROVIDED THAT MORE THAN TWENTY-FIVE PER CENTUM OF THE AGGREGATE FLOOR AREA OF SUCH BUILDING IS USED OR HELD OUT FOR USE AS COMMERCIAL, COMMUNITY FACILITY OR ACCESSORY USE SPACE.

16. "PERSON." AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, AGENCY, TRUST, ESTATE, FOREIGN OR DOMESTIC GOVERNMENT OR SUBDIVISION THEREOF, OR OTHER ENTITY.

17. "RENT COMMENCEMENT DATE." THE DATE SET FORTH IN THE LEASE ON WHICH THE OBLIGATION TO PAY BASIC FIXED RENT SHALL COMMENCE.

18. "TAX LIABILITY." THE PRODUCT OBTAINED BY MULTIPLYING THE BILLABLE ASSESSED VALUE FOR THE FISCAL YEAR IN WHICH THE BENEFIT PERIOD COMMENCES

BY THE TAX RATE APPLICABLE TO THE ELIGIBLE BUILDING FOR SUCH FISCAL YEAR AS SET BY THE LOCAL LEGISLATIVE BODY OF ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE.

19. "TAX LIABILITY PER SQUARE FOOT." THE TAX LIABILITY DIVIDED BY THE TOTAL NUMBER OF SQUARE FEET IN THE ELIGIBLE BUILDING, AS LISTED ON THE RECORDS OF THE DEPARTMENT OF FINANCE.

20. "TENANT." A PERSON (INCLUDING ANY SUCCESSORS IN INTEREST) WHO EXECUTES A LEASE WITH THE LANDLORD FOR THE RIGHT TO OCCUPY OR USE THE ELIGIBLE PREMISES AND WHO OCCUPIES OR USES THE ELIGIBLE PREMISES PURSUANT TO SUCH LEASE. TENANT SHALL NOT INCLUDE ANY SUBTENANT.

21. "TENANT'S PERCENTAGE SHARE." THE PERCENTAGE OF THE ELIGIBLE BUILDING'S AGGREGATE FLOOR AREA ALLOCATED TO THE ELIGIBLE PREMISES, WHICH SHALL BE PRESUMED TO BE SUCH PERCENTAGE AS SET FORTH IN THE LEASE FOR THE ELIGIBLE PREMISES; PROVIDED THAT WHERE THE ELIGIBLE PREMISES INCLUDES EXPANSION PREMISES, THE "TENANT'S PERCENTAGE SHARE" SHALL BE CALCULATED ON THE BASIS OF THE PERCENTAGE OF THE ELIGIBLE BUILDING'S AGGREGATE FLOOR AREA ALLOCATED SOLELY TO THE EXPANSION PREMISES.

22. "RENEWAL TENANT." A PERSON WHO HAS AN EXISTING LEASE WITH THE LANDLORD AND RENEGOTIATES OR RENEWS SUCH LEASE WITH THE LANDLORD FOR THE RIGHT TO OCCUPY OR USE THE ELIGIBLE PREMISES.

S 496-A. REAL PROPERTY TAX ABATEMENT. 1. WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE, ELIGIBLE BUILDINGS CONTAINING ELIGIBLE PREMISES SHALL RECEIVE AN ABATEMENT OF REAL PROPERTY TAXES DURING THE BENEFIT PERIOD AS FOLLOWS:

(A) FOR EACH OF THE FIRST THREE YEARS OF THE BENEFIT PERIOD, THE ABATEMENT SHALL BE EQUAL TO THE PRODUCT OBTAINED BY:

(1) MULTIPLYING THE TENANT'S PERCENTAGE SHARE BY THE NUMBER OF SQUARE FEET IN THE ELIGIBLE BUILDING, AS LISTED ON THE RECORDS OF THE DEPARTMENT OF FINANCE AND

(2) MULTIPLYING THE PRODUCT OBTAINED IN SUBPARAGRAPH ONE OF THIS PARAGRAPH BY THE ABATEMENT BASE;

(B) FOR THE FOURTH YEAR OF THE BENEFIT PERIOD, THE ABATEMENT SHALL BE EQUAL TO TWO-THIRDS OF THE ABATEMENT IN THE FIRST YEAR OF THE BENEFIT PERIOD; AND

(C) FOR THE FIFTH YEAR OF THE BENEFIT PERIOD, THE ABATEMENT SHALL BE EQUAL TO ONE-THIRD OF THE ABATEMENT IN THE FIRST YEAR OF THE BENEFIT PERIOD.

