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BY WEBSITE SUBMISSION / NO HARDCOPY SENT:

<https://rules.cityofnewyork.us/rule/wage-requirements-for-construction-employees/>

Submitted to: **Claudia Henriquez**, *Assistant Comptroller for Labor Law*
Attn: Bureau of Labor Law
Re: Commentary in Supporting the Office of the Comptroller of the City of New York's proposing rules to implement New York State Real Property Tax Law ("RPTL") section 485-x, which was enacted in 2024.

Dear Madam Assistant Comptroller:

I submit this commentary in my capacity as a Registered Representative in matters before the Office of Administrative Trials and Hearings (OATH), the City's designated adjudicatory body, and in response to the Office of the Comptroller of the City of New York's proposing rules to implement New York State Real Property Tax Law ("RPTL") section 485-x, which was enacted in 2024.

Introduction

The Affordable Neighborhoods for New Yorkers (ANNY) tax incentive program represents a comprehensive regulatory framework that balances the promotion of affordable housing development with robust labor protections. Established under New York State Real Property Tax Law § 485-x and implemented through detailed Comptroller regulations, the program creates a complex web of benefits and obligations for all stakeholders involved in covered construction projects.

Property Owner Benefits and Strategic Advantages

Tax Exemption Benefits

Property owners receive substantial financial incentives through real property tax exemptions for housing developments that meet specific affordability requirements. The program provides exemptions from real property taxes, creating

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significant cost savings that can make affordable housing projects economically viable. (See *Maddicks v. Big City Props.*, LLC, 2019 NY Slip Op 07519, 34 N.Y.3d 116, 114 N.Y.S.3d 1, 137 N.E.3d 456.) These tax incentives are designed to encourage rehabilitation and improvements, allowing property owners who complete eligible projects to receive tax exemptions and abatements that continue for a period of years.

Regulatory Flexibility Through Exclusions

The program provides meaningful flexibility through exclusion mechanisms that can reduce compliance burdens. Property owners can seek exclusions from construction wage and notice requirements where construction work is covered by project labor agreements. Additionally, exclusions may be granted for construction employees working under collective bargaining agreements or jobsite agreements that expressly waive the wage requirements.

Property Owner Liabilities and Compliance Obligations

Comprehensive Wage and Notice Requirements

Property owners face substantial compliance obligations that create significant potential liabilities. For covered sites with 100 or more dwelling units, owners must ensure construction employees receive minimum wages of \$40 per hour, subject to annual escalation. For sites with 150 or more units in designated zones, substantially higher wage requirements apply, with Zone A requiring \$74.26 per hour and Zone B requiring \$64.58 per hour as of July 1, 2025.

Owners must provide notice to the Comptroller at least three months prior to construction commencement, including project location, anticipated start and completion dates, and existence of any project labor agreements. Failure to provide timely notice can result in penalties and forfeiture of tax benefits.

Joint Liability Structure

The program establishes joint liability between applicants, owners, and construction employers for wage requirement violations, regardless of direct employment relationships. This creates significant exposure for property owners who

may be held liable for contractor violations even when they do not directly employ the affected workers.

Extensive Recordkeeping Obligations

Property owners must maintain comprehensive documentation for six years after project completion, including contracts, employee lists, certified payroll reports, daily sign-in logs, and benefit cost documentation. Failure to maintain or produce required records can result in penalties and adverse inferences in enforcement proceedings.

Severe Penalty Structure

The penalty framework creates substantial financial risks for non-compliant property owners. For three or more violations within five years, the Comptroller may terminate prospective benefits and recapture all previously received tax exemptions. Recapture amounts include the full amount of taxes exempted plus interest from the original due dates. Additionally, monetary penalties can reach up to 25% of underpayment amounts plus interest.

