

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York City Charter and section 11-263(7) of the Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the Industrial and Commercial Incentive Program. These rules were published in proposed form on October 11, 2006. A hearing for public comment was held on November 13, 2006. In response to comments received, changes were made to 19 RCNY §§ 14-01, 14-04(b) and 14-05(d) to revise the provisions relating to program fees, requirements prior to the commencement of construction, and the definition of eligible construction work.

/s/ Martha E. Stark
Commissioner of Finance

Note: New material is underlined.

Section 1. Chapter 14 of title 19 of the Rules of the City of New York (Rules Relating to the Industrial and Commercial Incentive Program is REPEALED. This chapter contained guidelines concerning benefits under the real property tax exemption and abatement program for construction and renovation of industrial and commercial real property authorized by part 4 of subchapter 2 of chapter 2 of title 11 of the New York City Administrative Code.

§2. A new chapter 14 is added to title 19 of the Rules of the City of New York to read as follows:

Rules Relating to the Industrial and Commercial Incentive Program

§14-01. Fees.

- (a) Preliminary application filing: \$100.
- (b) Final application filing: \$900.

§14-02. Where building permit not required for project. Where construction work that was the subject of an application for a certificate of eligibility does not require a building permit or is to be performed under authority of an open permit issued by the Department of Buildings, a notarized letter from the project's architect or engineer notifying the Department of this fact must be filed within 30 calendar days. The date of commencement indicated in the letter will be the project's effective date.

§14-03. Effective date. (a) New and previously abandoned projects. For a new project, or an abandoned project as defined in §14-05(g) of these rules, a certificate of eligibility's effective date will be the date either a newly issued or renewal permit for the project is issued.

(b) 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 building. The certificate of eligibility for each building will have its own effective date.

(c) 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 if the permit was granted before submission of completed plans and specifications for the entire building.

(d) Prior building permit. A prior building permit will not be deemed the first building permit for a building if the project for which application is made is a new project that is essentially different from the project for which the prior permit was issued.

§14-04. Commencement of construction. (a) No benefits will be received for construction work commenced before the effective date of the certificate of eligibility for the work.

(b) Construction may not be commenced until after

(1) submission of preliminary application and any notice required by law

(2) if a building permit is not required by the Department of Buildings, receipt by the Department of Finance of a letter from an architect or engineer licensed in the State of New York, a contractor, the applicant or its authorized representative detailing the project's scope and the estimated date of construction commencement and an affirmation that no permit is required; and

(3) submission of a completed employment report or notice where required.

§14-05. Eligible construction work. (a) For tax exemption benefits. For purposes of determining the minimum required expenditure, the exemption base and all other purposes, construction work will be eligible for tax exemption 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 and/or narrative description submitted as part of the application; (3) performed during the construction period; (4) not rendered ineligible by any provision of law or these rules or any agreement made as part of the application; and (5) creates or enhances the value of eligible commercial or industrial property by means of construction of a new building, structure or extension, by the modernization, rehabilitation or alteration of an existing building, by the erection or installation of building systems that are real property or by other physical means.

(b) For tax abatement benefits. To determine the minimum required expenditure, industrial construction work will be eligible for tax abatement benefits under this program if the work is: (1) a permanent capital improvement to real property having a useful life of at least three years; (2) described or integrally related to work described in the approved plans and/or narrative description submitted as part of the application; (3) performed during the construction period; and (4) not rendered ineligible by any provision of law or these rules or any agreement made as part of the application.

(c) Alterations. Alterations that are eligible construction work for tax exemption benefits or tax abatement benefits include, but are not limited to the following, provided that they are deemed to enhance the value of the property: (1) alterations that increase the square footage or cubic content of an existing building; and (2) modernization of core facilities including: (i) upgrading of electrical and plumbing systems; (ii) installation of new high-speed elevators and elevator banks; (iii) renovation or new installation of the “skin” 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; and (ix) major conversion of a building’s use involving structural changes.

(d) Work not deemed to be construction work. Construction work does not include: (1) Ordinary repairs, replacements or redecoration; (2) Installation of 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.

(e) Earthwork or partial demolition. Earthwork or partial demolition may be included in the construction work on a project if: (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 before commencement of the other work and 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 (3) for purposes of determining the exemption base only, the Department determines that the earthwork or partial demolition enhances the value of an eligible building.

(f) Notice of completion. (1) The applicant must notify the Department, in writing, within 60 days of completion of the project . If the project has not been completed by the end of the construction period, the applicant must notify the Department of the extent of construction completed as of that date.

