

STATE OF NEW YORK

1367

2021-2022 Regular Sessions

IN ASSEMBLY

January 8, 2021

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

AN ACT to amend the real property tax law, in relation to the certification of certain property complying with the residential-commercial urban exemption program and the revocation of benefits of such program in certain circumstances; and to amend a chapter of the laws of 2020 amending the real property tax law relating to the residential-commercial urban exemption program, as proposed in legislative bills numbers S. 5254-B and A. 8091-A, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 485-a of the real property tax law, as amended by a
2 chapter of the laws of 2020, amending the real property tax law relating
3 to the residential-commercial urban exemption program, as proposed in
4 legislative bills numbers S. 5254-B and A. 8091-A, is amended to read as
5 follows:

6 § 485-a. Residential-commercial urban exemption program. 1. Defi-
7 nitions. As used in this section, the following terms shall have the
8 following meanings:

9 (a) "Municipality" means any town, city or village except for a city
10 having more than one million inhabitants.

11 (b) "Applicant" means any person obligated to pay real property taxes
12 on the property for which an exemption from real property taxes under
13 this section is sought.

14 (c) "Commercial construction work" means the modernization, rehabili-
15 tation, expansion or other improvement of the portion of mixed-use prop-
16 erty to be used for commercial purposes.

17 (d) "Commercial purpose or use" means (i) the buying, selling or
18 otherwise providing of goods or services directly to the public~~[-~~
19 ~~including hotel services, retail stores, office space, restaurants,~~
20 ~~bars, gyms, theaters, and cafes]; or (ii) a non-residential lawful use~~
21 including, but not limited to, an office, hotel, retail store, brewery,
22 distillery, restaurant, cafe, bar or tavern, gymnasium, theater, or

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

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entertainment venue which employs or is anticipated to employ a minimum of five employees primarily at the mixed-use property for which an exemption under this section is sought.

(e) "Mixed-use property" means property on which will exist, after completion of residential construction work or a combination of residential construction work and commercial construction work, a building or structure used for both residential and commercial purposes of which, at least ~~[fifty]~~ forty percent of the building or structure's square footage is devoted to residential purposes or use and at least fifteen percent of the building or structure's square footage is devoted to commercial purposes or use. ~~[Only square footage existing in a story above grade shall be used in the determination of the building's percentage of residential purposes or use and commercial purposes or use.]~~

(f) "Person" means an individual, corporation, limited liability company, partnership, association, agency, trust, estate, foreign or domestic government or subdivision thereof, or other entity.

(g) "Residential construction work" means the creation, modernization, rehabilitation, expansion or other improvement of dwelling units, other than dwelling units in a hotel, in the portion of mixed-use property to be used for residential purposes.

~~[(h) "Floor area" means the horizontal areas of the several floors or any portion thereof of a mixed-use property measured from the exterior faces of exterior walls or from the center line of party walls, exclusive of any area existing below grade.]~~

~~(i)]~~ (h) "Story above grade" means any story having its finished floor surface entirely above grade.

~~[(j)]~~ (i) "Grade" shall mean the finished ground level adjoining the building at all exterior walls.

2. Any municipality may, by local law, provide for the exemption of real property from taxation as provided in this section. Upon the adoption of such a local law, the county in which such municipality is located may, by local law, and any school district, all or part of which is located in such municipality, may, by resolution, exempt such property from its taxation in the same manner and to the same extent as such municipality has done.

3. Upon the adoption of such a local law, non-residential real property, upon conversion to mixed-use property, shall be exempt from taxation and special ad valorem levies as provided for in subdivision four of this section. ~~[Land which was vacant prior to the residential or commercial construction work for which a tax exemption is sought, shall not be eligible to receive benefits pursuant to this section.]~~

4. (a) (i) For a period of twelve years from the approval of an application, the increase in assessed value of such property attributable to such conversion shall be exempt as provided in subparagraph (ii) of this paragraph. Such exemption shall be computed with respect to the "exemption base". The exemption base shall be determined for each year in which there is an increase in assessed value so attributable from that of the previous year's assessed value.

(ii) The following table shall illustrate the computation of the tax exemption:

| Year of exemption | Percentage of exemption |
|-------------------|-------------------------|
| 1 through 8 | 100% of exemption base |
| 9 | 80% of exemption base |

| | | |
|---|----|-----------------------|
| 1 | 10 | 60% of exemption base |
| 2 | 11 | 40% of exemption base |
| 3 | 12 | 20% of exemption base |

4 (b) No such exemption shall be granted unless:

5 (i) such conversion was commenced subsequent to the date on which the
6 municipality's local law took effect; and

7 (ii) the cost of such conversion exceeds the sum of ten thousand
8 dollars or such greater amount as may be specified by local law[+]

9 ~~(iii) at least seventy-five percent of the floor area of the mixed-use
10 property consists of the pre-existing building or structure;~~

11 ~~(iv) the portion of the building used for commercial purposes is
12 currently, as demonstrated by documentation submitted by the applicant,
13 used as such or is in good faith contemplated].~~

14 (c) For purposes of this section the term conversion shall not include
15 ordinary maintenance and repairs.

