

SENATE, No. 1368

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2008

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Provides for commencement of short term tax exemptions and abatements as of date of completion of project.

CURRENT VERSION OF TEXT

As introduced.



S1368 VITALE

2

1 AN ACT concerning the commencement of certain short term tax
2 exemptions and abatements and amending P.L.1991, c.441.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1991, c.441 (C.40A:21-3) is amended to
8 read as follows:

9 3. As used in this act:

10 a. "Abatement" means that portion of the assessed value of a
11 property as it existed prior to construction, improvement or
12 conversion of a building or structure thereon, which is exempted
13 from taxation pursuant to this act.

14 b. "Area in need of rehabilitation" means a portion or all of a
15 municipality which has been determined to be an area in need of
16 rehabilitation or redevelopment pursuant to the "Local
17 Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et
18 al.), a "blighted area" as determined pursuant to the "Blighted Areas
19 Act," P.L.1949, c.187 (C.40:55-21.1 et seq.), or which has been
20 determined to be in need of rehabilitation pursuant to P.L.1975,
21 c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.), or
22 P.L.1979, c.233 (C.54:4-3.121 et seq.).

23 c. "Assessor" means the officer of a taxing district charged
24 with the duty of assessing real property for the purpose of general
25 taxation.

26 d. "Commercial or industrial structure" means a structure or
27 part thereof used for the manufacturing, processing or assembling
28 of material or manufactured products, or for research, office,
29 industrial, commercial, retail, recreational, hotel or motel facilities,
30 or warehousing purposes, or for any combination thereof, which the
31 governing body determines will tend to maintain or provide gainful
32 employment within the municipality, assist in the economic
33 development of the municipality, maintain or increase the tax base
34 of the municipality and maintain or diversify and expand commerce
35 within the municipality. It shall not include any structure or part
36 thereof used or to be used by any business relocated from another
37 qualifying municipality unless: the total square footage of the floor
38 area of the structure or part thereof used or to be used by the
39 business at the new site together with the total square footage of the
40 land used or to be used by the business at the new site exceeds the
41 total square footage of that utilized by the business at its current site
42 of operations by at least 10%; and the property that the business is
43 relocating to has been the subject of a remedial action plan costing
44 in excess of \$250,000 performed pursuant to an administrative
45 consent order entered into pursuant to authority vested in the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Commissioner of Environmental Protection under P.L.1970. c.33
2 (C.13:1D-1 et seq.), the "Water Pollution Control Act," P.L.1977,
3 c.74 (C.58:10A-1 et seq.), the "Solid Waste Management Act,"
4 P.L.1970, c.39 (C.13:1E-1 et seq.), and the "Spill Compensation
5 and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

6 e. "Completion" means substantially ready for the intended use
7 for which a building or structure is constructed, improved or
8 converted.

9 f. "Condominium" means a property created or recorded as a
10 condominium pursuant to the "Condominium Act," P.L.1969, c.257
11 (C.46:8B-1 et seq.).

12 g. "Construction" means the provision of a new dwelling,
13 multiple dwelling or commercial or industrial structure, or the
14 enlargement of the volume of an existing multiple dwelling or
15 commercial or industrial structure by more than 30%, but shall not
16 mean the conversion of an existing building or structure to another
17 use.

18 h. "Conversion" or "conversion alteration" means the alteration
19 or renovation of a nonresidential building or structure, or hotel,
20 motel, motor hotel or guesthouse, in such manner as to convert the
21 building or structure from its previous use to use as a dwelling or
22 multiple dwelling.

23 i. "Cooperative" means a housing corporation or association,
24 wherein the holder of a share or membership interest thereof is
25 entitled to possess and occupy for dwelling purposes a house,
26 apartment, or other unit of housing owned by the corporation or
27 association, or to purchase a unit of housing owned by the
28 corporation or association.

29 j. "Cost" means, when used with respect to abatements for
30 dwellings or multiple dwellings, only the cost or fair market value
31 of direct labor and materials used in improving a multiple dwelling,
32 or of converting another building or structure to a multiple
33 dwelling, or of constructing a dwelling, or of converting another
34 building or structure to a dwelling, including any architectural,
35 engineering, and contractor's fees associated therewith, as the owner
36 of the property shall cause to be certified to the governing body by
37 an independent and qualified architect, following the completion of
38 the project.

