

About Real Estate Development Tax Incentives

The City of New York (the City) offers several tax incentives for developers and landlords to either construct new buildings or rehabilitate existing buildings.

The [421-a](#) and [421-g](#) tax incentive programs derive their names from sections 421-a and 421-g, respectively, of the New York State Real Property Tax Law. [J-51](#) benefits were established pursuant to section 11-243 (formerly known as section J-51-2.5) of the New York City Administrative Code. Under the 421-a, 421-g and J-51 programs, an application is filed with the New York City Department of Housing Preservation and Development (HPD). Upon review and approval of the application, HPD may issue a Certificate of Eligibility. The Certificate of Eligibility is then filed with the New York City Department of Finance. The Department of Finance actually implements the real estate tax benefit so that it is reflected on your tax bill. Applications for [ICIP](#) tax benefits are filed with and implemented by the Department of Finance.

The attorneys at Seiden and Schein, P.C. can assist you in applying for real estate tax development incentives and can monitor the City's records to insure that tax bills are credited properly.

421-a Tax Benefits

The 421-a program provides a partial real estate tax exemption to newly constructed Class A Multiple Dwellings of three units or more, including cooperatives and condominiums, throughout New York City. Under 421-a, taxes are based on the property's assessment in the year prior to construction (this is referred to as the Prior Assessed Valuation). Any increase in assessment over and above the Prior Assessed Valuation is exempt from taxation.

Eligibility

A property must meet certain site eligibility requirements to qualify for a 421-a partial real estate tax exemption. Under the program, the land must have been vacant, predominantly vacant, under-utilized or improved with a non-conforming use thirty-six months before construction commences. Site eligible properties in Manhattan that are located in the Geographic Exclusion Area (generally, south 96th Street), must also meet one or more of the following requirements:

- 1) construction is carried out with substantial assistance of grants, loans, or subsidies from a federal, state, or local agency or instrumentality; or

2) twenty percent (20%) of the units located in the building are affordable to families of low and moderate income as certified by HPD; or

3) the construction must be carried out pursuant to an agreement with HPD to create or substantially rehabilitate housing units affordable to households of low and moderate income outside the Geographic Exclusion Area or, in the alternative, 421-a Certificates are purchased from a developer who has such an agreement with HPD. Where affordable units are created by new construction, the affordable units must themselves be eligible for 421-a benefits.

Duration

Based on the location of the property and whether the project consists of the required percentage of affordable units, or is constructed with substantial government assistance, it may be eligible for construction period benefits plus 10, 15, 20 or 25 years of post-construction benefits as follows:

| 10-Year Post-Construction Benefits: | 15-Year Post-Construction Benefits: | 20-Year Post-Construction Benefits: | 25-Year Post Construction Benefits: |
|---|--|--|--|
| <ul style="list-style-type: none"> • Manhattan, inside the Geographic Exclusion Area (requires an agreement with HPD to construct affordable housing) • Manhattan, outside the Geographic Exclusion Area and south of 110th Street) | <ul style="list-style-type: none"> • Outer Boroughs and Manhattan, north of 110th Street | <p>Manhattan, inside or outside the Geographic Exclusion Area, if :</p> <ul style="list-style-type: none"> • construction is carried out with substantial government assistance <u>or</u> • 20% of the units are certified as affordable to low/moderate income families | <p>Outer Boroughs and Manhattan, north of 110th Street if:</p> <ul style="list-style-type: none"> • construction is carried out with substantial government assistance <u>or</u> • 20% of the units are certified as affordable to low/moderate income families <u>or</u> • the property is located in areas deemed eligible under the program |

| Time Period: | % of Increased Assessed Valuation Which is Exempt: | Time Period: | % of Increased Assessed Valuation Which is Exempt: | Time Period: | % of Increased Assessed Valuation Which is Exempt: | Time Period: | % of Increased Assessed Valuation Which is Exempt: |
|--------------|--|--------------|--|--------------|--|--------------|--|
| Years 1-2 | 100% | Years 1-11 | 100% | Years 1-12 | 100% | Years 1-21 | 100% |
| Years 3-4 | 80% | Year 12 | 80% | Years 13-14 | 80% | Year 22 | 80% |
| Years 5-6 | 60% | Year 13 | 60% | Years 15-16 | 60% | Year 23 | 60% |
| Years 7-8 | 40% | Year 14 | 40% | Years 17-18 | 40% | Year 24 | 40% |
| Years 9-10 | 20% | Year 15 | 20% | Years 19-20 | 20% | Year 25 | 20% |

Other Requirements

1) If the new Class A Multiple Dwelling contains more than 100 dwelling units, at least 10% of the units must contain 4.5 zoning rooms and at least 15% of the units must contain 3.5 zoning rooms.

