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New York Legislature extends the Cooperative and Condominium Tax Abatement, but with a hook

By Erica F. Buckley and Justine Martin

After much advocacy, the New York State Assembly and Senate agreed to extend the Cooperative and Condominium Tax Abatement for homeowners that occupy their apartments as their primary residence, but with a big hook. Beginning in the 2020 fiscal year, homeowners will only be eligible for the abatement if (i) a property with an average unit assessed value of **less than or equal to \$60,000.00**; or (ii) a property with respect to which an applicant has submitted **an affidavit certifying that all building service employees** employed or to be employed at the property shall receive the applicable prevailing wage for the duration of such property's tax abatement. This is defined in the statute as a "qualified property" for abatement eligibility. See N.Y. Real. Prop. Tax Law § 467-a(1)(j).

The statute also defines "**building service employee**" as any person who is regularly employed at a building who performs work in connection with the care or maintenance of such building. "Building service employee" includes, but is not limited to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, elevator operator and starter and window cleaner, but shall not include persons regularly scheduled to work fewer than eight hours per week in the building. N.Y. Real. Prop. Tax Law § 467-a(1)(k).

This will obviously come as a great shock to many homeowners and will also limit the number of eligible homeowners for the abatement. However, the benefit will remain intact for middle-class coops and condos, large complexes that already pay prevailing wages and potentially for certain housing development fund companies that do not receive any other form of tax abatement or exemption such as an Article XI exemption under the New York Private Housing Finance Law or the DAMP Tax Cap for buildings that came out of City ownership.

Overview of eligibility for New York City homeowners

As a reminder, the value of the Cooperative and Condominium Tax Abatement is based upon the assessed value of the home as follows:

Average Assessed Value	Benefit Amount Per Year
\$50,000 or less	28.1%
\$50,001–\$55,000	25.2%
\$55,001–\$60,000	22.5%
\$60,001 and above	17.5%

The New York City Department of Finance also provides the following additional information on its website for eligibility:¹

- New condominium owners must have filed a real property transfer tax (RPTT) form or deed with the Division of Land Records at www.nyc.gov/acris. For more information, visit the [Real Property Transfer Tax](#) page.
- The co-op or condo apartment must be the owner’s primary residence. Co-op shareholders and condo unit owners must inform their board or managing agent if the apartment is the homeowner’s primary residence to receive the abatement.
- The homeowner must have purchased the apartment on or before January 5 to qualify for the abatement for the upcoming tax year. If the unit was purchased after January 5, the homeowner can apply for the next tax year.
- Co-op or condo owners cannot own more than three residential apartments in any one development and one of the units must be the owner’s primary residence.
- Property must be classified as a Class 2 property.
- Properties that are part of the Urban Development Action Area Program (UDAAP) cannot receive the abatement.
- Co-op or condo owners cannot be receiving any of the following exemptions or abatements:
 - J-51 exemption
 - 420-c, 421-a, 421-b or 421-g exemptions
 - Cooperative properties are not eligible for the clergy exemption

The co-op or condo property cannot be:²

- a Housing Development Fund Corporation (HDFC);

¹ See <https://www1.nyc.gov/site/finance/benefits/landlords-coop-condo.page>

² Ineligibility is based upon the receipt of other tax benefits such as the DAMP Tax Cap or an Article XI tax exemption.

- a Limited Divided Housing Companies, Redevelopment Company;
 - a Mitchell-Lama Building; or
 - in the Division of Alternative Management Programs (DAMP) Program.
- Apartments owned by a business (LLC) are not eligible.
 - Apartments held by sponsors or their successors in interest are not eligible.
 - Apartments owned by a trust are eligible only if the unit is the primary residence of the beneficiary of the trust, trustee or life estate holder.

What's next?

Assuming the governor signs the new law, homeowners will need to adjust to the new change. For our cooperative and condominium board clients, we will work closely with tax cert counsel to determine eligibility starting in year 2020, assuming building service employees are not already paid prevailing wages. For our sponsor clients, we will ensure that the offering plan accurately reflects this change in the law and continue to caveat that eligibility is outside of the control of sponsor.

For more information on this bulletin, please contact your Nixon Peabody attorney, the authors or a member of the Cooperatives and Condominiums Team.

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