Construction Employer Obligations and Liabilities

Wage and Benefit Requirements

Construction employers bear primary responsibility for ensuring compliance with prevailing wage standards. They must pay wages and supplements based on rates set forth in Construction Worker Schedules or Construction Apprentice Schedules, as modified by the statutory requirements. The obligation includes both hourly wages and supplemental benefits, which may be satisfied through bona fide fringe benefits, increased wages, or combinations thereof.

Overtime and Premium Pay Obligations

Construction employers must calculate overtime, weekend, and holiday pay based on the applicable wage schedules and classification requirements. Where employees receive percentage-based wages, overtime rates follow the schedule provisions, while fixed-rate employees receive overtime calculated by multiplying the base rate by the applicable premium factors.

Documentation and Cooperation Requirements

Construction employers must maintain detailed payroll records and cooperate fully with Comptroller investigations. They face penalties of \$500 for each failure to timely produce requested information or documents, in addition to other potential monetary liability. The burden of proof shifts to employers when they fail to maintain accurate records, allowing the Bureau to calculate underpayments using best available evidence.

Construction Employee Benefits and Protections

Guaranteed Wage Standards

Construction employees receive substantial wage protections that exceed standard minimum wage requirements. The program guarantees minimum hourly rates ranging from \$40 to over \$74 per hour depending on project size and location, with annual escalation provisions. These rates include both wages and supplemental benefits, providing comprehensive compensation packages.

Enforcement Mechanisms and Remedies

The program provides robust enforcement mechanisms to protect employee rights. Construction employees can file complaints with the Bureau of Labor Law, triggering investigations that may result in recovery of underpaid wages plus interest and civil penalties. The Comptroller maintains confidentiality of complaining workers unless necessary for settlement or hearing proceedings.

Anti-Retaliation Protections

Strong anti-interference provisions protect construction employees from retaliation for exercising their rights under the program. Adverse actions against employees for filing complaints, participating in investigations, or testifying at hearings constitute impermissible interference. The Bureau may assess additional underpayments representing lost earnings due to interference, plus interest and civil penalties up to 25% of amounts due.

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Comptroller's Enforcement Authority and Procedures

Comprehensive Investigation Powers

The Comptroller possesses broad authority to investigate violations through multiple channels, including self-initiated investigations, worker complaints, and referrals from other agencies. The Bureau may demand production of all relevant documents and information within specified timeframes, with failure to comply resulting in monetary penalties and adverse inferences.

Adjudication and Penalty Authority

The Comptroller can impose substantial penalties for violations, including civil penalties up to 25% of underpayment amounts, interest charges, and termination or recapture of tax benefits. For repeat violators with three or more violations within five years, the Comptroller may recapture all benefits received after the third violation, including accumulated interest.

Publication and Notice Requirements

The enforcement framework includes transparency measures requiring publication of violators with two violations within five years. This public disclosure mechanism creates additional reputational consequences for non-compliant parties beyond monetary penalties.

Procedural Safeguards and Due Process Protections

Hearing Rights and Legal Representation

All stakeholders receive substantial due process protections through formal hearing procedures conducted at the Office of Administrative Trials and Hearings (OATH). Parties have the right to legal representation at their own expense, with mandatory notification of this right at investigation commencement.

Evidence and Discovery Procedures

The hearing process includes comprehensive discovery obligations requiring parties to provide witness lists, documentary evidence, and written statements at least ten business days before hearings. Failure to comply with discovery

requirements may result in preclusion of evidence or adverse inferences.

Settlement and Resolution Mechanisms

The program provides settlement opportunities through stipulation agreements that can resolve investigations while establishing compliance measures to prevent future violations. These settlements have the effect of orders under Labor Law §§ 220 and 220-b, providing enforceability while allowing negotiated resolutions.

Impact of Labor Agreements on Compliance

Project Labor Agreement Exclusions

Project labor agreements provide complete exclusions from wage and notice requirements when they regulate all construction work on covered sites. This exclusion mechanism recognizes that comprehensive labor agreements may provide equivalent or superior protections through alternative frameworks.