2. IF, AS A RESULT OF APPLICATION TO THE TAX COMMISSION OR A COURT ORDER OR ACTION BY THE DEPARTMENT OF FINANCE, THE BILLABLE ASSESSED VALUE IS REDUCED, THE DEPARTMENT OF FINANCE SHALL RECALCULATE THE ABATEMENT UTILIZING SUCH REDUCED BILLABLE ASSESSED VALUE. THE AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE ABATEMENT ORIGINALLY GRANTED AND THE ABATEMENT AS SO RECALCULATED SHALL BE DEDUCTED FROM ANY REFUND OTHERWISE PAYABLE OR REMISSION OTHERWISE DUE AS A RESULT OF SUCH REDUCTION IN BILLABLE ASSESSED VALUE, AND ANY BALANCE OF SUCH AMOUNT REMAINING UNPAID AFTER MAKING ANY SUCH DEDUCTION SHALL BE PAID TO THE DEPARTMENT OF FINANCE WITHIN THIRTY DAYS FROM THE DATE OF MAILING BY THE DEPARTMENT OF FINANCE OF A NOTICE OF THE AMOUNT PAYABLE. SUCH AMOUNT PAYABLE SHALL CONSTITUTE A TAX LIEN ON THE ELIGIBLE BUILDING AS OF THE DATE OF SUCH NOTICE AND, IF NOT PAID WITHIN SUCH THIRTY-DAY PERIOD, PENALTY AND INTEREST AT THE RATE APPLICABLE TO DELINQUENT TAXES ON SUCH ELIGIBLE BUILDING SHALL BE CHARGED AND COLLECTED ON SUCH AMOUNT FROM THE DATE OF SUCH NOTICE TO THE DATE OF PAYMENT.

3. IN NO EVENT SHALL THE ABATEMENT FOR THE ELIGIBLE PREMISES GRANTED PURSUANT TO THIS TITLE EXCEED THE TAX LIABILITY ALLOCABLE TO THE ELIGIBLE PREMISES.

4. NOTWITHSTANDING THE PROVISIONS OF ANY LEASE FOR OCCUPANCY OF NON-ELIGIBLE PREMISES IN AN ELIGIBLE BUILDING OR FOR OCCUPANCY OF ELIGIBLE PREMISES FOR WHICH NO CERTIFICATE OF ABATEMENT HAS BEEN ISSUED PURSUANT TO THIS TITLE, A LESSEE OF NON-ELIGIBLE PREMISES OR OF ELIGIBLE PREMISES FOR WHICH NO CERTIFICATE OF ABATEMENT HAS BEEN ISSUED PURSUANT TO THIS TITLE SHALL NOT BE ENTITLED TO RECEIVE DIRECTLY OR INDIRECTLY A REDUCTION IN EITHER THE REAL PROPERTY TAXES OR ANY RENT (INCLUDING ADDITIONAL RENT) PAYABLE PURSUANT TO SUCH LEASE WHERE SUCH REDUCTION WOULD RESULT FROM AN ABATEMENT OF REAL PROPERTY TAXES GRANTED PURSUANT TO THIS TITLE. A LANDLORD OF AN ELIGIBLE BUILDING SHALL NOT ALLOCATE, CREDIT, ASSIGN OR DISBURSE ANY PORTION OF AN ABATEMENT GRANTED PURSUANT TO THIS TITLE TO A LESSEE OF NON-ELIGIBLE PREMISES OR OF ELIGIBLE PREMISES FOR WHICH NO CERTIFICATE OF ABATEMENT HAS BEEN ISSUED PURSUANT TO THIS TITLE. A LANDLORD SHALL NOT BE REQUIRED TO REDUCE THE REAL PROPERTY TAXES OR ANY RENT (INCLUDING ADDITIONAL RENT) PAYABLE BY EXPANSION TENANTS, NEW TENANTS AND RENEWAL TENANTS BY AN AMOUNT THAT EXCEEDS THE FULL AMOUNT OF THE ABATEMENT GRANTED PURSUANT TO THIS TITLE, BUT A LANDLORD SHALL BE REQUIRED TO REDUCE THE REAL PROPERTY TAXES OR ANY RENT (INCLUDING ADDITIONAL RENT) PAYABLE BY EXPANSION TENANTS, NEW TENANTS AND RENEWAL TENANTS BY AN AMOUNT THAT, IN THE AGGREGATE, EQUALS THE FULL AMOUNT OF THE ABATEMENT GRANTED PURSUANT TO THIS TITLE. SUCH REDUCTION SHALL BE ALLOCATED IN ACCORDANCE WITH THE ABATEMENT GRANTED FOR THE ELIGIBLE PREMISES OCCUPIED BY EACH SUCH TENANT.

S 496-B. ELIGIBILITY REQUIREMENTS. 1. NO ABATEMENT SHALL BE GRANTED PURSUANT TO THIS TITLE UNLESS THE LANDLORD ENTERS INTO A LEASE FOR ELIGIBLE PREMISES WITH A TENANT OR RENEWAL TENANT AND:

(A) THE LEASE COMMENCEMENT DATE IS WITHIN THE ELIGIBILITY PERIOD;

(B) (1) IF, BY THE SIXTIETH DAY FOLLOWING THE RENT COMMENCEMENT DATE, SUCH TENANT OR RENEWAL TENANT EMPLOYS ONE HUNDRED TWENTY-FIVE OR FEWER EMPLOYEES IN THE ELIGIBLE PREMISES, THE INITIAL LEASE TERM IS FOR A PERIOD OF AT LEAST FIVE YEARS OR

(2) IF, BY THE SIXTIETH DAY FOLLOWING THE RENT COMMENCEMENT DATE, SUCH TENANT OR RENEWAL TENANT EMPLOYS MORE THAN ONE HUNDRED TWENTY-FIVE EMPLOYEES IN THE ELIGIBLE PREMISES, THE INITIAL LEASE TERM IS FOR A PERIOD OF AT LEAST TEN YEARS.

