

Rosenberg & Estis, P.C.
COMMERCIAL REAL ESTATE REPRESENTATION

New §421-a Policy at City Department of Finance

Dear Clients:

The New York City Department of Finance ("DoF") has apparently begun auditing its records to determine whether a Final Certificate of Eligibility ("FCE") has been issued for all properties currently receiving Real Property Tax Law ("RPTL") §421-a tax benefits. DoF is delivering notices to property owners whose buildings are currently receiving §421-a tax benefits for which DoF has no record of an FCE, advising those owners that unless an FCE is submitted to DoF on or before **January 5, 2018**, tax benefits will not be applied to the 2018-2019 tax bills. As a result, the City will demand full taxes for the 2018-2019 tax year for those properties without an FCE.

Significantly, DoF's letter requires property owners to deliver the FCE to DoF by January 5, 2018 which is an arbitrary deadline, because HPD needs an inordinate amount of time to completely process FCE applications and then issue the FCE. If HPD continues to prolong processing of FCE applications beyond January 5, 2018, tax benefits for fiscal year 2018-2019 may be removed from the tax bills of those affected properties, and full taxes will be owed by the properties for that tax year.

This is not a revocation notice of all §421-a benefits for the affected properties. Rather, it is DoF claiming that fiscal year 2018-2019 tax bills will not include the §421-a benefit, and the City will demand taxes based on the full assessed value, unless an FCE is delivered to DoF before the January 5, 2018 deadline. In effect, HPD will decide which properties will receive their 2018-2019 tax year benefits by issuing, or not issuing, FCE's for §421-a properties before the January, 2018 deadline. The DoF Notice does warn that HPD may in the future issue revocation notices to properties which fail to obtain an FCE.

This issue is further complicated for new buildings which are not yet ready for occupancy. For those properties, Owners have not been able to file an FCE application to date. When the FCE application is filed with HPD when the building is completed, there is no assurance that HPD will finish its processing and issue the FCE for the property before January 5, 2018. If the FCE is not issued by January 5, 2018, according to DoF's notice, the 2018-2019 tax bill will be calculated and taxes charged based on the full assessed evaluation without tax benefits. The 2018-2019 tax benefits could be denied through no fault of the owner. Moreover, if full taxes are paid and subsequently the FCE is issued, DoF's notice is silent as to whether the property owner will then be able to file for a remission or credit for the amount of tax benefits withheld from and paid as part of the 2018-2019 tax bill. Will missing the deadline permanently forfeit the 2018-2019 benefits? This appears to be an open question.

We recommend that you check your property records to ensure that an FCE was applied for and granted for each of your §421-a properties. If you do not have any record of an FCE, you should request HPD to produce a copy of the FCE, and deliver it to DoF. If HPD has no FCE record, you may need to take immediate remedial steps.

Our firm is available to advise and help you minimize the risks created by this new DoF procedure. We will continue to monitor this situation, and advise you of further developments.

If you have any questions, please call [Nicholas Kamillatos \(212\) 551-8495](tel:2125518495) or [Blaine Schwadel \(212\) 551-8440](tel:2125518440) at our Firm.

Respectfully yours,

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