

New York City Department of Finance

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Finance is considering adding rules governing the Industrial and Commercial Abatement Program (“ICAP”) which provides an abatement of real property taxes for the construction, alteration or improvement of certain industrial or commercial properties in specified areas of New York City for varying time periods. ICAP provides a tax incentive to owners of commercial and industrial properties to improve these properties or to construct new buildings. This notice supersedes the notice published on August 29, 2016 and the public hearing has been rescheduled as set forth below.

When and where is the hearing? The Department of Finance will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on October 26, 2016. The hearing will be in the Department of Finance hearing room at 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201.

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Finance through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to laroset@finance.nyc.gov.
- **Mail.** You can mail written comments to NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201, Attn: Timothy LaRose.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Timothy LaRose, at (718) 488-2491.
- **Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (718) 488-2007, or you can sign up in the hearing room before the hearing begins on October 26, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline to submit written comments is October 26, 2016.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. Please note that the hearing room is wheelchair accessible. You must tell us if you need a sign language interpreter. You may tell us by mail at the address given above, sent to the attention of Joan Best; by telephone, by calling Joan Best at (718) 488-2007; or by e-mail at bestj@finance.nyc.gov. You must tell us by October 12, 2016.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments concerning the proposed rule will be

available to the at NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201.

What authorizes Department of Finance to adopt this rule? New York State Real Property Tax Law sections 489-aaaaaa to 489-kkkkkk, sections 11-268 to 11-278 of the Administrative Code of the City of New York and New York City Charter (“Charter”) §§ 1043 and 1504 authorize the Department of Finance to adopt this proposed rule.

Where can I find the Department of Finance’s rules? The Department of Finance’s rules can be found in Title 19 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Finance must meet the requirements of § 1043 of the Charter when creating or amending rules. This notice is made according to the requirements of § 1043 of the Charter.

STATEMENT OF BASIS AND PURPOSE

The Industrial and Commercial Abatement Program (“ICAP”) provides an abatement of real property taxes for the construction, alteration or improvement of certain industrial or commercial properties in specified areas of New York City for varying time periods. ICAP provides a tax incentive to owners of commercial and industrial properties to improve these properties or to construct new buildings.

The proposed rule:

- Sets forth the criteria for commercial and qualifying properties that are eligible for ICAP,
- Provides an application process, including deadline, and,
- Provides criteria for when an ICAP project may lose its benefits.

The enabling legislation for ICAP is set forth in Real Property Tax Law Sections 489-aaaaaa to 489-kkkkkk and the local law is set forth in sections 11-268 to 11-278 of the Administrative Code of the City of New York. A new chapter 36 is being added to Title 19 of the Rules of the City of New York to set forth the rules for ICAP.

Matter underlined is new. Matter in brackets [] is to be deleted.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 19 of the Rules of the City of New York is amended by adding a new chapter 36, to read as follows:

Chapter 36

RULES RELATING TO THE INDUSTRIAL AND COMMERCIAL ABATEMENT PROGRAM

§36-01 Definitions.

a. “Applicant” means a person or entity who has applied or applies for benefits under this chapter who is obligated to pay real property tax on the property, either because of ownership or a contract, unless the property is exempt from real property taxation and the record owner or

lessee of such property has entered into an agreement to sell or lease such property to another person or entity, in which case both parties to the agreement shall be considered co-applicants and must submit an application jointly.

b. "Commercial activities" means activities that include the following, unless such activities are described as retail purposes in subdivision y of this section:

(1) Buying, selling, leasing or otherwise providing goods or services.

(2) Operating a transient hotel, except that:

(i) a structure or part of any hotel owned or leased by a not-for-profit corporation to provide governmentally funded emergency housing is not considered a hotel for purposes of the ICAP; and

(ii) a condominium hotel unit or timeshare hotel unit is part of a transient hotel where the property as a whole is operated as a transient hotel. An individual condominium or timeshare unit located in a transient hotel building may qualify for abatement benefits under this chapter if the unit is:

(A) made available to the general public at large for a minimum of 183 days during the calendar year on terms and dates which are consistent with standards in the hotel industry; and

(B) not occupied for more than 183 days in any calendar year by

(I) the owner or any relative of the owner; or

(II) any employee of the owner, or any employee of any corporation, partnership, limited liability corporation or other entity owner or controlled by such owner.

(3) Operating a theater or other entertainment business.

(4) Manufacturing conducted in a building or individual condominium unit where less than 75 percent of the floor area upon completion of construction is used for manufacturing.

(5) Providing information or services to businesses or investors on a nonprofit, limited profit, or cooperative basis, including operating a stock or commodity exchange, insurance rating bureau, testing service, clearinghouse, wire service, buying service, or private label company or the like.

(6) Providing computer software development and services, including:

(i) internet and web related activities;

(ii) computer graphics and designs; or

(iii) desk-top publishing.

(7) Operating any other lawful businesses, including governmental or not-for-profit activities.

(8) Operating repair of equipment and service businesses such as heating, ventilation and air conditioning ("HVAC"), plumbing and refrigeration.

(9) Operating nursing homes.

c. "Commercial construction work" means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as commercial property.

d. "Commercial property" means non-residential property on which will exist after completion of commercial construction work a building or structure, or portion thereof, used for the buying,

selling or otherwise providing of goods or services, including hotel services, or for other lawful business commercial or manufacturing activities, with at least 50 percent of the total net square footage of the property used or immediately available and held out for commercial or manufacturing activity; provided that property or portions of property dedicated to use as utility property shall not be considered commercial property for purposes of this chapter.

e. “Commissioner” means the commissioner of finance of the city of New York.

f. “Completion of construction,” or “completion” means:

(1) when relating to the construction of a new building or structure, the earlier of the date on which:

(i) the department of buildings issues a final certificate of occupancy.;

(ii) an architect or engineer certifies to the department of finance that construction is complete;

or

(iii) the department of finance has conducted an inspection and determined that construction is complete.

(2) when relating to modernization, rehabilitation, expansion or improvement of an existing building or structure work, the earlier of the date on which:

(i) an architect or engineer certifies to the department of finance that construction is complete; or

(ii) when the department of finance has conducted an inspection and determined that construction is complete.

Construction of buildings or structures for which benefits have been approved must be completed no later than five years after the date the first building permit is issued, or if no permit was required, after the completion of construction.

g. “Department” means the department of finance of the city of New York.

h. “Division” means the division of labor services contract compliance unit within the New York city department of small business services, or such successor division.

i. “ICAP” means the Industrial and Commercial Abatement Program.

j. “ICIP” means the Industrial and Commercial Incentive Program.

k. “Industrial construction work” means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property.

l. “Industrial property” means nonresidential property on which will exist after completion of industrial construction work a building or structure, or portion thereof, with at least 75 percent of the total net square footage of the property used or immediately available and held out for manufacturing activity; however, property or portions of property dedicated to use as utility property will not be considered industrial property, except for peaking units, which will be considered to be industrial property and not utility property.

m. “Initial tax rate” means, for the purposes of the ICAP, the final tax rate on the assessment roll with a taxable status date immediately before the first building permit is issued. If no

building permit was required, the initial tax and initial tax rate shall be determined based on the assessment roll with the taxable status date immediately before the start of construction.

n. "Manufacturing activity" means an activity involving the assembly of goods or the fabrication or processing of raw materials, but will not include: (i) such activity when conducted for the purpose of retail sale on the premises; (ii) utility services, except that peaking units are considered manufacturing activity; or (iii) any activity that meets the definition of "retail purposes."

(1) Areas used for manufacturing activities.

Areas of a building used for manufacturing activities include, but are not limited to:

- (a) space used to house or repair equipment used for assembly, fabrication or processing work;
- (b) space used to store raw materials, semi-finished or finished goods for short periods before or after assembly, fabrication or processing in normal quantities for the manufacturing activity involved;
- (c) space used to ship or receive such raw materials or goods;
- (d) space used to store normal quantities of supplies and spare parts for use in the manufacturing activity;
- (e) testing and research laboratories operated in connection with manufacturing activities;
- (f) cafeterias, locker rooms and other facilities for the workers engaged in manufacturing activities;
- (g) office space, not in excess of 10 percent of the total floor area, used directly in the administration of the manufacturing activity; and
- (h) other space used for activities necessarily done at the same site as the manufacturing activity and integrally related to such activity.

(2) Workers engaged in manufacturing activities.

Workers engaged in manufacturing activities are workers performing assembly, fabrication or processing or related immediate supervision, equipment repair or maintenance, goods handling, testing or research.

