

Chapter 98

FIVE-YEAR TAX EXEMPTION AND ABATEMENT

§ 98-1. Purpose.

The purpose of this chapter is to establish procedures whereby qualified individuals and corporations may avail themselves of the property tax exemptions and abatements which the Borough of Seaside Heights is permitted by law to grant pursuant to N.J.S.A. 40A:21-1 et seq.

§ 98-2. Area covered. [Amended 9-15-2010 by Ord. No. 10-16]

The areas covered by this chapter shall include all areas designated as an area in need of rehabilitation. It is the desire and intent of the chapter to promote the construction and rehabilitation of structures in these areas and to combat economic decline.

§ 98-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ABATEMENT — That portion of the assessed value of a property as it existed prior to construction, improvement or conversion of a building or structure thereon which is exempted from taxation pursuant to this chapter.

AREA IN NEED OF REHABILITATION — A portion or all of the Borough which has been determined to be an area in need of rehabilitation or redevelopment pursuant to the "Local Redevelopment and Housing Law," P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et al.), a "blighted area" as determined pursuant to the "Blighted Areas Act," P.L. 1949, c. 187 (N.J.S.A. 40:55-21.1 et seq.), or which has been determined to be in need of rehabilitation pursuant to P.L. 1975, c. 104 (N.J.S.A. 54:4-3.72 et seq.), P.L. 1977, c. 12 (N.J.S.A. 54:4-3.95 et seq.), or P.L. 1979, c. 233 (N.J.S.A. 54:4-3.121 et seq.). [Amended 9-15-2010 by Ord. No. 10-16]

ASSESSOR — The officer of the Borough of Seaside Heights charged with the duty of assessing real property for the purpose of general taxation.

COMMERCIAL or INDUSTRIAL STRUCTURE — A structure or part thereof used for the manufacturing, processing or assembling of material or manufactured products or used for research, office, industrial, commercial, retail, recreational, hotel or motel facilities or warehousing purposes, or for any combination thereof, which the governing body determines will tend to maintain or provide gainful employment within the borough, assist in the economic development of the borough, maintain or increase the tax base of the borough and maintain or diversify and expand commerce within the borough. It shall not include any structure or part thereof used or to be used by a business relocated from another qualifying municipality.

COMPLETION — Substantially ready for the intended use for which a building or structure is constructed, improved or converted.

CONSTRUCTION — The provision of a new commercial or industrial structure or the enlargement of the volume of an existing commercial or industrial structure by more than 30%, but shall not mean the conversion of an existing building or structure to

another property class use.

CONVERSION or CONVERSION ALTERATION — The alteration or renovation of a building or structure in such manner as to convert the building or structure from its previous use to use as a commercial or industrial structure.

COST — Only the cost or fair market value of direct labor and materials used in improving, converting or constructing a building or structure, including any architectural, engineering and contractor's fees associated therewith, as the owner of the property shall cause to be certified to the governing body by an independent and qualified architect following the completion of the project.

DWELLING — A building or part of a building used, to be used or held for use as a home or residence, including accessory buildings located on the same premises, together with the land upon which such building or buildings are erected and which may be necessary for the fair enjoyment thereof, but shall not mean any building or part of a building, defined as a "multiple dwelling" pursuant to the Hotel and Multiple Dwelling Law, P.L. 1967, c. 76 (N.J.S.A. 55:13A-1 et seq.). A dwelling shall include, as they are separately conveyed to individual owners, individual residences within a cooperative, if purchased separately by the occupants thereof, and individual residences within a horizontal property regime or a condominium, but shall not include "general common elements" or "common elements" of such horizontal property regime or condominium as defined pursuant to the Horizontal Property Act,¹ or the Condominium Act² or of a cooperative if the residential units are owned separately.

EXEMPTION — That portion of the Assessor's full and true value of any improvement, conversion, alteration or construction not regarded as increasing the taxable value of a property pursuant to this chapter.