39 k. "Dwelling" means a building or part of a building used, to be
40 used or held for use as a home or residence, including accessory
41 buildings located on the same premises, together with the land upon
42 which such building or buildings are erected and which may be
43 necessary for the fair enjoyment thereof, but shall not mean any
44 building or part of a building, defined as a "multiple dwelling"
45 pursuant to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76
46 (C.55:13A-1 et seq.). A dwelling shall include, as they are
47 separately conveyed to individual owners, individual residences
48 within a cooperative, if purchased separately by the occupants

1 thereof, and individual residences within a horizontal property
2 regime or a condominium, but shall not include "general common
3 elements" or "common elements" of such horizontal property
4 regime or condominium as defined pursuant to the "Horizontal
5 Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), or the
6 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), or of a
7 cooperative, if the residential units are owned separately.

8 l. "Exemption" means that portion of the assessor's full and
9 true value of any improvement, conversion alteration, or
10 construction not regarded as increasing the taxable value of a
11 property pursuant to this act.

12 m. "Horizontal property regime" means a property submitted to
13 a horizontal property regime pursuant to the "Horizontal Property
14 Act," P.L.1963, c.168 (C.46:8A-1 et seq.).

15 n. "Improvement" means a modernization, rehabilitation,
16 renovation, alteration or repair which produces a physical change in
17 an existing building or structure that improves the safety, sanitation,
18 decency or attractiveness of the building or structure as a place for
19 human habitation or work, and which does not change its permitted
20 use. In the case of a multiple dwelling, it includes only
21 improvements which affect common areas or elements, or three or
22 more dwelling units within the multiple dwelling. In the case of a
23 multiple dwelling or commercial or industrial structure, it shall not
24 include ordinary painting, repairs and replacement of maintenance
25 items, or an enlargement of the volume of an existing structure by
26 more than 30%. In no case shall it include the repair of fire or other
27 damage to a property for which payment of a claim was received by
28 any person from an insurance company at any time during the three
29 year period immediately preceding the filing of an application
30 pursuant to this act.

31 o. "Multiple dwelling" means a building or structure meeting
32 the definition of "multiple dwelling" set forth in the "Hotel and
33 Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), and
34 means for the purpose of improvement or construction the "general
35 common elements" and "common elements" of a condominium, a
36 cooperative, or a horizontal property regime.

37 p. "Project" means the construction, improvement or
38 conversion of a structure in an area in need of rehabilitation that
39 would qualify for an exemption, or an exemption and abatement,
40 pursuant to P.L.1991, c.441 (C.40A:21-1 et seq.).

41 q. "Annual period" means a duration of time comprising 365
42 days, or 366 days when the included month of February has 29
43 days, that commences on the date that an exemption or abatement
44 for a project becomes effective pursuant to section 16 of P.L.1991,
45 c.441 (C.40A:21-16) (pending before the Legislature as this bill).

46 (cf: P.L.1995, c.113, s.1)

1 2. Section 4 of P.L.1991, c.441 (C.40A:21-4) is amended to
2 read as follows:

3 4. The governing body of a municipality may determine to
4 utilize the authority granted under Article VIII, Section I, paragraph
5 6 of the New Jersey Constitution, and adopt an ordinance setting
6 forth the eligibility or noneligibility of dwellings, multiple
7 dwellings, or commercial and industrial structures, or all of these,
8 for exemptions or abatements, or both, from taxation in areas in
9 need of rehabilitation. The ordinance may differentiate among
10 these types of structures as to whether the property shall be eligible
11 for exemptions or abatements, or both, within the limitations set
12 forth in P.L.1991, c.441 (C.40A:21-1 et seq.). With respect to a
13 type of structure, the ordinance shall specify the eligibility of
14 improvements, conversions, or construction, or all of these, for each
15 type of structure. The ordinance may differentiate for the purposes
16 of determining eligibility pursuant to this section among the various
17 neighborhoods, zones, areas or portions of the designated area in
18 need of rehabilitation.

19 An ordinance adopted pursuant to this section may be amended
20 from time to time. An amendment to an ordinance shall not affect
21 any exemption, abatement, or tax agreement previously granted and
22 in force prior to the amendment.