2. NO ABATEMENT SHALL BE GRANTED PURSUANT TO THIS TITLE IF AN APPLICANT SHALL FAIL TO MEET ANY OF THE REQUIREMENTS OF THIS TITLE WITHIN SIXTY DAYS OF THE RENT COMMENCEMENT DATE.

3. FOR PURPOSES OF THIS TITLE, THE EXPIRATION DATE OF A LEASE SHALL BE DETERMINED BY THE EXPIRATION DATE SET FORTH IN SUCH LEASE, WITHOUT GIVING EFFECT TO ANY RIGHTS OF THE LANDLORD OR THE TENANT TO TERMINATE SUCH LEASE PRIOR TO THE EXPIRATION DATE SET FORTH IN SUCH LEASE.

4. THE LEASE FOR THE ELIGIBLE PREMISES SHALL CONTAIN THE FOLLOWING PROVISIONS:

(A) A STATEMENT OF THE TENANT'S PERCENTAGE SHARE;

(B) A STATEMENT INFORMING THE TENANT IN AT LEAST TWELVE-POINT TYPE THAT:

(1) AN APPLICATION FOR ABATEMENT OF REAL PROPERTY TAXES PURSUANT TO THIS TITLE WILL BE MADE FOR THE PREMISES;

(2) THE RENT, INCLUDING AMOUNTS PAYABLE BY THE TENANT OR RENEWAL TENANT FOR REAL PROPERTY TAXES, WILL ACCURATELY REFLECT ANY ABATEMENT OF REAL PROPERTY TAXES GRANTED PURSUANT TO THIS TITLE FOR THE PREMISES; AND

(3) ALL ABATEMENTS GRANTED WITH RESPECT TO A BUILDING PURSUANT TO THIS TITLE WILL BE REVOKED IF, DURING THE BENEFIT PERIOD, REAL ESTATE TAXES OR WATER OR SEWER CHARGES OR OTHER LIENABLE CHARGES ARE UNPAID FOR MORE

THAN ONE YEAR, UNLESS SUCH DELINQUENT AMOUNTS ARE PAID AS PROVIDED IN SUBDIVISION FOUR OF SECTION FOUR HUNDRED NINETY-SIX-E OF THIS TITLE.

5. NO ABATEMENT SHALL BE GRANTED PURSUANT TO THIS TITLE IF:

(A) THE LEASE FOR THE ELIGIBLE PREMISES PROVIDES THAT DURING THE INITIAL LEASE TERM REQUIRED BY SUBDIVISION ONE OF THIS SECTION EITHER THE LANDLORD OR THE TENANT OR RENEWAL TENANT MAY TERMINATE SUCH LEASE PRIOR TO THE EXPIRATION DATE OF SUCH REQUIRED INITIAL LEASE TERM; PROVIDED THAT SUCH LEASE MAY PROVIDE THAT EITHER THE LANDLORD OR THE TENANT MAY TERMINATE SUCH LEASE IF:

(1) THE OTHER PARTY IS IN DEFAULT OF ANY OF SUCH PARTY'S OBLIGATIONS UNDER THE LEASE,

(2) THE ELIGIBLE PREMISES ARE DAMAGED OR DESTROYED BY FIRE OR OTHER CASUALTY,

(3) THE ELIGIBLE PREMISES ARE RENDERED UNUSABLE FOR ANY REASON NOT ATTRIBUTABLE TO ANY ACT OR FAILURE TO ACT OF EITHER TENANT OR LANDLORD, OR

(4) THE ELIGIBLE PREMISES ARE ACQUIRED BY EMINENT DOMAIN; AND

(B) THERE ARE REAL PROPERTY TAXES, WATER OR SEWER CHARGES OR OTHER LIENABLE CHARGES CURRENTLY DUE AND OWING ON THE ELIGIBLE BUILDING WHICH IS THE SUBJECT OF AN APPLICATION FOR ABATEMENT PURSUANT TO THIS TITLE, UNLESS SUCH REAL PROPERTY TAXES OR CHARGES ARE CURRENTLY BEING PAID IN TIMELY INSTALLMENTS PURSUANT TO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF FINANCE OR OTHER APPROPRIATE AGENCY.