(3) Specific uses.

Manufacturing activities include, but are not limited to:

- (a) printing, but not including publishing or the service of taking retail orders for material to be printed; printing is characterized by the production of multiple copies of identical, or nearly identical, written material or designs on paper or other tangible material;
- (b) reproduction or processing of photographic film, audio or video media, or magnetic or other data storage media, but not including creation of the original image, sound or data;
- (c) scientific or technical testing or research to develop or improve products of other manufacturing activities;
- (d) shipbuilding or repair;
- (e) rebuilding or repairing stationary machinery or equipment used in other manufacturing activities;
- (f) rebuilding other machinery or equipment;
- (g) processing or packaging of food products for wholesale distribution;
- (h) packaging of dry goods for a manufacturer or wholesaler, but not including packaging done at an establishment used for retailing, wholesaling or warehousing activities;
- (i) pattern-making and cutting cloth for garments, sewing and finishing garments, including custom made garments, except activities done in a retail establishment; and

(j) building theatrical scenery, other than activities done in a theater or on the set of a film or television studio.

(4) Non-manufacturing uses.

(a) Uses which are not permitted in a manufacturing district, as defined by the Zoning Resolution, are not manufacturing activities, including:

(i) construction, repair, operation or maintenance of real property, including activities performed in a building contractor's shop, or the preassembly of structural elements or service equipment for installation in a building;

(ii) generation, collection, storage, transmission distribution or sale of gas, electricity, steam, water, refrigeration, cable television, telephone, telegraph or other one-way or two-way communication service, delivered through mains, pipes, cables, lines or wires;

(iii) collection, removal, carting, processing or disposal of sewerage, drainage, wastes, garbage or trash;

(iv) broadcasting, transmission or reception of television, radio or other electromagnetic signals;

(v) transportation of passengers or goods;

(vi) operation of a public or private warehouse;

(vii) operation of a showroom;

(viii) operation of a workshop, studio, sound stage, set or other place for creation of original works of art, films or recordings; or

(ix) buying, selling, leasing or providing goods or services.

(c) The following activities, except as specifically provided in paragraphs (2) and (3) of this subdivision, are not manufacturing activities:

(i) general management;

(ii) storage, shipping or receiving of materials and finished goods;

(iii) maintenance, repair or construction of real property;

(iv) professional, clerical or information processing activities;

(v) buying, selling, leasing or providing goods or services;

(vi) activity conducted for the purpose of retail sale on the premises; or

(vii) utility services.

o. "Minimum required expenditure" means the amount that an applicant must expend on construction work for a project in order to qualify for benefits under this chapter. The minimum required expenditure must be met no later than four years from the date after the first building permit is issued, or if no permit was required, from the start of construction.

p. "Mixed-use property" means property on which exists, or will exist upon completion of construction work, a building or structure used for both residential and nonresidential purposes.

q. "MWBE" means a minority-owned or women-owned business enterprise certified in accordance with section 1304 of the New York City Charter.

r. "Peaking Unit" means a generating unit that: (i) is determined by the New York independent system operator or a federal or New York state energy regulatory commission to constitute a peaking unit as set forth in section 5.14.1.2 of the New York independent system operator's market administration and control area services tariff, as such term existed as of April 1, 2011; or (ii) has an annual average operation, during the calendar year preceding the taxable status date, of less than 18 hours following each start of the unit; provided that, for purposes of calculating the annual average, operations during any period covered by any major emergency

declaration issued by the New York independent system operator, northeast power coordinating council, or other similar entity, shall be excluded.

(1) A “peaking unit” will include all real property used in connection with the generation of electricity and any facilities used to interconnect the peaking unit with the electrical transmission or distribution system, but will not include any facilities that are part of the electric transmission or distribution system; it may be comprised of a single turbine and generator or multiple turbines and generators located at the same site.

(2) Notwithstanding any provision of this title to the contrary, a peaking unit will be considered industrial property. Peaking units will not be considered utility property.

(3) The abatement benefit schedule for peaking units is set forth in section 36-12(c).

s. “Project” means the work described in the preliminary application as amended by the final application.

t. “Property” means, except where otherwise provided, a separately assessed parcel of real property, or a group of condominium units in a single building that are the subjects of a single application for ICAP benefits. When a parcel of real property includes more than one building, “property” means an individual building on such parcel and an allocable portion of the land.

u. “Renovation construction work” means the modernization, rehabilitation, expansion or improvement of an existing building or structure where such modernization, rehabilitation, expansion or improvement is physically and functionally integrated with the existing building or structure, or portion thereof, does not increase the bulk of the existing building or structure by more than 30 percent, and does not increase the height of the existing building or structure by more than 30 percent. The 30 percent limitation will apply to each building individually which has a separate certificate of occupancy.

v. “Residential construction work” means any construction, modernization, rehabilitation, expansion or improvement of dwelling units other than dwelling units in a hotel.

w. “Residential property” means property primarily used for dwelling purposes except for dwelling units in a hotel.

x. “Restricted activity” means any commercial use of property that is unlawful or a public nuisance as defined in section 7-703 of the Administrative Code.

y. “Retail purposes” means any activity that consists predominately of (i) the final sale of tangible personal property or services by a vendor as defined in section 1101 of the Tax Law, (ii) the sale of services that generally involve the physical, mental, or spiritual care of individuals or the physical care of the personal property of individuals, including medical offices, (iii) retail banking services, or (iv) the final sale of food or beverage by a vendor as defined in section 1101 of the Tax Law, including the assembly, processing or packaging of goods, provided that sales of such tangible personal property or services are predominantly to purchasers who personally visit the facilities at which such sales are made or such property or services are

provided. “Retail purposes” does not include hotels used to provide lodging and support services for transient guests, except that restaurants, bars and gift shops associated with such hotels are considered “retail purposes.”

z. “Square footage” means the following in the following contexts:

(1) “Net square footage” means square footage within a room or area of a building, measured by the inside wall-to-wall dimensions.

(2) “Gross square footage” means the total amount of square footage in a building. It includes elevator shafts, vertical penetrations, equipment areas, ductwork shafts, and stairwells, as well as the usable square footage occupied by or available to tenants.

(3) “Rentable square footage” means the net square footage of the building plus a pro-rata share of building common areas.

aa. “Temporary commercial incentive area boundary commission” means the commission described in section 11-274 of the Administrative Code.

bb. “Utility property” means property and equipment as described in paragraphs (c), (d), (e), (f), and (i) of subdivision 12 of section 102 of the Real Property Tax Law that is used in the ordinary course of business by its owner or any other entity, or property as described in paragraphs (a) and (b) of such subdivision 12 that is owned by any entity that uses, in the ordinary course of business, property and equipment as described in paragraphs (c), (d), (e) and (f) and (i) of such subdivision 12 without regard to the classification of such property and equipment for real property tax purposes pursuant to section 1802 of such Law, except that any such property and equipment used solely to serve the building to which they are attached will not be deemed to be utility property.

§36-02 Areas Eligible for Abatement Benefits.

a. Commercial construction work outside of a special commercial abatement area. Commercial construction projects anywhere in New York City outside of a special commercial abatement area are eligible for abatement benefits except for such projects in the commercial exclusion area described in subdivision b.

b. Commercial exclusion area. The commercial exclusion area is the area in Manhattan lying south of the centerline of 96th Street, except for (i) the areas in Manhattan designated for commercial renovation projects as commercial renovation areas that are described in subdivision c, and (ii) the area designated for new construction as described in subdivision d.

c. Commercial renovation areas. Commercial renovation projects in any area of New York City, except such projects south of the centerline of 96th Street in Manhattan, will be eligible for abatement benefits, except that abatement benefits will also be available for commercial renovation projects in the following designated areas, with the amount of such benefit dependent of the area in which the project is located, pursuant to sections 36-12(e) and (f) of this chapter:

(1) The area in Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street, running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly

along the center line of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connection through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street.

(2) The area in Manhattan defined as the special garment center district by chapter one of article XII of the Zoning Resolution of the city, which is the area in Manhattan bounded by the centerline of west 40th street on the north between 7th and 8th avenue; running southerly along the centerline of 7th avenue to the center line of west 38th street; running easterly along the centerline of west 38th street to the centerline of Broadway; running southerly along the centerline of Broadway to the centerline of west 35th street to 7th avenue and running southerly along the centerline of 7th avenue to the centerline of west 34th street; running westerly to the centerline of 8th avenue, running northerly to the centerline of west 35th street to 100 feet east of 9th avenue, running northerly to the centerline of west 39th street, running easterly to 8th avenue and running northerly to the centerline of west 40th street.