2) The new Class A Multiple Dwelling may contain commercial, community facility or accessory use space. However, if the commercial, community facility or accessory use space in the building exceeds 12% of the aggregate floor area, the City will reduce the exemption proportionally.

3) All units are subject to the Rent Stabilization Law and must remain rent stabilized throughout the 421-a benefit period, unless the property is owned as a condominium or a cooperative.

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421-g Tax Benefits

The 421-g program provides a real estate tax exemption and abatement incentive for developers to convert commercial buildings in Manhattan, generally south of Murray Street, into Class A Multiple Dwellings. Under 421-g, the property's assessment

attributed to the building improvement (in other words, increases in physical value) is exempt from taxation. The City then abates the remaining tax in an amount equal to the tax due in the first year of the benefit after the exemption is deducted. The abatement does not vary from year to year.

Duration

The 421-g exemption on a non-landmarked building runs for twelve years. The abatement on a non-landmarked building runs for fourteen years.

| Tax Year Following the Effective Date of the Certificate of Eligibility | Exemption | Abatement |
|---|-----------|-----------|
| 1 | 100% | 100% |
| 2 | 100% | 100% |
| 3 | 100% | 100% |
| 4 | 100% | 100% |
| 5 | 100% | 100% |
| 6 | 100% | 100% |
| 7 | 100% | 100% |
| 8 | 100% | 100% |
| 9 | 80% | 100% |
| 10 | 60% | 100% |
| 11 | 40% | 80% |
| 12 | 20% | 60% |
| 13 | 0% | 40% |
| 14 | 0% | 20% |

Landmarked buildings receive a thirteen-year exemption and a fifteen-year abatement.

Other Requirements

- 1) The Class A Multiple Dwelling may contain commercial, community facility or accessory use space. However, if the commercial, community facility or accessory use space in the building exceeds 12% of the aggregate floor area, the City will reduce the exemption proportionally.
- 2) The building must contain less than 25% commercial, community facility or accessory use space.
- 3) All units are subject to the Rent Stabilization Law and must remain rent stabilized throughout the 421-g benefit period, unless the property is owned as a condominium or a cooperative.

4) Conversion of a Non-Residential Building into a Residential Building with an Aggregate Floor Area of Less Than 100,000 Square Feet: Applicants must convert at least 75% of the Aggregate Floor Area in order to apply to HPD for final benefits. Completion of conversion of at least 75% of the Aggregate Floor Area must occur within 3 years of commencement of construction.

5) Conversion of a Non-Residential Building into a Residential Building with an Aggregate Floor Area of 100,000 Square Feet or More: Applicants must convert at least 75% of the Aggregate Floor Area in order to apply to HPD for final benefits. Completion of conversion of at least 50% of the Aggregate Floor Area must occur within 3 years of commencement of construction and at least 75% of the Aggregate Floor Area must be completed within 5 years of commencement of construction.

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ICIP Tax Benefits

The Industrial and Commercial Incentive Program (ICIP) provides a partial real estate tax exemption to developers as an incentive to construct new commercial buildings and renovate existing commercial buildings.

- In Manhattan, generally south of Murray Street, ICIP is available for the construction of new commercial "smart" buildings, subject to strict design standards.
- In Manhattan, south of 59th Street, ICIP is available for the modernization or expansion of an existing structure for use as a commercial property. The assessment attributed to physical improvements for eligible work (generally, major capital improvements) is exempt from taxation.
- In the outer boroughs and in Manhattan north of 96th Street, ICIP is available for the construction of new commercial buildings or the modernization or expansion of an existing structure for use as a commercial property. As in Manhattan south of 59th Street, the assessment attributed to physical improvements for eligible work is exempt from taxation.
- Certain parts of northern Manhattan and the outer boroughs have been designated as Special Areas. Special Areas are regions of the City that have been identified as requiring a greater degree of economic assistance. Properties in Special Areas benefit by receiving an exemption on assessments attributable to physical improvements for eligible work and building equalization increases that occur after the initial permit date.