6. NO ABATEMENT SHALL BE GRANTED PURSUANT TO THIS TITLE UNLESS THE APPLICANT SHALL FILE, TOGETHER WITH THE APPLICATION, AN AFFIDAVIT SETTING FORTH THE FOLLOWING INFORMATION:

(A) A STATEMENT THAT WITHIN THE SEVEN YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR A CERTIFICATE OF ABATEMENT, NEITHER THE APPLICANT NOR ANY PERSON OWNING A SUBSTANTIAL INTEREST IN THE ELIGIBLE BUILDING AS DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION, NOR ANY OFFICER, DIRECTOR OR GENERAL PARTNER OF THE APPLICANT OR SUCH PERSON WAS FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION TO HAVE VIOLATED SECTION TWO HUNDRED THIRTY-FIVE OF THE REAL PROPERTY LAW OR ANY SECTION OF ARTICLE ONE HUNDRED FIFTY OF THE PENAL LAW OR ANY SIMILAR ARSON LAW OF ANOTHER JURISDICTION WITH RESPECT TO ANY BUILDING, OR WAS AN OFFICER, DIRECTOR OR GENERAL PARTNER OF A PERSON AT THE TIME SUCH PERSON WAS FINALLY ADJUDICATED TO HAVE VIOLATED ANY SUCH LAW; AND

(B) A STATEMENT SETTING FORTH ANY PENDING CHARGES ALLEGING VIOLATION OF SECTION TWO HUNDRED THIRTY-FIVE OF THE REAL PROPERTY LAW OR ANY SECTION OF ARTICLE ONE HUNDRED FIFTY OF THE PENAL LAW OR ANY SIMILAR ARSON LAW OF ANOTHER JURISDICTION WITH RESPECT TO ANY BUILDING BY THE APPLICANT OR ANY PERSON OWNING A SUBSTANTIAL INTEREST IN THE ELIGIBLE BUILDING AS DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION, OR ANY OFFICER, DIRECTOR OR GENERAL PARTNER OF THE APPLICANT OR SUCH PERSON, OR ANY PERSON FOR WHOM THE APPLICANT OR PERSON OWNING A SUBSTANTIAL INTEREST IN THE ELIGIBLE BUILDING IS AN OFFICER, DIRECTOR OR GENERAL PARTNER.

(C) FOR PURPOSES OF THIS SUBDIVISION AND SUBDIVISION SEVEN OF SECTION FOUR HUNDRED NINETY-SIX-E OF THIS TITLE, "SUBSTANTIAL INTEREST" SHALL MEAN OWNERSHIP AND CONTROL OF AN INTEREST OF TEN PER CENTUM OR MORE IN THE ELIGIBLE BUILDING OR IN ANY PERSON OWNING THE ELIGIBLE BUILDING.

S 496-C. APPLICATION FOR CERTIFICATE OF ABATEMENT. 1. APPLICATION FOR A CERTIFICATE OF ABATEMENT MAY BE MADE ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHT AND UNTIL SIXTY DAYS AFTER THE END OF THE ELIGIBILITY PERIOD, AND SHALL BE FILED WITH THE DEPARTMENT OF FINANCE. NO APPLICATION MAY BE FILED PRIOR TO THE DATE ON WHICH THE LEASE FOR THE ELIGIBLE PREMISES IS EXECUTED BY THE LANDLORD AND TENANT.

2. NO ABATEMENT PURSUANT TO THIS TITLE SHALL BE GRANTED UNLESS THE APPLICANT FILES AN APPLICATION FOR A CERTIFICATE OF ABATEMENT WITHIN SIXTY DAYS FOLLOWING THE LEASE COMMENCEMENT DATE OR WITHIN SIXTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS TITLE, WHICHEVER IS LATER.

3. IN ADDITION TO ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT OF FINANCE, THE APPLICATION FOR A CERTIFICATE OF ABATEMENT SHALL INCLUDE AN ABSTRACT OF THE LEASE FOR THE ELIGIBLE PREMISES FOR WHICH AN ABATEMENT IS BEING SOUGHT WHICH ABSTRACT IS SIGNED BY THE LANDLORD AND THE TENANT. SUCH ABSTRACT SHALL INCLUDE THE TENANT'S PERCENTAGE SHARE, THE LEASE COMMENCEMENT DATE, THE RENT COMMENCEMENT DATE, THE EXPIRATION DATE FOR SUCH LEASE AND A DESCRIPTION OF THE IMPROVEMENTS TO BE MADE TO THE ELIGIBLE PREMISES AND THE COMMON AREAS OF THE ELIGIBLE BUILDING, INCLUDING THE ESTIMATED VALUE OF SUCH IMPROVEMENTS. SUCH APPLICATION SHALL ALSO INCLUDE:

(A) A STATEMENT OF THE NUMBER OF PERSONS WHO WILL, ON THE RENT COMMENCEMENT DATE, BE EMPLOYED IN THE ELIGIBLE PREMISES,

(B) A STATEMENT OF THE LOCATION OF ALL OFFICE OR RETAIL SPACE IN THE CITY OF NEW YORK OCCUPIED BY THE TENANT PRIOR TO THE EXECUTION OF THE LEASE FOR THE ELIGIBLE PREMISES,

(C) THE COMMENCEMENT AND EXPIRATION DATES OF ALL LEASES FOR PREMISES IN THE ABATEMENT ZONE USED OR OCCUPIED AS OFFICE OR RETAIL SPACE, AND

(D) THE AGGREGATE FLOOR AREA OF THE ELIGIBLE BUILDING. SUCH APPLICATION SHALL ALSO STATE THAT THE APPLICANT AGREES TO COMPLY WITH AND BE SUBJECT TO THE RULES ISSUED FROM TIME TO TIME BY THE DEPARTMENT OF FINANCE.