(3) The area in Manhattan south of the center line of 59th Street, other than the areas designated renovation areas by paragraphs (1) and (2) of this subdivision.

d. New Construction in New York City. New construction projects in any area of New York City, except such projects south of the centerline of 96th Street in Manhattan, will be eligible for abatement benefits, except that abatement benefits will also be available for new construction projects as described in subdivision e of this section.

e. New construction in certain areas of lower Manhattan. The area in Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center line of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street, except that abatement benefits will not be available for projects in the area in the borough of Manhattan bounded by Church Street on the east starting at the intersection of Liberty Street and Church Street; running northerly along the center line of Church Street to the intersection of Church Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Broadway; running northerly along the center line of West Broadway to the intersection of West Broadway and Barclay Street; running westerly along the center line of Barclay Street to the intersection of Barclay Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Street; running southerly along the center line of West Street to the intersection of West Street and Liberty Street; and running easterly along the center line of Liberty Street to the intersection of Liberty Street and Church Street.

f. Special commercial abatement area. (1) The boundaries of special commercial abatement areas as designated by the temporary commercial incentive area boundary commission will be described on the department's website.

(2) In accordance with section 489-gggggg of the Real Property Tax Law and section 11-274 of the Administrative Code, the temporary commercial incentive area boundary commission may designate an area in the city of New York, other than in the area lying south of the centerline of 96th street in Manhattan, to be a special commercial abatement area if it determines that market conditions in the area are such that the availability of a special abatement is required in order to encourage commercial construction in such area.

g. Industrial construction. Eligible projects may receive industrial construction benefits in any area of New York City.

h. Projects partially in an excluded area. Properties partially located in an excluded area will not be eligible for abatement benefits.

§36-03 Application Procedures.

An applicant must receive approval for a series of milestones in order to receive ICAP tax abatement benefits.

a. Applicants.

(1) An entity is eligible to apply for ICAP benefits:

(i) if it is obligated to pay real property tax on the property, either by virtue of ownership or contract; or

(ii) if the property is exempt from real property taxation and the record owner or lessee of such property has entered into an agreement to sell or lease such property to another entity, provided that both parties to the agreement are co-applicants.

(2) Co-application with public entity. A co-applicant with a public entity may be eligible for abatement benefits except benefits will not be available for any period for which the property is exempt from real property tax because it is owned or controlled by a public entity. Abatement benefits will only be available if the recipient meets the requirements of subdivision g of section 11-270 of the Administrative Code.

(3) Multiple buildings. Where a completed project will result in creating two or more buildings, and separate building permits were obtained, a separate application must be filed for each permitted building.

b. Preliminary application.

(1) An applicant must submit a completed preliminary application before issuance of the first building permit, or if no permit is required, the start of construction. The preliminary application must be made on the form prescribed by the Commissioner. The completed preliminary application must be accompanied by a narrative describing the proposed project, including:

(i) the project site;

(ii) the proposed improvement(s);

(iii) the proposed uses of the building or structure upon completion of improvements; and

(iv) whether the improvements are building-wide or limited to specific building systems or renovations to particular areas (such as specific floors or lobby) of the building.

(2) Failure to file a preliminary application Certificate of Eligibility for ICAP benefits before receipt of the first building permit, or if no permit is required, the start of construction, will disqualify the project from receiving benefits under this program.

(3) The preliminary application deadline for ICAP benefits is March 1, 2019. Work performed pursuant to a building permit first issued after April 1, 2019, shall not be included in the project, except as otherwise provided by statute.

(4) Work excluded from the project shall not be considered for purposes of meeting the minimum required expenditure or determining the completion date.

c. M/WBE requirements.

(1) For projects with a total estimated cost of between \$750,000 and \$1,500,000 an ICAP applicant must certify that it accessed the directory of city certified M/WBE business enterprises ("directory"). The ICAP applicant must file the certification with the department in conjunction with the final application for benefits along with a report of whether or not efforts were made by the applicant to include minority and women-owned business enterprises in the construction work on property for which benefits are sought and describe those efforts.

(2) For projects with a total estimated cost of \$1,500,000 or more ICAP applicants must comply with the following M/WBE requirements to obtain abatement benefits:

(i) After filing a preliminary application for benefits, the applicant must inform the division of contracting and subcontracting opportunities at construction sites where the applicant will be performing construction work subject to benefits pursuant to this part. The division shall make information on such contracting and subcontracting opportunities available to the general public by posting them on its website.

(ii) The ICAP applicant must review the directory to identify minority- or women-owned business enterprises that may be qualified to perform contracting or subcontracting work on construction projects subject to benefits pursuant to this part.

(iii) For each subcontract on the project, the ICAP applicant must solicit or arrange for the solicitation of bids from at least three minority or women-owned enterprises to perform contracting work.

(iv) The ICAP applicant must maintain records demonstrating its compliance with these M/WBE requirements.

(v) When filing a final application for benefits with the department, the ICAP applicant must certify that it has complied with and will continue to comply with the M/WBE provisions. The certification must also include: (A) the name and contact information of every minority- or women-owned business enterprise that the applicant solicited bids from and (B) whether any such minority- or women-owned firm was awarded a subcontract.

(vi) Work performed by an applicant's contractors or subcontractors is eligible construction work except when such work is not included in the project description, contained in the final application or an amendment thereto.

(vii) The division shall have authority to audit the records maintained by each applicant to ensure compliance with the requirements of such subdivision.

(vii) The applicant must maintain records demonstrating its compliance with the provisions of this subdivision.

d. Final application.

(1) An applicant must submit to the department a completed final application no later than one year from the date of issuance of the first building permit for construction work on the project, or when construction work does not require a building permit, no later than one year from the date of commencement of construction on the project, for all projects including new projects as described in section 36-05(a). Construction does not have to be completed prior to submitting the final application. Stop work orders issued by the department of buildings will not extend the deadline for filing the final application.

(2) Failure to file a final application no later than one year from the date of issuance of the first building permit for construction work on the project, or when construction work does not require a building permit, no later than one year from the date of commencement of construction on the project, will disqualify the project from receiving benefits under this chapter.

(3) The final application must be made on the form prescribed by the department. As part of the final application the applicant must provide a narrative description of the project which must include:

(i) A written description of the proposed project stating the specific work to be undertaken including the floor area (below grade and above grade floors and roof) and location within the property of space created or affected by the work;

(ii) List each permit number and the work associated with such permit, including elevator permits;

(iii) List any work that did not require a permit;

(iv) Date of start of construction;

(v) Estimated date of completion of project or actual date of first temporary certificate of occupancy or final certificate of occupancy, and include copies of any certificate of occupancy issued;

(vi) Contractors and sub-contractors by trade, including addresses;

(vii) Cost of construction broken down by major categories of expenses;

(viii) Number and location of buildings on project property and where multiple buildings exist on a lot or project site, include a survey showing each building; and

(ix) (A) Statement of current or prior use by square foot; and

(B) Statement of proposed use by square feet, distinguishing between commercial and residential use.

(4) The applicant must also provide copies of all executed construction contracts or a statement from the engineer or architect detailing cost estimates.

(5) The department reserves the right to require that any documents submitted in support or as part of any application be certified.

(6) No ICAP benefits will be granted for any construction work unless the applicant files with the final application an affidavit setting forth the following information:

(i) statement that within the seven years immediately preceding the date of the final application for benefits, neither the applicant, nor any person owning a substantial interest in the property, nor any officer, director or general partner of the applicant or such person was finally adjudicated by a court of competent jurisdiction to have violated section 235 of the real property law or any section of article 150 of the penal law or any similar arson law of another state with respect to any building, or was an officer, director or general partner of a person at the time such person was finally adjudicated to have violated such law; and

(ii) a statement setting forth any pending charges alleging violation of section 235 of the real property law or any section of article 150 of the penal law or any similar arson law of another jurisdiction with respect to any building by the applicant or any person owning a substantial interest in the property or any officer, director or general partner of the applicant or such person.

(iii) "Substantial interest" as used in subparagraphs (i) and (ii) of this paragraph will mean ownership and control of an interest of 10 percent or more in a property or any person owning a property.

(iv) If any person described in the statement required by subparagraph (i) or (ii) of this paragraph is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient will cease to be eligible for benefits pursuant to this part and must pay with interest any taxes for which an abatement was claimed pursuant to this part.

e. Notice of completion.

