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Real estate tax breaks for green buildings: Amendment to RPTL provides benefits

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Doing the right thing environmentally doesn't always make economic sense. However, when it comes to green buildings, it certainly may. A recent amendment to the New York State Real Property Tax Law (RPTL) provides certain tax benefits to those who construct a building with the health of its occupants and the environment in mind.

RPTL Section 470 allows exemptions for improvements to real property meeting certification standards for green buildings. The U.S. Green Building Council, or USGBC, is the overseeing body that developed the Leadership in Energy and Environmental Design (LEED) program, the most well known certification program. LEED provides building owners and operators with a framework for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions.

Initial requirements under RPTL Section 470 are (a) such construction of improvements was commenced on or after January 1st, 2013, or such later date as may be specified by local law; (b) the value of such construction exceeds the sum of \$10,000; and (c) such construction is documented by a building permit, if required, for the improvements, or other appropriate

documentation as required by the assessor.

Properties that meet the above requirements and apply for an RPTL Section 470 tax exemption are subject to a rating system that will classify the building in one of four categories: Certified, Silver, Gold or Platinum. A building that qualifies for a Certified, Silver, Gold, or Platinum exemption shall be exempt from taxation by any municipal corporation in which such property is located to the extent provided in RPTL Section 470, provided the governing board of such municipal corporation, adopts a local law, ordinance or resolution providing RPTL Section 470 exemptions effective in that municipality. The chart shows the maximum exemption percentages allowed given the certified rating achieved.

The certification system used by LEED is a point based system where LEED assigns a certain amount of points to each environmentally friendly improvement made to the property. LEED lays out major areas of improvement where a taxpayer can earn points such as sustainability, water efficiency, energy and atmosphere, materials and resources as well as indoor environmental quality. The number of points the project earns determines its level of LEED certification. At Forchelli,

YEAR	CERTIFIED/SILVER	GOLD	PLATINUM
1	100%	100%	100%
2	100%	100%	100%
3	100%	100%	100%
4	80%	100%	100%
5	60%	80%	100%
6	40%	60%	100%
7	20%	40%	80%
8	0%	20%	60%
9	0%	0%	40%
10	0%	0%	20%

Maximum exemption percentages allowed given the LEED certified rating achieved.

Curto, Deegan, Schwartz, Mineo and Terrana, LLP, we are proud to have been the first commercial tenant on Long Island to achieve a LEED certification for interior space in a non LEED certified building. Specifically, the firm's space on the top floor of the Omni building in Uniondale was awarded LEED commercial Interior Silver.

RPTL Section 470 provides an exemption for improvements to the property and does not provide an exemption for the existing land or building(s) already on it. As set forth in the chart above, the exemption declines over a 10-year period, and only in year 11 would the taxpayer pay taxes based on the full assessment of the improvements. However, if the taxpayer has separately commenced tax certiorari proceedings and has been successful, he may never have to pay taxes based on the proposed assessment of the improvements. For these reasons, we recommend filing a separate tax certiorari proceeding on the property in addition to filing for the exemption.

Despite checking with the New York State Office of Real Property Tax Services and the USGBC, we have been unable to find a database

that lists the municipalities that have adopted RPTL Section 470. However, we have been able to determine some municipalities that have on Long Island. To date, the Suffolk County Towns of Huntington, Babylon, Brookhaven and Southampton have adopted RPTL Section 470. The maximum allowable exemption in Babylon is \$250,000 and in Southampton it is \$1 million.

This article is meant to provide some general information regarding the availability of a particular tax exemption for new construction. A more detailed review of the proposed project and the statute must be done before it can be determined if a project qualifies for it. In addition, other exemptions or avenues for obtaining tax relief may be available. Accordingly, before proceeding with a project, you should consult an attorney with expertise in tax certiorari.

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