4. WITHIN SIXTY DAYS FOLLOWING THE RENT COMMENCEMENT DATE, THE APPLICANT SHALL PROVIDE, IN ADDITION TO ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT OF FINANCE, EVIDENCE ACCEPTABLE TO THE DEPARTMENT OF FINANCE REGARDING THE NUMBER OF EMPLOYEES IN THE ELIGIBLE PREMISES. THE DEPARTMENT OF FINANCE SHALL ISSUE A CERTIFICATE OF ABATEMENT UPON DETERMINING THAT THE APPLICANT HAS SUBMITTED PROOF ACCEPTABLE TO THE DEPARTMENT OF FINANCE THAT THE APPLICANT HAS MET THE REQUIREMENTS SET FORTH IN THIS TITLE.

5. THE BURDEN OF PROOF SHALL BE ON THE APPLICANT TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE REQUIREMENTS FOR GRANTING A CERTIFICATE OF ABATEMENT HAVE BEEN SATISFIED. THE DEPARTMENT OF FINANCE SHALL HAVE THE AUTHORITY TO REQUIRE THAT STATEMENTS IN CONNECTION WITH SUCH APPLICATION BE MADE UNDER OATH.

6. THE DEPARTMENT OF FINANCE MAY PROVIDE BY RULE FOR REASONABLE ADMINISTRATIVE CHARGES OR FEES NECESSARY TO DEFRAY EXPENSES IN ADMINISTERING THE ABATEMENT PROGRAM PROVIDED BY THIS TITLE.

S 496-D. ENFORCEMENT AND ADMINISTRATION. THE DEPARTMENT OF FINANCE SHALL HAVE, IN ADDITION TO ANY OTHER FUNCTIONS, POWERS AND DUTIES WHICH HAVE BEEN OR MAY BE CONFERRED ON IT BY LAW, THE FOLLOWING FUNCTIONS, POWERS AND DUTIES:

1. TO RECEIVE AND REVIEW APPLICATIONS FOR CERTIFICATES OF ABATEMENT UNDER THIS TITLE AND ISSUE SUCH CERTIFICATES WHERE AUTHORIZED PURSUANT TO THIS TITLE.

2. TO RECEIVE EVIDENCE OF PREMISES AND BUILDING ELIGIBILITY.

3. TO RECEIVE ALL CERTIFICATES OF CONTINUING ELIGIBILITY REQUIRED BY SECTION FOUR HUNDRED NINETY-SIX-E OF THIS TITLE.

4. TO COLLECT ALL REAL PROPERTY TAXES, WITH INTEREST AND PENALTY, DUE AND OWING AS A RESULT OF REDUCTION, TERMINATION OR REVOCATION OF ANY ABATEMENT GRANTED PURSUANT TO THIS TITLE.

5. TO MAKE AND PROMULGATE RULES TO CARRY OUT THE PURPOSES OF THIS TITLE.

S 496-E. REPORTING REQUIREMENTS; REVOCATION OF ABATEMENTS. 1. FOR THE DURATION OF THE APPLICANT'S BENEFIT PERIOD, THE APPLICANT SHALL FILE ANNUALLY WITH THE DEPARTMENT OF FINANCE, ON OR BEFORE JULY FIRST OF EACH YEAR, A CERTIFICATE OF CONTINUING ELIGIBILITY CONFIRMING THAT THE ELIGIBLE PREMISES ARE OCCUPIED BY THE TENANT WHO ORIGINALLY EXECUTED THE LEASE AND THAT THE ELIGIBLE PREMISES ARE BEING USED FOR THE PURPOSES DESCRIBED IN THE APPLICATION. SUCH CERTIFICATE OF CONTINUING ELIGIBILITY SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCE AND SHALL CONTAIN SUCH ADDITIONAL INFORMATION AS THE DEPARTMENT OF FINANCE SHALL REQUIRE. THE DEPARTMENT OF FINANCE SHALL HAVE THE AUTHORITY TO DETERMINE THE ABATEMENTS GRANTED PURSUANT TO THIS TITLE UPON FAILURE OF AN APPLICANT TO FILE SUCH CERTIFICATE BY SUCH DATE. THE BURDEN OF PROOF SHALL BE ON THE APPLICANT TO ESTABLISH CONTINUING ELIGIBILITY FOR BENEFITS AND THE DEPARTMENT OF FINANCE SHALL HAVE THE AUTHORITY TO REQUIRE THAT STATEMENTS MADE IN SUCH CERTIFICATE SHALL BE MADE UNDER OATH.