Eligibility and Duration

| | | | |
|-------------------|---------------------|--------------------|--------------------|
| 8-Year Exemption: | 12- year Exemption: | 15-Year Exemption: | 25 Year Exemption: |
|-------------------|---------------------|--------------------|--------------------|

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| Manhattan New Construction Exemption Area (south of Murray Street for the construction of "smart" buildings) | | Manhattan Renovation Area (south of 59 th Street) | | Regular Exemption Areas (Manhattan, north of 96 th Street and outer boroughs) | | Special Areas (designated areas of Manhattan and the outer boroughs that require additional economic assistance) | |
| Tax Year Following the Effective Date of the Certificate of Eligibility: | Percent of Exemption Base which is Exempt: | Tax Year Following the Effective Date of the Certificate of Eligibility: | Percent of Exemption Base which is Exempt: | Tax Year Following the Effective Date of the Certificate of Eligibility: | Percent of Exemption Base which is Exempt: | Tax Year Following the Effective Date of the Certificate of Eligibility: | Percent of Exemption Base which is Exempt: |
| Years 1-4 | 100% | Years 1-8 | 100% | Years 1-11 | 100% | Years 1-16 | 100% |
| Year 5 | 80% | Year 9 | 80% | Year 12 | 80% | In years 17 through 25, the exemption phases out by 10% annually. | |
| Year 6 | 60% | Year 10 | 60% | Year 13 | 60% | | |
| Year 7 | 40% | Year 11 | 40% | Year 14 | 40% | | |
| Year 8 | 20% | Year 12 | 20% | Year 15 | 20% | | |

Please note that ICIP is not available in Manhattan between 59th Street and 96th Street.

Other requirements:

- 1) A Preliminary ICIP Application must be filed with the New York City Department of Finance prior to the issuance of a building permit by the New York City Department of Buildings.
- 2) To qualify for ICIP benefits in the Manhattan Renovation Area (south of 59th Street), the applicant must meet a minimum required expenditure ("MRE") of 20% of the initial assessed value of the property. One half of the MRE must be made within 18 months of the initial permit date and the full MRE must be made within 36 months of the initial permit date. The initial assessed value is the value appearing on the books of the annual record on the initial permit date.
- 3) To qualify for ICIP benefits in the outer boroughs and Manhattan north of 96th Street, and in a Special Area, the applicant must meet a MRE of 10% of the initial assessed value of the property. One half the MRE must be made within 30 months of the initial permit date and the full MRE must be made within 60 months of the initial permit date.

4) ICIP recipients must file a Certificate of Continuing Use with the Department of Finance on an annual basis for the duration of their exemption period.

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J-51 Tax Benefits

J-51 is the City's oldest real estate development tax incentive program. J-51 provides an incentive in the form of a tax exemption and/or abatement for developers to convert existing Class B Multiple Dwellings, Interim Multiple Dwellings and non-residential buildings into Class A Multiple Dwellings. Please note that the J-51 program is only available for the conversion of a Class B Multiple Dwelling into a Class A Multiple Dwelling if it is carried out with substantial government assistance (generally, grants, loans or subsidies from any federal, state or local agency or instrumentality.) J-51 also provides incentives for landlords and condominium and cooperative boards to make improvements to existing Class A Multiple Dwellings. J-51 benefits are available throughout New York City, subject to strict eligibility requirements.

Benefit Amount

Under J-51, increases in assessment attributed to physical improvements may be exempt from real estate taxation, depending on certain geographic and assessed valuation limitations. The non-exempt portion of the assessed value may be abated on a dollar for dollar basis, up to 8 1/3% per year of the cost of construction, as certified by the New York City Department of Housing Preservation and Development. This is known as the Certified Reasonable Cost (CRC). The maximum total abatement varies from 50% of the CRC to 150% of the CRC, depending on the location and nature of the project.

Duration

Generally, the J-51 exemption, if available, runs for 14-years, as provided below. However, a 34-year exemption is available under very limited circumstances.

The exemption period for the conversion of a non-residential building in Manhattan, North of 110th Street, and in the outer boroughs of New York City runs as follows:

| Year of Benefit (commencing on the first day of January or July following the issuance of the Certificate of Eligibility) | Percent of Exemption Base Which is Exempt |
|---|---|
| 1-10 | 100% |
| 11 | 80% |
| 12 | 60% |
| 13 | 40% |

13
14

40%
20%

The J-51 abatement runs for the period needed for the benefit recipient to receive a total abatement. However, the abatement cannot run longer than twenty years.