IMPROVEMENT — A modernization, rehabilitation, renovation, alteration or repair which produces a physical change in an existing building or structure that improves the safety, sanitation, decency or attractiveness of the building or structure. It shall not include ordinary painting, repairs and replacement of maintenance items or an enlargement of the volume of an existing structure by more than 30%. In no case shall it include the repair of fire or other damage to a property for which payment of a claim was received by any person from an insurance company at any time during the three-year period immediately preceding the filing of an application pursuant to this chapter unless the improvement resulted in compliance with the base flood elevation standard in place at the time of the improvement and the demonstrated cost of the improvement is no less than \$100,000. **[Amended 12-30-2014 by Ord. No. 14-23]**

MULTIPLE DWELLING — A building or structure meeting the definition of "multiple dwelling" as set forth in the Hotel and Multiple Dwelling Law, and means for the purpose of improvement or construction the "general common elements" and "common elements" of a condominium, a cooperative or a horizontal property regime.

§ 98-4. Exemption for improvements.

A. This chapter authorizes an exemption from taxation of improvements to commercial or industrial structures as defined herein. This exemption shall be

1. Editor's Note: See N.J.S.A. 46:8A-1 et seq.

2. Editor's Note: See N.J.S.A. 46:8B-1 et seq.

granted only by the governing body on an individual basis after review, evaluation and approval of each application. **[Amended 12-6-2017 by Ord. No. 2017-19]**

- B. With regard to exemption from taxation of improvements to commercial or industrial structures, the municipality shall regard, in determining the value of real property, the Assessor's full and true value of the improvements as not increasing the value of the property for a period of five years, notwithstanding that the value of the property to which the improvements are made is increased thereby. During the exemption period, the assessment on the property shall not be less than the assessment thereon existing immediately prior to the improvements unless there is damage to the structure through action of the elements sufficient to warrant a reduction. **[Amended 12-6-2017 by Ord. No. 2017-19]**
- C. Upon the timely receipt of a completed application, the governing body may approve a tax agreement providing for the tax phase-in for the value of the improvements as cited by the Assessor or an alternate taxing method if it is in the public interest.

§ 98-5. Exemption and abatement for new construction. [Amended 12-30-2014 by Ord. No. 14-23]

- A. This chapter authorizes the granting of tax abatement and exemption for new construction or certain improvements to commercial or industrial structures as defined herein. **[Amended 12-6-2017 by Ord. No. 2017-19]**
- B. Upon the timely receipt of a completed application, the governing body may approve a tax agreement as provided for in § 98-7 of this chapter.

§ 98-6. Application. [Amended 12-6-2017 by Ord. No. 2017-19]

With regard to tax exemption and abatement for improvements to or for new construction of commercial or industrial structures, all applicants shall provide the governing body with an application setting forth:

- A. A general description of a project for which exemption and abatement is sought.
- B. A legal description of all real estate necessary for the project.
- C. Plans, drawings and other documents as may be required by the governing body to demonstrate the structure and design of the project.
- D. A description of the number, classes and type of employees to be employed at the project site within two years of completion of the project.
- E. A statement of the reasons for seeking tax exemption and abatement on the project and a description of the benefits to be realized by the applicant if a tax agreement is granted.
- F. Estimates of the cost of completing such project.
- G. A statement showing the real property taxes currently being assessed at the project site; estimated tax payments that would be made annually by the applicant on the project during the period of the agreement; and estimated tax payments that would

be made by the applicant on the project during the first full year following the termination of the tax agreement.

- H. A description of any lease agreements between the applicant and proposed users of the commercial or industrial project and a history and description of the users' businesses.
- I. Such other pertinent information as the governing body may require.

§ 98-7. Tax agreement.

