

420-c Fact Sheet

What is an Eligible Entity?

Applications for real property tax exemption pursuant to Real Property Tax Law ("RPTL") §420-c approved on or after September 28, 2004 are governed solely by RPTL §420-c(4), which provides that only eligible real property of an "eligible owner" shall be eligible for such tax exemption.

Definition of Charitable Organization:

RPTL §420-c(4)(a)(4) defines a "charitable organization" as an entity formed for purposes of providing housing accommodations for persons of low income that has received written recognition of exemption pursuant to Internal Revenue Code §§ 501(c)(3) or 501(c)(4) ("501(c) Entity") or a corporation, partnership or limited liability company wholly owned and wholly controlled by a 501(c) Entity.

Definition of Eligible Entity:

RPTL §420-c(4)(a)(5) defines an "eligible entity" as a corporation, partnership or limited liability company at least 50% of the controlling interest of which is held by a charitable organization. If a charitable organization owns at least 50% of (a) the shares of a corporation, (b) the general partner of a partnership, or (c) the managing member of a limited liability company, such charitable organization is deemed to hold at least 50% of the controlling interest in such corporation, partnership, or limited liability company.

Definition of Eligible Owner:

RPTL §420-c(4)(a)(6) defines an "eligible owner" as one or more eligible entities that holds (i) legal and beneficial title to eligible real property, or (ii) a legal and beneficial leasehold interest with a term of not less than thirty years in eligible real property.

What is Eligible Real Property?

Definition of Eligible Real Property:

RPTL §420-c(4)(a)(3) defines "eligible real property" as real property that (i) provides housing accommodations for persons and families of low income, and (ii) participates in or has participated in the tax credit program.

Definition of Persons and Families of Low Income:

RPTL §420-c(4)(a)(1) refers to PHFL §2(19), which defines "persons and families of low income" as people who are in low income groups and cannot afford to pay enough to cause private enterprise in their municipality to build a sufficient supply of adequate, safe and sanitary housing.

Definition of Tax Credit Program:

RPTL §420-c(4)(a)(2) defines "tax credit program" as the federal low-income housing tax credit program established pursuant to Section 42 of the Internal Revenue Code of 1986, as amended.



How are the Eligible Owner and Eligible Real Property requirements applied to projects that consist of separate condominium units?

Each condominium unit that is part of the project applying for 420-c benefits must be owned or leased by an Eligible Owner (see above).

All condominium units that are part of the project applying for 420-c benefits must meet the Eligible Real Property requirements (see above). For example, Condo Unit 1 could include 70% of the units in the project that are subject to IRC 42 while Condo Unit 2 holds the remaining 30% of the project units, which are non-tax credits units but are income-restricted at or below 165% AMI.

Definition of Housing Accommodations:

FOR PROJECTS WITH AN INITIAL FILING DATE ON OR AFTER JULY 1, 2004 AND BEFORE SEPTEMBER 20, 2015:

"Housing Accommodations" are defined by HPD's RPTL §420-c rules, Chapter 31 of Title 28 of the Rules of the City of New York, as real property used for:

(i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs;

(ii) ancillary residential purposes including management, administrative and social service offices and facilities used to provide social services (including Job Training) primarily for persons or families of low income residing in such housing accommodations; or

(iii) community facility uses that (A) provide services to individuals who reside in the area, (B) limit any fees charged for such community facility uses to fees that are affordable to individuals whose household incomes do not exceed sixty percent (60%) of the area median income adjusted for family size, and (C) are located on the same real property as the dwelling units that constitute such housing accommodations. However, any portion of the combined floor area of such ancillary residential purposes and/or community facility uses which exceeds 25% of the aggregate floor area of the real property will not qualify as housing accommodations.

