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

2194

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to establishing the residential open green space tax abatement for certain properties in a city of one million or more

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 4-D to read as follows:

TITLE 4-D

RESIDENTIAL OPEN GREEN SPACE TAX ABATEMENT FOR CERTAIN PROPERTIES IN A CITY OF ONE MILLION OR MORE PERSONS

SECTION 499-AAAAA. DEFINITIONS.
499-BBBBB. REAL PROPERTY TAX ABATEMENT.
499-CCCCC. APPLICATION FOR TAX ABATEMENT.
499-DDDDD. CONTINUING REQUIREMENTS.
499-EEEEE. REVOCATION OF TAX ABATEMENT.
499-FFFFF. ENFORCEMENT AND ADMINISTRATION.
499-GGGGG. TAX LIEN AND INTEREST.

S 499-AAAAA. DEFINITIONS. WHEN USED IN THIS TITLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "APPLICANT" SHALL MEAN (A) WITH RESPECT TO AN ELIGIBLE BUILDING HELD IN THE COOPERATIVE OR CONDOMINIUM FORM OF OWNERSHIP, THE BOARD OF MANAGERS OF A CONDOMINIUM OR THE BOARD OF DIRECTORS OF A COOPERATIVE APARTMENT CORPORATION, OR (B) WITH RESPECT TO ANY OTHER ELIGIBLE BUILDING, THE OWNER OF SUCH BUILDING.

2. "APPLICATION FOR TAX ABATEMENT" SHALL MEAN AN APPLICATION FOR A RESIDENTIAL OPEN GREEN SPACE TAX ABATEMENT PURSUANT TO SECTION FOUR HUNDRED NINETY-NINE-CCCCC OF THIS TITLE.

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

LBD03600-01-3

3. "COMPLIANCE PERIOD" SHALL MEAN THE TAX YEAR IN WHICH A TAX ABATEMENT IS TAKEN.

4. "DEPARTMENT OF FINANCE" SHALL MEAN THE DEPARTMENT OF FINANCE OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS.

5. "DESIGNATED AGENCY" SHALL MEAN ONE OR MORE AGENCIES OR DEPARTMENTS OF A CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS THAT ARE DESIGNATED BY THE MAYOR OF SUCH CITY TO EXERCISE THE FUNCTIONS, POWERS AND DUTIES OF A DESIGNATED AGENCY PURSUANT TO THIS TITLE.

6. "ELIGIBLE BUILDING" SHALL MEAN RESIDENTIAL REAL PROPERTY, LOCATED WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS. NO BUILDING SHALL BE ELIGIBLE FOR MORE THAN ONE TAX ABATEMENT PURSUANT TO THIS TITLE.

7. "ELIGIBLE SPACE" SHALL MEAN THE TOTAL SPACE AVAILABLE THAT IS COVERED WITH AN IMPERMEABLE SURFACE, TO SUPPORT A RESIDENTIAL OPEN GREEN SPACE.

8. "RESIDENTIAL OPEN GREEN SPACE" SHALL MEAN THE AREA OF RESIDENTIAL YARDS, ADJOINING REAR YARDS AND REAR FACADES THAT HAS BEEN ALTERED BY REMOVING AN IMPERMEABLE SURFACE AND HAS BEEN COVERED WITH SOIL AND VEGETATION.

S 499-BBBBB. REAL PROPERTY TAX ABATEMENT. AN ELIGIBLE BUILDING SHALL RECEIVE AN ABATEMENT OF REAL PROPERTY TAXES AS PROVIDED IN THIS TITLE AND THE RULES PROMULGATED HEREUNDER.

1. THE AMOUNT OF SUCH TAX ABATEMENT SHALL BE FOUR DOLLARS AND FIFTY CENTS PER SQUARE FOOT OF RESIDENTIAL OPEN GREEN SPACE PURSUANT TO AN APPROVED APPLICATION FOR TAX ABATEMENT; PROVIDED, HOWEVER, THAT THE AMOUNT OF SUCH TAX ABATEMENT SHALL NOT EXCEED THE LESSER OF (A) ONE HUNDRED THOUSAND DOLLARS OR (B) THE TAX LIABILITY FOR THE ELIGIBLE BUILDING IN THE TAX YEAR IN WHICH THE TAX ABATEMENT IS TAKEN.

