

# STATE OF NEW YORK

7888

## IN SENATE

January 3, 2024

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the labor law and the real property tax law, in relation to the exemption from real property taxation of certain multiple dwellings in certain municipalities

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

1 Section 1. Paragraph a of subdivision 3 of section 224-a of the labor  
2 law, as added by section 1 of part FFF of chapter 58 of the laws of  
3 2020, is amended to read as follows:

4 a. Benefits under section four hundred twenty-one-a or four hundred  
5 sixty-seven-m of the real property tax law;

6 § 2. The real property tax law is amended by adding a new section  
7 467-m to read as follows:

8 § 467-m. Exemption from local real property taxation of certain multi-  
9 ple dwellings in certain municipalities. 1. Definitions. For purposes  
10 of this section, the following terms shall have the following meanings:

11 a. "Affordable housing from commercial conversions tax incentive bene-  
12 fits" hereinafter referred to as "AHCC program benefits", shall mean the  
13 exemption from real property taxation authorized pursuant to this  
14 section.

15 b. "Affordability requirement" shall mean that within any eligible  
16 multiple dwelling: (i) not less than twenty percent of the dwelling  
17 units are affordable housing units; (ii) not less than five percent of  
18 the dwelling units are affordable housing forty percent units; (iii) the  
19 weighted average of all income bands for all of the affordable housing  
20 units does not exceed seventy percent of the area median income,  
21 adjusted for family size; (iv) there are no more than three income bands  
22 for all of the affordable housing units; and (v) no income band for  
23 affordable housing units exceeds one hundred percent of the area median  
24 income, adjusted for family size.

25 c. "Affordable housing forty percent unit" shall mean a dwelling unit  
26 that: (i) is situated within the eligible multiple dwelling for which

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

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1 AHCC program benefits are granted; and (ii) upon initial rental and upon  
2 each subsequent rental following a vacancy during the restriction peri-  
3 od, is affordable to and restricted to occupancy by individuals or fami-  
4 lies whose household income does not exceed forty percent of the area  
5 median income, adjusted for family size, at the time that such household  
6 initially occupies such dwelling unit.

7 d. "Affordable housing unit" shall mean, collectively and individual-  
8 ly: (i) an affordable housing forty percent unit; and (ii) any other  
9 unit that meets the affordability requirement upon initial occupancy and  
10 upon each subsequent rental following a vacancy during the restriction  
11 period, and is affordable to and restricted to occupancy by individuals  
12 or families whose household income does not exceed the income bands  
13 established in conjunction with such affordability requirement.

14 e. "Agency" shall mean the local housing agency, provided, however,  
15 within a city having a population of one million or more, "agency" shall  
16 mean the New York city department of housing preservation and develop-  
17 ment.

18 f. "Application" shall mean an application for AHCC program benefits.

19 g. "Building service employee" shall mean any person who is regularly  
20 employed at, and performs work in connection with the care or mainte-  
21 nance of, an eligible multiple dwelling, including, but not limited to,  
22 a watchman, guard, doorman, building cleaner, porter, handyman, janitor,  
23 gardener, groundskeeper, elevator operator and starter, and window  
24 cleaner, but not including persons regularly scheduled to work fewer  
25 than eight hours per week at such eligible multiple dwelling.

26 h. "Commencement date" shall mean the date upon which the actual  
27 construction of the eligible conversion lawfully begins in good faith.

28 i. "Completion date" shall mean the date upon which the local depart-  
29 ment of buildings issues the first temporary or permanent certificate of  
30 occupancy covering all residential areas of an eligible multiple dwell-  
31 ing.

32 j. "Construction period" shall mean, with respect to any eligible  
33 multiple dwelling, a period: (i) beginning on the later of the commence-  
34 ment date or three years before the completion date; and (ii) ending on  
35 the day preceding the completion date.

36 k. "Dwelling" or "dwellings" shall have the same meaning as set forth  
37 in subdivision four of section four of the multiple dwelling law.

38 l. "Eligible conversion" shall mean the conversion of a non-residen-  
39 tial building to an eligible multiple dwelling.

40 m. "Eligible multiple dwelling" shall mean a multiple dwelling in  
41 which: (i) all dwelling units included in any application are operated  
42 as rental housing; (ii) six or more dwelling units have been created  
43 through an eligible conversion; (iii) the commencement date is after  
44 December thirty-first, two thousand twenty-two and on or before December  
45 thirty-first, two thousand thirty-two; and (iv) the completion date is  
46 on or before December thirty-first, two thousand thirty-eight.