Pursuant to HPD's RPTL §420-c rules, if an Eligible Owner of projects with an Initial Filing Date on or after July 1, 2004 and before September 20, 2015 has done one of the following, the community facility uses located on the same real property as the residential dwelling units constitute housing accommodations and are eligible for RPTL §420-c benefits, provided that the

combination of any ancillary residential purposes and community facility uses does not exceed 25% of the aggregate floor area of such real property:

(1) entered into a lease with a service provider to provide services to individuals who reside in the area at fees that are affordable at or below 60% of area median income and such lease is coterminous with the requested RPTL §420-c benefit period, OR


(2) subjected the real property devoted to community facility uses to a Master Lease solely for the provision of services to individuals who reside in the area at fees that are affordable at or below 60% of area median income, and such Master Lease is coterminous with the requested RPTL §420-c benefit period, OR

(3) entered into a tax credit regulatory agreement which provides that such community facility uses shall provide services to individuals who reside in the area at fees that are affordable at or below 60% of area median income for the entire term of such tax credit regulatory agreement and the RPTL §420-c requested benefit period.

Furthermore, all community facility service fees for projects with an Initial Filing Date on or after July 1, 2004 and before September 20, 2015 **must** be set at levels that are affordable to building tenants **and** area households with incomes at or below 60% AMI.

Finally, any such project seeking 420-c benefits for a community facility must record a 420-c Restrictive Declaration in the form provided by HPD before issuance of 420-c benefits.

FOR PROJECTS WITH AN INITIAL FILING DATE ON OR AFTER SEPTEMBER 20, 2015:

 Housing Accommodations. "Housing Accommodations" shall mean Real Property used for (i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs; or (ii) ancillary residential purposes including management, administrative and community facility uses that are authorized under use groups 3 and 4 of the Zoning Resolution. Notwithstanding the foregoing, any portion of the combined floor area of such ancillary residential purposes which exceeds twenty-five percent (25%) of the Aggregate Floor Area of the Real Property shall not qualify as Housing Accommodations.

What are Community Facility Uses?

For projects with an Initial Filing Date on or after July 1, 2004 and before September 20, 2015, HPD has, in the past, considered the below services to constitute community facility uses that satisfy the definition of Housing Accommodation provision (iii), provided that the community facility restrictions are coterminous with the 420-c benefit term (see above).

- Senior center providing meals, social services, recreational classes and case management services;
- Homecare service providing home attendants to assist disabled and elderly individuals with daily personal care;

- Soup kitchen/food pantry;
- After-school program providing classes/tutoring to students;
- Social services for adults with psychiatric disabilities;
- Health care clinic providing physical rehabilitation;
- Mental health clinic providing counseling and related supportive services as well referral services;
- Medical center affiliated with local hospital;
- Program for the elderly providing health and wellness classes, health screenings, and vaccinations as part of the Healthy Aging Initiative;
- Program for low-income families providing counseling services and assistance with completing applications for public benefits; and
- Theater/arts education program.

For projects with an Initial Filing Date on or after September 20, 2015, HPD may issue 420-c benefits for any community facility uses that are authorized under Use Groups 3 and 4 of the Zoning Resolution. HPD may require an architect's affidavit to confirm such authorized community facility uses.

Can office space be considered Housing Accommodations eligible to receive 420-c benefits?

Some office space may be considered Housing Accommodations if it is used for ancillary residential purposes, including management, administrative and social service offices and facilities used to provide social services when such services are primarily for persons or families of low income residing in such housing accommodation.

With respect to projects with an Initial Filing Date on or after July 1, 2004 and before September 20, 2015, another type of office space may be considered Housing Accommodations if it is included in the same master lease and/or tax credit regulatory agreement as the community facility and is for the use of that community facility. For example, if a senior center providing services in the real property maintains an office there in which program planning occurs and/or eligibility determinations are made, and such office space is part of the same lease as the senior center, such office space can be considered Housing Accommodations eligible to receive 420-c benefits.

Is parking considered Housing Accommodations?

Yes, if the parking is 100% for residents of the real property. Tenant parking is construed as common facilities and/or outdoor public area only under provision (i) of the definition of Housing Accommodations.