(2) 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, as last amended, is an accurate and complete description of the completed project; and

- (i) A final certificate of occupancy or any equivalent document issued by the Department of Buildings acknowledging completion of construction; and
- (ii) Where no certificate of occupancy is required by the Department of Buildings for construction work described in the narrative description, the date upon which that construction work was completed; or
- (iii) Temporary certificate of occupancy plus proof that the applicant has incurred 90 percent of the construction expenses.

(3) 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 \$1,000,000, in which case the statement may be certified by the applicant.

(g) 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 exemption and 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. Where a renovation or new construction for which a building permit was previously issued is abandoned, either a newly issued building permit or the renewal of a previously issued building permit may be deemed a first building permit to determine a certificate of eligibility's effective date. An abandoned project is a project where construction or renovation construction work was commenced by an applicant but has ceased for at least two consecutive years at the time an application is filed for the new project.

§14-06. Restricted activity. Restricted activity means any commercial use of property that is unlawful or a public nuisance, as defined in §7-703 of the New York City Administrative Code.

§14-07. Manufacturing defined. (a) A building or part of a building is used for manufacturing where it is used primarily for manufacturing activities. A manufacturing activity involves the assembly of goods or the fabrication or processing of raw materials.

(b) Activities that are not manufacturing, generally. (1) General management; (2) Storage, shipping or receiving of materials and finished goods;(3) Maintenance, repair or construction of real property;(4) Professional, clerical or information processing activities; and (5) Buying, selling, leasing or providing goods or services.

§14-08. Commercial activities. (a) Commercial activities include:

(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 for the purpose of providing governmentally funded emergency housing is not considered a hotel for purposes of the ICIP; and (ii) a condominium or timeshare is a transient hotel building for the purposes of the ICIP only where the building, if viewed as a whole and as if it were under single ownership, would qualify as a transient hotel building under

the Zoning Resolution. An individual condominium or timeshare unit located in a transient hotel building may qualify for exemption to the extent that the unit is (A) made available to the general public at large for a minimum of 187 days during the calendar year on terms and dates which are consistent with standards in the hotel industry; and

(B) the unit is not occupied for more than 179 days in any calendar year by: (I) the owner or any relative of the owner; or (II) any employee of the owner, or employee of any corporation, partnership, limited liability corporation or other entity owned or controlled by the unit 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) Computer software development and services, including:

(i) internet and web related activities; (ii) computer graphics and designs; and (iii) desk-top publishing.

(7) Other lawful businesses, including governmental or nor-for-profit activities.

(8) Repair of equipment and service businesses such as HVAC, plumbing and refrigeration.

§14-09. Apportionment of value in multi-use property. (a) In the event that the value of a multi-use property must be apportioned to determine the value attributable to a particular use for any purpose under these rules, including, but not limited to, determining the minimum required expenditure, the assessed value will be apportioned using the same method used by the Department to value property for tax and assessment.

(b) Methods that may be considered.

(1) the land area of each portion;

(2) the market value of the buildings situated on each portion;

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

(4) the topography of the lot;

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

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

(7) analyses of cost factors; and

(8) other relevant factors.

§14-10. Minimum required expenditure. (a) What may be included. Expenditures may include 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 fees do not exceed ten (10) percent of the expenses incurred for direct construction costs;

(5) site preparation, such as the erection of 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.

(b) What may not be included:

- (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 §14-05(e) of these rules;
- (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; or
- (7) the costs or payments associated with vacating the site and/or existing buildings such as terminating existing leases or tenancies.

§14-11. Tax abatement for industrial construction. (a) Eligible applications. A real property tax abatement is available for qualifying industrial construction where the application has an effective date on or after July 1, 1995.

(b) Amount of the abatement. For industrial construction work in any area of the City with an effective date on or after July 1, 1995, where after the effective date of the certificate of eligibility, the work was both commenced and completed, the property is eligible for an abatement of real property taxes. The abatement is a percentage of the real property tax that was imposed on the property in the tax year immediately preceding the tax year in which the effective date of the certificate of eligibility occurs, or, if the property was fully or partially exempt from real property taxes, the tax that would have been imposed but for the exemption (the abatement base). In each of the first four years, the abatement equals 50% of the abatement base; for years 5 and 6, 40%; for years 7 and 8, 30%; for years 9 and 10, 20%; and for years 11 and 12, 10%.

(c) Proof to be submitted. Generally, the twelve (12) year abatement benefit period does not commence until after the applicant has submitted proof of completion of industrial construction.

(1) No abatement benefit will be available for the first tax year after construction is completed unless satisfactory proof of completion on or before the taxable status date (January 5th) is submitted no later than 30 days following the taxable status date (February 4th). If satisfactory material is submitted, the abatement period will commence on July 1st.