47 n. "Fiscal officer" shall mean the comptroller or other analogous  
48 officer in a municipality.

49 o. "Floor area" shall mean the horizontal areas of the several floors,  
50 or any portion thereof, of a dwelling or dwellings, and accessory struc-  
51 tures on a lot measured from the exterior faces of exterior walls, or  
52 from the center line of party walls.

53 p. "Income band" shall mean a percentage of the area median income,  
54 adjusted for family size, that is a multiple of ten percent.

55 q. "Market unit" shall mean a dwelling unit in an eligible multiple  
56 dwelling other than an affordable housing unit.

1 r. "Marketing band" shall mean maximum rent amounts ranging from twenty  
2 percent to thirty percent of the area median income or income band,  
3 respectively, that is applicable to a specific affordable housing unit.

4 s. "Multiple dwelling" shall have the same meaning as set forth in  
5 subdivision seven of section four of the multiple dwelling law.

6 t. "Municipality" shall mean a county, city, town or village.

7 u. "Nineteen-year benefit" shall mean: (i) for the construction peri-  
8 od, a one hundred percent exemption from real property taxation, other  
9 than assessments for local improvements; (ii) for the first fifteen  
10 years of the restriction period, a thirty-five percent exemption from  
11 real property taxation, other than assessments for local improvements;  
12 (iii) for the sixteenth year of the restriction period, a twenty-eight  
13 percent exemption from real property taxation, other than assessments  
14 for local improvements; (iv) for the seventeenth year of the restriction  
15 period, a twenty-one percent exemption from real property taxation,  
16 other than assessments for local improvements; (v) for the eighteenth  
17 year of the restriction period, a fourteen percent exemption from real  
18 property taxation, other than assessments for local improvements; and  
19 (vi) for the nineteenth year of the restriction period, a seven percent  
20 exemption from real property taxation, other than assessments for local  
21 improvements.

22 v. "Non-residential building" shall mean a structure or portion of a  
23 structure having at least one floor, a roof and at least three walls  
24 enclosing all or most of the space used in connection with the structure  
25 or portion of the structure, which has a certificate of occupancy for  
26 commercial, manufacturing or other non-residential use for not less than  
27 ninety percent of the aggregate floor area of such structure or portion  
28 of such structure, or other proof of such non-residential use as is  
29 acceptable to the agency.

30 w. "Non-residential tax lot" shall mean a tax lot that does not  
31 contain any dwelling units.

32 x. "Rent stabilization" shall mean, collectively, the rent stabiliza-  
33 tion law of nineteen hundred sixty-nine, the rent stabilization code,  
34 and the emergency tenant protection act of nineteen seventy-four, all as  
35 in effect as of the effective date of this section or as amended there-  
36 after, together with any successor statutes or regulations addressing  
37 substantially the same subject matter.

38 y. "Residential tax lot" shall mean a tax lot that contains dwelling  
39 units.

40 z. "Restriction period" shall mean a period commencing on the  
41 completion date and extending in perpetuity, notwithstanding any earlier  
42 termination or revocation of AHCC program benefits.

43 2. Benefit. In a municipality subsequent to the effective date of a  
44 local law adopted pursuant to this section, notwithstanding the  
45 provisions of any other general, special or local law to the contrary, a  
46 new eligible multiple dwelling, except a hotel, that complies with the  
47 provisions of this section shall be exempt from real property taxation,  
48 other than assessments for local improvements, in the amounts and for  
49 the periods specified in this section, provided that such eligible  
50 multiple dwelling is used or held out for use for dwelling purposes. A  
51 municipality may, by local law, provide for the exemption of real prop-  
52 erty from taxation as provided in this section. A copy of such local law  
53 shall be filed with the commissioner and the assessor of such muni-  
54 cipality who prepares the assessment roll on which the taxes of such muni-  
55 cipality are levied. An eligible multiple dwelling that meets all of  
56 the requirements of this section shall receive a nineteen-year benefit.

1 3. Tax payments. In addition to any other amounts payable pursuant to  
2 this section, the owner of any eligible multiple dwelling receiving AHCC  
3 program benefits shall pay, in each tax year in which such AHCC program  
4 benefits are in effect, all assessments for local improvements.

