

CHAPTER 268

AN ACT concerning the commencement of certain short term tax exemptions and abatements and amending P.L.1991, c.441.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.1991, c.441 (C.40A:21-3) is amended to read as follows:

C.40A:21-3 Definitions.

3. As used in this act:

- a. "Abatement" means that portion of the assessed value of a property as it existed prior to construction, improvement or conversion of a building or structure thereon, which is exempted from taxation pursuant to this act.

- b. "Area in need of rehabilitation" means a portion or all of a municipality which has been determined to be an area in need of rehabilitation or redevelopment pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.), a "blighted area" as determined pursuant to the "Blighted Areas Act," P.L.1949, c.187 (C.40:55-21.1 et seq.), or which has been determined to be in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.), or P.L.1979, c.233 (C.54:4-3.121 et al.).

- c. "Assessor" means the officer of a taxing district charged with the duty of assessing real property for the purpose of general taxation.

- d. "Commercial or industrial structure" means a structure or part thereof used for the manufacturing, processing or assembling of material or manufactured products, or for research, office, industrial, commercial, retail, recreational, hotel or motel facilities, or warehousing purposes, or for any combination thereof, which the governing body determines will tend to maintain or provide gainful employment within the municipality, assist in the economic development of the municipality, maintain or increase the tax base of the municipality and maintain or diversify and expand commerce within the municipality. It shall not include any structure or part thereof used or to be used by any business relocated from another qualifying municipality unless: the total square footage of the floor area of the structure or part thereof used or to be used by the business at the new site together with the total square footage of the land used or to be used by the business at the new site exceeds the total square footage of that utilized by the business at its current site of operations by at least 10%; and the property that the business is relocating to has been the subject of a remedial action plan costing in excess of \$250,000 performed pursuant to an administrative consent order entered into pursuant to authority vested in the Commissioner of Environmental Protection under P.L.1970, c.33 (C.13:1D-1 et al.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), and the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

- e. "Completion" means substantially ready for the intended use for which a building or structure is constructed, improved or converted.

- f. "Condominium" means a property created or recorded as a condominium pursuant to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

- g. "Construction" means the provision of a new dwelling, multiple dwelling or commercial or industrial structure, or the enlargement of the volume of an existing multiple dwelling or commercial or industrial structure by more than 30%, but shall not mean the conversion of an existing building or structure to another use.

h. "Conversion" or "conversion alteration" means the alteration or renovation of a nonresidential building or structure, or hotel, motel, motor hotel or guesthouse, in such manner as to convert the building or structure from its previous use to use as a dwelling or multiple dwelling.

i. "Cooperative" means a housing corporation or association, wherein the holder of a share or membership interest thereof is entitled to possess and occupy for dwelling purposes a house, apartment, or other unit of housing owned by the corporation or association, or to purchase a unit of housing owned by the corporation or association.

j. "Cost" means, when used with respect to abatements for dwellings or multiple dwellings, only the cost or fair market value of direct labor and materials used in improving a multiple dwelling, or of converting another building or structure to a multiple dwelling, or of constructing a dwelling, or of converting another building or structure to a dwelling, including any architectural, engineering, and contractor's fees associated therewith, as the owner of the property shall cause to be certified to the governing body by an independent and qualified architect, following the completion of the project.

k. "Dwelling" means a building or part of a building used, to be used or held for use as a home or residence, including accessory buildings located on the same premises, together with the land upon which such building or buildings are erected and which may be necessary for the fair enjoyment thereof, but shall not mean any building or part of a building, defined as a "multiple dwelling" pursuant to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.). A dwelling shall include, as they are separately conveyed to individual owners, individual residences within a cooperative, if purchased separately by the occupants thereof, and individual residences within a horizontal property regime or a condominium, but shall not include "general common elements" or "common elements" of such horizontal property regime or condominium as defined pursuant to the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), or the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), or of a cooperative, if the residential units are owned separately.

l. "Exemption" means that portion of the assessor's full and true value of any improvement, conversion alteration, or construction not regarded as increasing the taxable value of a property pursuant to this act.

m. "Horizontal property regime" means a property submitted to a horizontal property regime pursuant to the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.).