2. SUCH TAX ABATEMENT SHALL COMMENCE ON JULY FIRST FOLLOWING THE APPROVAL OF AN APPLICATION FOR TAX ABATEMENT BY A DESIGNATED AGENCY, AND SHALL NOT EXCEED ONE YEAR.

3. WITH RESPECT TO ANY ELIGIBLE BUILDING HELD IN THE CONDOMINIUM FORM OF OWNERSHIP THAT RECEIVES A TAX ABATEMENT PURSUANT TO THIS TITLE, SUCH TAX ABATEMENT BENEFITS SHALL BE APPORTIONED AMONG ALL OF THE CONDOMINIUM TAX LOTS WITHIN SUCH ELIGIBLE BUILDING.

4. 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 FOR THE FISCAL YEAR IN WHICH THE TAX ABATEMENT IS TAKEN IS REDUCED AFTER THE ASSESSMENT ROLL BECOMES FINAL, THE DEPARTMENT OF FINANCE SHALL RECALCULATE THE ABATEMENT SO THAT THE ABATEMENT GRANTED SHALL NOT EXCEED THE ANNUAL TAX LIABILITY AS SO REDUCED. 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.

S 499-CCCCC. APPLICATION FOR TAX ABATEMENT. 1. TO OBTAIN A TAX ABATEMENT PURSUANT TO THIS TITLE, AN APPLICANT MUST FILE AN APPLICATION FOR TAX ABATEMENT, WHICH MAY BE FILED ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN, AND ON OR BEFORE MARCH FIFTEENTH, TWO THOUSAND EIGHTEEN.

2. SUCH APPLICATION SHALL BE FILED WITH A DESIGNATED AGENCY NO LATER THAN THE MARCH FIFTEENTH BEFORE THE TAX YEAR, BEGINNING JULY FIRST, FOR WHICH THE TAX ABATEMENT IS SOUGHT.

3. SUCH APPLICATION SHALL CONTAIN THE FOLLOWING:

(A) THE NAME AND ADDRESS OF THE APPLICANT AND THE LOCATION OF THE RESIDENTIAL OPEN GREEN SPACE.

(B) PROOF THAT THE APPLICANT RECEIVED ALL REQUIRED CERTIFICATIONS, PERMITS AND OTHER APPROVALS TO CONSTRUCT THE RESIDENTIAL OPEN GREEN SPACE.

(C) AN AGREEMENT BY THE APPLICANT, WHICH INCLUDES A MAINTENANCE PLAN, TO MAINTAIN THE RESIDENTIAL OPEN GREEN SPACE DURING THE COMPLIANCE PERIOD AND FOR A MINIMUM OF THREE YEARS THEREAFTER IN SUCH A MANNER THAT IT CONTINUOUSLY CONSTITUTES A RESIDENTIAL OPEN GREEN SPACE WITHIN THE MEANING OF THIS TITLE AND THE RULES PROMULGATED HEREUNDER.

(D) AN AGREEMENT TO PERMIT A DESIGNATED AGENCY OR ITS DESIGNEE TO INSPECT THE RESIDENTIAL OPEN GREEN SPACE AND ANY RELATED STRUCTURES AND EQUIPMENT UPON REASONABLE NOTICE.

(E) ANY OTHER INFORMATION OR CERTIFICATIONS REQUIRED BY A DESIGNATED AGENCY PURSUANT TO THIS TITLE AND THE RULES PROMULGATED HEREUNDER.

4. AN APPLICATION FOR TAX ABATEMENT SHALL BE IN ANY FORMAT PRESCRIBED BY A DESIGNATED AGENCY, INCLUDING ELECTRONIC FORM.

5. AN APPLICATION FOR TAX ABATEMENT SHALL BE APPROVED BY A DESIGNATED AGENCY UPON DETERMINING THAT THE APPLICANT HAS SUBMITTED PROOF ACCEPTABLE TO SUCH AGENCY THAT THE REQUIREMENTS FOR OBTAINING A TAX ABATEMENT PURSUANT TO THIS TITLE AND THE RULES PROMULGATED HEREUNDER HAVE BEEN MET. THE BURDEN OF PROOF SHALL BE ON THE APPLICANT TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE REQUIREMENTS FOR GRANTING A TAX ABATEMENT HAVE BEEN SATISFIED.

