

STATE OF NEW YORK

9426

IN ASSEMBLY

March 7, 2022

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

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
2 chapter 132 of the laws of 2021, is amended to read as follows:
3 § 485-a. Residential-commercial urban exemption program. 1. Defi-
4 nitions. As used in this section, the following terms shall have the
5 following meanings:
6 (a) "Municipality" means any town, city or village except for a city
7 having more than one million inhabitants.
8 (b) "Applicant" means any person obligated to pay real property taxes
9 on the property for which an exemption from real property taxes under
10 this section is sought.
11 (c) "Commercial construction work" means the modernization, rehabili-
12 tation, expansion or other improvement of the portion of mixed-use prop-
13 erty to be used for commercial purposes.
14 (d) "Commercial purpose or use" means [~~(i)~~] the buying, selling or
15 otherwise providing of goods or services directly to the public[~~, or~~
16 ~~(ii) a non-residential lawful use including, but not limited to, an~~
17 ~~office, hotel, retail store, brewery, distillery, restaurant, cafe, bar~~
18 ~~or tavern, gymnasium, theater, or entertainment venue which employs or~~
19 ~~is anticipated to employ a minimum of five employees primarily at the~~
20 ~~mixed-use property for which an exemption under this section is sought].~~
21 including hotel services, retail stores, office space, restaurants,
22 bars, gyms, theaters, and cafes.
23 (e) "Mixed-use property" means property on which will exist, after
24 completion of residential construction work or a combination of residen-
25 tial construction work and commercial construction work, a building or
26 structure used for both residential and commercial purposes of which, at

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

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1 least [~~forty~~] fifty percent of the building or structure's square
 2 footage is devoted to residential purposes or use and at least fifteen
 3 percent of the building or structure's square footage is devoted to
 4 commercial purposes or use. Only square footage existing in a story
 5 above grade shall be used in the determination of the building's
 6 percentage of residential purposes or use and commercial purposes or
 7 use.

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

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

15 (h) "Story above grade" means any story having its finished floor
 16 surface entirely above grade.

17 (i) "Grade" shall mean the finished ground level adjoining the build-
 18 ing at all exterior walls.

19 (j) "Floor area" means the horizontal areas of the several floors or
 20 any portion thereof of a mixed-use property measured from the exterior
 21 faces of exterior walls or from the center line of party walls, exclu-
 22 sive of any area existing below-grade.

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

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

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

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

| 45 | Year of exemption | Percentage of exemption |
|----|-------------------|-------------------------|
| 46 | 1 through 8 | 100% of exemption base |
| 47 | 9 | 80% of exemption base |
| 48 | 10 | 60% of exemption base |
| 49 | 11 | 40% of exemption base |
| 50 | 12 | 20% of exemption base |

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

52 (i) such conversion was commenced subsequent to the date on which the
 53 municipality's local law took effect; [~~and~~]

1 (ii) the cost of such conversion exceeds the sum of ten thousand
2 dollars or such greater amount as may be specified by local law[-];
3 (iii) at least seventy-five percent of the floor area of the mixed-use
4 property consists of the pre-existing building or structure; and
5 (iv) the portion of the building used for commercial purposes is
6 currently, as demonstrated by documentation submitted by the applicant,
7 used as such or is in good faith contemplated.

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

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

21 5. Such exemption shall be granted only upon application by the owner
22 of such real property on a form prescribed by the commissioner. Such
23 application shall be filed with the assessor of the municipality or
24 county having the power to assess property for taxation on or before the
25 appropriate taxable status date of such municipality or county.

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

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

40 (i) the types of residential use and the total above-grade square
41 footage [~~and below-grade square footage~~] of such use;

42 (ii) the types of commercial use and the total above-grade square
43 footage [~~and below-grade square footage~~] of such use;

44 (iii) attestation that the portion of the building used for commercial
45 purposes is currently, as demonstrated by documentation submitted by the
46 applicant, used as such or is in good faith contemplated [~~to be used as~~
47 ~~such~~]; and

48 (iv) [~~the specific address of the entrance through which the public~~
49 ~~enters the portion of the building used for commercial purposes,~~

50 ~~(v) if the portion of the building intended to be used for commercial~~
51 ~~purposes is not currently in active use for such purposes and open to~~
52 ~~the public, the reasons why it is not currently being used for commer-~~
53 ~~cial purposes and open to the public, and~~

54 ~~(vi)]~~ all such other information required by the municipality.

55 (b) If the assessor is satisfied that the applicant continues to be
56 entitled to the exemption pursuant to this section, the assessor shall

1 approve the certification and the real property shall remain exempt from
2 taxation and special ad valorem levies for another year as provided in
3 this section.

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

6 (i) the application for benefits hereunder or the annual certification
7 required hereunder contains a false statement or false information as to
8 a material matter or omits a material matter; or

9 (ii) the eligible real property fails to comply with one or more of
10 the provisions or requirements of this section or any provisions or
11 requirements provided by local law[~~, or~~

12 ~~(iii) the portion of the property devoted to commercial purposes has~~
13 ~~not been in active use for commercial purposes and open to the public~~
14 ~~for three consecutive years].~~

15 (b) Such revocation shall require the repayment of any benefits previ-
16 ously granted pursuant to this section [~~for any year during which the~~
17 ~~property was non-compliant or the application or annual certification~~
18 ~~contained a false statement or false information as to a material matter~~
19 ~~or omitted a material matter.~~

20 ~~(c) No benefits may be revoked unless the applicant has been given~~
21 ~~thirty days' notice of such revocation and has been given reasonable~~
22 ~~notice to cure any failure to comply with the provisions of requirements~~
23 ~~of this section].~~

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

30 § 2. This act shall take effect January 1, 2023 and shall apply to
31 properties for which the initial application for exemption are received
32 on and after such date.