(1) The applicant must file the notice of completion with the department within 120 days of the taxable status date after completion of construction. Abatement benefits will not be granted until the applicant files the notice of completion. Except as allowed by paragraph (2) of this subdivision, the notice of completion must be submitted electronically in the format required by the department on the department's website, and in accordance with the instructions for submission of such notices of completion described on the website.

(2) Request for waiver of electronic filing requirement. The Commissioner may, for good cause, waive the requirement that the notice of completion be filed electronically. A request for waiver of the electronic filing requirement must be made in writing no later than 30 days prior to the deadline for filing a notice of completion. Any filing in paper format must be filed with the department at such address as may be designated by the department.

(3) The notice of completion must contain certification by a New York State licensed engineer or architect, or general contractor that the narrative description provided in the final application for Certificate of Eligibility, as last amended, is an accurate and complete description of the completed project; and a final certificate of occupancy.

(4) The notice of completion must include a detailed itemized statement of the cost of construction. This statement must be certified by a certified public accountant, unless the project cost is less than \$2,500,000 in which case the statement may be certified by the applicant.

(5) All applications must be submitted to the address set forth on the applicable forms.

f. Fees.

The filings required by this section must be accompanied by the following fees:

(1) Preliminary application filing: \$150

(2) Final application filing: \$500

(3) Notice of Completion filing: \$1,000

None of the filings listed above will be processed until the applicable fee is paid. All fees must be paid in a form acceptable to the Department.

§36-04 First Building Permit.

a. First building permit. For purposes of these rules, the first building permit is the permit that would, in the ordinary course, allow construction to proceed, even though:

(i) such permit was granted before submission of completed plans and specifications for the entire building; or

(ii) such permit, or the application, plans or specifications upon which it was granted, are later amended; or

(iii) such permit shall have expired by limitation of time or otherwise become invalid; or

(iv) another permit is issued for the same project on the basis of same or similar plans, subject to the provisions of section 36-05(a) of this chapter.

b. A subsequent building permit will be deemed to be the first building permit for a building where the project for which a preliminary application is made is a new project pursuant to section 36-05(a) of this chapter or the previous project has been deemed abandoned pursuant to section 36-05(b) of this chapter.

§36-05 New Projects and Abandoned Projects.

a. A project will be deemed a new project if one of the following conditions applies:

(1) a building permit was previously issued for the project and an applicant has shown by clear and convincing evidence that there is a change in the project for which a new building permit is issued which meets at least one of the following criteria:

(i) change in the total estimated cost of the project of at least 10 percent; or

(ii) change in the total floor area of the project of at least 10 percent; or

(iii) change in use.

For purposes of the requirements of filing a preliminary application pursuant to section 36-03(b) of this chapter, the previously issued building permit will be deemed to be the first building permit for a project that meets the requirements specified in this paragraph but does not meet the requirements specified in paragraph (2) of this subdivision.

(2) a building permit was previously issued for the project and an applicant has shown by clear and convincing evidence that there is a change in the project for which a new building permit is issued which meets at least one of the following criteria:

(i) the current project will require an estimated expenditure at least twice as great as the project for which a building permit was previously issued, where the estimated expenditures of the project for which a building permit was previously issued and of the current project are each measured as if construction commenced on the date of each such project's preliminary application; or

(ii) the current project will enclose floor area at least twice as great as the project for which the prior permit was issued.

For purposes of the requirements of filing a preliminary application pursuant to section 36-03(b) of this chapter, the new building permit will be deemed to be the first building permit for a project that meets the requirements specified in this paragraph.

(3) a permanent certificate of occupancy has been granted for the building which was the subject of the prior building permit, and the application for the project is made either:

(i) more than four years after issuance of the building permit for the prior project; or

(ii) for a new project in a discrete, separate part of the building than the project that was the subject of the prior building permit.

b. A project will be deemed abandoned where construction work was commenced by an applicant but has ceased for at least two continuous years at the time a preliminary application is filed for the new project.

§36-06 Eligible construction work.

a. For purposes of determining the minimum required expenditure, the abatement base and all other purposes, construction work will be eligible for tax abatement benefits under this program if the work is:

(1) A permanent capital improvement to real property with a useful life of at least three years;

(2) Described or integrally related to work described in the approved plans or narrative description submitted as part of the application;

(3) Performed during the construction period which is five years after issuance of the first building permit, or if no permit was required, after the commencement of construction; and

(4) Not rendered ineligible by any provision of law or these rules, or by any agreement made as part of the application.

b. Renovations. Renovations that are eligible construction work for abatement benefits include, but are not limited to, the following, provided that such renovations are deemed to enhance the value of the property:

(1) Renovations that increase the square footage or cubic content of an existing building; or

(2) Modernization of core facilities including:

(i) Upgrading of electrical and plumbing systems;

(ii) Installation of new elevators and elevator banks;

(iii) Renovation or new installation of the exterior of a structure;

(iv) Major upgrading of lobby space;

- (v) Reconfiguration of multi-tenant floor space to single tenant space;
- (vi) Installation of central HVAC systems;
- (vii) Major abatement of asbestos contamination;
- (viii) Conversion of obsolete office space into functional space; or
- (ix) Major conversion of a building's use involving structural changes.

c. Work not deemed to be eligible construction work. Construction work that is not eligible for tax abatement benefits pursuant to this section includes:

- (1) Ordinary repairs, replacements or redecoration;
- (2) Placement of personal property that remains personal property;
- (3) Extension of streets, sewers, water or utility systems to a site not provided with such services; or
- (4) Installation of satellite dishes, billboards, or cellular and microwave antennae.

d. Earthwork or partial demolition. Earthwork or partial demolition will be included in the construction work on a project if the following three conditions are met:

- (1) the earthwork or partial demolition is integrally related to the other construction work on the project and is commenced not more than one year after the date that a preliminary application was filed;
- (2) the applicant requests inclusion of the earthwork or partial demolition in the preliminary application or a subsequent notice filed at least 15 business days before the commencement of the earthwork or partial demolition and before a permit for the earthwork or partial demolition is issued; and

e. In the case of an abandoned project, only construction work that is the subject of a newly issued or renewal permit will be eligible for abatement benefits. Eligible construction for an abandoned project will qualify for benefits only if it is the subject of a preliminary application filed prior to the date on which the new or renewal permit was issued.

f. Construction work that is part of a project which is the subject of an approved application may not be considered eligible construction work for a future application for tax abatement benefits for the same property, building or structure under this chapter.

g. (1) No ICAP benefits will be granted for residential construction work, or for work on a structure or building where 20 percent or more of the rentable square footage of such property is or will be dedicated to residential purposes, provided however that where less than 5 percent of a property's rentable square footage is or will be dedicated to residential purposes, that use will be considered negligible and will not be considered in determining ICAP benefits.

(2) Notwithstanding paragraph (1) of this subdivision, where a building or structure is owned in condominium form, and an application for benefits under this chapter includes more than one property in the same condominium, then for purposes of this paragraph, the 5 percent and 20 percent of the rentable square footage shall be determined based upon the aggregate usage of all such properties.

h. Notwithstanding the foregoing, for purposes of determining whether a project is completed within the time required to secure the inflation protection benefits described in section 36-10(l), eligible construction work may include construction work done more than four years, but not more than five years, from the date of the issuance of the first building permit or from the start of construction if no permit was required.

§36-07 Minimum Required Expenditure.

a. The minimum required expenditure is based on a percentage of the property's final taxable assessed value, without regard to any exemptions, for the tax year with a taxable status date immediately preceding the issuance of the first building permit, or if no permit was required, the commencement of construction. For commercial construction work the minimum required expenditure is 30 percent. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities will not be included in the minimum required expenditure. For the additional industrial construction abatement set forth in section 36-11 of this chapter, the minimum required expenditure is 40 percent.

b. Eligible expenditures. Expenditures include but are not limited to those made for:

(1) construction contracts;

(2) materials, labor, equipment rental, insurance, permit fees and other direct expenses of construction;

(3) installation of partitions and other tenant work by or for the first tenant or occupant of new or substantially renovated space;

(4) architectural, engineering, construction management, legal, accounting and other professional services rendered in connection with the construction work to the extent that the total of all such fees do not exceed 10 percent of the expenses incurred for direct construction costs;

(5) site preparation, such as the erection of partitions, fences, barricades, scaffolding, temporary walkways, removal of debris or any similar work allocable to the project; and

(6) fees for connection to existing sewer, water or utility lines.

c. Ineligible expenditures. The following are ineligible expenditures:

(1) the costs of selecting or acquiring the site;

(2) the costs of determining the feasibility of the project;

(3) the costs of moving or installing machinery or equipment, except the cost of installing equipment that is real property and installed as part of the project;

(4) charges to any reserve, contingency or sinking fund;

(5) the costs of earthwork or demolition except as provided in section 36-06(d) of this chapter;

(6) the costs or payments for the extension of streets, sewers, water lines or other public utilities to a site not provided with these services; and

(7) the cost or payments associated with vacating the site or existing buildings such as terminating existing leases or tenancies.

d. Expenditures for construction work for mixed use properties related to the common areas and systems of such property will be allocated, if applicable, between the residential, nonresidential and retail portions of the property based on a pro rata square footage basis.

e. No later than 60 days after the minimum required expenditure must be made—four years from the date of the first building permit, or from the start of construction if no permit was required—the applicant must submit to the department a certified statement that the applicant has made the minimum required expenditure as required by this chapter.