n. "Improvement" means a modernization, rehabilitation, renovation, alteration or repair which produces a physical change in an existing building or structure that improves the safety, sanitation, decency or attractiveness of the building or structure as a place for human habitation or work, and which does not change its permitted use. In the case of a multiple dwelling, it includes only improvements which affect common areas or elements, or three or more dwelling units within the multiple dwelling. In the case of a multiple dwelling or commercial or industrial structure, it shall not include ordinary painting, repairs and replacement of maintenance items, or an enlargement of the volume of an existing structure by more than 30%. In no case shall it include the repair of fire or other damage to a property for which payment of a claim was received by any person from an insurance company at any time during the three year period immediately preceding the filing of an application pursuant to this act.

o. "Multiple dwelling" means a building or structure meeting the definition of "multiple dwelling" set forth in the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), and means for the purpose of improvement or construction the "general common elements" and "common elements" of a condominium, a cooperative, or a horizontal property

regime.

p. "Project" means the construction, improvement or conversion of a structure in an area in need of rehabilitation that would qualify for an exemption, or an exemption and abatement, pursuant to P.L.1991, c.441 (C.40A:21-1 et seq.).

q. "Annual period" means a duration of time comprising 365 days, or 366 days when the included month of February has 29 days, that commences on the date that an exemption or abatement for a project becomes effective pursuant to section 16 of P.L.1991, c.441 (C.40A:21-16).

2. Section 4 of P.L.1991, c.441 (C.40A:21-4) is amended to read as follows:

C.40A:21-4 Municipal ordinance granting exemptions or abatements.

4. The governing body of a municipality may determine to utilize the authority granted under Article VIII, Section I, paragraph 6 of the New Jersey Constitution, and adopt an ordinance setting forth the eligibility or noneligibility of dwellings, multiple dwellings, or commercial and industrial structures, or all of these, for exemptions or abatements, or both, from taxation in areas in need of rehabilitation. The ordinance may differentiate among these types of structures as to whether the property shall be eligible for exemptions or abatements, or both, within the limitations set forth in P.L.1991, c.441 (C.40A:21-1 et seq.). With respect to a type of structure, the ordinance shall specify the eligibility of improvements, conversions, or construction, or all of these, for each type of structure. The ordinance may differentiate for the purposes of determining eligibility pursuant to this section among the various neighborhoods, zones, areas or portions of the designated area in need of rehabilitation.

An ordinance adopted pursuant to this section may be amended from time to time. An amendment to an ordinance shall not affect any exemption, abatement, or tax agreement previously granted and in force prior to the amendment.

Application for exemptions and abatements from taxation may be filed pursuant to an ordinance so adopted to take initial effect in the tax year in which the ordinance is adopted, and for tax years thereafter as set forth in P.L.1991, c.441 (C.40A:21-1 et seq.), but no application for exemptions or abatements shall be filed for exemptions or abatements to take initial effect in the eleventh tax year or any tax year occurring thereafter, unless the ordinance is readopted by the governing body pursuant to this section.

3. Section 10 of P.L.1991, c.441 (C.40A:21-10) is amended to read as follows:

C.40A:21-10 Formula for payments under tax agreements.

10. Upon adoption of an ordinance authorizing a tax agreement or agreements for a particular project or projects, the governing body may enter into written agreements with the applicants for the exemption and abatement of local real property taxes. An agreement shall provide for the applicant to pay to the municipality in lieu of full property tax payments an amount annually to be computed by one, but in no case a combination, of the following formulas:

a. Cost basis: the agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount equal to 2% of the cost of the project. For the purposes of the agreement, "the cost of the project" means only the cost or fair market value of direct labor and all materials used in the construction, expansion, or rehabilitation of all buildings, structures, and facilities at the project site, including the costs, if any, of land

acquisition and land preparation, provision of access roads, utilities, drainage facilities, and parking facilities, together with architectural, engineering, legal, surveying, testing, and contractors' fees associated with the project; which the applicant shall cause to be certified and verified to the governing body by an independent and qualified architect, following the completion of the project.