5 4. Limitation on benefits for non-residential space. If the aggregate  
6 floor area of commercial, community facility and accessory use space in  
7 an eligible multiple dwelling exceeds twelve percent of the aggregate  
8 floor area in such eligible multiple dwelling, any AHCC program benefits  
9 shall be reduced by a percentage equal to such excess. If an eligible  
10 multiple dwelling contains multiple tax lots, the tax arising out of  
11 such reduction in AHCC program benefits shall first be apportioned pro  
12 rata among any non-residential tax lots. After any such non-residential  
13 tax lots are fully taxable, the remainder of the tax arising out of such  
14 reduction in AHCC program benefits, if any, shall be apportioned pro  
15 rata among the remaining residential tax lots. For the purposes of this  
16 section, accessory use space shall not include home occupation space or  
17 accessory parking space located not more than twenty-three feet above  
18 the curb level.

19 5. Application of benefit. Based on the certification of the agency  
20 certifying eligibility for AHCC program benefits, the department of  
21 finance shall determine the amount of the exemption pursuant to subdivi-  
22 sions two and four of this section and shall apply the exemption to the  
23 assessed value of the eligible multiple dwelling.

24 6. Affordability requirements. An eligible multiple dwelling shall  
25 comply with the following affordability requirements during the  
26 restriction period:

27 a. All affordable housing units in an eligible multiple dwelling shall  
28 share the same common entrances and common areas as rental market rate  
29 units in such eligible multiple dwelling and shall not be isolated to a  
30 specific floor or area of an eligible multiple dwelling. Common  
31 entrances shall mean any means of ingress or egress regularly used by  
32 any resident of a rental dwelling unit in the eligible multiple dwell-  
33 ing.

34 b. Unless preempted by the requirements of a federal, state or local  
35 housing program, either: (i) the affordable housing units in an eligible  
36 multiple dwelling shall have a unit mix proportional to the rental  
37 market units; or (ii) at least fifty percent of the affordable housing  
38 units in an eligible multiple dwelling shall have two or more bedrooms  
39 and no more than twenty-five percent of the affordable housing units  
40 shall have less than one bedroom.

41 c. Notwithstanding any provision of rent stabilization to the contra-  
42 ry: (i) all affordable housing units shall remain fully subject to rent  
43 stabilization during the restriction period; and (ii) any affordable  
44 housing unit occupied by a tenant that has been approved by the agency  
45 prior to the agency's denial of an eligible multiple dwelling's applica-  
46 tion for AHCC program benefits shall remain subject to rent stabiliza-  
47 tion until such tenant vacates such affordable housing unit.

48 d. All rent stabilization registrations required to be filed shall  
49 contain a designation that specifically identifies affordable housing  
50 units created pursuant to this section as "AHCC program affordable hous-  
51 ing units" and shall contain an explanation of the requirements that  
52 apply to all such affordable housing units.

53 e. Failure to comply with the provisions of this subdivision that  
54 require the creation, maintenance, rent stabilization compliance, and  
55 occupancy of affordable housing units shall result in revocation of AHCC  
56 program benefits.

1 f. Nothing in this section shall: (i) prohibit the occupancy of an  
2 affordable housing unit by individuals or families whose income at any  
3 time is less than the maximum percentage of the area median income or  
4 income band, as applicable, adjusted for family size, specified for such  
5 affordable housing unit pursuant to this section; or (ii) prohibit the  
6 owner of an eligible multiple dwelling from requiring, upon initial  
7 rental or upon any rental following a vacancy, the occupancy of any  
8 affordable housing unit by such lower income individuals or families.

9 g. Following issuance of a temporary certificate of occupancy and upon  
10 each vacancy thereafter, an affordable housing unit shall promptly be  
11 offered for rental by individuals or families whose income does not  
12 exceed the maximum percentage of the area median income or income band,  
13 as applicable, adjusted for family size, specified for such affordable  
14 housing unit pursuant to this section and who intend to occupy such  
15 affordable housing unit as their primary residence. An affordable hous-  
16 ing unit shall not be: (i) rented to a corporation, partnership or other  
17 entity; or (ii) held off the market for a period longer than is reason-  
18 ably necessary to perform repairs needed to make such affordable housing  
19 unit available for occupancy.

20 h. An affordable housing unit shall not be rented on a temporary,  
21 transient or short-term basis. Every lease and renewal thereof for an  
22 affordable housing unit shall be for a term of one or two years, at the  
23 option of the tenant.

24 i. An affordable housing unit shall not be converted to cooperative or  
25 condominium ownership.