Collective Bargaining Agreement Waivers

The program allows targeted exclusions for employees covered by collective bargaining agreements or jobsite agreements that expressly waive the statutory wage requirements. These exclusions apply only to specifically covered employees, allowing mixed compliance approaches on individual projects.

Addressing Regulatory Burden Concerns

Counterargument: Excessive Compliance Costs

Critics may argue that the ANNY program imposes excessive regulatory burdens that could discourage affordable housing development. However, this argument fails to recognize the substantial tax benefits provided to offset compliance costs. The program's exclusion mechanisms for projects with comprehensive labor agreements provide meaningful flexibility for developers who establish appropriate worker protections through alternative means.

Counterargument: Administrative Complexity

Some stakeholders may contend that the recordkeeping and notice requirements create unmanageable administrative burdens. This argument overlooks the program's clear guidance on compliance procedures and the availability

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of electronic submission systems to streamline administrative processes. The six-year record retention period aligns with standard business practices and provides reasonable time limits for compliance verification.

Counterargument: Joint Liability Concerns

Property owners may challenge the joint liability structure as unfairly exposing them to contractor violations beyond their control. However, this liability framework serves the essential purpose of ensuring that all parties with economic interests in projects maintain oversight of wage compliance. Property owners retain the ability to contractually allocate risks and implement monitoring systems to prevent violations.

Policy Objectives and Stakeholder Balance

Affordable Housing Development Goals

The ANNY program advances critical affordable housing objectives by providing substantial tax incentives that make projects economically viable while ensuring that construction workers receive fair compensation. This dual approach recognizes that sustainable affordable housing development requires both financial incentives for developers and protection of worker rights.

Labor Standards and Worker Protection

The program's wage requirements and enforcement mechanisms establish meaningful labor standards that prevent exploitation of construction workers on publicly subsidized projects. The comprehensive penalty structure, including benefit recapture provisions, ensures that tax incentives are not provided to projects that fail to meet basic worker protection standards.

Balanced Enforcement Framework

The program balances enforcement authority with procedural protections, providing the Comptroller with necessary tools to ensure compliance while affording all stakeholders due process rights and opportunities for resolution. The availability of exclusions for projects with comprehensive labor agreements recognizes that multiple approaches can achieve the program's worker protection objectives.

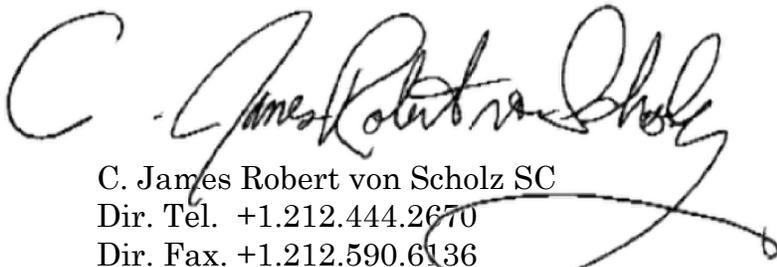
Conclusion

The ANNY tax incentive program creates a comprehensive framework that provides substantial benefits to property owners through tax exemptions while establishing robust protections for construction workers through wage guarantees and enforcement mechanisms. Property owners receive significant financial incentives but assume corresponding obligations for wage compliance, recordkeeping, and notice requirements, with substantial penalties for violations including potential recapture of all benefits. Construction employers bear primary responsibility for wage compliance with joint liability shared by property owners, while construction employees receive guaranteed wage protections and comprehensive enforcement remedies.

The Comptroller's broad enforcement authority is balanced by procedural safeguards including formal hearings, settlement opportunities, and exclusion mechanisms for projects with comprehensive labor agreements. This balanced approach advances both affordable housing development and worker protection objectives while providing clear compliance pathways and meaningful consequences for violations.

For these reasons, I strongly support the adoption of the Office of the Comptroller of the City of New York's proposed rules to implement New York State Real Property Tax Law ("RPTL") section 485-x.

Respectfully Submitted



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