2. THE DEPARTMENT OF FINANCE SHALL REVOKE ANY ABATEMENT GRANTED PURSUANT TO THIS TITLE WHEN THE TENANT WHO ORIGINALLY EXECUTED THE LEASE IS NO LONGER OCCUPYING THE ELIGIBLE PREMISES. SUCH REVOCATION SHALL BE RETROACTIVE TO THE DATE THAT SUCH TENANT VACATED THE ELIGIBLE PREMISES AND THE DEPARTMENT OF FINANCE SHALL REQUIRE THE LANDLORD TO PAY, WITH INTEREST, ANY TAXES WHICH BECOME PAYABLE AS A RESULT OF SUCH REVOCATION. THE LANDLORD SHALL NOTIFY THE DEPARTMENT OF FINANCE WITHIN THIRTY DAYS FOLLOWING THE DATE ON WHICH SUCH TENANT VACATED THE ELIGIBLE PREMISES AND, FOR FAILURE TO COMPLY WITH THIS NOTIFICATION REQUIREMENT, SHALL BE LIABLE FOR PENALTY CALCULATED FOR THE SAME PERIOD AS INTEREST IS CALCULATED PURSUANT TO THE PRECEDING SENTENCE.

3. IF ANY PORTION OF THE PREMISES FOR WHICH AN ABATEMENT HAS BEEN GRANTED PURSUANT TO THIS TITLE CEASES TO BE OCCUPIED OR USED AS ELIGIBLE PREMISES OR IS OCCUPIED BY A SUBTENANT, THE DEPARTMENT OF FINANCE SHALL REDUCE THE ABATEMENT GRANTED PURSUANT TO THIS TITLE BY AN AMOUNT EQUAL TO THE PERCENTAGE OF SUCH ELIGIBLE PREMISES WHICH HAS CEASED TO BE OCCUPIED OR USED AS ELIGIBLE PREMISES OR IS OCCUPIED BY A SUBTENANT. SUCH REDUCTION SHALL BE RETROACTIVE TO THE DATE THAT SUCH PREMISES CEASED TO BE OCCUPIED OR USED AS ELIGIBLE PREMISES OR WAS OCCUPIED BY A SUBTENANT, AND THE DEPARTMENT OF FINANCE SHALL REQUIRE THE LANDLORD TO PAY, WITH INTEREST, ANY TAXES WHICH BECOME PAYABLE AS A RESULT OF SUCH REDUCTION. THE LANDLORD SHALL NOTIFY THE DEPARTMENT OF FINANCE WITHIN THIRTY DAYS FOLLOWING THE DATE ON WHICH THE PREMISES CEASED TO BE OCCUPIED OR USED AS ELIGIBLE PREMISES OR WAS OCCUPIED BY A SUBTENANT AND, FOR FAILURE TO COMPLY WITH THIS NOTIFICATION REQUIREMENT, SHALL BE LIABLE FOR PENALTY CALCULATED FOR THE SAME PERIOD AS INTEREST IS CALCULATED PURSUANT TO THIS SUBDIVISION.

4. IF, DURING THE BENEFIT PERIOD, ANY REAL PROPERTY TAX OR WATER OR SEWER CHARGE OR OTHER LIENABLE CHARGE DUE AND PAYABLE WITH RESPECT TO AN ELIGIBLE BUILDING SHALL REMAIN UNPAID FOR AT LEAST ONE YEAR FOLLOWING THE DATE UPON WHICH SUCH TAX OR CHARGE BECAME DUE AND PAYABLE, ALL ABATEMENTS GRANTED PURSUANT TO THIS TITLE WITH RESPECT TO SUCH BUILDING SHALL BE REVOKED, UNLESS WITHIN THIRTY DAYS FROM THE MAILING OF A NOTICE OF REVOCATION BY THE DEPARTMENT OF FINANCE SATISFACTORY PROOF IS PRESENTED TO THE DEPARTMENT OF FINANCE THAT ANY AND ALL DELINQUENT TAXES AND CHARGES OWING WITH RESPECT TO SUCH BUILDING AS OF THE DATE OF SUCH NOTICE HAVE BEEN PAID IN FULL OR ARE CURRENTLY BEING PAID IN TIMELY INSTALLMENTS PURSUANT TO A WRITTEN AGREEMENT WITH THE DEPARTMENT OF FINANCE OR OTHER APPROPRIATE AGENCY. ANY REVOCATION PURSUANT TO THIS SUBDIVISION SHALL BE EFFECTIVE WITH RESPECT TO REAL PROPERTY TAXES WHICH BECOME DUE AND PAYABLE FOLLOWING THE DATE OF SUCH REVOCATION.