Other Requirement

All units are subject to the Rent Stabilization Law and must remain rent stabilized throughout the J-51 benefit period, unless the property is owned as a condominium or a cooperative.

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421-a Negotiable Certificates

Developers of affordable housing (an "AH Developer") may apply for and receive negotiable certificates which provide for Section 421-a real estate tax benefits for each unit of affordable housing constructed which permit from two to six units of market-rate housing to be constructed in certain areas of Manhattan below 96th Street (the "Exclusion Area"). The number of negotiable certificates ("421-a Negotiable Certificates") awarded per unit of affordable housing constructed depends upon the type and use of the housing unit. For example, two 421-a Negotiable Certificates would be awarded for each single room occupancy unit in a multiple dwelling meeting certain requirements which is rented to persons of low or moderate income, and six 421-a Negotiable Certificates would be awarded for each unit of affordable housing meeting certain requirements which is rented to homeless persons. Most AH Developers either construct or substantially renovate multiple dwellings containing a requisite percentage of rental units for persons of low or moderate income, with the AH Developer receiving four 421-a Negotiable Certificates for each such unit.

The 421-a Affordable Housing Program (the "421-a Program"), which is administered through the New York City Department of Housing Preservation and Development ("HPD"), provides a vehicle whereby the costs of construction of affordable housing are, in effect, paid for by the issuance to and the sale by the AH Developer of 421-a Negotiable Certificates, which enable 421-a real estate tax exemptions to be granted to properties in the Exclusion Area which otherwise would not qualify for these benefits.

Section 421-a of the Real Property Tax Law affords a partial real estate tax exemption for new construction of multiple dwellings on lots which were underutilized, vacant, predominantly vacant, or improved with a non-conforming use for three years prior to commencement of the new construction. For eligible properties in the Exclusion Area for which 421-a Negotiable Certificates are obtained, there is a construction period exemption of up to 3 years, plus a 10-year (2-years full + 8-years phase out) post-construction exemption from the increase in real estate taxes resulting from the construction.

The 421-a Negotiable Certificate Program works as follows:

- The AH Developer must file an "Affordable Housing Plan" with HPD for approval. The affordable units are to be rented to persons of "low and moderate income", low income being less than 60%, and moderate income being 60% to 100%, of "median income" as calculated in accordance with the regulations of the U.S. Department of Housing and Urban Development governing eligibility for occupancy as a lower income family, by size of family, in the metropolitan statistical area (which includes the City of New York), for purposes of §8 of the United States Housing Act of 1937, as amended. Rents for the affordable units are established by HPD, and are based upon standards relating to (i) income and family size and (ii) amounts necessary for the maintenance, operation, administration, necessary reserves and debt service of the affordable housing.
- The AH Developer enters into a "Written Agreement" with HPD governing the development, use and management of the affordable housing, and whereby HPD will issue to the AH Developer (after completion of the affordable housing) 421-a Negotiable Certificates at a rate of up to 4 or 5 certificates for each unit of affordable housing constructed. Each 421-a Negotiable Certificate allows 421-a real estate tax exemption benefits for one market-rate unit (of up to 1200 square feet) in the Exclusion Area.
- In order for the 421-a Negotiable Certificates to be irrevocable, ownership of the affordable housing units must be transferred by the AH Developer to a not-for-profit New York corporation experienced in the management of low income housing and approved by HPD, unless the AH Developer has created the affordable housing units on a privately-owned site with the assistance of the Federal Low Income Housing Credit under §42 of the Internal Revenue Code of 1986. In the latter case, the AH Developer can retain ownership of the affordable housing units and the 421-a Negotiable Certificates will be irrevocable, provided a management contract is entered into with a qualified managing agent, all as approved by HPD.
- The AH Developer will then enter into one or more agreements to sell the 421-a Negotiable Certificates (when issued) to a developer (a "Market Rate Developer") of a market-rate project in the Exclusion Area, with 421-a Negotiable Certificates usually selling for \$10,000 to \$20,000 each. All rental units in the market rate project receiving 421-a tax benefits become subject to rent stabilization for the duration of these benefits.

