



Lawyers Alliance
for New York

Connecting lawyers, nonprofits, and communities

October 2011

REAL PROPERTY TAX ALERT

IMPORTANT NOTICE FOR ORGANIZATIONS THAT OWN PROPERTY EXEMPT FROM REAL ESTATE TAXES UNDER NEW YORK REAL PROPERTY TAX LAW SECTIONS 420-a AND 420-b

If you received a "Not-for-Profit Exemption Renewal Form" from the Department of Finance you must complete the form and return it by October 24, 2011 or risk revocation of your real property tax exemption.

Background

The Mayor's Office of Contract Services has asked Lawyers Alliance to help spread the word about a recent questionnaire circulated by the Department of Finance ("DOF") to nonprofits that own property with real estate tax exemptions under Section 420-a and 420-b of the NYS Real Property Tax Law ("RPTL"). The questionnaire is designed to provide DOF with updated information about property use and the property owner. It may result in a change in your property tax bill if your use does not comply with the facts initially supplied in your application for exemption.

DOF – while it has the authority to request this information annually - has not requested this information from property owners in the last few years. Therefore, if you received an exemption in the past based on contemplated use but have not started construction, or if you have leased part or all of your property to a business entity, or if you have changed the purpose clause in your certificate of incorporation your property *may* become subject to real property taxes.

Details

If your organization was granted exemption based on its use or contemplated use of property for charitable purposes under either Sections 420-a or 420-b you can expect to receive (if you have not already) a form from DOF entitled "Not-for-Profit Exemption Renewal Form". In order to capture potential tax revenue, the DOF is checking-in on nonprofits with real property tax exemptions granted under RPTL Sections 420-a and 420-b. DOF is soliciting detailed information that will confirm whether or not the property use or contemplated use continues to qualify the property for real property tax exemption.

Examples of factors that might trigger taxation are: (1) failure to implement development plans for property that received an exemption based on contemplated use; (2) change in use (e.g. leasing or licensing all or a part of the property to a for-profit business or entity);

or (3) change in the organization's tax exempt status or a change in the purposes. The foregoing are merely examples of factors that may trigger full or partial restoration of the property to the tax rolls.

Please note that the renewal form states that the penalty for failure to submit the form by **October 24, 2011** may be revocation of exemption.

What is RPTL 420-a? RPTL 420-a is the statute that provides for an exemption from real property taxes for properties in the "mandatory" class of exempt properties, i.e. property used for charitable, educational, hospital, or religious purposes or for the moral or mental improvement of men, women, and children.

What is RPTL 420-b? RPTL 420-b is the statute that provides for exemption for properties in what is called the "permissive" class. The "permissive class" means that unless an exemption is disallowed by a local authority, real property that is owned by a nonprofit corporation or association organized exclusively for one or more specific purposes (bible, tract, benevolent, missionary, infirmary, public playground, scientific, literary, bar association, medical society, library, patriotic, historical, development of good sportsmanship for persons under age 18 through the conduct of supervised athletic games, or enforcement of laws relating to children or animals) and is actually used for such purposes, may be granted exemption.

This Real Property Tax Alert does *not* apply to affordable housing projects with exemptions under RPTL Section 420-c.

Who to Contact for More Information

The form states that if organizations have questions they should call 311 or email the Not-for-Profit Exemption Unit at DOF at the following address: commercialexemptions@finance.nyc.gov.

This alert is meant to provide general information only, not legal advice. Please contact Hedwig O'Hara at (212) 219-1800 ext. 226 if you have any questions about this alert.

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