On approval by the governing body of a tax agreement for a particular project, the governing body may enter into a written agreement with the applicant for the exemption and abatement of local real property taxes. The agreement shall provide for the applicant to pay to the municipality in lieu of full property tax payments an amount annually to be computed by one, but in no case a combination, of the following formulas:

- A. Tax phase-in basis. The agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount equal to a percentage of taxes otherwise due according to the following schedule:
 - (1) In the first full tax year after completion, no payment of the increased taxes otherwise due as a result of the improvement or construction.
 - (2) In the second tax year, an amount not less than 20% of the tax increase otherwise due as a result of the improvement or construction.
 - (3) In the third tax year, an amount not less than 40% of the tax increase otherwise due as a result of the improvement or construction.
 - (4) In the fourth tax year, an amount not less than 60% of the tax increase otherwise due as a result of the improvement or construction.
 - (5) In the fifth tax year, an amount not less than 80% of the tax increase otherwise due as a result of the improvement or construction.
- B. Cost basis. The agreement may provide for the applicant to pay to the municipality in lieu of full property tax payments an amount equal to 2% of the cost of the project. For the purposes of the agreement, the "cost of the project" means only the fair market value of the direct labor and the cost of all materials used in the construction, expansion or rehabilitation of all buildings, structure and facilities at the project site, including the cost, if any, of land acquisition and land preparation, provision of access roads, utilities, drainage facilities and parking facilities, together with architectural, engineering, legal, surveying, testing and contractors' fees associated with the project, which the applicant shall cause to be certified and verified to the governing body by an independent and qualified architect following the completion of the project.
- C. Gross revenue basis. The agreement may provide for the applicant to make an annual payment to the municipality in lieu of full property tax payments in an amount equal to 15% of the annual gross revenues from the project. For the purposes of the agreement, "annual gross revenues" means the total annual gross rental and other income payable to the owner of the project from the project. If in

any leasing, any real estate taxes or assessments on property included in the project, any premiums for fire or other insurance on or concerning property included in the project or any operating or maintenance expenses ordinarily paid by the landlord are to be paid by the tenant, then those payments shall be computed and deemed to be part of the rent and shall be included in the annual gross revenue. The tax agreement shall establish the method of computing the revenues and may establish a method of arbitration by which either the landlord or tenant may dispute the amount of payments so included in the annual gross revenue.

§ 98-8. Term of agreement; filing of same.

- A. All tax agreements entered into under this chapter shall be in effect for no more than five full tax years following the date of completion of the project.
- B. All projects subject to tax agreement as provided herein shall be subject to all applicable federal, state and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.
- C. That percentage which the payment in lieu of taxes for a property bears to the property tax which would have been paid had an exemption and abatement not been granted for the property shall be applied to the valuation of the property for determining equalization for county tax apportionment and school aid during the term of the tax agreement.
- D. Within 30 days after the execution of a tax agreement, the Borough Clerk shall forward a copy of the agreement to the Director of the Division of Local Government Services and the Department of Community Affairs and to such other officials or agencies that the governing body may direct.

§ 98-9. Termination of tax agreement.

- A. If during any tax year prior to the termination of the tax agreement the property owner ceases to operate or disposes of the property or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The governing body shall notify the property owner and Tax Collector forthwith and the Tax Collector shall, within 15 days thereof, notify the owner of the property of the amount of taxes due. However, with respect to the disposal of the property where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, no tax shall be due, the exemption and the abatement shall continue and the agreement shall remain in effect.
- B. At the termination of a tax agreement, a project shall be subject to all applicable real property taxes as provided by state law and regulation and local ordinance; but nothing herein shall prohibit a project, at the termination of an agreement, from qualifying for and receiving the full benefits of any other tax preferences provided by law.

§ 98-10. Assessor determination.