5. THE DEPARTMENT OF FINANCE MAY DENY, REDUCE, SUSPEND, TERMINATE OR REVOKE ANY ABATEMENT GRANTED PURSUANT TO THIS TITLE WHENEVER:

(A) THE LANDLORD OR THE TENANT RECEIVING ABATEMENT PURSUANT TO THIS TITLE FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE OR THE RULES PROMULGATED HEREUNDER; OR

(B) AN APPLICATION, CERTIFICATE, REPORT OR OTHER DOCUMENT SUBMITTED BY THE APPLICANT CONTAINS A FALSE OR MISLEADING STATEMENT AS TO A MATERIAL FACT OR OMITS TO STATE ANY MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENT THEREIN NOT FALSE OR MISLEADING, AND MAY DECLARE ANY APPLICANT WHO MAKES SUCH FALSE OR MISLEADING STATEMENT OR OMISSION TO BE INELIGIBLE FOR FUTURE ABATEMENT PURSUANT TO THIS TITLE FOR THE SAME OR OTHER PROPERTY. IN ADDITION, THE DEPARTMENT OF FINANCE SHALL REQUIRE THE APPLICANT TO PAY, WITH PENALTY AND INTEREST, ANY ABATEMENT RECEIVED PURSUANT TO THIS TITLE AS A RESULT OF SUCH FALSE OR MISLEADING STATEMENT OR OMISSION OF A MATERIAL FACT.

6. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE DEPARTMENT OF FINANCE SHALL DENY, TERMINATE OR REVOKE ANY ABATEMENT APPLIED FOR OR GRANTED PURSUANT TO THIS TITLE UPON A DETERMINATION THAT THE LEASE BETWEEN THE LANDLORD AND THE TENANT WAS ENTERED INTO PRIMARILY FOR THE PURPOSE OF RECEIVING AN ABATEMENT UNDER THIS TITLE. IN MAKING SUCH DETERMINATION, THE DEPARTMENT OF FINANCE MAY CONSIDER, AMONG OTHER FACTORS, THE RELATIONSHIP, IF ANY, BETWEEN THE LANDLORD AND THE TENANT AND WHETHER THE BUSINESS TERMS OF SUCH LEASE ARE CONSISTENT WITH THE BUSINESS TERMS GENERALLY FOUND IN LEASES FOR COMPARABLE SPACE.

7. (A) IF ANY PERSON DESCRIBED IN THE STATEMENT REQUIRED BY PARAGRAPH (B) OF SUBDIVISION SIX OF SECTION FOUR HUNDRED NINETY-SIX-B OF THIS TITLE OR PARAGRAPH (B) OF THIS SUBDIVISION IS FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION TO BE GUILTY OF ANY CHARGE LISTED IN SUCH STATEMENT, THE DEPARTMENT OF FINANCE SHALL REVOKE THE ABATEMENT GRANTED PURSUANT TO THIS TITLE AND SHALL REQUIRE THE PAYMENT, WITH INTEREST, OF ANY ABATEMENT RECEIVED PURSUANT TO THIS TITLE.

(B) THE APPLICANT SHALL, ON THE CERTIFICATE OF CONTINUING ELIGIBILITY, STATE WHETHER ANY CHARGES ALLEGING VIOLATION BY THE APPLICANT OR ANY PERSON OWNING A SUBSTANTIAL INTEREST IN THE ELIGIBLE BUILDING, OR ANY OFFICER, DIRECTOR OR GENERAL PARTNER OF THE APPLICANT OR PERSON OWNING A SUBSTANTIAL INTEREST IN THE ELIGIBLE BUILDING, OR ANY PERSON FOR WHOM THE APPLICANT OR PERSON OWNING A SUBSTANTIAL INTEREST IN THE ELIGIBLE BUILDING IS AN OFFICER, DIRECTOR OR GENERAL PARTNER, OF SECTION TWO HUNDRED THIRTY-FIVE OF THE REAL PROPERTY LAW OR ANY SECTION OF ARTICLE ONE HUNDRED FIFTY OF THE PENAL LAW OR ANY SIMILAR ARSON LAW OF ANOTHER JURISDICTION, ARE PENDING. FOR PURPOSES OF THIS PARAGRAPH, "SUBSTANTIAL INTEREST" SHALL HAVE THE SAME MEANING AS SET FORTH IN PARAGRAPH (C) OF SUBDIVISION SIX OF SECTION FOUR HUNDRED NINETY-SIX-B OF THIS TITLE.

S 496-F. TAX LIEN; INTEREST AND PENALTY. ALL TAXES, WITH INTEREST, REQUIRED TO BE PAID RETROACTIVELY PURSUANT TO THIS TITLE SHALL CONSTITUTE A TAX LIEN AS OF THE DATE IT IS DETERMINED SUCH TAXES AND INTEREST ARE OWED. ALL INTEREST SHALL BE CALCULATED FROM THE DATE THE TAXES WOULD HAVE BEEN DUE BUT FOR THE ABATEMENT GRANTED PURSUANT TO THIS TITLE AT THE APPLICABLE RATE OR RATES OF INTEREST IMPOSED BY SUCH CITY GENERALLY FOR NON-PAYMENT OF REAL PROPERTY TAX WITH RESPECT TO THE ELIGIBLE BUILDING FOR THE PERIOD IN QUESTION. WHEN A PROVISION OF THIS TITLE REQUIRES THE PAYMENT OF A PENALTY IN ADDITION TO INTEREST, THE AMOUNT OF SUCH PENALTY SHALL BE EQUAL TO THE AMOUNT OF INTEREST THAT WOULD HAVE BEEN PAYABLE PURSUANT TO SUCH PROVISION HAD SUCH INTEREST BEEN CALCULATED AT THE RATE OF THREE PERCENT PER ANNUM.

