

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

3 TITLE 4-D

4 RESIDENTIAL OPEN GREEN SPACE TAX ABATEMENT FOR CERTAIN PROPERTIES IN A
5 CITY OF

6 ONE MILLION OR MORE PERSONS

7 SECTION 499-AAAAA. DEFINITIONS.

8 499-BBBBB. REAL PROPERTY TAX ABATEMENT.

9 499-CCCCC. APPLICATION FOR TAX ABATEMENT.

10 499-DDDDD. CONTINUING REQUIREMENTS.

11 499-EEEEEE. REVOCATION OF TAX ABATEMENT.

12 499-FFFFFF. ENFORCEMENT AND ADMINISTRATION.

13 499-GGGGG. TAX LIEN AND INTEREST.

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

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

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

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

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1 3. "COMPLIANCE PERIOD" SHALL MEAN THE TAX YEAR IN WHICH A TAX ABATE-
2 MENT IS TAKEN.

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

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

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

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

16 8. "RESIDENTIAL OPEN GREEN SPACE" SHALL MEAN THE AREA OF RESIDENTIAL
17 YARDS, ADJOINING REAR YARDS AND REAR FACADES THAT HAS BEEN ALTERED BY
18 REMOVING AN IMPERMEABLE SURFACE AND HAS BEEN COVERED WITH SOIL AND VEGE-
19 TATION.

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

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

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

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

36 4. IF, AS A RESULT OF APPLICATION TO THE TAX COMMISSION OR A COURT
37 ORDER OR ACTION BY THE DEPARTMENT OF FINANCE, THE BILLABLE ASSESSED
38 VALUE FOR THE FISCAL YEAR IN WHICH THE TAX ABATEMENT IS TAKEN IS REDUCED
39 AFTER THE ASSESSMENT ROLL BECOMES FINAL, THE DEPARTMENT OF FINANCE SHALL
40 RECALCULATE THE ABATEMENT SO THAT THE ABATEMENT GRANTED SHALL NOT EXCEED
41 THE ANNUAL TAX LIABILITY AS SO REDUCED. THE AMOUNT EQUAL TO THE DIFFER-
42 ENCE BETWEEN THE ABATEMENT ORIGINALLY GRANTED AND THE ABATEMENT AS SO
43 RECALCULATED SHALL BE DEDUCTED FROM ANY REFUND OTHERWISE PAYABLE OR
44 REMISSION OTHERWISE DUE AS A RESULT OF SUCH REDUCTION IN BILLABLE
45 ASSESSED VALUE.

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

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

53 3. SUCH APPLICATION SHALL CONTAIN THE FOLLOWING:

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

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

4 (C) AN AGREEMENT BY THE APPLICANT, WHICH INCLUDES A MAINTENANCE PLAN,
5 TO MAINTAIN THE RESIDENTIAL OPEN GREEN SPACE DURING THE COMPLIANCE PERI-
6 OD AND FOR A MINIMUM OF THREE YEARS THEREAFTER IN SUCH A MANNER THAT IT
7 CONTINUOUSLY CONSTITUTES A RESIDENTIAL OPEN GREEN SPACE WITHIN THE MEAN-
8 ING OF THIS TITLE AND THE RULES PROMULGATED HEREUNDER.

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

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

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

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

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

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

30 1. CONTINUING COMPLIANCE DURING THE COMPLIANCE PERIOD WITH ALL APPLI-
31 CABLE PROVISIONS OF LAW, INCLUDING WITHOUT LIMITATION THE LOCAL
32 CONSTRUCTION AND FIRE CODES, MAINTAINING THE RESIDENTIAL OPEN GREEN
33 SPACE IN SUCH A MANNER THAT IT CONTINUOUSLY CONSTITUTES A RESIDENTIAL
34 OPEN GREEN SPACE WITHIN THE MEANING OF THIS TITLE AND THE RULES PROMUL-
35 GATED HEREUNDER, AND PERMITTING A DESIGNATED AGENCY OR ITS DESIGNEE TO
36 INSPECT THE RESIDENTIAL OPEN GREEN SPACE AND ANY RELATED STRUCTURES AND
37 EQUIPMENT UPON REASONABLE NOTICE; AND