16 (d) No such exemption shall be granted concurrent with or subsequent
17 to any other real property tax exemption granted to the same improve-
18 ments to real property, except, where during the period of such previous
19 exemption, payments in lieu of taxes or other payments were made to the
20 local government in an amount that would have been equal to or greater
21 than the amount of real property taxes that would have been paid on such
22 improvements had such property been granted an exemption pursuant to
23 this section. In such case, an exemption shall be granted for a number
24 of years equal to the twelve year exemption granted pursuant to this
25 section less the number of years the property would have been previously
26 exempt from real property taxes.

27 5. Such exemption shall be granted only upon application by the owner
28 of such real property on a form prescribed by the commissioner. Such
29 application shall be filed with the assessor of the municipality or
30 county having the power to assess property for taxation on or before the
31 appropriate taxable status date of such municipality or county.

32 6. If the assessor is satisfied that the applicant is entitled to an
33 exemption pursuant to this section, he or she shall approve the applica-
34 tion and such real property shall be exempt from taxation and special ad
35 valorem levies as in this section provided. The assessed value of any
36 exemption granted pursuant to this section shall be entered by the
37 assessor on the assessment roll with the taxable property, with the
38 amount of the exemption shown in a separate column.

39 7. (a) During the period of exemption pursuant to this section, the
40 owner shall submit an annual certification to the assessor attesting
41 that the property complies with the provisions or requirements of this
42 section and any additional provisions or requirements as may be provided
43 by local law. Failure to submit such certification shall result in revo-
44 cation of benefits. Such certification shall include at a minimum the
45 following:

46 (i) the types of residential use and the total above-grade square
47 footage and below-grade square footage of such use;

48 (ii) the types of commercial use and the total above-grade square
49 footage and below-grade square footage of such use;

50 (iii) attestation that the portion of the building used for commercial
51 purposes is currently, as demonstrated by documentation submitted by the
52 applicant, used as such or is in good faith contemplated to be used as
53 such; ~~and~~

54 (iv) the specific address of the entrance through which the public
55 enters the portion of the building used for commercial purposes;

1 (v) if the portion of the building intended to be used for commercial
2 purposes is not currently in active use for such purposes and open to
3 the public, the reasons why it is not currently being used for commer-
4 cial purposes and open to the public; and

5 (vi) all such other information required by the municipality.

6 (b) If the assessor is satisfied that the applicant continues to be
7 entitled to the exemption pursuant to this section, the assessor shall
8 approve the certification and the real property shall remain exempt from
9 taxation and special ad valorem levies for another year as provided in
10 this section.

11 8. (a) The benefits of this section shall be revoked upon a finding by
12 the assessor that:

13 (i) the application for benefits hereunder or the annual certification
14 required hereunder contains a false statement or false information as to
15 a material matter or omits a material matter; ~~[ex]~~

16 (ii) the eligible real property fails to comply with one or more of
17 the provisions or requirements of this section or any provisions or
18 requirements provided by local law; or

19 (iii) the portion of the property devoted to commercial purposes has
20 not been in active use for commercial purposes and open to the public
21 for three consecutive years.

22 (b) Such revocation shall require the repayment of any benefits previ-
23 ously granted pursuant to this section for any year during which the
24 property was non-compliant or the application or annual certification
25 contained a false statement or false information as to a material matter
26 or omitted a material matter.

27 (c) No benefits may be revoked unless the applicant has been given
28 thirty days' notice of such revocation and has been given reasonable
29 notice to cure any failure to comply with the provisions of requirements
30 of this section.

31 9. If the assessor determines that there was a material misstatement
32 in an application filed by or on behalf of the owners for an exemption
33 pursuant to this section and that such misstatement provided the basis
34 for the granting of such exemption, the municipality shall proceed to
35 impose a penalty on the applicant of one thousand dollars in addition to
36 recovering the amount of any prior exemption granted.

37 § 2. Section 2 of a chapter of the laws of 2020, amending the real
38 property tax law relating to the residential-commercial urban exemption
39 program as proposed in legislative bills numbers S. 5254-B and A.
40 8091-A, is amended to read as follows:

41 § 2. This act shall take effect January 1, 2021 and shall apply to
42 properties for which the initial application for exemption are received
43 on and after such date, provided, however, that this act shall not apply
44 to properties for which the building permit for construction has been
45 issued prior to such effective date, or within 180 days of such effec-
46 tive date, provided that such project receives a certificate of occupan-
47 cy within 24 months of the issuance of the building permit or such
48 effective date, whichever occurs later. Days for which a stop work order
49 is issued due to the COVID-19 state disaster emergency, as required by
50 the locality and/or executive order or other law, shall not be included
51 in the calculation of these time periods.

52 § 3. This act shall take effect on the same date and in the same
53 manner as a chapter of the laws of 2020, amending the real property tax
54 law relating to the residential-commercial urban exemption program, as
55 proposed in legislative bills numbers S. 5254-B and A. 8091-A, takes
56 effect.