26 j. The agency may establish by rule such requirements as the agency  
27 deems necessary or appropriate for: (i) the marketing of affordable  
28 housing units, both upon initial occupancy and upon any vacancy; (ii)  
29 monitoring compliance with the provisions of this subdivision; and (iii)  
30 the establishment of marketing bands for affordable housing units. Such  
31 requirements may include, but need not be limited to, retaining a moni-  
32 tor approved by the agency and paid for by the owner of the eligible  
33 multiple dwelling.

34 k. Notwithstanding any provision of this section to the contrary, a  
35 market unit shall not be subject to rent stabilization unless, in the  
36 absence of AHCC program benefits, the unit would be subject to rent  
37 stabilization.

38 7. Building service employees. a. For the purposes of this subdivi-  
39 sion, "applicant" shall mean an applicant for AHCC program benefits, any  
40 successor to such applicant, or any employer of building service employ-  
41 ees for such applicant including, but not limited to, a property manage-  
42 ment company or contractor.

43 b. All building service employees employed by the applicant at the  
44 eligible multiple dwelling shall receive the applicable prevailing wage  
45 for the duration of the nineteen-year benefit period, regardless of  
46 whether such benefits are revoked or terminated.

47 c. The fiscal officer shall have the power to enforce the provisions  
48 of this subdivision. In enforcing such provisions, the fiscal officer  
49 shall have the power: (i) to investigate or cause an investigation to be  
50 made to determine the prevailing wages for building service employees,  
51 and in making such investigation, the fiscal officer may utilize wage  
52 and fringe benefit data from various sources, including, but not limited  
53 to, data and determinations of federal, state or other governmental  
54 agencies; provided, however, that the provision of a dwelling unit shall  
55 not be considered wages or a fringe benefit; (ii) to institute and  
56 conduct inspections at the site of the work or elsewhere; (iii) to exam-

1 ine the books, documents and records pertaining to the wages paid to,  
2 and the hours of work performed by, building service employees; (iv) to  
3 hold hearings and, in connection therewith, to issue subpoenas, the  
4 enforcement of which shall be regulated by the civil practice law and  
5 rules, administer oaths and examine witnesses; (v) to make a classifica-  
6 tion by craft, trade or other generally recognized occupational category  
7 of the building service employees and to determine whether such work has  
8 been performed by the building service employees in such classification;  
9 (vi) to require the applicant to file with the fiscal officer a record  
10 of the wages actually paid by such applicant to the building service  
11 employees and of their hours of work; (vii) to delegate any of the fore-  
12 going powers to his or her deputy or other authorized representative;  
13 (viii) to promulgate rules as he or she shall consider necessary for the  
14 proper execution of the duties, responsibilities and powers conferred  
15 upon him or her by the provisions of this subdivision; and (ix) to  
16 prescribe appropriate sanctions for failure to comply with the  
17 provisions of this subdivision. For each violation of paragraph b of  
18 this subdivision, the fiscal officer may require the payment of (A) back  
19 wages and fringe benefits; (B) liquidated damages up to three times the  
20 amount of the back wages and fringe benefits for willful violations;  
21 and/or (C) reasonable attorneys' fees. If the fiscal officer finds that  
22 the applicant has failed to comply with the provisions of this subdivi-  
23 sion, he or she shall present evidence of such non-compliance to the  
24 agency.

25 d. Paragraph b of this subdivision shall not be applicable to: (i) an  
26 eligible multiple dwelling containing less than thirty dwelling units;  
27 or (ii) an eligible multiple dwelling whose eligible conversion is  
28 carried out with the substantial assistance of grants, loans or subsi-  
29 dies provided by a federal, state or local governmental agency or  
30 instrumentality pursuant to a program for the development of affordable  
31 housing.

32 e. The applicant shall submit a sworn affidavit with its application  
33 certifying that it shall comply with the requirements of this subdivi-  
34 sion or is exempt in accordance with paragraph d of this subdivision.  
35 Upon the agency's approval of such application, the applicant who is not  
36 exempt in accordance with paragraph d of this subdivision shall submit  
37 annually a sworn affidavit to the fiscal officer certifying that it  
38 shall comply with the requirements of this subdivision.

39 8. Concurrent exemptions or abatements. An eligible multiple dwelling  
40 receiving AHCC program benefits shall not receive any exemption from or  
41 abatement of real property taxation under any other law.

