



ADLER & STACHENFELD LLP

New NYC Property Tax Incentives



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New law: Childcare Center Tax Abatement

In an effort to boost childcare centers in New York City, a new Childcare Center Tax Abatement was recently made effective and aims at encouraging owners to create childcare centers where none existed, as well as increasing capacity at existing childcare centers.

Here are some aspects of this new tax abatement we think owners should be aware of:

- 1. Eligible Buildings:** Owners of NYC tax classes 1, 2, and 4 properties are eligible for the abatement. These generally include single- and multi-family homes, co-ops, condominiums, rentals, commercial properties, and retail properties. Each eligible property can only receive one Childcare Center Tax Abatement.
- 2. Eligible Expenses:** The abatement is credited against the reasonable cost of construction, conversion, alteration, or improvement—completed on or after April 1, 2022—resulting in a new childcare center or an increased capacity of an existing childcare center. To take advantage of the credit, applicants must include determinations certified by an engineer, architect, certified public accountant, or other certified or licensed professional as to the reasonableness of the costs incurred in the process. A copy of the center's permit issued by the Department of Health and Mental Hygiene (DOHMH) must also be included in the application. For owners that do not operate a childcare center on the improved premises themselves, the application requires proof of a lease or other agreement with an entity to operate a childcare center on the premises.
- 3. Abatement Term:** The abatement begins at the start of the tax year (July 1) and runs through the tax year (June 30). Once approved, eligible applicants may receive the abatement for a period of up to five years. Applications must be submitted by March 15 of the year for which the abatement term is to begin. For example, an application must be submitted by March 15, 2023, to be eligible for the abatement for the tax year starting July 1, 2023. Applications for the July 1, 2024, tax year must be in by March 15, 2024, and the latest date to apply for the abatement is March 15, 2025. The abatement will be revoked if the childcare center ceases operations for more than 180 days or where the owner provided misleading information in its application to the Department of Finance.
- 4. Abatement Calculation:** As mentioned above, the abatement equals the reasonable cost incurred in the construction, conversion, alteration, or improvement of the property to create or expand a childcare center—completed on or after April 1, 2022—but comes with some restrictions, depending on the location of the property.

Generally, the abatement cannot exceed the property tax liability on the property, and is further capped at \$7 per square foot per year, and at \$20,000 per year, for each of the five years. However, childcare centers located in childcare deserts—defined as a census tract that has three

or more children under age five for each available childcare slot—have a higher cap of \$15 per square foot per year, and a maximum abatement of \$45,000 per year, for each of the five years.

Any abatement in excess of the amount applied may roll over to one of the remaining years of the applicant's abatement period. The city has budgeted \$25 million for this incentive, and allocations will be prorated amongst eligible applicants.

New proposal: Office to Residential Conversion

New York State's 2023-24 Executive Budget includes a new proposal, Affordable Housing from Commercial Conversions (AHCC), which creates a property tax exemption for New York City owners converting non-residential properties into mixed-income rental buildings in an attempt to address the need for affordable housing.

Below are some details for owners interested in AHCC (and will sound familiar to those acquainted with the 421-a program):

- 1. Eligibility:** To qualify for AHCC benefits, buildings must meet the following criteria:
 - a. Buildings must be multiple dwellings located in New York City, where six or more rental units are created by converting commercial, manufacturing or other non-residential buildings into a residential dwelling;
 - b. At least 20% of the units in the building must be affordable, and at least 5% of those must be affordable to households whose income does not exceed 40% of the AMI as adjusted for household size; and the weighted average of all the affordable units cannot exceed 70% of the AMI as adjusted for household size;
 - c. Buildings cannot not receive any other form of exemption or abatement of real property taxes;
 - d. Unless otherwise required by law, the affordable units must either be a unit mix proportional to the rental market units; or at least 50% of the affordable units must have two or more bedrooms and no more than 25% of the affordable units can have less than one bedroom;
 - e. All units – affordable and market-rate – must share the same common entrances and common areas. Affordable units cannot be isolated on a specific floor or area of the building.