The Borough Assessor shall determine, on October 1 of the year following the date of the completion of an improvement, conversion or construction, the true taxable value thereof. Except for projects subject to tax agreement pursuant to this chapter, the amount of tax to be paid for the first full tax year following completion shall be based on the assessed valuation of the property for the previous year, minus the amount of the abatement, if any, allowed pursuant to this chapter, plus any portion of the assessed valuation of the improvement, conversion or construction not allowed an exemption pursuant to this chapter. The property owner shall continue to be treated in the appropriate manner under the terms of this chapter and the tax agreement, if any, for each of the five full tax years subsequent to the original determination by the Borough Assessor.

§ 98-11. Subsequent improvements and exemptions.

Any additional improvement, conversion or construction completed on a property granted a previous exemption or abatement pursuant to this chapter during the period in which such previous exemption or abatement is in effect shall be qualified for an exemption, or exemption and abatement, just as if such property had not received a previous exemption or abatement. In such case, the additional improvement, conversion or construction shall be considered as separate for the purposes of calculating exemptions and abatements pursuant to this chapter, except that the assessed value of any previous improvement, conversion alteration or construction for the purpose of determining the assessed valuation of the property from which any additional abatement is to be subtracted.

§ 98-12. Tax delinquency.

No exemption or abatement shall be granted or tax agreement entered into pursuant to this chapter with respect to any property for which property taxes are delinquent or remain unpaid or for which penalties for nonpayment of taxes are due.

§ 98-13. Application for exemption.

No exemption or abatement shall be granted pursuant to this chapter except upon written application filed with and approved by the Borough Tax Assessor. Every application shall be on a form prescribed by the Director of the Division of Taxation in the Department of the Treasury and provided for the use of claimants by the Borough of Seaside Heights and shall be filed with the Borough Assessor within 30 days, including Saturdays and Sundays, following the completion of the improvement, conversion alteration or construction and/or issuance of a certification of occupancy, whichever occurs first. Every application for exemption or exemption and abatement which is filed within the time specified shall be approved and allowed by the Assessor and governing body to the degree that the application is consistent with the provisions of the adopting ordinance or the tax agreement, provided that the improvement, conversion alteration or construction for which the application is made qualified as an improvement, a conversion alteration or construction pursuant to the provision of this chapter and the tax agreement, if any. The granting of an exemption or exemption and abatement or tax agreement shall be recorded and made a permanent part of the official tax records of the

borough, which record shall contain a notice of the termination date thereof.

§ 98-14. Exemption applicable to all levys.

The exemption and abatement of real property taxes pursuant to this chapter shall apply to property taxes levied for municipal purposes, school purposes, county government purposes and for the purposes of funding any other property tax exemptions or abatements.

§ 98-15. Notice of exemption program.

The Borough Tax Collector shall include a notice describing the exemption program or exemption and abatement program provided for by this chapter and the application procedure therefore in the mailing of annual property tax bills to each owner of property located in an area in which exemptions or exemptions and abatements may be allowed pursuant to this chapter during the first year following adoption of the chapter.

§ 98-16. Report of Tax Assessor.

- A. The Tax Assessor shall report, on or before September 1 of each year, to the Mayor and Council as to the total amount of real property taxes exempted and the total amount abated within the borough in the current tax year under this chapter.
- B. The report shall state, for the current tax year, the total amount of payments made in lieu of taxes according to the formula utilized by the borough and the difference between that total amount and the total amount of real property taxes which would have been paid on the project had the tax agreement not been in effect.

§ 98-17. Prior exemption.

No exemption or abatement granted by any prior ordinance or law shall be affected or terminated by this chapter but shall remain in effect for the time and under the terms granted as if the ordinance had not been superseded or repealed.

§ 98-18. Severability.

If any provision of this chapter or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this chapter which can be given effect, and to this end, the provisions of this chapter are declared to be severable.

§ 98-19. When effective. [Amended 9-15-2010 by Ord. No. 10-16; 12-16-2020 by Ord. No. 2020-14]

This chapter shall take effect immediately and shall, pursuant to N.J.S.A. 40A:21-4, remain effective until December 31, 2030, unless either readopted or repealed before that date.