(2) If proof of completion of industrial construction is not submitted as provided in this subdivision, no abatement will be available until the second tax year after completion of the work. In this case, the twelve (12) year abatement period will begin July 1st in the second tax year following completion of the work if satisfactory proof is submitted to the Department by February 4th for the tax year. This will be the Applicant's final opportunity to qualify for a full twelve (12) year abatement. (3) If the Applicant fails to submit satisfactory proof of completion by the deadlines, the twelve (12) year abatement period will commence on July 1 although no abatement benefits will be granted. The twelve (12) year period will continue in operation for the next eleven years without regard to the actual submission of proof of completion. Example: Applicant completed industrial construction work on January 4, 2005. If the Applicant submitted satisfactory proof of completion by February 4, 2005, the abatement period would have commenced July 1, 2005. But Applicant failed to file timely and, therefore, must submit proof of completion by February 4, 2006, his last opportunity to file for a full 12-year abatement period to commence July 1, 2006. Whether or not the proof is submitted by February 4, 2006, the abatement period will begin July 1, 2006. Absent the timely filing of satisfactory proof of completion, however, no abatement benefit will be credited for the fiscal year commencing July

1, 2006. Assuming Applicant files satisfactory proof of completion on or before February 4, 2007, the abatement benefit will be credited July 1, 2007, the second year of the Applicant's abatement period. Applicant will receive a tax abatement for a total of 11 years.

(d) Date of completion of construction. Construction is completed on the date either: (1) a temporary certificate of occupancy and 90 percent of the final actual cost of eligible construction is made or (2) a permanent certificate of occupancy is received for the completed project.

(e) Multiple Buildings on a Single Tax Lot. To calculate the abatement where a lot contains more than one building or structure (but not all buildings and structures are the subject of a certificate of eligibility for industrial construction work) the property taxes imposed on the tax lot for the year immediately preceding the effective date of the certificate of eligibility will be apportioned among the buildings and structures as provided in §14-09 of these rules. Only the taxes attributable to the property that is the subject of this certificate of eligibility will be abated.

§14-12. Payment of taxes and other charges due the City. 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 unless all such arrears are subject to an installment agreement with the Department of Finance and all installments that have come due under the agreement have been paid.

§14-13. Equal employment opportunity; trainee programs. (a) Employment reports. (1) An applicant for a certificate of eligibility must file an employment report with the Department of Business Services (DBS), if it will perform construction work with a cost or value of \$2.5 million or more or if any subcontractor will perform construction work with a cost or value of \$1 million or more. If the applicant or the applicant's subcontractor will not perform work meeting this dollar threshold, the applicant must file a letter stating that it will not perform construction work having this cost or value.

(2) Each application must contain a statement that the applicant and its contractors agree to be equal opportunity employers and comply with all applicable requirements of Executive Order No. 50 and the Department of Business Services, including those relating to trainee programs for economically disadvantaged persons employed in construction work that is the subject of the application for benefits.

(b) Failure to comply. (1) The Director of the Department of Business Services' Division of Economic and Financial Opportunity will inform the Commissioner in writing where applicants, contractors, subcontractors or successors have failed to comply with any requirement of DBS or Executive Order No. 50 regarding trainee programs.

(2) The Director will issue a written recommendation to the Commissioner that benefits be denied, suspended, revoked or terminated.

(3) Where the Commissioner has determined that an applicant, contractor, or subcontractor has made false or misleading statements or omissions in employment reports provided to DBS, all benefits will be revoked from the date of the false statement or omission.

BASIS AND PURPOSE OF PROPOSED RULES

These rules replace the existing Rules Relating to the Industrial and Commercial Incentive Program (“ICIP”). The existing rules have proven to be less helpful in providing guidance than intended, in part because they are quite lengthy and duplicate material that is already found in the ICIP statute. These new rules are intended to accompany the ICIP statute to provide guidance in a streamlined manner in areas not specifically addressed by the ICIP statute.

These new rules provide: a simpler schedule of fees to offset the cost of administering the program; the manner of determining the effective date of the project for purposes of the benefit program in several types of circumstances not addressed by the statute; the steps that the applicant must take prior to commencing construction to be eligible for benefits; a description of the type of construction work that is eligible for ICIP benefits, and examples of the type of work that is not eligible; definitions and examples of manufacturing activities and commercial activities for purposes of determining eligibility for industrial and commercial construction benefits, respectively; the mechanism for apportioning the value of a multi-use property to determine the value attributable to a particular use for purposes of administration of the program benefits and the obligations of the applicant; an explanation of eligibility for an abatement of taxes for qualifying industrial construction work; and a description equal employment opportunity requirements with which applicants must comply.