- 2. Term of Benefit:** The benefit period depends largely on when construction begins and when a Temporary Certificate of Occupancy (TCO) is issued. Eligible properties will receive a 100% exemption that will last from the time construction commences to the date the TCO is issued. However, this time period cannot exceed three years prior to the TCO issuance date. Further, the construction commencement date must be on or before December 31, 2032 and the completion date must be on or before December 31, 2038. After the TCO is issued, the tax benefit extends for an additional 19 years but the amount of the benefit will depend on the exemption calculation (below).

3. **Exemption Calculation:** In addition to the full exemption during construction, owners will receive one of the exemptions below during the subsequent 19 years, based on the property's location:
 - a. For buildings in the Manhattan Prime Development Area (PDA), i.e. south of 96th Street, there is a 50% tax exemption for the first 15 years of the tax benefit period. This decreases by 10% per year from the 16th through 19th years. After that, the full real property taxes are due from and after the 20th year after the TCO is issued.
 - b. For buildings outside the PDA, there is a 35% tax exemption for the first 15 years of the tax benefit period. This decreases by 7% per year from the 16th through 19th years. After that, the full real property taxes are due from and after the 20th year after the TCO is issued.
4. **Commercial Carve-Out:** The bill also creates a carve-out for buildings with non-residential space. If the aggregate floor area of a commercial, communal facility or accessory use space within the building exceeds 12% of the total aggregate floor area, the AHCC benefit will be reduced by a percentage equal to the excess.
5. **Additional Information:** The goal of the bill is to create additional affordable housing, and thus, it imposes additional restrictions on the future of the affordable units. These units must stay affordable and are subject to rent stabilization in perpetuity; and cannot be rented out to corporations, partnerships or other entities. Affordable units also cannot be converted to condos/co-ops, and cannot be rented on a transient basis. Notably, market units are not subject to rent stabilization unless, in the absence of the AHCC program benefits, the unit would be subject to rent stabilization.

Last, all building service employees that are employed by the owner must receive the applicable prevailing wage for the duration of the 19-year benefit period (with some exceptions for small or subsidized projects).

New proposal: Energy Efficient Improvements Abatement

Senate Bill S904-A was introduced in the New York State Senate by Kevin Parker that will provide abatements to owners who make certain energy efficient improvements to their properties.

As the New York real estate community continues to grapple with ways to improve the energy usage of their buildings, lawmakers in Albany appear to be focusing on ways they can incentivize these enhancements.

Similar to the PACE (Property Assessed Clean Energy) financing program, this new bill focuses on ensuring building owners can afford the improvements many think are desperately needed.

Here are some aspects of the bill we think owners should be aware of:

- 1. Eligible properties:** In order to be eligible, the property must be a class A multiple dwelling (which includes apartment buildings), class B multiple dwelling (which includes hotels and furnished room housing), any single family home, any two family private dwelling, or any commercial property that is used for manufacturing or office purposes. Buildings that are only used for institutional purposes (such as dormitories) are not included. Interestingly, the bill is focused on the use of the building *after* the capital improvements are completed. This likely means that even if the property is a residence used for an institutional purpose, if it becomes a hotel by the time the improvements are made, the owner will be able to claim the tax benefits.
- 2. Eligible improvements:** The bill provides a broad list of general improvements that are included in the program but places significant power in a board (see more on the board below) to adjust the listed improvements and to add others so long as they result in a reduction of greenhouse gas emissions. The listed eligible improvements include things like design work required to complete the project, cleaning, pointing, waterproofing, installation of new HVAC systems, installation of solar panels, installation of energy efficient appliances, replacement of insulation and modification of electrical systems.
- 3. A board will oversee the entire program:** The bill calls for a board to be created to oversee the process. More specifically, the board will be tasked with creating regulations and overseeing the application process including providing approval for improvements. The board will be comprised of four voting members: one must be the commissioner of the state's Department of Taxation and Finance, one must be the president of New York State Energy Research and Development Authority (NYSERDA), one must be the commissioner of Division of Housing and Community Renewal (DHCR), and one must be a person who has experience in the construction of multiple dwellings. The governor of New York is tasked with appointing all voting members. In addition, the mayor of New York City will be tasked with appointing two non-voting members. It is worth noting that the board will have significant power as it relates to answering questions and providing regulations on the many points not explicitly covered in the bill.