42 9. Voluntary renunciation or termination. Notwithstanding the  
43 provisions of any general, special or local law to the contrary, an  
44 owner shall not be entitled to voluntarily renounce or terminate AHCC  
45 program benefits unless the agency authorizes such renunciation or  
46 termination in connection with the commencement of a tax exemption  
47 pursuant to the private housing finance law or section four hundred  
48 twenty-c of this title.

49 10. Termination or revocation. The agency may terminate or revoke AHCC  
50 program benefits for noncompliance with this section. All of the afford-  
51 able housing units shall remain subject to rent stabilization and all  
52 other requirements of this section for the duration of the restriction  
53 period, regardless of whether such benefits have been terminated or  
54 revoked.

55 11. Powers cumulative. The enforcement provisions of this section  
56 shall not be exclusive, and are in addition to any other rights, reme-

1 dies or enforcement powers set forth in any other law or available at  
2 law or in equity.

3 12. Multiple tax lots. If an eligible multiple dwelling contains  
4 multiple tax lots, an application may be submitted with respect to one  
5 or more of such tax lots. The agency shall determine eligibility for  
6 AHCC program benefits based upon the tax lots included in such applica-  
7 tion and benefits for each such eligible multiple dwelling shall be  
8 based upon the completion date of each such multiple dwelling.

9 13. Applications. a. The application with respect to any eligible  
10 multiple dwelling shall be filed with the agency no earlier than the  
11 completion date and not later than one year after the completion date of  
12 such eligible multiple dwelling.

13 b. Notwithstanding the provisions of any general, special, or local  
14 law to the contrary, the agency may require by rule that applications be  
15 filed electronically.

16 c. The agency may rely on certification by an architect or engineer  
17 submitted by an applicant in connection with the filing of an applica-  
18 tion. A false certification by such architect or engineer shall be  
19 deemed to be professional misconduct pursuant to section sixty-five  
20 hundred nine of the education law. Any architect or engineer found  
21 guilty of such misconduct under the procedures prescribed in section  
22 sixty-five hundred ten of the education law shall be subject to the  
23 penalties prescribed in section sixty-five hundred eleven of the educa-  
24 tion law and shall thereafter be ineligible to submit a certification  
25 pursuant to this section.

26 d. Such application shall also certify that all taxes, water charges,  
27 and sewer rents currently due and owing on the property which is the  
28 subject of the application have been paid or are currently being paid in  
29 timely installments pursuant to a written agreement with the department  
30 of finance or other appropriate agency.

31 14. Filing fee. The agency may require a filing fee of no less than  
32 three thousand dollars per dwelling unit in connection with any applica-  
33 tion, except that the agency may promulgate rules:

34 a. imposing a lesser fee for an eligible multiple dwelling whose  
35 eligible conversion is carried out with the substantial assistance of  
36 grants, loans or subsidies provided by a federal, state or local govern-  
37 mental agency or instrumentality pursuant to a program for the develop-  
38 ment of affordable housing; and

39 b. requiring a portion of the filing fee to be paid upon the  
40 submission of the information the agency requires in advance of approv-  
41 ing the commencement of the marketing process for such eligible conver-  
42 sion.

43 15. Rules. Except as provided in subdivision seven of this section,  
44 the agency shall have the sole authority to enforce the provisions of  
45 this section and may promulgate rules to carry out the provisions of  
46 this section.

47 16. Penalties for violations of affordability requirements. a. On or  
48 after the expiration date of the nineteen-year benefit, the agency may  
49 impose, after notice and an opportunity to be heard, a penalty for any  
50 violation by an eligible multiple dwelling of the affordability require-  
51 ments of subdivision six of this section.

52 b. A penalty imposed under this subdivision shall be computed as a  
53 percentage of the capitalized value of all AHCC program benefits on the  
54 eligible multiple dwelling, calculated as of the first year that bene-  
55 fits were granted, not to exceed one thousand percent. The agency shall

1 establish a schedule and method of calculation of such penalties pursu-  
2 ant to subdivision fifteen of this section.

3 c. A penalty imposed under this subdivision shall be imposed against  
4 the owner of the eligible multiple dwelling at the time the violation  
5 occurred, even if such owner no longer owns such eligible multiple  
6 dwelling at the time of the agency's determination.

7 d. A person or entity who fails to pay a penalty imposed pursuant to  
8 this subdivision shall be guilty of a misdemeanor punishable by impri-  
9 sonment not to exceed six months.

10 § 3. This act shall take effect immediately.