§36-08 Eligibility and Compatibility With Other Abatements/Exemptions.

a. No benefits will be granted under ICAP for property that is concurrently receiving any other exemptions or abatements except for exemptions pursuant to Real Property Tax Law sections 420(a) or(b) or 459(b), or for any other exemptions granted to the primary residence of the applicant.

b. If the property is currently receiving ICIP benefits, it will not be eligible for ICAP benefits unless the applicant can show by clear and convincing evidence, such as permits, plans and other documentation, that the new ICAP project is a new separate project in a discrete, separate part of the building which is different from the ICIP project. If the new ICAP project is not deemed by the department to be a separate project in a discrete separate part of the building, the applicant may submit a new ICAP application for approval while they are receiving ICIP benefits but will not be eligible to receive ICAP benefits until the current ICIP benefits have expired. An approved ICAP applicant will not receive ICAP benefits for such period of ineligibility though the schedule for such benefits will begin upon ICAP approval. ICAP benefits will be based on the tax year that such benefits commence. For example, if the ICIP benefits expire in tax year 2018 and if ICAP benefits would have otherwise commenced in tax year 2016, the ICAP benefits for tax year 2016 and tax year 2017 will not be granted and the ICAP benefits will begin in tax year 2018 in accordance with the ICAP schedule for tax year 3.

c. No ICAP benefits will be granted for any property unless required income and expenses statements are filed for the tax year for the assessment roll with a taxable status date immediately preceding the first building permit or if no permit was required, the commencement of construction. ICAP benefits will also not be granted for any property, unless income and expense statements are filed for all subsequent tax years, up to and including the tax year with a taxable status date immediately following the earlier of the completion of construction or four years from the date of issuance of the first building permit, or if no permit was required, the commencement of construction.

d. As a condition of eligibility for benefits under this program, there must be no arrears in real property taxes or other charges imposed by the City of New York on the property for all years prior to the post-completion year unless such arrears are subject to an installment agreement with the department and all installments that have come due under the agreement have been paid. The post completion year is the tax year with the first taxable status date where the applicant is otherwise eligible to receive ICAP abatement benefits.

§36-09 Benefit Period Commencement.

Upon approval by the department of a final application for benefits, the first year of the abatement shall be the tax year with the first taxable status date that follows the earlier of (a) completion of construction, or (b) four years from the date the first building permit was issued, or if no permit was required, the commencement of construction.

§36-10 Calculation of Abatement.

a. Abatement amount. The abatement amount is equal to the product of the abatement base times the percentage for the applicable year indicated in the applicable schedule set forth in section 36-12.

b. Abatement base. The abatement base is the amount that the post completion tax liability exceeds 115% of the initial tax liability for each type of abatement except for the additional industrial abatement as defined in section 36-11.

c. The calculation of initial and post completion tax liability is based on the lower of the actual or transitional assessed value of the building.

d. The initial tax liability is the liability for the building or structure on the tax roll with a taxable status date preceding the first building permit or commencement of construction if no permit is required.

e. Calculation of initial tax liability. The product of the taxable assessed value ("AV") for the building or structure (without regard to any tax exemption that may be applicable to the property) for the assessment roll with a taxable status date preceding the first building permit or commencement of construction if no permit is required is multiplied by the initial tax rate. The initial tax rate is the final tax rate applicable to the assessment roll with a taxable status date immediately preceding the issuance of the first building permit. If no building permit was required, the initial tax rate shall be determined based on the assessment roll with a status date immediately preceding the commencement of construction.

f. If the initial tax or the post-completion tax attributable to a mixed-use property must be apportioned to determine the tax attributable to a particular use for any purpose under these rules, the tax will be apportioned using the same method used by the department to value property for tax and assessment. This includes, but is not limited to, determining the abatement base or the minimum required expenditure, or if the tax must be apportioned among newly apportioned tax lots, Methods that may be considered, individually or in combination include:

(1) the land area of each portion;

(2) the square footage of the building or structure used or dedicated to each purpose;

(3) the market value of the building situated on each portion;

(4) the location of each portion on the lot;

(5) the topography of the lot;

(6) zoning and other land use restrictions applicable to the lot or portion thereof;

(7) analyses of income factors relating to each portion;

(8) analyses of cost factors; and

(9) other relevant factors.

If any tax lot included in a project that is the subject of a pending or approved final application for ICAP benefits is subdivided, the applicant must file an amendment to the final application designating the tax lots that constitute the property that is the subject of the application. The Department shall allocate the initial and, if applicable, the post construction assessed values based on the allocation of the historical assessments made pursuant to subdivision 5 of section 1805 of the real property tax law.

g. At no time during the abatement benefit period may the abatement reduce the amount of taxes imposed on the land portion of the assessment, nor may it reduce the initial tax liability imposed on the building or structure, except for the additional industrial abatement as described in section 36-11.

Example: Commercial construction work outside of a special commercial abatement area. Preliminary application filed 7/1/2008; first building permit issued 8/1/2008. Project consists of commercial construction work to renovate and modernize the building.

In this case, the initial tax liability is based on the FY2008/09 tax liability (assessment roll with a taxable status date preceding the first building permit)

Section 1805 of the real property tax law requires that certain changes to assessed valuation ("AV") be phased in over a number of years rather than one year. This is transitional AV.

	<u>Actual AV</u>	<u>Transitional AV</u>
<u>Total AV</u>	<u>\$1,100,000</u>	<u>\$900,000</u>
<u>Land AV</u>	<u>\$400,000</u>	<u>\$300,000</u>
<u>Building AV</u>	<u>\$700,000*</u>	<u>\$600,000*</u>
<u>Initial Tax Liability</u>	<u>\$60,000**</u>	<u>\$600,000 x 0.10</u>

*The initial tax liability will be based on the lower of the building actual AV or building transitional AV.

**FY 2008/09 Tax Rate Assume an initial tax rate of 10% for 2008/09 for illustrative purposes

h. The post-completion tax liability is the tax liability for the building or structure on the tax roll with a taxable status date immediately following the earlier of completion of construction, or four years from the date of issuance of the first building permit or commencement of construction, if no building permit was required, multiplied by the initial tax rate.

Example: In this case, the construction was completed by November 2011; therefore, the post completion tax is based on the 2012/13 AV roll (taxable status date January 5, 2012). The AV for the building on that assessment roll was:

	<u>Actual AV</u>	<u>Transitional AV</u>
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Building AV	\$1,100,000	\$1,000,000
FY 2008/09 Tax Rate of 10%	.10	.10
Post Completion Tax	\$110,000*	\$100,000*

*Post completion tax is based on the lower of the actual AV or transitional AV.
The abatement base is equal to the post-completion tax liability less 115% of the initial tax liability.

Post Completion Tax Liability	\$100,000
Initial Tax Liability	\$60,000
115% of Initial Tax Liability	\$69,000
Abatement Base	\$31,000

i. Abatement benefits will not in any year exceed the property taxes imposed on such property.

j. If a tax lot has multiple structures with both eligible and non-eligible uses, the initial tax will be apportioned and only the eligible portion will receive the abatement.

k. (1) The availability of ICAP benefits for retail use is limited in the following cases:

(i) No more than 10 percent of gross square footage in industrial and commercial buildings in special commercial abatement areas used for retail purposes is eligible to receive a 25 year abatement benefit. If more than 10 percent of the property is used for retail purposes, the portion exceeding the 10 percent retail use will be eligible for a 15 year abatement benefit.

(ii) For renovation areas in Manhattan, any retail use in excess of 5 percent of the building(s) gross square footage will be ineligible for ICAP benefits, except in the Lower Manhattan renovation area, as set forth in section 36-02(c)(1), where there will be no limit on portion of gross square footage dedicated to retail use.