6. UPON NOTIFICATION FROM A DESIGNATED AGENCY THAT AN APPLICATION FOR TAX ABATEMENT HAS BEEN APPROVED, THE DEPARTMENT OF FINANCE SHALL APPLY THE TAX ABATEMENT, PROVIDED THERE ARE NO OUTSTANDING REAL ESTATE TAXES, WATER AND SEWER CHARGES, PAYMENTS IN LIEU OF TAXES OR OTHER MUNICIPAL CHARGES WITH RESPECT TO THE ELIGIBLE BUILDING.

S 499-DDDDD. CONTINUING REQUIREMENTS. THE TAX ABATEMENT SHALL BE CONDITIONED UPON:

1. CONTINUING COMPLIANCE DURING THE COMPLIANCE PERIOD WITH ALL APPLICABLE PROVISIONS OF LAW, INCLUDING WITHOUT LIMITATION THE LOCAL CONSTRUCTION AND FIRE CODES, MAINTAINING THE RESIDENTIAL OPEN GREEN SPACE IN SUCH A MANNER THAT IT CONTINUOUSLY CONSTITUTES A RESIDENTIAL OPEN GREEN SPACE WITHIN THE MEANING OF THIS TITLE AND THE RULES PROMULGATED HEREUNDER, AND PERMITTING A DESIGNATED AGENCY OR ITS DESIGNEE TO INSPECT THE RESIDENTIAL OPEN GREEN SPACE AND ANY RELATED STRUCTURES AND EQUIPMENT UPON REASONABLE NOTICE; AND

2. REAL ESTATE TAXES, WATER AND SEWER CHARGES, PAYMENTS IN LIEU OF TAXES OR OTHER MUNICIPAL CHARGES WITH RESPECT TO AN ELIGIBLE BUILDING NOT HAVING BEEN DUE AND OWING DURING THE COMPLIANCE PERIOD FOR A PERIOD OF SIX MONTHS OR MORE.

S 499-EEEEE. REVOCATION OF TAX ABATEMENT. 1. THE DEPARTMENT OF FINANCE SHALL REVOKE, IN WHOLE OR IN PART, ANY TAX ABATEMENT GRANTED PURSUANT TO THIS TITLE WHENEVER A DESIGNATED AGENCY HAS DETERMINED AND NOTIFIED THE DEPARTMENT OF FINANCE THAT:

(A) AN APPLICANT HAS FAILED TO COMPLY WITH A REQUIREMENT OF THIS TITLE OR ANY RULE PROMULGATED HEREUNDER AT ANY TIME DURING THE COMPLIANCE PERIOD, INCLUDING WITHOUT LIMITATION ANY OF THE CONTINUING REQUIREMENTS SET FORTH IN SUBDIVISION ONE OF SECTION FOUR HUNDRED NINETY-NINE-DDDDD OF THIS TITLE;

(B) AN ELIGIBLE BUILDING HAS NOT BEEN IN COMPLIANCE DURING ALL OR PART OF THE COMPLIANCE PERIOD WITH ANY REQUIREMENT OF THIS TITLE OR ANY RULE PROMULGATED HEREUNDER;

(C) THE RESIDENTIAL OPEN GREEN SPACE FOR WHICH A TAX ABATEMENT WAS GRANTED HAS AT ANY TIME DURING THE COMPLIANCE PERIOD FAILED TO MEET ANY

REQUIREMENT FOR A RESIDENTIAL OPEN GREEN SPACE PURSUANT TO THIS TITLE OR ANY RULE PROMULGATED HEREUNDER; OR

(D) AN APPLICATION, CERTIFICATION, 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.

2. THE DEPARTMENT OF FINANCE MAY REVOKE, IN WHOLE OR IN PART, ANY TAX ABATEMENT GRANTED PURSUANT TO THIS TITLE WHENEVER IT HAS DETERMINED THAT AN APPLICANT HAS FAILED TO COMPLY WITH THE CONTINUING REQUIREMENT SET FORTH IN SUBDIVISION TWO OF SECTION FOUR HUNDRED NINETY-NINE-DDDDD OF THIS TITLE.

3. WHERE IT HAS BEEN DETERMINED BY A DESIGNATED AGENCY, AFTER NOTICE TO AND AN OPPORTUNITY TO BE HEARD BY THE ENTITY RECEIVING THE TAX REBATE, THAT A SITUATION DESCRIBED IN ANY OF THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION HAS OCCURRED, SUCH DESIGNATED AGENCY SHALL SO NOTIFY THE DEPARTMENT OF FINANCE NO LATER THAN THE NINETIETH DAY AFTER THE LAST DAY OF THE COMPLIANCE PERIOD.