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

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

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

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

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

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

3 (D) AN APPLICATION, CERTIFICATION, REPORT OR OTHER DOCUMENT SUBMITTED
4 BY THE APPLICANT CONTAINS A FALSE OR MISLEADING STATEMENT AS TO A MATE-
5 RIAL FACT OR OMITS TO STATE ANY MATERIAL FACT NECESSARY IN ORDER TO MAKE
6 THE STATEMENT THEREIN NOT FALSE OR MISLEADING.

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

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

18 4. AN APPLICANT SHALL PAY, WITH INTEREST, SUCH PART OF ANY TAX ABATE-
19 MENT RECEIVED PURSUANT TO THIS TITLE THAT REPRESENTS THE PERIOD OF NON-
20 COMPLIANCE AS DETERMINED BY THE DESIGNATED AGENCY OR THE DEPARTMENT OF
21 FINANCE, AS THE CASE MAY BE. IN ADDITION, A DESIGNATED AGENCY MAY
22 DECLARE ANY APPLICANT INELIGIBLE FOR FUTURE TAX ABATEMENT PURSUANT TO
23 THIS TITLE IF ANY APPLICATION, CERTIFICATION, REPORT OR OTHER DOCUMENT
24 SUBMITTED BY THE APPLICANT CONTAINS A FALSE OR MISLEADING STATEMENT AS
25 TO A MATERIAL FACT OR OMITS TO STATE ANY MATERIAL FACT NECESSARY IN
26 ORDER TO MAKE THE STATEMENT THEREIN NOT FALSE OR MISLEADING.

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

32 (A) TO APPLY A TAX ABATEMENT;

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

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

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

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

42 (A) TO RECEIVE, REVIEW, APPROVE AND DENY APPLICATIONS FOR TAX ABATE-
43 MENT;

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

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

47 (D) TO MAKE THE DETERMINATIONS PROVIDED FOR IN SECTIONS FOUR HUNDRED
48 NINETY-NINE-CCCC AND FOUR HUNDRED NINETY-NINE-EEEE OF THIS TITLE AND
49 TO NOTIFY THE DEPARTMENT OF FINANCE OF SUCH DETERMINATIONS; AND

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

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

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

1 CATION TO THE DEPARTMENT OF FINANCE BY A DESIGNATED AGENCY OF AN
2 APPROVAL OF AN APPLICATION FOR TAX ABATEMENT OR OF ANY NONCOMPLIANCE
3 PURSUANT TO SECTION FOUR HUNDRED NINETY-NINE-EEEEEE OF THIS TITLE AND (B)
4 ANY OTHER INTERAGENCY COORDINATION TO FACILITATE THE PURPOSES OF THIS
5 TITLE.
6 S 499-GGGGG. TAX LIEN AND INTEREST. ALL TAXES, WITH INTEREST, REQUIRED
7 TO BE PAID RETROACTIVELY PURSUANT TO THIS TITLE SHALL CONSTITUTE A TAX
8 LIEN AS OF THE DATE IT IS DETERMINED SUCH TAXES AND INTEREST ARE OWED.
9 ALL INTEREST SHALL BE CALCULATED FROM THE DATE THE TAXES WOULD HAVE BEEN
10 DUE BUT FOR THE TAX ABATEMENT GRANTED PURSUANT TO THIS TITLE AT THE
11 APPLICABLE RATE OR RATES OF INTEREST IMPOSED GENERALLY FOR NON-PAYMENT
12 OF REAL PROPERTY TAX WITH RESPECT TO THE ELIGIBLE BUILDING FOR THE PERI-
13 OD IN QUESTION.
14 S 2. This act shall take effect immediately.