(2) The determination of the percent of gross square footage used for retail purposes shall be based on the gross square footage of the entire building in all cases, including those where the ICAP application relates to one or more condominium units in the building.

(3) In a building in which at least 10% of the gross square footage is dedicated exclusively to industrial or commercial purposes other than retail purposes, the gross square footage of retail space shall not include space used for common building mechanical equipment, maintenance or circulation.

I. Inflation Protection.

(1) Inflation protection for industrial construction projects. Inflation protection is available during years 2 through 13 of the abatement period if in such year there is an increase in the tax over the immediately preceding year resulting from an increase in the property's total taxable assessed value. The new increase in tax liability, based upon the increase in taxable assessed value, will be added to the abatement base using the initial tax rate.

For industrial construction projects the inflation protection is the full amount of the increase in taxes based upon the initial tax rate, unless there is a physical change from the immediately preceding year and the increase in taxable assessed value due to such physical change is more

than 5 percent of the taxable assessed value for the immediately preceding year. Under such circumstances, none of the increase in tax liability, whether the increase in taxable assessed value is solely the result of a physical change or a combination of physical change and non-physical change, may be added to the abatement base. For industrial projects the percentage of retail use does not have any impact on eligibility for inflation protection.

(2) Inflation protection for commercial projects in special commercial abatement areas. Inflation protection is available during years 2 through 13 of the abatement period if in any such year there is an increase in taxable assessed value of more than 5 percent of the initial tax rate. The increase in tax liability based upon the increase in taxable assessed value that is more than 5 percent calculated using the initial tax rate will be added to the abatement base.

However, no inflation protection will be provided for commercial projects in special commercial abatement areas where there is a physical change from the immediately preceding year and the increase in taxable assessed value due to such physical change is more than 5 percent of the taxable assessed value for the immediately preceding year. Under such circumstances, none of the increase in tax liability, whether the increase in taxable assessed value is solely the result of a physical improvement or a combination of physical improvement and equalization, may be added to the abatement base. For commercial projects in special commercial areas the percentage of retail use does not have any impact on eligibility for inflation protection. If the building is currently receiving inflation protection for one ICAP project and any additional ICAP projects are approved that qualify for inflation protection, the inflation protection for the current ICAP project will be terminated and inflation protection benefits for the most recently approved ICAP project will commence upon such termination.

Hotels located in special commercial abatement areas are eligible for the inflation protection set forth in this paragraph.

Examples: In the examples below, inflation protection is provided on the calculation of total abatement base for commercial construction projects in a special commercial abatement area when the retail portion of the square footage of the project is not more than 10% (Example 1), as well as when the retail portion is more than 10% of the square footage of the project (Example 2).

Example 1: Commercial construction in special commercial abatement area – retail not more than 10% of square footage (equalization increases in taxable assessed value)

<u>Percent Increase in Taxable Assessed Value</u>	<u>Benefit Period</u>	<u>Post Completion Tax Liability</u>	<u>Initial Tax Rate</u>	<u>Addition to Abatement Base Due to Inflation Protection</u>	<u>Total Abatement Base</u>	<u>Yearly Abatement Percentage</u>
	<u>YR 1</u>	<u>100,000</u>	<u>10%</u>		<u>31,000</u>	<u>100%</u>
<u>3%</u>	<u>YR 2</u>	<u>103,000</u>	<u>10%</u>		<u>31,000</u>	<u>100%</u>
<u>6%</u>	<u>YR 3</u>	<u>109,180</u>	<u>10%</u>	<u>1,030</u>	<u>32,030</u>	<u>100%</u>
<u>6%</u>	<u>YR 4</u>	<u>115,731</u>	<u>10%</u>	<u>1,092</u>	<u>33,122</u>	<u>100%</u>

4%	YR 5	120,360	10%		33,122	100%
3%	YR 6	123,971	10%		33,122	100%
2%	YR 7	126,450	10%		33,122	100%
6%	YR 8	134,037	10%	1,265	34,387	100%
3%	YR 9	138,058	10%		34,387	100%
1%	YR 10	139,439	10%		34,387	100%
1%	YR 11	140,833	10%		34,387	100%
2%	YR 12	143,650	10%		34,387	100%
3%	YR 13	147,960	10%		34,387	100%
4%	YR 14	153,878	10%		34,387	100%
2%	YR 15	156,956	10%		34,387	100%
4%	YR 16	163,234	10%		34,387	100%
3%	YR 17	168,131	10%		34,387	90%
2%	YR 18	171,494	10%		34,387	80%
4%	YR 19	178,354	10%		34,387	70%
5%	YR 20	187,272	10%		34,387	60%
6%	YR 21	198,508	10%		34,387	50%
3%	YR 22	204,463	10%		34,387	40%
2%	YR 23	208,552	10%		34,387	30%
1%	YR 24	210,638	10%		34,387	20%
2%	YR 25	214,851	10%		34,387	10%

Example 2: Commercial construction in special commercial abatement area – retail more than 10% of square footage (equalization increases in taxable assessed value). The retail space is 25% of square footage.

Percent Increase in Taxable Assessed Value	Benefit Period	Post Completion Tax Liability	Initial Tax rate	Addition to Abatement Base Due to Inflation Protection	Total Abatement Base	Abatement Base for Commercial Plus 10% Retail	Yearly Abatement Percentage	Abatement Base for Retail over 10%	Yearly Abatement Percentage
	YR 1	100,000	10%		31,000	26,350	100%	4,650	100%
3%	YR 2	103,000	10%		31,000	26,350	100%	4,650	100%
6%	YR 3	109,180	10%	1,030	32,030	27,226	100%	4,804	100%
6%	YR 4	115,731	10%	1,092	33,122	28,154	100%	4,968	100%
4%	YR 5	120,360	10%		33,122	28,154	100%	4,968	100%
3%	YR 6	123,971	10%		33,122	28,154	100%	4,968	100%
2%	YR 7	126,450	10%		33,122	28,154	100%	4,968	100%
6%	YR 8	134,037	10%	1,265	34,387	29,229	100%	5,158	100%
3%	YR 9	138,058	10%		34,387	29,229	100%	5,158	100%
1%	YR 10	139,439	10%		34,387	29,229	100%	5,158	100%
1%	YR 11	140,833	10%		34,387	29,229	100%	5,158	100%
2%	YR 12	143,650	10%		34,387	29,229	80%	5,158	80%
3%	YR 13	147,960	10%		34,387	29,229	60%	5,158	60%
4%	YR 14	153,878	10%		34,387	29,229	40%	5,158	40%
2%	YR 15	156,956	10%		34,387	29,229	20%	5,158	20%

(3) Industrial construction work on a peaking unit will have the same inflation protection as other industrial construction projects.

(4) A property receiving abatement benefits for both industrial and commercial construction is eligible for the inflation protection provided under this section based upon the predominant use of the property as determined by the department.

(5) Time limit for completion of construction. Construction of buildings or structures for which benefits have been approved must be completed no later than five years from the date of issuance of the first building permit, or if no permit was required, the commencement of

construction. Failure to meet this requirement will result in the termination of any inflation protection provided under this subdivision for any tax year that begins following the date by which completion of construction is required.

§36-11 Additional Industrial Abatement.

a. Eligibility. An applicant is eligible for an additional industrial abatement in addition to the abatement for industrial construction work set forth in section 36-02(b) and (c), if the applicant meets the eligibility requirements for the abatement of industrial construction work in this chapter and makes the minimum required expenditure of 40 percent of the property's taxable assessed value in the tax year with the taxable status date immediately preceding the issuance of the first building permit, or if no permit was required, the commencement of construction. Expenditures for residential construction work or construction work on portions of property to be used for restricted activities will not be included in the minimum required expenditure for the purposes of eligibility under this section.

b. Benefits granted. The additional industrial abatement benefits will only be granted for industrial construction work and only those portions of a building or structure used or held for use for industrial purposes will be eligible for such benefits.

c. The first year of additional industrial abatement benefits will be the tax year with a taxable status date following the earlier of (i) completion of construction, or (ii) four years from the date the first building permit was issued or, if no permit was required, from the start of construction.

d. Projects that do not meet the minimum required expenditure of 40 percent or do not perform eligible industrial construction work will not be eligible for additional industrial abatements.

e. The amount of the additional industrial abatement is set forth below:

<u>Years 1 to 4</u>	<u>50% of the initial tax liability</u>
<u>Year 5</u>	<u>40% of the initial tax liability</u>
<u>Year 6</u>	<u>40% of the initial tax liability</u>
<u>Year 7</u>	<u>30% of the initial tax liability</u>
<u>Year 8</u>	<u>30% of the initial tax liability</u>
<u>Year 9</u>	<u>20% of the initial tax liability</u>
<u>Year 10</u>	<u>20% of the initial tax liability</u>
<u>Year 11</u>	<u>10% of the initial tax liability</u>
<u>Year 12</u>	<u>10% of the initial tax liability</u>

§36-12 ICAP Abatement Schedules.