23 Application for exemptions and abatements from taxation may
24 be filed pursuant to an ordinance so adopted to take initial effect
25 **【for the first full tax year commencing after】** in the tax year in
26 which the ordinance is adopted, and for tax years thereafter as set
27 forth in P.L.1991, c.441 (C.40A:21-1 et seq.), but no application for
28 exemptions or abatements shall be filed for exemptions or
29 abatements to take initial effect **【for】** in the eleventh **【full】** tax year
30 or any tax year occurring thereafter, unless the ordinance is
31 readopted by the governing body pursuant to this section.

32 (cf: P.L.1992, c.79, s.58)

33

34 3. Section 10 of P.L.1991, c.441 (40A:21-10) is amended to
35 read as follows:

36 10. Upon adoption of an ordinance authorizing a tax agreement
37 or agreements for a particular project or projects, the governing
38 body may enter into written agreements with the applicants for the
39 exemption and abatement of local real property taxes. An
40 agreement shall provide for the applicant to pay to the municipality
41 in lieu of full property tax payments an amount annually to be
42 computed by one, but in no case a combination, of the following
43 formulas:

44 a. Cost basis: the agreement may provide for the applicant to
45 pay to the municipality in lieu of full property tax payments an
46 amount equal to 2% of the cost of the project. For the purposes of
47 the agreement, "the cost of the project" means only the cost or fair
48 market value of direct labor and all materials used in the

1 construction, expansion, or rehabilitation of all buildings,
2 structures, and facilities at the project site, including the costs, if
3 any, of land acquisition and land preparation, provision of access
4 roads, utilities, drainage facilities, and parking facilities, together
5 with architectural, engineering, legal, surveying, testing, and
6 contractors' fees associated with the project; which the applicant
7 shall cause to be certified and verified to the governing body by an
8 independent and qualified architect, following the completion of the
9 project.

10 b. Gross revenue basis: the agreement may provide for the
11 applicant to pay to the municipality in lieu of full property tax
12 payments an amount annually equal to 15% of the annual gross
13 revenues from the project. For the purposes of the agreement,
14 "annual gross revenues" means the total annual gross rental and
15 other income payable to the owner of the project from the project.
16 If in any leasing, any real estate taxes or assessments on property
17 included in the project, any premiums for fire or other insurance on
18 or concerning property included in the project, or any operating or
19 maintenance expenses ordinarily paid by the landlord, are to be paid
20 by the tenant, then those payments shall be computed and deemed
21 to be part of the rent and shall be included in the annual gross
22 revenue. The tax agreement shall establish the method of computing
23 the revenues and may establish a method of arbitration by which
24 either the landlord or tenant may dispute the amount of payments so
25 included in the annual gross revenue.

26 c. Tax phase-in basis: the agreement may provide for the
27 applicant to pay to the municipality in lieu of full property tax
28 payments an amount equal to a percentage of taxes otherwise due,
29 according to the following schedule:

30 (1) In the first full **[tax]** year after completion, no payment in
31 lieu of taxes otherwise due;

32 (2) In the second **[tax]** full year after completion, an amount
33 not less than 20% of taxes otherwise due;

34 (3) In the third **[tax]** full year after completion, an amount not
35 less than 40% of taxes otherwise due;

36 (4) In the fourth **[tax]** full year after completion, an amount not
37 less than 60% of taxes otherwise due;

38 (5) In the fifth **[tax]** full year after completion, an amount not
39 less than 80% of taxes otherwise due.

40 (cf: P.L.1992, c.200, s.1)

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42 4. Section 11 of P.L.1991, c.441 (C.40A:21-11) is amended to
43 read as follows:

44 11. a. All tax agreements entered into by municipalities pursuant
45 to sections 9 through 12 of P.L.1991, c.441 shall be in effect for no
46 more than the five full **[tax]** years next following the date of
47 completion of the project.

S1368 VITALE

1 b. All projects subject to tax agreement as provided herein shall
2 be subject to all applicable federal, State and local laws and
3 regulations on pollution control, worker safety, discrimination in
4 employment, housing provision, zoning, planning and building code
5 requirements.

6 c. That percentage which the payment in lieu of taxes for a
7 property bears to the property tax which would have been paid had
8 an exemption and abatement not been granted for the property
9 under the agreement shall be applied to the valuation of the
10 property to determine the reduced valuation of the property to be
11 included in the valuation of the municipality for determining
12 equalization for county tax apportionment and school aid during the
13 term of the tax agreements covering the properties, and at the
14 termination of an agreement for a property the reduced valuation
15 procedure required under this section shall no longer apply.

