

The Amendment To The 17.5% Tax Abatement Law and How It Will Affect You

By: Pierre E. Debbas, Esq.

In 1996 the NYC Dept. of Finance (DOF) enacted a tax abatement for co-op and condo buildings which reduced their real estate property taxes by 17.5% automatically. Most buildings were eligible for this abatement and the primary reason it came into effect was due to the substantial discrepancy in how co-op/condo units were taxed in comparison to 1-3 family homes. However, in an effort to raise revenue, New York State Legislature recently amended this law.

The 17.5% abatement was extended through June 30, 2015 (the end of the tax year in NYC), however only unit owners who occupy their unit as their primary residence are eligible for this abatement. Now the question is: how does the DOF track who uses their unit as a primary residence versus a 2nd home or investment property? To address this issue, the DOF amended the law to state that all unit owners who own in the name of a trust or limited liability company (LLC) are not eligible for this abatement under the presumption that they do not occupy their units as their primary residence. There is a major flaw in the DOF's logic in coming to this conclusion. LLCs and trusts are common mechanisms for taking title which are not limited to investors. An LLC is common for several unit owners who occupy their units as their primary residence, the reason being anonymity. One cannot review the city's records to determine who the individual owner of a unit is, if it is in the name of an LLC. As for a trust, this structure is utilized predominantly for estate planning purposes. A significant amount of units that are held in the name of a trust are actually occupied by the individuals named in the trust as their primary residence. The one advantage for the trust in this situation is that if an apartment is a primary residence and is held in the owner's name and in trust, the owner is still eligible for the abatement.

For an owner who received the 17.5% abatement in 2011/12 for a non-primary residence (which includes units held solely by an LLC or a Trust), this will then be the last year that this type of owner will receive the full coop/condo abatement. For tax year 2012/13, 50% of the abatement received before the new abatement law was enacted will be phased out. For tax year 2013/14, 75% of the abatement received before the new abatement law was enacted will be phased out. By tax year 2014/15, the abatement will be phased out completely. The new tax abatement law will apply retroactively from the start of tax year 2012/2013 (July 1, 2012).

Co-op/condo boards will now have to monitor which units are eligible for this abatement and which ones are not. For a condo board, the task is simpler as each unit has its own tax lot and is taxed separately. The phase out of the abatement will simply be listed on the tax bill. Now for a co-op, the building receives one tax bill for the entire building and real estate taxes are factored into each unit owners' monthly maintenance. As a result, most co-op buildings tax bills will

increase and the board will have to assess the individual owners who are not eligible for this abatement, a sum equivalent to their proportionate share of the increase.

A common concern that has come up as a result of the amendment to this tax abatement is how it affects 421-a, J-51 or other similar real estate tax abatements. The good news is that it does not affect these types of abatements in any manner. 421-a and J-51 abatements were enacted for new development/conversion projects and phase out over a specified period of time. During the time period which they are active, buildings with these abatements could not also apply for the 17.5% abatement. The 421-a/J-51 abatements are mutually exclusive from the 17.5% abatement. Once a 421-a/J-51 abatement expires, then buildings would be permitted to apply for the 17.5% abatement.

At the moment there are several questions being posed to the DOF that remain unanswered and it is unclear what the future of the abatement will look like. The DOF has acknowledged that there needs to be a clearer method for determining the different options for eligibility for beneficial owners of a trust. The DOF will need to create a clear outline for how a “primary occupant” is determined, that is not determined solely based off of title not being held in an individual’s name. The current amendment poses an undue hardship on unit owners throughout New York City and is not an accurate method of implementing the DOF’s ultimate goal; which is to limit the benefits of the 17.5% abatement to those owners who use their units as their primary residence.