

FEDERAL STANDARD ABSTRACT

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Title News

Dutchess County Reduces its Mortgage Recording Tax

It is a well-known fact that the mortgage tax may vary from county to county, and city to city. The reason for this is that the New York Legislature has passed a number of specific statutes allowing local governments to impose their own mortgage recording tax over the amount due to the State. Effective December 1, 2009, Dutchess County will no longer impose the county mortgage tax of \$0.25 for each \$100.00 secured by a mortgage. The resulting rate in Dutchess County is now \$1.05 for every \$100.00 of mortgage security. One can only hope that New York City (charging in aggregate between \$2.05 and \$2.80 per \$100.00) and the City of Yonkers (charging in aggregate \$1.80 per \$100.00) may someday follow the example set by Dutchess County.

Timing and Coverage Expansion of the First-Time Homebuyer Credit

The First-Time Homebuyer Credit has been extended effective November 6, 2009. The new deadline to qualify for the credit is two-fold: The taxpayer must have a binding contract to purchase no later than April 30, 2010, and closing must occur no later than June 30, 2010. Qualifying taxpayers may claim a credit of up to \$8,000.00 in their 2009 or 2010 federal income tax returns.

More importantly, however, the coverage of this tax incentive has been expanded to cover not only first-time homebuyers, but also “long-term residents.” A “long-term resident” is someone who has occupied the same property as a residence for at least five consecutive years in the eight-year period ending on the date of purchase of a new home. For example, if you bought a home in April of 2003, lived there until April of 2008, and then rented it until you purchased your new home in April of 2010, you would be a “long-term resident” and qualify for the exemption. The look-back period would be eight years back from the date of the new purchase, i.e. from April of 2010 to April of 2002. If during that time you owned and lived at the same residence for five consecutive years, you would qualify. In the example given, the owner lived at the residence continuously between 2003 and 2008, which is within the look-back period of 2002-2010, and therefore qualifies. The maximum credit available to a “long-term resident” is \$6,500.00. The IRS has published a 1-minute video explaining how this credit works. The video and IRS news release are available at: <http://www.irs.gov/newsroom/article/0,,id=215791,00.html>.

It should be noted that there are a number of restrictions to the program. Homes having a sales price in excess of \$800,000.00 are excluded from the program, as are any taxpayers with

modified adjusted gross income in excess of \$145,000.00 for single filers and \$245,000.00 for joint filers. Taxpayers whose incomes fall within \$20,000.00 below the threshold only benefit from a reduced credit. Individuals appearing as dependents in any tax return, or being younger than 18 years of age, are excluded. The IRS has announced that it will soon issue a new Form 5405 with instructions for claiming the credit. The Form 5404 available at the time of this writing is only to be used for credits on transactions occurring before November 7, 2009.

Those Annoying Boiler Violations

The most common violation appearing on building violation searches in New York City is the so-called “boiler violation”, with no description of the problem other than “Failure to Maintain Boiler: Non-Hazardous.” Below is an explanation of the boiler requirements that this violation most often covers.

This violation is issued under the authority of NYC Admin. Code §27-127, which mandates all buildings and facilities to be maintained safe. The violation most typically results from a complaint, a scheduled inspection on an application, as part of a review of previously-issued violations, or from failure to submit an annual filing.

Installation of all boilers requires a permit, and in the case of commercial, mixed-use, and some multi-family buildings, the installation must be inspected by the Department of Buildings. All boilers in all commercial buildings, mixed-use and dwellings with 6 or more families must be inspected annually by the building owner

for code compliance. Owners must annually certify to the DOB that low pressure boilers have been inspected by a duly-licensed entity. High pressure boilers must be inspected annually by the DOB or by a duly authorized insurance company. Prospective purchasers can check for annual compliance of these requirements by visiting the DOB’s on-line Buildings Information System (BISWeb), entering the property address and clicking on “View Boilers.” The BISWeb can be found at: <http://a810-bisweb.nyc.gov/bisweb/bispi00.jsp>.

Should Non-Taxable Not-for-Profit Corporation That Leases Its Real Property to For-Profit Corporation Pay Taxes?

Real Property Tax Law §420-a (1) (a) provides that real property owned by a corporation and used exclusively for non-profit purposes is exempt from taxation. However, this exemption does not apply any more when a non-profit corporation leases its real property to a profit-making business. This corporation, Lackawanna Community Development Corporation (LCDC) organized under §1411 of the Not-for-Profit Corporation Law, does not qualify for the exemption because it rented it to a for-profit manufacturer. LCDC’s suit against the local tax collector to try to stop the tax therefore fails. Lackawanna Community Development Corp. v. Krakowski, 12 N.Y.3d 578, 883 N.Y.S.2d 168 (June 11, 2009)

LCDC was incorporated as a not-for-profit charitable organization in 1980 for the purpose of promoting economic development and expanding job opportunities in the City of Lackawanna. In 1993, LCDC leased the entire property to Now-Tech Industries, a for-profit manufacturer and later was assigned to

PCB Now-Tech, another for-profit manufacturer. LCDC was given tax exempt status under Real Property Tax Law §420-a in 1991 and it remained tax exempt through 2005. In 2006, the Lackawanna City Assessor determined the property was no longer eligible for tax exemption under the statute because it was not used exclusively for an exempt purpose once it was leased to a for-profit enterprise. In an opinion by Chief Judge Lippman, the Court addresses the burden of proof is generally on taxpayer to show the property exempt, but in this case, the burden shifts to the assessor to prove it is not. The Court here finds the assessor to have satisfied the burden. The Court further explains that the fact that the company leasing the property pays LCDC for it, which money would presumably then be used to advance LCDC's non-profit purpose, does not itself assure a tax exemption. The leasing of the property to another, who makes a profit, is not a "use" of it that invokes the exemption, the Court states; it's "the actual or physical use of the property that the Real Property Tax Law is concerned when it exempts from taxation property used exclusively for

carrying out thereupon one or more exempt purpose". Considering LCDC's argument of its renting this property to a profit-making business advanced its purpose of economic development in the municipal, but to conclude from a combined reading of the Real Property Tax Law and the Not-for-Profit Corporation Law that the taxpayer thereby secures an exemption of the re-circulated property from taxation would be to establish an unintended "tax purpose". And isn't getting local property tax back into the tax rolls a major mission of a corporation like LCDC?

¹ In *Matter of Adult Home v. Assessor & Ed. of Assessment Review of City of Middletown*, 10 NY 3d 205, 216 (2008), the use of the property at issue was said to be reasonably incident to an exempt purpose (10 NY 3d at 216), and it has long been clear that the statute's "used exclusively" language should be understood to mean "used principally" (see *Matter of Symphony Space v. Tishelman*, 60 NY 2d 33, 38 (1983)). Whether the use of real property to carry out an exempt purpose is characterized, as here, as the sole use of the property or, as in *Matter of Adult Home*, as a use reasonably incident to an exempt purpose, it is the actual or physical use of the real property that is determinative under §420-a (1) (a).

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