S 496-G. CONFIDENTIALITY. 1. EXCEPT IN ACCORDANCE WITH A PROPER JUDICIAL ORDER OR AS OTHERWISE PROVIDED BY LAW, IT SHALL BE UNLAWFUL FOR THE COMMISSIONER OF FINANCE, ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF FINANCE, THE PRESIDENT OR A COMMISSIONER OR EMPLOYEE OF THE TAX COMMISSION, ANY PERSON ENGAGED OR RETAINED BY SUCH DEPARTMENT OR SUCH COMMISSION ON AN INDEPENDENT CONTRACT BASIS, OR ANY PERSON WHO, PURSUANT TO THIS TITLE, IS PERMITTED TO INSPECT ANY INFORMATION SUBMITTED BY AN APPLICANT TO THE DEPARTMENT OF FINANCE PURSUANT TO THIS TITLE OR TO WHOM A COPY, AN ABSTRACT OR A PORTION OF ANY SUCH INFORMATION IS FURNISHED, TO DIVULGE OR MAKE KNOWN IN ANY MANNER ANY SUCH INFORMATION TO ANY PERSON NOT AUTHORIZED PURSUANT TO THIS TITLE TO INSPECT SUCH INFORMATION. THE OFFICERS CHARGED WITH CUSTODY OF SUCH INFORMATION SHALL NOT BE REQUIRED TO PRODUCE ANY OF IT OR EVIDENCE OF ANYTHING CONTAINED IN IT IN ANY ACTION OR PROCEEDING IN ANY COURT EXCEPT ON BEHALF OF THE COMMISSIONER OF FINANCE IN AN ACTION OR PROCEEDING UNDER THE PROVISIONS OF THIS TITLE, OR ON BEHALF OF ANY PARTY TO ANY ACTION OR PROCEEDING UNDER THE PROVISIONS OF THIS TITLE WHEN SUCH INFORMATION OR FACTS SHOWN THEREBY ARE DIRECTLY INVOLVED IN SUCH ACTION OR PROCEEDING, IN EITHER OF WHICH EVENTS THE COURT MAY REQUIRE THE PRODUCTION OF, AND MAY ADMIT IN EVIDENCE SO MUCH OF SUCH INFORMATION OR OF THE FACTS SHOWN THEREBY, AS ARE PERTINENT TO THE ACTION OR PROCEEDING AND NO MORE. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE INSPECTION BY THE LEGAL REPRESENTATIVES OF THE DEPARTMENT OF FINANCE OR THE TAX COMMISSION OF SUCH INFORMATION SUBMITTED BY ANY APPLICANT WHO SHALL BRING AN ACTION TO CORRECT AN ASSESSMENT. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE DELIVERY TO AN APPLICANT OR THE APPLICANT'S DULY AUTHORIZED REPRESENTATIVE OF A CERTIFIED COPY OF ANY INFORMATION SUBMITTED BY AN APPLICANT TO THE DEPARTMENT OF FINANCE PURSUANT TO THIS TITLE; OR TO ANY AGENCY OR ANY DEPARTMENT OF ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PROVIDED THE SAME IS REQUESTED FOR OFFICIAL BUSINESS; NOR TO PROHIBIT THE INSPECTION FOR OFFICIAL BUSINESS OF SUCH INFORMATION BY THE CORPORATION COUNSEL OR OTHER LEGAL REPRESENTATIVES OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE OR BY THE DISTRICT ATTORNEY OF ANY COUNTY WITHIN SUCH CITY; NOR TO PROHIBIT THE PUBLICATION OF STATISTICS SO CLASSIFIED AS TO PREVENT THE IDENTIFICATION OF SUCH INFORMATION OR PARTICULAR ITEMS THEREOF. INFORMATION SUBMITTED BY AN APPLICANT TO THE DEPARTMENT OF FINANCE PURSUANT TO THIS TITLE SHALL NOT BE SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

2. ANY VIOLATION OF THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL BE PUNISHED BY A FINE NOT EXCEEDING ONE THOUSAND DOLLARS OR BY IMPRISONMENT NOT EXCEEDING ONE YEAR, OR BOTH, AT THE DISCRETION OF THE COURT, AND IF THE OFFENDER BE AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF FINANCE OR OF THE TAX COMMISSION, THE OFFENDER SHALL BE DISMISSED FROM OFFICE.

S 2. This act shall take effect immediately, provided that this act shall be deemed to have been in full force and effect on and after January 1, 2008. Any actions, including the promulgation of rules, necessary to carry out the purposes of this act may be taken before the date this act shall have become a law, provided that such rules shall not take effect before the effective date of this act, and provided further that such rules, if necessary to carry out the purposes of this act, may be made retroactive to and deemed to have been in full force and effect on and after January 1, 2008.