4. AN APPLICANT SHALL PAY, WITH INTEREST, SUCH PART OF ANY TAX ABATEMENT RECEIVED PURSUANT TO THIS TITLE THAT REPRESENTS THE PERIOD OF NON-COMPLIANCE AS DETERMINED BY THE DESIGNATED AGENCY OR THE DEPARTMENT OF FINANCE, AS THE CASE MAY BE. IN ADDITION, A DESIGNATED AGENCY MAY DECLARE ANY APPLICANT INELIGIBLE FOR FUTURE TAX ABATEMENT PURSUANT TO THIS TITLE IF ANY APPLICATION, CERTIFICATION, 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.

S 499-FFFFF. ENFORCEMENT AND ADMINISTRATION. 1. THE DEPARTMENT OF FINANCE SHALL HAVE, IN ADDITION TO ANY OTHER FUNCTIONS, POWERS AND DUTIES THAT HAVE BEEN OR MAY BE CONFERRED ON IT BY LAW, THE FOLLOWING FUNCTIONS, POWERS AND DUTIES TO BE EXERCISED IN ACCORDANCE WITH THIS TITLE:

(A) TO APPLY A TAX ABATEMENT;

(B) TO REVOKE ALL OR PART OF ANY SUCH TAX ABATEMENT;

(C) TO MAKE AND PROMULGATE RULES TO CARRY OUT THE PURPOSES OF THIS TITLE; AND

(D) ANY OTHER FUNCTION, POWER OR DUTY NECESSARILY IMPLIED BY THIS TITLE.

2. A DESIGNATED AGENCY SHALL HAVE, IN ADDITION TO ANY OTHER FUNCTIONS, POWERS AND DUTIES THAT HAVE BEEN OR MAY BE CONFERRED ON IT BY LAW, THE FOLLOWING FUNCTIONS, POWERS AND DUTIES TO BE EXERCISED IN ACCORDANCE WITH THIS TITLE:

(A) TO RECEIVE, REVIEW, APPROVE AND DENY APPLICATIONS FOR TAX ABATEMENT;

(B) TO INSPECT OPEN SPACES AND ANY RELATED STRUCTURES AND EQUIPMENT;

(C) TO PRESCRIBE FORMS AND MAKE AND PROMULGATE RULES TO CARRY OUT THE PURPOSES OF THIS TITLE;

(D) TO MAKE THE DETERMINATIONS PROVIDED FOR IN SECTIONS FOUR HUNDRED NINETY-NINE-CCCCC AND FOUR HUNDRED NINETY-NINE-EEEEE OF THIS TITLE AND TO NOTIFY THE DEPARTMENT OF FINANCE OF SUCH DETERMINATIONS; AND

(E) ANY OTHER FUNCTION, POWER OR DUTY NECESSARILY IMPLIED BY THIS TITLE.

3. A DESIGNATED AGENCY MAY PROVIDE FOR REASONABLE ADMINISTRATIVE CHARGES OR FEES NECESSARY TO DEFRAY EXPENSES OF ADMINISTERING THE TAX ABATEMENT PROGRAM ESTABLISHED BY THIS TITLE.

4. A DESIGNATED AGENCY AND THE DEPARTMENT OF FINANCE SHALL ESTABLISH PROCEDURES THAT ARE NECESSARY OR APPROPRIATE FOR (A) THE TIMELY NOTIFI-

CATION TO THE DEPARTMENT OF FINANCE BY A DESIGNATED AGENCY OF AN APPROVAL OF AN APPLICATION FOR TAX ABATEMENT OR OF ANY NONCOMPLIANCE PURSUANT TO SECTION FOUR HUNDRED NINETY-NINE-EEEEE OF THIS TITLE AND (B) ANY OTHER INTERAGENCY COORDINATION TO FACILITATE THE PURPOSES OF THIS TITLE.

S 499-GGGGG. TAX LIEN AND INTEREST. 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 TAX ABATEMENT GRANTED PURSUANT TO THIS TITLE AT THE APPLICABLE RATE OR RATES OF INTEREST IMPOSED GENERALLY FOR NON-PAYMENT OF REAL PROPERTY TAX WITH RESPECT TO THE ELIGIBLE BUILDING FOR THE PERIOD IN QUESTION.

S 2. This act shall take effect immediately.