§ 489-cccccc. Eligibility for benefits. 1. Time limit for meeting minimum required expenditure. Applicants must meet the appropriate minimum required expenditure as provided in subdivision three of section four hundred eighty-nine-bbbbbb of this title relating to the abatement for which such project qualifies as follows:

(a) No later than four years from the date of issuance of the first building permit, or if no permit was required, the commencement of construction.

(b) Mixed use properties. Expenditures for construction work related to the common areas and systems of such property shall be allocated under rules promulgated by the department between the residential, nonresidential and retail, if any, portions of the property.

2. Time limit for completion of construction. Construction of buildings or structures for which benefits have been approved shall be completed no later than five years from the date of issuance of the first building permit, or if no permit was required, the commencement of construction. Failure to meet this requirement shall result in termination of any inflation protection provided under subdivision three of section four hundred eighty-nine-bbbbbb of this title for any tax year that begins following the date by which completion of construction is required under this paragraph.

3. Non-permissible uses. To be eligible for benefits, the property may not be used for a non-permissible purpose. Accordingly, no abatement benefits under this title shall be granted for work to be performed on property to be used for the following purposes:

(a) Residential. No abatement benefits under this title shall be granted for construction work for residential purposes, or for work on a structure or building where twenty percent or more of the total rentable square footage of such property is or will be dedicated to residential purposes, provided however that where less than five percent of a property's rentable square footage is or will be dedicated to residential purposes, that use shall be considered de minimus and shall not be considered in determining benefits under this title.

(i) For purposes of this paragraph, "property" means the real property contained by an individual tax lot.

(ii) Notwithstanding subparagraph (i) of this paragraph, where a building or structure is owned in condominium form, and an application for benefits under this title includes more than one property in the same condominium, then for purposes of this paragraph, the five percent and twenty percent of the rentable square footage shall be determined based on the aggregate usage of all such properties.

(iii) Hotel uses, as described in subdivision four of this section, shall not be considered residential.

(b) Utility property. No abatement benefits under this title shall be provided for utility property.

(c) Restricted activity. No benefits pursuant to this title shall be granted for construction work on property any part of which is to be used for a restricted activity.

(d) Self-storage facilities. For purposes of this title, "self-storage facility" shall mean any real property or a portion thereof that is designed and used for the purpose of occupying storage space by occupants who are to have access thereto for the purpose of storing and removing personal property, pursuant to subdivision one of section one hundred eighty-two of the lien law. No benefits shall be granted pursuant to this title for construction work on real property where any portion of such property is to be used as a self-storage facility.

(e) Parking facility. No benefits shall be granted pursuant to this title for construction work on real property where any portion of such property is to be used as a parking facility, except where a parking facility is associated with residential construction work on a separate tax lot, as described in rules of the commissioner, and such residential construction work is subject to financial assistance from the local housing agency of a city that has enacted a local law pursuant to this title. For the purposes of this paragraph, the term "financial assistance" means loans, grants, tax credits, tax exemptions, tax abatements, subsidies, mortgages, debt forgiveness, and land conveyances for less than appraised value provided in accordance with a regulatory agreement entered into with such local housing agency, except that "financial assistance" shall not include as-of-right assistance or benefits. For the purposes of this title, "parking facility" means any real property or portion thereof in a city on which exists a facility operated in a manner that requires a license for the operation of a

garage or parking lot issued by the consumer and worker protection agency of such city.

(f) Storage warehouse. No benefits shall be granted pursuant to this title for construction work on real property where any portion of such property is to be used as a storage warehouse. For the purposes of this title, "storage warehouse" means any real property or portion thereof in a city on which exists a building or structure which a consumer's household goods are received for storage for compensation, except warehouses in which such goods are stored by or on behalf of a merchant for resale or other use in the course of the merchant's business, operated in a manner that requires a license for the operation of a storage warehouse issued by the consumer and worker protection agency of such city.

4. Hotel uses. Benefits shall be available for commercial construction work or renovation construction work on a building or structure for the property's square footage used to provide lodging and support services for transient guests, provided the applicant is not otherwise disqualified pursuant to paragraph (c) of subdivision five of this section, or section four hundred eighty-nine-eeeeee or four hundred eighty-nine-iiiiii of this title.

5. Filing requirements. (a) Time to file. (i) Preliminary application. (A) Building permit. No benefits pursuant to this title shall be granted for any construction work unless the applicant filed a preliminary application for such benefits on or before the date of issuance of the first building permit for such work. This requirement may be satisfied where the applicant's architect, contractor or other representative authorized to file the application for such building permit files with the department on behalf of the applicant a preliminary application containing such information as the department shall prescribe by rule.