b. Gross revenue basis: the agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount annually equal to 15% of the annual gross revenues from the project. For the purposes of the agreement, "annual gross revenues" means the total annual gross rental and other income payable to the owner of the project from the project. If in any leasing, any real estate taxes or assessments on property included in the project, any premiums for fire or other insurance on or concerning property included in the project, or any operating or maintenance expenses ordinarily paid by the landlord, are to be paid by the tenant, then those payments shall be computed and deemed to be part of the rent and shall be included in the annual gross revenue. The tax agreement shall establish the method of computing the revenues and may establish a method of arbitration by which either the landlord or tenant may dispute the amount of payments so included in the annual gross revenue.

c. Tax phase-in basis: the agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount equal to a percentage of taxes otherwise due, according to the following schedule:

- (1) In the first full year after completion, no payment in lieu of taxes otherwise due;
- (2) In the second full year after completion, an amount not less than 20% of taxes otherwise due;
- (3) In the third full year after completion, an amount not less than 40% of taxes otherwise due;
- (4) In the fourth full year after completion, an amount not less than 60% of taxes otherwise due;
- (5) In the fifth full year after completion, an amount not less than 80% of taxes otherwise due.

4. Section 11 of P.L.1991, c.441 (C.40A:21-11) is amended to read as follows:

C.40A:21-11 Tax agreements, duration, other law, valuation of ratables, copy to DCA.

11. a. All tax agreements entered into by municipalities pursuant to sections 9 through 12 of P.L.1991, c.441 shall be in effect for no more than the five full years next following the date of completion of the project.

b. All projects subject to tax agreement as provided herein shall be subject to all applicable federal, State and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.

c. That percentage which the payment in lieu of taxes for a property bears to the property tax which would have been paid had an exemption and abatement not been granted for the property under the agreement shall be applied to the valuation of the property to determine the reduced valuation of the property to be included in the valuation of the municipality for determining equalization for county tax apportionment and school aid during the term of the tax agreements covering the properties, and at the termination of an agreement for a property the reduced valuation procedure required under this section shall no longer apply.

d. Within 30 days after the execution of a tax agreement, a municipality shall forward a copy of the agreement to the Director of the Division of Local Government Services in the Department of Community Affairs.

5. Section 13 of P.L.1991, c.441 (C.40A:21-13) is amended to read as follows:

C.40A:21-13 Assessed value of property under abatement or exemption.

13. The assessor shall determine, on October 1 of the year following the date of the completion of an improvement, conversion or construction, the true taxable value thereof. Except for projects subject to tax agreement, pursuant to sections 9 through 12 of P.L.1991, c.441, the amount of tax to be paid for the tax year in which the project is completed shall be based on the assessed valuation of the property for the current tax year, minus the amount of the abatement, if any, allowed pursuant to this act and pro rated, plus any portion of the assessed valuation of the improvement, conversion or construction not allowed an exemption pursuant to this act, also pro rated. Subject to the provisions of the adopting ordinance, the property shall continue to be treated in the appropriate manner for each of the four tax years subsequent to the original determination by the assessor and shall be pro rated for the final tax year in which the exemption or abatement expires.

6. Section 16 of P.L.1991, c.441 (C.40A:21-16) is amended to read as follows:

C.40A:21-16 Applications, forms, records.

16. No exemption or abatement shall be granted pursuant to this act except upon written application therefor filed with and approved by the assessor of the taxing district wherein the improvement, conversion alteration or construction is made. Every application shall be on a form prescribed by the Director of the Division of Taxation in the Department of the Treasury, and provided for the use of claimants by the governing body of the municipality constituting the taxing district, and shall be filed with the assessor within 30 days, including Saturdays and Sundays, following the completion of the improvement, conversion alteration or construction. Every application for exemption, or exemption and abatement, within a municipality adopting the provisions of this act which is filed within the time specified, shall be approved and allowed by the assessor to the degree that the application is consistent with the provisions of the adopting ordinance or the tax agreement, provided that the improvement, conversion alteration or construction for which the application is made qualifies as an improvement, a conversion alteration or construction pursuant to the provisions of this act and the tax agreement, if any. The granting of an exemption, or exemption and abatement, shall relate back to, and take effect as of, the date of completion of the project, or portion or stage of the project for which the exemption, or exemption and abatement, is granted, and shall continue for five annual periods from that date. The grant of the exemption, or exemption and abatement, or tax agreement shall be recorded and made a permanent part of the official tax records of the taxing district, which record shall contain a notice of the termination date thereof.

7. This act shall take effect immediately.

Approved January 13, 2008.