I Want My, I Want My, I Want My 421a

Yes, I'm showing my age with the headline of this piece referencing the old MTV catchphrase. Back in the 1980s, it seemed like everyone was watching music videos, and you could not get that rhythmically repetitious "I want my MTV" out of your head. Today, many market participants want their 421a to continue.

The 421a incentive is a real estate tax exemption for the new construction of multifamily rental housing in New York. The program was originally established in 1971 and has been closed, re-opened, and reorganized several times since its inception. After the tax exemption sunsetted in 2016, the state Legislature extended the 421-a program in April 2017, renaming it the Affordable New York Housing Program, or Affordable New York for short. This new version has several amendments, including a tax exemption during construction and new location guidelines.


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The primary objectives of Affordable New York were to encourage development while simultaneously increasing the stock of affordable housing throughout the city. In an effort to do so, the state has eliminated the option for 100 percent market-rate buildings as a beneficiary of the Affordable New York abatement program. Under the old 421a, developments outside of geographic exclusion areas were not required to have an affordable component. All future construction will now require a minimum of 25 percent affordable, with most projects requiring 30 percent.

Affordable New York has also extended the duration of all abatements to 35 years, with projects of less than 300 units benefiting from 25 years of 100 percent full tax abatement, with the final 10 years of the program having an abatement equal to the percentage of affordable units within that project. Projects with 300 or more units benefit from a full 35 years of 100 percent tax exemption. In addition, projects with more than 300 units south of 96th Street in Manhattan, and along the Brooklyn and Queens waterfront, must now pay enhanced minimum hourly construction wages.

There are several different options developers can select from, with various categories of affordability. The program is viewed by developers as critical to the feasibility of new rental construction in New York City. Without it, many developers feel construction of rental housing is not economically viable.

However, both the original version of the tax abatement program and the new Affordable New York have had fierce critics. These include many elected officials who say it is simply a giveaway to developers, that it doesn't generate enough housing that is actually affordable, and that the housing would have been built even without the abatement, so why provide this benefit to the industry?

The remarkable thing that I find about these critics is that they don't really understand how the program works. The important thing to realize is that the program is a temporary abatement. The original real estate taxes on the property prior to development continues to be paid throughout the abatement period.

Therefore, there is no real "cost" to the city. It is simply a temporary delay of the receipt of what the new taxes would have been in the absence of the program. At the expiration of the abatement, full real estate taxes kick in. The new taxes will be several times what the taxes would have been if the new building was never developed.

Affordable New York is set to expire in June 2022, and state bills to modify or repeal it are being drafted in Albany. Many officials simply want the program to go away, and others want to significantly reduce the benefits it provides to the developer.

In order to qualify for the program, a developer will need to get one footing in the ground prior to June 15 of next year. A seller is really looking at a window that will close sometime this summer, though, for being able to make a deal and allow any developer to take advantage of the program. This is particularly true for those owners that want to do a ground lease or structure a joint venture with a developer to build a rental building.

Absent this program, land values for rental construction will drop significantly. This will have two implications: Sellers won't sell at the new lower values, so no new rental buildings will be built. The other impact is that lower land values will make condo developers more aggressive, and sites that would have been built for rentals will be built as condos.

In either case, new affordable rentals are not created. And with the need for affordable units in New York, that result would be terrible for the market. Let's hope the program will be continued, and well before its expiration.

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