



New York Housing Conference

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Honorable Jamie Woodward
Acting Commissioner
New York State Department of Taxation and Finance
W.A. Harriman Campus, Building Nine
Room 217
Albany, New York 12227

Re: Taxation on the Sale of Section 421-a Certificates

Dear Commissioner Woodward:

It has come to our attention that in a recent audit of the partners of an affordable housing owner, the Department of Taxation and Finance has taken the position that the owner's general partner should have recognized taxable income arising from the sale of certificates authorized under Section 421-a of the New York State Real Property Tax Law. We are writing to oppose that position and to request your reconsideration because we believe it will hinder the critically important policy of encouraging affordable housing by New York City and the State of New York.

The New York Housing Conference (NYHC) is a broad-based coalition of nonprofit and private developers, owners, managers, professionals, and funders of affordable housing. Our goal is decent affordable housing for all New Yorkers and we advocate for their housing needs through affordable housing legislation with adequate funding and workable policies and regulations. We also promote increased public awareness of the need for and benefit of affordable housing in New York.

Section 421-a has resulted in the development of thousands of units of much needed affordable rental housing in New York City since the program's inception in 1971. We believe the NYS Legislature created and extended the program because of the continuing shortage of affordable housing and they understood the valuable and continuing role the program plays in developing affordable housing for lower income families.

In exchange for developing affordable rental housing with strict rent and income occupancy limitations, owners receive certificates that are sold for cash to market rate developers, who then apply the certificates against their real property taxes. The cash received from the sale of these certificates is used by the affordable housing owners to reduce or eliminate the construction debt on the affordable housing properties, thereby making these developments financially feasible and allowing occupancy by lower income families at rents that are substantially below market. In other words, the cash received from the sale of the Section 421-a certificates is a source of funds used to develop the affordable housing properties-it does not get paid to the developers or owners as fees or other compensation. Rents, income limitations and physical condition are closely monitored and the rules enforced pursuant to a regulatory agreement with the New York City Department of Housing Preservation and Development (HPD) for a term of 20 years.

If the proceeds from the sale of Section 421-a certificates were to be treated as taxable income to the developer or any of the partners of the owner, the effectiveness of the program would be substantially undermined. Assuming that the owner's partners are taxed at the highest marginal state and federal rates, then for every \$1.00 received from the sale of the certificates, approximately 42.7 cents would have to be set aside by the taxable entities in order to pay the resulting income tax at the federal rate of 35% and the state rate of 7.7%. That would mean that only 57.3 cents per dollar would be devoted to

the development of the affordable housing. Moreover, the result would be that a tax credit against real property taxes that would benefit the market rate developer who purchased the certificates would simply be translated into a state and federal income tax burden borne by the affordable housing developer. This could not possibly have been the intent of the Legislature in enacting this program.

Our intent in writing this letter is not to focus on the technical details of how the sales proceeds were structured for income tax purposes, but rather to point out the compelling larger housing policy reasons why the Department should not treat the proceeds of the sale of the Section 421-a certificates as taxable income.

We hope you will reconsider your position on this matter and not treat the proceeds as taxable income. Thank you for considering our views on this important matter and we would be happy to discuss them in greater detail or in person with you or your staff.

Sincerely yours,

Judith Calogero
CEO