

## Real Estate Law: Building boon: 485-b program offers property developers valuable benefits



By **KELLY A. PRONTI**

Commercial real estate development is an uphill challenge. From property acquisition and development through the approval and construction processes, the path to completion is laden with significant costs before a prospective tenant ever walks through the door. At the same time, the improvements a developer makes to the property will increase the assessed value and, along with it, their property tax burden. A valuable New York State program can help ease that burden.

The tax exemption program established by Section 485-b of the New York State Real Property Tax Law can be an invaluable tool in helping developers bring their projects to fruition. Under this section, real property that is “constructed, altered, installed or improved” after July 1, 1976 “for the purpose of commercial, business or industrial activity” is entitled to a business investment exemption. The effect of the tax exemption program, established by this law, is a decrease in the total property tax an owner is obligated to pay a municipality for a 10-year period.

In order to be considered for the Section 485-b tax exemption program, the cost of a development must be more than \$10,000. However, this requirement may differ based on local laws or resolutions. Developers must also be able to prove the development of their property through a certificate of occupancy or other documentation that provides evidence of improvement. Ordinary maintenance or repairs do not qualify for partici-

pation in the program.

If a property developer satisfies the statutory requirements, they are eligible to participate in the Section 485-b tax exemption program. The program allows developers to apply for a property tax exemption of 50 percent of the increase in assessed value attributable to the development of a commercial property. The tax exemption is applied to property taxes the year following any changes made to the property. After the initial year, the exemption then decreases by five percent, every year, for an additional nine years. At the conclusion of the tenth year, the exemption will cease and the property owner will return to paying the full amount of property taxes owed.

Municipalities may reduce the exemption percentage permitted under Section 485-b and may limit the exemption to specific geographic areas and sectors and subsectors of business. As a result, towns, cities, school districts, villages and counties may pass a local resolution or law that limits the permitted tax exemption. If a city or school district does not participate in the program, a developer is still entitled to seek relief from any other participating municipality where the property is situated. If the property qualifies for participation in the program, the developer is entitled to a reduction in the taxes following the completion of any eligible development projects.

In order to participate in the tax exemption program, property owners must file an application with the assessor of the municipality that has the power to assess the property for taxation. The application must be on a form prescribed by the Commissioner of Taxation and Finance and be filed within one year following the completion of

an eligible project. It is also important to note that the statute requires the application be submitted by the property owner. To the extent a tenant is responsible for the construction of the improvements at a site, it would be prudent to include a provision in the lease between the tenant and the landlord where the landlord agrees, as the property owner, to cooperate with the tenant in any 485-b tax exemption sought by the tenant (including a requirement that the landlord submit the necessary application for the exemption). The assessor reviews the application and decides if the applicant is entitled to the tax exemption outlined by the New York State statute. If approved, then the property will be partially exempt from taxation. Once the exemption has been granted, the exemption may continue for the authorized period of time provided that the eligibility requirements continue to be satisfied. It is not necessary to re-apply for the exemption after the initial year. Any tax exemptions granted under the Section 485-b tax exemption program do not include special ad valorem levies for fire district, fire protection district and fire alarm district purposes.

Commercial development is a long-term investment, where developers often face a steep uphill climb in the early years, with the hope that a return on their investment awaits on the horizon. The 10-year benefits of the 485-b tax exemption program can go a long way in bringing their long-term goals into a clearer view.

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