



## Tax Abatements

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In New York City, there are tax incentive programs frequently used by owners of rent regulated buildings.

### **J-51**

This program, administered by the NYC Department of Housing Preservation and Development (HPD) and the NYC Department of Finance (DOF), gives tax benefits to owners who rehabilitate qualifying systems in existing buildings. Examples of systems are boilers, windows, plumbing, electricity and roofs. The receipt of the tax benefits places the building under rent regulation, even if it is less than six (6) units and previously was not under regulation.

### **421-a and 421-g**

These programs, also administered by HPD and DOF, give tax benefits to owners who construct new buildings or create residential units in previously commercial buildings. The receipt of tax benefits also places these buildings under rent regulation.

**To determine the beginning and end dates for tax benefits given to a building for either of these two programs, log on to [www.nyc.gov/finance](http://www.nyc.gov/finance).**

### **Tax benefit expiration and termination of rent regulation**

#### **J-51**

The vast majority of rent regulated buildings were built before 1974 and contain six or more apartments. Many of these buildings receive J-51 tax benefits for rehabilitation work. The tax benefit period can vary, but frequently it lasts for 12 years. **In these buildings, the expiration of the tax benefit period does not affect the status of the apartments, which will remain under rent regulation at the end of the tax benefit period and thereafter.**

However, there are buildings that were either built or gut renovated since 1974 or contain less than six apartments that were placed under rent regulation only because the building received J-51 tax benefits. In these buildings, owners are required to include in each lease and lease renewal a notice in at least twelve point type informing the tenant that the apartment shall become deregulated upon the expiration of the last lease entered into during the tax benefit period. The notice also needs to state the approximate date on which such tax benefit period is scheduled to expire.

The failure to include this notice in all leases for the tenant in occupancy at the time the tax benefits expire means that the apartment will remain under rent regulation and the tenant can continue to renew his or her rent stabilized lease.

The apartment remains rent regulated until the tenant vacates the apartment.

The inclusion of the required notice in all leases deregulates the apartment at the end of the last lease entered into during the tax benefit period.

### **Example**

A four unit building, 100 Main St., was placed under rent regulation upon the receipt of J-51 tax benefits on January 1, 1997, for a period of twelve years, that will expire on December 31, 2008. Ms. Gonzalez moves into an apartment with a two year vacancy lease on March 1, 2006 and renews for one year on March 1, 2008. Neither the vacancy lease nor the renewal lease contained a notice alerting Ms. Gonzalez to the status of the tax benefits and the date of the expiration of benefits.

When Ms. Gonzalez's lease comes up for renewal again on March 1, 2009, her apartment will remain rent regulated and she is entitled to a renewal lease, even though the tax benefit period expired.

### **421-a**

Many buildings built since 1974, which ordinarily would not be subject to rent regulation, have been placed under rent regulation only because the building owner chose to receive 421-a tax benefits. In buildings which become subject to requirements of Section 421-a after July 3, 1984, the owners are required to include in each lease and renewal lease a notice in at least twelve point type informing the tenant that the apartment shall become deregulated upon the expiration of the last lease entered into during the tax benefit period. The notice also needs to state the approximate date on which such tax benefit period is scheduled to expire.

In buildings where construction began before June 30, 2008, the failure to include this notice in all leases for the tenant in occupancy at the time the

tax benefits expire means that the apartment will remain under rent regulation and the tenant can continue to renew their rent stabilized lease. The apartment remains rent regulated until the tenant vacates the apartment.

The inclusion of the required notice in all leases deregulates the apartment at the end of the last lease entered into during the tax benefit period.

Generally, in buildings where construction began on or after June 30, 2008, those apartments in 421-a buildings designated as "Affordable" units must remain rent stabilized for 35 years, even if a tenant vacates and a new tenant moves into the apartment. Tenants in occupancy at the end of the 35 year period remain under rent stabilization until they vacate the apartment.

### **Example**

A three-unit building was placed under rent regulation upon the receipt of 421-a tax benefits on April 1, 1999 for a period of 10 years that will expire on March 31, 2009. Ms. Smith moved into an apartment with a two year vacancy leave on June 1, 2008. The vacancy lease contained a notice of alerting her to the status of the tax benefits and the date of the expiration of the tax benefits.

When Ms. Smith's lease comes up for renewal on April 1, 2009, the apartment will be deregulated, and a market rent can be collected.

### **Other Considerations**

- In 421-a buildings, where the tax benefits are for 10 or more years, and provided that a "2.2% lease rider" is offered by the owner and signed by the tenant, owners can collect annual "421-a" surcharges equal to 2.2% of the rent charged at the beginning of the period of gradual diminution (when real estate taxes begin being phased in).

- In 421-a (16) buildings, apartments initially rented at an amount at or above the market rate threshold qualify for permanent exemption from rent stabilization. An apartment that is rent stabilized and then vacated also qualifies for permanent exemption if the market rate threshold has been lawfully reached.
- Apartments in co-op and condo buildings that are exempt from rent regulation remain exempt, even if these buildings subsequently receive J-51 or 421-a benefits.
- If a building owner receives a J-51 tax abatement for an item that DHCR has issued an MCI rent increase order, the rent is temporarily reduced in the MCI case or at a later date in a Tax Abatement Modification case. The rent is restored at the end of the tax abatement period pursuant to a DHCR issued rent restoration order for rent controlled apartments and an owner filed notice for rent stabilized apartments.

**SOURCES**

NYC Rent Stabilization Code, Sections 2520.11 (o), (p), (r), and (s)

	<p><b>➤ Rent Connect:</b> rent.hcr.ny.gov</p>	<p><b>To visit a Borough Rent Office, <u>by appointment only</u>, please contact:</b></p>		
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