- 4. The benefits provided:** Any increase in the assessed value of the building after the improvements are made will be exempt from taxation for up to 20 years so long as the work starts after December 31, 2021 and is completed within five years from when DOB issues a permit; the board approves the work; and specific local filing guidelines are adhered to. The bill allows for either a 10 or 20 year abatement depending on the reduction in greenhouse gas emissions.

If the improvements result in a reduction of greenhouse gas emission of up to 29%, then a 10 year abatement on the costs of the improvements will be provided. The amount of the abatement will depend on the decrease in the greenhouse gas emissions. See the chart below for the breakdown.

Reduction in Greenhouse Gas Emissions	Annual Amount of the Abatement
2% to 5%	5%
5% to 10%	6.5%
10% to 12%	7%
12% to 15%	7.5%
15% to 17%	8%
17% to 20%	8.5%
20% to 25%	9%
25% to 29%	9.5%

If the improvements result in a reduction of greenhouse gas emissions of 30% or more, then up to a 20 year abatement will be provided. More specifically, a 10% abatement will be provided so long as that in any year in which the abatement exceeds the tax owed, excess amounts will carry forward until the earlier of years is reached or 100% of the costs of the improvement are expended.

- 5. Combining this abatement with other programs offered:** The bill expressly allows for the abatement to be utilized even if owners receive any other benefit under state, local or federal law unless another local or state law says otherwise. As an example, the bill will allow for owners to reap the benefits provided even if they are beneficiaries of the Industrial & Commercial Abatement Program (ICAP), however, as currently drafted, the ICAP law would have to be revised to permit concurrent exemptions.

New proposal: J-51

Senate Bill S4709 replaces the now-expired J-51 program for alterations and improvements of multiple dwellings. The J-51 program expired in June 2022 so this bill seeks to revive the expired program.

Here are some aspects of the bill we think owners should be aware of:

1. **Eligible properties:** A rental building or a condo or co-op not operated as a hotel where the average assessed value does not exceed \$35,000 per dwelling unit in 2023/24 and capped at \$40,000 in later years. Such buildings must contain 3 or more dwelling units.
2. **Eligible improvements:** Alterations or improvements to the building that are specifically identified on HPD's certified reasonable cost schedule and meet the minimum scope of work schedule as determined by HPD (and shall be no less than \$1,500 for each dwelling unit). The construction cannot increase the cubic content of the building.
3. **Construction timeline:** The construction work must commence after June 29, 2022 and be completed prior to June 30, 2026. The construction must be completed within 30 months of commencement.
4. **The benefits provided:** An eligible rental building that is not the recipient of substantial government assistance will have a 5% exemption of the assessed value of the building as of the commencement date. Such exemption shall begin with the first quarterly tax bill following the restrictive declaration date and shall continue for 15 years as follows:

Year	Annual Amount of the Abatement
1-10	100% of the 5% assessed value as of the commencement date
11	83.33%
12	66.66%
13	50%
14	33.33%
15	16.66%

Additionally, there is an abatement of 70% of the certified reasonable cost of eligible construction for 20 years. The annual abatement shall not exceed 8.33% of the total certified reasonable cost of such eligible construction.

5. **No MCI:** Owners waive collecting MCI rent increases for construction work applying for J-51 benefits.
6. **Owner liability:** Prospective, present, or former tenant of a J-51 building may sue the owner within 6 years from the date of a violation to enforce the J-51 requirements in New York

Supreme Court (trial court) and can recover treble damages plus costs and reasonable attorney's fees.

The office conversion, energy efficient improvements, and J-51 proposals are still just proposals and therefore subject to changes as they make their way through the legislative process. However, as stakeholders continue to make future plans in New York City, we wanted to make sure you were aware of these updates.

As the proposals continue to work through the halls of Albany, we will be sure to keep track of it and be ready to answer any questions you have.

If you have any questions regarding any of these new laws and proposals, please contact:

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