(B) No building permit required. Where construction work does not require a building permit, a notarized letter from the project's architect or engineer notifying the department of this fact shall be filed within thirty calendar days of the commencement of construction. In such circumstance, such letter shall also satisfy the requirement of a preliminary application if the letter contains all of the information required for a preliminary application under rules prescribed by the

department.

(ii) Final application. Applicants shall file a final application for benefits no later than one year from the date of issuance of the first building permit for construction work, or, where construction work does not require a building permit, no later than one year from the date of commencement of construction. Abatement benefits shall not be granted until the applicant files the final application. If the final application is not filed within such one year period, abatement benefits shall not be granted until such application is filed, and the department may delay the granting of such benefits, at the department's discretion, to investigate the reason for the late filing.

(iii) Notwithstanding any provision of law to the contrary, the time limit to file a final application for benefits as specified in subparagraph (ii) of this paragraph shall not apply to brand-new construction from the ground up located on property purchased from the city of New York where such property which is the site of the new construction was purchased from the city of New York for the purposes of an eligible development pursuant to this article and where the sales agreement with the city of New York for such property includes a restriction preventing the sale or transfer of such property for a period of five years or more and where the first valuation and assessment for the purposes of property taxes occurred within that period of restriction from sale, provided the project meets the other requirements of this title.

(b) Who may file for benefits. An applicant shall be:

(i) obligated to pay real property tax on the property, either by virtue of ownership or contract; or

(ii) the record owner or lessee of property that is exempt from real property taxation who has entered into an agreement to sell or lease such property to another person. Such applicant shall be a co-applicant with such owner or lessee.

(c) Applicant affidavit. No benefits pursuant to this title shall be granted for any construction work unless the applicant provides, together with the final application, an affidavit setting forth the following information:

(i) a statement that within the seven years immediately preceding the date of the preliminary application for benefits, neither the applicant,

nor any person owning a substantial interest in the property as defined in subparagraph (iii) of this paragraph, nor any officer, director or general partner of the applicant or such person was finally adjudicated by a court of competent jurisdiction to have violated section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another state with respect to any building, or finally adjudicated by a competent authority, agency, or a court of competent jurisdiction to have violated any state, city, or municipal business regulations or ordinances related to payment of taxes, payment of wages, or fraudulent representation to governmental entities, or was an officer, director or general partner of a person at the time such person was finally adjudicated to have violated such state, city, or municipal laws, business regulations, and ordinances related to payment of taxes, payment of wages, or fraudulent representation to governmental entities; and

(ii) a statement setting forth any pending charges alleging violation of section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another jurisdiction with respect to any building and pending charges alleging violation of state, city, or municipal business regulations or ordinances related to payment of taxes, payment of wages, or fraudulent representation to governmental entities by the applicant or any person owning a substantial interest in the property as defined in subparagraph (iii) of this paragraph, or any officer, director or general partner of the applicant or such person.

(iii) "Substantial interest" as used in this subdivision shall mean ownership and control of an interest of ten percent or more in a property or any person owning a property.

(iv) If any person described in the statement required by subparagraph (ii) of this paragraph is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to this title and shall pay with interest any taxes for which an abatement was claimed pursuant to this title.

6. Requirement to file income and expense statements. No benefits

pursuant to this title shall be granted for any property in a city that requires income and expense statements to be filed for income producing property, unless income and expense statements are filed for the property with respect to the tax year as to which the assessment roll described in paragraph (b) of subdivision two of section four hundred eighty-nine-bbbbbb of this title applies, and all subsequent tax years up to and including the tax year on which the assessment roll described in paragraph (c) of subdivision two of section four hundred eighty-nine-bbbbbb of this title applies.

7. Co-application with public entity. A co-applicant with a public entity may be eligible for abatement benefits, provided that for any period for which the property is exempt from real property tax because it is owned or controlled by a public entity, no benefits shall be available to such recipient under this title. Such recipient may receive benefits under this title when the property is no longer eligible for an exemption as follows: (a) No benefits under this title shall be provided during the period of exemption; (b) during such period of exemption, the years of the benefit period applicable to the project provided in subdivision three of section four hundred eighty-nine-bbbbbb of this title shall not be tolled, but shall run in accordance with the applicable schedule provided therein; and (c) the recipient shall, starting with the date the exemption ceases, and continuing until the abatement benefit period expires, receive the abatement benefits to which such recipient is entitled in the tax year that corresponds to the year of the benefit period provided in subdivision three of section four hundred eighty-nine-bbbbbb of this title.