- When the AH Developer completes construction of the affordable housing units, HPD issues a "certificate of completion of affordable units" and a "master certificate of eligibility", which sets forth total amount of 421-a Negotiable Certificates which will be issued that are attributable to such affordable housing.
- The AH Developer directs HPD to issue 421-a Negotiable Certificates in the amount contracted for by the Market Rate Developer.
- The AH Developer then tenders the 421-a Negotiable Certificates to the Market Rate Developer and receives the purchase price therefor.
- The New York City Department of Finance then implements the 421-a tax exemption benefits. Provided all other requirements have been met, the Market Rate Developer receives the benefit of the 421-a exemption once construction of the market rate project begins, and if construction has already begun, the benefits are retroactive.

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Inclusionary Air Rights

In order to retain and promote the blend of low and upper income housing within neighborhoods which are experiencing a shift from mixed to upper income housing, the Inclusionary Housing Program (Sections 23-90 to 23-943 of the New York City Zoning Resolution) (the "IH Program") confers on developers of low income housing (a "LIH Developer") transferable development rights (called "Inclusionary Air Rights") which may be used as a financing tool for the construction or rehabilitation of such lower income housing.

The IH Program, which is administered through the New York City Department of Housing Preservation and Development ("HPD"), grants the right to construct up to 4 square feet of additional space for each square foot of qualified lower income housing constructed. As a result, the floor area ratio ("FAR") of the residential property to which the Inclusionary Air Rights are transferred is elevated (to a maximum of 12.0, for an increase of 20% in buildable space).

In contrast to 421-a Negotiable Certificates, which may benefit any qualified new residential construction in New York City, transferability of Inclusionary Air Rights is geographically limited to R-10 properties located either within the same community district as, or (if not within in the same community district) within a half-mile radius of, such lower income housing.

The IH Program works as follows:

- The LIH Developer must file a "Lower Income Housing Plan" with HPD. The Zoning Resolution provides that, in order to qualify as lower income housing,

- each unit must be occupied by a "lower income household", which is defined as a family having an income equal to or less than the income limits for New York City residents established by the U.S. Department of Housing and Urban Development pursuant to §3(b)(2) of the United States Housing Act of 1937, as amended, for lower income families receiving housing assistance payments. At initial occupancy of a lower income housing unit, the annual "fair rent" must be equal to not more than either (i) the public assistance shelter allowance (if the family receives public assistance), or (ii) 30% of the annual income of the tenant of such lower income housing (provided that such tenant is a lower income household at the time of such initial occupancy).
- HPD and the LIH Developer then enter into a "Written Agreement" which regulates the use and management of the lower income housing - thereby generating the LIH Developer's right to receive Inclusionary Air Rights. The lower income housing is to be managed by a responsible "administering agent", which must be approved by HPD (and is usually a not-for-profit organization). Before HPD will enter into the Written Agreement, though, a number of requirements must be first met, including a satisfactory investigation by HPD of the principals of the LIH Developer. The timing of this process will vary, depending on the prior level of experience of the LIH Developer with HPD, but can be expected to take several months.
 - Before the issuance of the Inclusionary Air Rights, a restrictive declaration running with the land is recorded against the zoning lot which comprises the lower income housing, setting forth the obligation of the owner and all successors in interest to provide lower income housing in accordance with the Lower Income Housing Plan. A copy of the Lower Income Housing Plan is incorporated in and attached as an exhibit to the restrictive declaration.
 - Once the LIH Developer finds a buyer for the Inclusionary Air Rights, the LIH Developer notifies HPD that the Inclusionary Air Rights will be transferred to the "compensated development" (i.e., an R-10 property located either within the same community district as, or within a half-mile radius of, such lower income housing).
 - The zoning lot which comprises the lower income housing cannot be encumbered by a mortgage after the Inclusionary Air Rights are issued.
 - In order for the New York City Building Department to approve construction plans for the compensated development which reflect additional floor area attributable to the Inclusionary Air Rights, HPD must present a letter (the "HPD-DOB Letter") certifying that: (a) a Written Agreement has been entered into by HPD and the LIH Developer, and (b) a portion (or all, as the case may be) of the Inclusionary Air Rights to be produced pursuant to the Written Agreement has been allocated to the compensated development.
 - Upon completion of the lower income housing to the satisfaction of HPD, HPD issues a "certificate of completion of affordable units" and a "certificate of eligibility", which sets forth total amount of Inclusionary Air Rights which will be issued that are attributable to such lower income housing.

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