The abatement schedules below set forth the abatement amounts available pursuant to the ICAP program. While an applicant may meet the eligibility requirements for abatement benefits such abatement benefits will not be granted until the applicant complies with the notice of completion requirements set forth in section 36-03(e).

a. Abatement for commercial construction work outside of a special commercial abatement or a renovation area. Upon approval by the department of a final application for benefits, an applicant who has performed commercial construction work outside of a special commercial abatement area as described in section 36-02(a), or a commercial renovation area, as

described in section 36-02(c), shall be eligible for an abatement of real property taxes as set forth below.

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
<u>Years 1 to 11</u>	<u>100% of abatement base</u>
<u>12</u>	<u>80% of abatement base</u>
<u>13</u>	<u>60% of abatement base</u>
<u>14</u>	<u>40% of abatement base</u>
<u>15</u>	<u>20% of abatement base</u>

b. Abatement for industrial construction work or commercial construction work in special commercial abatement areas where not more than 10% of the building or structure is used for retail purposes. Upon approval by the department of a final application for benefits, an applicant who has performed industrial construction work as described in section 36-02(f), or commercial construction work in a special commercial abatement area as described in section 36-02(e), on buildings where not more than 10% of the building or structure is used for retail purposes, shall be eligible for an abatement of real property taxes as set forth below.

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
<u>Years 1 to 16</u>	<u>100% of abatement base</u>
<u>17</u>	<u>90%</u>
<u>18</u>	<u>80%</u>
<u>19</u>	<u>70%</u>
<u>20</u>	<u>60%</u>
<u>21</u>	<u>50%</u>
<u>22</u>	<u>40%</u>
<u>23</u>	<u>30%</u>
<u>24</u>	<u>20%</u>
<u>25</u>	<u>10%</u>

c. Abatement for industrial construction work on a peaking unit. Upon approval by the department of a final application for benefits, an applicant who has performed industrial construction work on a peaking unit as described in section 36-02(f) shall be eligible for an abatement of real property taxes as set forth below.

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
<u>Years 1 to 15</u>	<u>100% of abatement base</u>

d. Abatement for industrial construction work or commercial construction work in special commercial abatement areas, on buildings where more than 10% of the building or structure is used for retail purposes. Upon approval by the department of a final application for benefits, an applicant who has performed industrial construction work as described in section 36-02(f) or commercial construction work in special commercial abatement areas as described in section 36-02(e), shall be eligible for an abatement of real property taxes. Abatement benefits are available for the non-retail portion of such buildings or structures and 10% of the building or structure used for retail purposes in accordance with the 25 year schedule set forth in subdivision b above. Any retail portion in excess of 10% of such building or structure is eligible for abatement benefits in accordance with the 15 year schedule set forth below.

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
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<u>Years 1 to 11</u>	<u>100% of abatement base</u>
<u>12</u>	<u>80% of abatement base</u>
<u>13</u>	<u>60% of abatement base</u>
<u>14</u>	<u>40% of abatement base</u>
<u>15</u>	<u>20% of abatement base</u>

e. Abatement for renovation construction work in renovation areas.

(1) Upon approval by the department of a final application for benefits, an applicant who has performed renovation construction work in a renovation area, as described in section 36-02(c)(1), shall be eligible for an abatement of real property taxes as set forth in the table below.

(2) Upon approval by the department of a final application for benefits, an applicant who has performed renovation construction work in a renovation area as described in section 36-02(c)(2) shall be eligible for an abatement of real property taxes for the non-retail portion of such building or structure and up to 5% of such building or structure used for retail purposes as set forth in the table below. Any retail portion in excess of 5% of such building or structure is not eligible for abatement benefits.

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
<u>Years 1 to 8</u>	<u>100% of abatement base</u>
<u>9</u>	<u>80% of abatement base</u>
<u>10</u>	<u>60% of abatement base</u>
<u>11</u>	<u>40% of abatement base</u>
<u>12</u>	<u>20 of abatement base</u>

f. Abatement for renovation construction work in renovation areas. Upon approval by the department of a final application for benefits, an applicant who has performed renovation construction work in a renovation area, as described in section 36-02(c)(3) shall be eligible for an abatement of real property taxes for the non-retail portion of such building or structure and up to 5% of the building or structure used for retail purposes. Any retail portion in excess of 5% of such building or structure is not eligible for abatement benefits.

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
<u>Years 1 to 5</u>	<u>100% of abatement base</u>
<u>6</u>	<u>80% of abatement base</u>
<u>7</u>	<u>60% of abatement base</u>
<u>8</u>	<u>40% of abatement base</u>
<u>9</u>	<u>20% of abatement base</u>
<u>10</u>	<u>20% of abatement base</u>

g. Abatement for commercial construction work on new construction in certain areas of lower Manhattan. Upon approval by the department of a final application for benefits, an applicant who has performed new construction work in certain areas of lower Manhattan as described in section 36-02(d) shall be eligible for an abatement of real property taxes

<u>Tax year during benefit period</u>	<u>Amount of abatement</u>
<u>Years 1 to 4</u>	<u>100% of the abatement base</u>
<u>5</u>	<u>80% of the abatement base</u>
<u>6</u>	<u>60% of the abatement base</u>
<u>7</u>	<u>40% of the abatement base</u>

§36-13 Continuing Use.**a. Certificate of continuing use.**

(1) For the duration of the benefit period. ICAP benefit recipients must file with the department a certificate of continuing use on or before the taxable status date of January fifth every other year that states any changes in the structure or use of the property that have occurred since the previous submission for that property, except that ICAP benefit recipients receiving benefits for construction work on a peaking unit must file such statement on or before January fifth and July fifth of each year. For example, for recipients of benefits not for peaking units, the first certificate of continuing use must be filed after the first year benefits are received and the next certificate of continuing use must be filed after the third year benefits are received.

(2) The certificate of continuing use form must be filed electronically in the manner prescribed by the Commissioner. The Commissioner may, for good cause, waive the requirement that the statement of continuing use be filed electronically and permit the statement of continuing use to be filed by means of a paper form. A request for waiver of the electronic filing requirement must be made in writing no later than thirty days prior to the deadline for filing a statement of continuing use. Any filing permitted to be filed in a paper format must be filed with the department at the address designated by the department.

(3) ICAP benefit recipients who fail to file an ICAP certificate of continuing use by January fifth of a required filing year, or in the case of an ICAP benefit recipient receiving benefits for construction work on a peaking unit by January fifth or July fifth of each year, may have their ICAP benefits reduced or suspended. ICAP benefit recipients who fail to file an ICAP certificate of continuing use for two consecutive required filing years, may have their ICAP benefits terminated. The Commissioner may, after providing notice to the ICAP benefit recipient and an opportunity to be heard, reduce, suspend, terminate or revoke ICAP benefits. Such notice will inform the recipient of the reasons for the proposed action by the department and that the ICAP recipient has the right to present information as to why the ICAP recipient should not be penalized to the Commissioner or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail.

(4) An ICAP certificate of continuing use delivered by an ICAP benefits recipient which contains a false or misleading statement as to a material fact or omits any material fact required to be reported under this subdivision may result in a determination that the recipient is ineligible for current and future tax abatements for the subject property or any other property. The Commissioner may, after providing notice to the ICAP benefit recipient and an opportunity to be heard, reduce, suspend, terminate or revoke ICAP benefits. Such notice will inform the recipient of the reasons for the proposed action by the department and that the ICAP recipient has the right to present information as to why the ICAP recipient should not be penalized to the Commissioner or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail.

b. Continued use.

(1) Continuing eligibility for ICAP benefits is contingent upon continued use of buildings and property for the purpose specified in the application as last amended in the most recent certificate of continuing use.

(2) ICAP benefits will be suspended for code violations pursuant to section 11-277 of the Administrative Code.