16 d. Within 30 days after the execution of a tax agreement, a
17 municipality shall forward a copy of the agreement to the Director
18 of the Division of Local Government Services in the Department of
19 Community Affairs.

20 (cf: P.L.1991, c.441, s.11)

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22 5. Section 13 of P.L.1991, c.441 (C.40A:21-13) is amended to
23 read as follows:

24 13. The assessor shall determine, on October 1 of the year
25 following the date of the completion of an improvement, conversion
26 or construction, the true taxable value thereof. Except for projects
27 subject to tax agreement, pursuant to sections 9 through 12 of
28 P.L.1991, c.441, the amount of tax to be paid for the **【first full】** tax
29 year **【following completion】** in which the project is completed shall
30 be based on the assessed valuation of the property for the
31 **【previous】** current tax year, minus the amount of the abatement, if
32 any, allowed pursuant to this act and pro rated, plus any portion of
33 the assessed valuation of the improvement, conversion or
34 construction not allowed an exemption pursuant to this act, also pro
35 rated. Subject to the provisions of the adopting ordinance, the
36 property shall continue to be treated in the appropriate manner for
37 each of the **【five full】** four tax years subsequent to the original
38 determination by the assessor and shall be pro rated for the final tax
39 year in which the exemption or abatement expires.

40 (cf: P.L.1991, c.441, s.13)

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42 6. Section 16 of P.L.1991, c.441 (C.40A:21-16) is amended to
43 read as follows:

44 16. No exemption or abatement shall be granted pursuant to this
45 act except upon written application therefor filed with and approved
46 by the assessor of the taxing district wherein the improvement
47 conversion alteration or construction is made. Every application
48 shall be on a form prescribed by the Director of the Division of

1 Taxation in the Department of the Treasury, and provided for the
2 use of claimants by the governing body of the municipality
3 constituting the taxing district, and shall be filed with the assessor
4 within 30 days, including Saturdays and Sundays, following the
5 completion of the improvement, conversion alteration or
6 construction. Every application for exemption, or exemption and
7 abatement, within a municipality adopting the provisions of this act
8 which is filed within the time specified, shall be approved and
9 allowed by the assessor to the degree that the application is
10 consistent with the provisions of the adopting ordinance or the tax
11 agreement, provided that the improvement, conversion alteration or
12 construction for which the application is made qualifies as an
13 improvement, a conversion alteration or construction pursuant to
14 the provisions of this act and the tax agreement, if any. The
15 granting of an exemption, or exemption and abatement, shall relate
16 back to, and take effect as of, the date of completion of the project,
17 or portion or stage of the project for which the exemption, or
18 exemption and abatement, is granted, and shall continue for five
19 annual periods from that date. The grant of the exemption, or
20 exemption and abatement, or tax agreement shall be recorded and
21 made a permanent part of the official tax records of the taxing
22 district, which record shall contain a notice of the termination date
23 thereof.

24 (cf: P.L.1991, c.441, s.16)

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26 7. This act shall take effect immediately.

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STATEMENT

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31 This bill would permit short-term tax abatements or exemptions
32 to commence immediately following the completion of a project.
33 Under current law, the exemption or abatement commences for the
34 next full tax year following the year of completion of the project.
35 The bill would permit exemptions and abatements to commence for
36 the tax year following completion of the project when the
37 municipality and taxpayer enter into a tax agreement. In other
38 cases, however, the granting of the exemption or abatement would
39 relate back to, and become effective as of, the date of completion of
40 the project, or portion of the project which is the object of the
41 exemption or abatement, and continue for five annual periods from
42 that date.

43 This legislation is a response to the case of Seventy Five P-B
44 Corporation v. Town of Phillipsburg, 18 N.J. Tax 71 (Tax Ct.
45 1999), where the court held that under the "Five-Year Exemption
46 and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), the
47 five-year property tax exemption period commences on January 1
48 next following completion of an improvement. Under the bill, the

S1368 VITALE

9

- 1 five-year exemption or abatement period would commence as of the
- 2 date of completion of an improvement or project.