



Scott Goldberg and Jason Bokor - Making sense out of real property tax exemptions in New York City

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There are a myriad of real property tax exemption programs in New York City that can benefit property owners. Although many owners are aware of the different programs that are available (J-51, 421-a, 421-b, 421-g, 420-c, ICIP, ICAP, Shelter Rent, to name a few) few understand the exact manner in which these benefits are calculated by the New York City Department of Finance (DOF). In fact, the divergent opinions on exactly how benefits are calculated amongst professionals in this area and those charged with calculating these benefits is startling at times. This article will briefly explore how taxes are calculated, how exemptions affect taxation, and how some of these exemption benefits are calculated.

To illustrate the above, this article will focus on J-51 issues for Class 2 properties, which are made up of primarily residential buildings with more than three units and most cooperatives and condominiums. Properties are taxed based upon their taxable assessed value (Taxable AV). In order to arrive at a property's Taxable AV one must begin with the market value of the property. Class 2 properties are issued an actual assessed value (Actual AV) equal to 45% of the market value, as determined by the assessor. The actual amount of tax that would be due is arrived by multiplying the Taxable AV by the tax rate. From July 1, 2010 to June 30, 2011, Class 2 properties are taxed at a tax rate of 13.353% of Taxable AV.

One additional factor in deriving the Taxable AV is the phase-in of changes in a property's Actual AV. When the Actual AV is determined each year, the amount of increase or decrease, in most cases, is phased in over a five year period. The phasing in assessed value is termed the transitional assessed value ("Trans AV"). The Taxable AV is the lower of the Actual AV or the Trans AV for any given year less any exemption benefit.

With this in mind we can turn to the effects of J-51 benefits on actual taxes and assessed values.

The first and simpler benefit of a J-51 is an abatement benefit. The abatement benefit, which is used to offset or pay the tax levied, is a percentage of the Certified Reasonable Cost (CRC) of the J-51, as determined by HPD. The property can utilize, depending on the filing, either 8 1/3% or 12 1/2% of the CRC per year up to the tax that is due until the abatement benefits are exhausted.

The second benefit that many J-51's are eligible to receive is an exemption benefit. One criteria that is required for an exemption is that a property's Actual AV needs to increase due to the J-51 related work. There appears to be a trend in place where many properties are not being issued exemption benefits. The reason for this seems to have its origin in DOF relying upon the Real Property Income and Expense Statement (RPIE) to value a property and not to take into account the improvements that were made to the property. This results in a denial of a J-51 exemption benefit even where a property's value was so obviously increased due to J-51 related work, such as a gut rehab of a building into a fully functional building.

Besides properties not receiving an exemption benefit, there are many properties that are in fact receiving their exemption, but the exemption is miscalculated. Here, the rules vary per benefit. A J-51 generally runs for 14 years, although some J-51s receive benefits for 34 years. The exemption is calculated differently depending on the type of J-51 and depending on the year that such J-51 was put in place. Generally, for the first three years the exemption is based on the difference between the current tax year and the "base year" (sometimes there is even an error regarding the base year used by DOF). Thereafter, except in limited cases, the initial exemption percentage is used to determine the exemption in the subsequent years with a phase-out of benefits during the last four years.

Examples of the manner in which other exemption programs are calculated, or a full detailing of how J-51 exemption benefits are calculated are beyond the scope of this article. However, the message that should be clear is that building owners should retain competent professionals familiar with both the intricacies involved in calculating exemption benefits and the various computer and data files that need to be reviewed in order to fully audit the exemption benefits that a property has received or possibly ought to have received. This even applies to owners who sold properties, as an historical error will often accrue to the historical owner.

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