(3) When the eligibility of a property to receive ICAP benefits is affected by a conversion as described in subdivision c of this section, the recipient must establish by clear and convincing evidence the last date that the property was eligible for the benefits previously granted, which will be deemed the date of the conversion. If no certificate of continuing use has been submitted, a building permit indicating a change in use will be treated as a presumption of conversion.

(4) A recipient must file an amendment to the latest filed statement of continuing use prior to conversion of use as set forth in subdivisions e and f of this section. For all other conversions an applicant must file an amendment to the latest filed statement of continuing use within 60 days of the conversion.

c. Conversion.

(1) A conversion of property, a building or a building site is any intentional change in the nature of the improvements for which benefits were granted, or in the use of such improvements by any person, including by the benefit recipient, a tenant or an occupant.

(2) A demolition, in full or part, or any other structural change which necessarily causes a change in use is a conversion.

(3) A discontinuance of use may be deemed a conversion if the dilapidated condition of the property and prolonged period of nonuse evidences intent to abandon the property and permanently discontinue use. Temporary nonuse due to inability to secure tenants or funding for completion of construction shall not constitute a change in use.

d. Permitted changes.

The following types of changes are not conversions:

(1) A change in ownership or control of property, provided that the department is notified of such change in ownership or control, or

(2) A change in the identity of a tenant or occupant.

e. Conversion from industrial to commercial use.

(1) If a property receives industrial abatement benefits, but then at any time prior to the end of the abatement period, less than 65 percent of the total net square footage is used as an industrial property, no further abatement benefits for industrial work will be granted except as set forth in this subdivision. Except as otherwise provided in this section, any taxes owed from a converted use will be due, and interest assessed, as of the date of such conversion.

(2) Notwithstanding paragraph (1) of this subdivision, any applicant whose property was receiving industrial abatement benefits in a special commercial abatement area that would have been eligible to receive benefits for commercial construction work at the time such applicant

applied for abatement benefits will continue to receive the abatement for industrial construction work until the expiration of such benefit period.

(3) Notwithstanding paragraph (1) of this subdivision any applicant whose property was receiving industrial abatement benefits other than in a special commercial abatement area who would have been eligible to receive benefits for commercial construction work at the time such applicant applied for abatement benefits will receive any abatement which such applicant would have received in the corresponding tax year pursuant to the benefits granted for commercial construction work. Such benefits will commence with the date of conversion to commercial property and continue until the expiration of the benefit period for commercial construction work.

(4) If a property that converts from industrial to commercial use was receiving benefits for industrial construction work in any area of the city and at least 65 percent of the net square footage continues to be used for manufacturing activity after such conversion to commercial use, the recipient will not be required to pay the pro-rata share of tax for the abatement claimed during the tax year for which an abatement was claimed during the tax year in which such conversion occurred.

(5) Any industrial property that was receiving the additional industrial abatement pursuant to section 36-11 will cease to be eligible for such additional benefits from the date of conversion to commercial property.

f. Conversion to residential use.

(1) Any applicant whose property has been granted benefits for commercial, industrial or renovation construction work and who, before the benefit period expires, uses or allows the use of the property or a portion of the property as residential property, will cease to be eligible for further abatement for commercial, industrial or renovation construction work as of the date such property was first used as residential property, as follows:

(i) If 20 percent or more of the rentable square footage of the property is used as residential property, then the entire property will cease to be eligible for further abatement.

(ii) If less than 20 percent of the rentable square footage of the property is used as residential property, then that portion of such property used as residential property will cease to be eligible for further abatement.

(iii) Notwithstanding subparagraph (ii) of this paragraph, where less than 5 percent of a property's rentable square footage is used as residential property, that use will be considered negligible and will not be a basis for benefits to cease under this subdivision.

(iv) Where benefits cease or are reduced pursuant to this subdivision, the recipient of such ceased or reduced benefits must pay, with interest, any taxes for which an abatement was received after the conversion of the property as described in this subdivision, including the pro rata share of tax for which such abatement was claimed during the tax year in which such use occurred. The abatement will continue for the commercial, industrial or renovation construction work for the portion of the property that continues to be used for commercial purposes as long as the property is still eligible for such abatement benefits.

(2) For purposes of this subdivision, "property" means the real property contained within an individual tax lot.

(3) Notwithstanding subparagraph (iv) above, where a building or structure is owned in condominium form, and an application for benefits includes more than one unit in the same

condominium, then for purposes of this subdivision, the 5 percent and 20 percent of the rentable square footage determination will be based on the total square footage of all condominium units applying for ICAP benefits.

g. Conversion to retail use.

(1) Where a property has been granted benefits for industrial or commercial construction work in special commercial abatement areas on buildings where not more than 10 percent of the rentable square footage of the building or structure is used for retail purposes, and where, before the benefit period expires, the property or a portion thereof is converted so that 10 percent or more of the rentable square footage of the building or structure is used for retail purposes, the department will recalculate the abatement upon conversion in accordance with subdivision e of this section.

(2) Where a property has been granted benefits for renovation construction work in renovation areas and where, before the benefit period expires, the property or a portion of the property is converted so that more than 5 percent of the rentable square footage of the building or structure is used for retail purposes, the department will recalculate the abatement upon conversion to reflect the benefit for which the current use is eligible.

h. Conversion of use by peaking units. Any applicant whose property has been granted benefits under this chapter for industrial construction work as a peaking unit and who converts such property in any tax year to a use that no longer qualifies as a peaking unit, or who uses such property in a manner inconsistent with the definition of a peaking unit, will be ineligible for abatement benefits during any such tax year. Any such recipient of benefits must pay with interest taxes for which an abatement was claimed during any portion of such tax year.

i. Recalculation of abatement upon conversion. If, during the benefit period, a recipient converts square footage within any building or structure, the department may recalculate the benefit granted pursuant to this chapter to reflect the benefit for which the current use is eligible.

j. The burden shall at all times be on the recipient to demonstrate by clear and convincing evidence that property subject to benefits under this part is used as stated in the applications for benefits filed by the recipient with the department.

§36-14 Subsequent Abatements.

An applicant may not file a preliminary application for new ICAP benefits for an additional construction project on any portion of a property that is already receiving any ICAP benefit for four years after the start of the first tax year for which such property is receiving such ICAP benefits. For any ICAP benefit granted for a property that has previously been granted any other ICAP benefit, the initial tax to determine the new abatement will not include the ICAP abatement previously received.

§36-15 Administration of ICAP Program.

a. The department may submit written requests to any ICAP benefit applicant or ICAP benefit recipient for additional information which may include, but is not limited to, the production of books, records and documents relating to any application made for ICAP benefits or submission of a certificate of continuing use. Such written requests will contain a 90 day deadline. The Commissioner may, after providing notice and an opportunity to be heard to the ICAP benefit

applicant or ICAP benefit recipient deny, reduce, suspend, terminate or revoke ICAP benefits if an applicant or ICAP benefit recipient fails to timely comply with such a request. Such notice will inform the recipient of the reasons for the proposed action by the department and that the ICAP applicant or ICAP recipient has the right to present information as to why they should not be penalized. This information must be submitted to the Commissioner or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail.

b. The department may, consistent with the law, upon reasonable notice enter and inspect property during normal business hours to determine a property's use and whether a property is eligible for the abatement benefits that the property has applied for or is receiving.

c. The Commissioner may, after providing notice to the ICAP benefit applicant or ICAP benefit recipient an opportunity to be heard deny, reduce, suspend, terminate or revoke any abatement benefits granted under this chapter where:

(1) A recipient fails to comply with any requirement provided for by title 2-f of article 4 of the real property tax law, part 5 of title 11 of the administrative code, or this chapter; or

(2) An application, certificate, report or other document delivered by an applicant or benefit recipient contains a false or misleading statement as to a material fact or omits any material fact, and may declare any applicant or recipient who makes such false or misleading statement or omits such material fact, ineligible for future tax abatements for the subject property or any other property.

Such notice will inform the recipient of the reasons for the proposed action by the department and that the ICAP applicant or ICAP recipient has the right to present information as to why the ICAP recipient should not be penalized to the Commissioner or his or her designee, within 10 business days of delivery of the notice by hand or 15 business days of the posting of notice by mail.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
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CERTIFICATION PURSUANT TO

CHARTER §1043(d)

RULE TITLE: Implementation of Industrial and Commercial Abatement Program

REFERENCE NUMBER: 2015 RG 110

RULEMAKING AGENCY: Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: August 22, 2016

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Implementation of Industrial and Commercial Abatement Program

REFERENCE NUMBER: DOF-19

RULEMAKING AGENCY: Department of Finance

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and

- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

August 22, 2016
Date