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TARGETING TAX DOLLARS MORE EFFICIENTLY: PROPOSED MODIFICATIONS TO THE 421-a REAL PROPERTY TAX EXEMPTION

I. Introduction

Section 421-a of the Real Property Tax Law¹ awards a tax exemption to building owners who construct new multi-family housing units² in designated areas of New York City,³ provided that: (1) the development occurs on vacant,⁴ predominantly vacant,⁵ or underutilized⁶

1. See N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987).

2. Multiple dwelling is defined as "a dwelling which is to be occupied or is occupied as the residence or home of three or more families living independently of one another, whether such dwelling is rented or owned as a cooperative or condominium." *Id.* § 421-a(1)(c). The developers of hotels are ineligible to receive such an exemption. *Id.* § 421-a(2)(a).

3. *Id.* § 421-a(2)(e)(i)-(iii), (2)(a)(ii)(A)-(C), (2)(a)(iii)(A)-(D) (McKinney 1984 & Supp. 1987); see *infra* note 71 and accompanying text for a discussion of the applicability of § 421-a to New York City.

4. Vacant is not defined in the § 421-a legislation. N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987). The legislation provides, however, that the agency may define the term. *Id.* § 421-a(3)(iv). "The local housing agency may promulgate rules and regulations to carry out the provisions of this section, not inconsistent with the provisions hereof. . . ." *Id.*; see also Housing and Development Administration Rules and Regulations Governing 421 Partial Tax Exemption, § 2.5(3)(a) (1982). Vacant land is defined as "land, including land under water, which contains no enclosed, permanent improvement. Fences, sheds, garage attendants' booths, piers, bulkheads, lighting fixtures, and similar items, or any improvement having an assessed value of less than \$2,000 shall not constitute an enclosed, permanent improvement." *Id.*

5. Predominantly vacant is not defined in the § 421-a legislation. N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987). For a discussion of the impact caused by the absence of a definition, see *supra* note 4. See also Housing and Development Administration Rules and Regulations Governing 421 Partial Tax Exemption, § 2.5(3)(b) (1982). Predominantly vacant land is defined as "a plot of land on which not more than fifteen percent of the land area contained enclosed, permanent improvements. Fences, sheds, garage attendants' booths, pier bulkheads, lighting fixtures and similar items, or any improvement having an assessed value of less than \$2,000 shall not constitute an enclosed, permanent improvement." *Id.*

6. Underutilized land is not defined in the § 421-a legislation. N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987). For a discussion of the impact caused by the absence of a definition, see *supra* note 4. See also Housing and Development Administration Rules and Regulations Governing 421 Partial Tax Exemption § 2.5(3)(c) (1982). Underutilized land is defined as:

[L]and or space which was under-utilized by virtue of the fact that: (i) It was improved with a residential building or buildings (A) whose aggregate occupied zoning rooms numbered not more than twenty percent of the

land, or land improved with a non-conforming use;⁷ and (2) the owner continues to pay at least the prior tax assessment throughout the period of the exemption.⁸ The stated purpose of the section 421-a real property tax exemption (the exemption, the program, or section 421-a) is to provide incentives so that developers will construct safe and habitable dwellings in New York City.⁹ In its application, a rather limited type of housing stock is being developed. Developers of luxury

maximum number of zoning rooms allowed by the Zoning Resolution and where the total number of self-contained dwelling units on the land did not exceed the ratio, as applicable, per full thousand square feet of lot . . . or (B) whose aggregate occupied zoning rooms numbered not more than 6.66 percent of the maximum number of zoning rooms allowed by the Zoning Resolution; provided that where the lot is divided by district boundaries, the Commissioner shall determine the appropriate ratio in relation to the permitted aggregate density of such lot under the Zoning Resolution, and if the land is in a commercial district, the applicant may use the ratio or its equivalent in the corresponding residential district; and provided further that if the land or space includes air rights over residential buildings not to be demolished, such buildings will not be considered in computing either the ratio of occupied zoning rooms or the ratio of units to area set forth above, though the air rights from such buildings may be considered in computing either ratio set forth above; (ii) It consisted of air rights above a public roadway, waterway, railroad right of way, public buildings, or other similar property used by the general public; or (iii) It was improved with a non-residential building or buildings (a) each of which contained (i) no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and (ii) a floor area ratio which was 20% or less of the maximum [floor area ratio] for residential buildings, or (b) each of which had an assessed valuation equal to or less than twenty percent of the assessed valuation of the land on which the building or buildings were situated, or (c) which, by reason of the building's configuration, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized, on the operative date, in the capacity in which it was formerly utilized.

Id. See *infra* notes 157-72 and accompanying text for a discussion of litigation regarding the definition of underutilized.

7. Land improved with a non-conforming use is not defined in the § 421-a legislation. N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987). For a discussion of the impact caused by the absence of a definition, see *supra* note 4. See also Housing and Development Administration Rules and Regulations Governing 421 Partial Tax Exemption § 2.5 (3)(d) (1982). Land improved with a non-conforming use is "defined in the same manner as that term was defined in the Zoning Resolution in effect on the operative date." *Id.*

8. N.Y. REAL PROP. TAX LAW § 421-a(2)(b)(i) (McKinney 1984). See *infra* notes 75-78 and accompanying text for a discussion of the phasing out of the exemption.

9. Memorandum of Legislative Representative of City of New York, *reprinted in* [1971] N.Y. Laws 2551 (McKinney) [hereinafter Legislative Memorandum]. The representative stated: "No efforts should be spared to increase the number of safe and decent dwelling units in our cities." *Id.*

buildings, such as the Trump Tower, are the primary beneficiaries of the exemption.¹⁰

Although it is recognized that the construction of housing is an area worthy of legislative action and that section 421-a has laudable goals, there has been opposition to the program.¹¹ Political rhetoric and posturing renders objective analysis of the program extremely difficult. Public interest groups who condemn the program¹² have cited the huge sum of tax dollars the exemption has excused,¹³ the high income levels of the residents of the buildings,¹⁴ and the luxurious nature of the housing constructed under the program.¹⁵ On the other hand, proponents assert that the inflated costs of purchasing land and constructing buildings in New York City necessitate the exemption;¹⁶ that it has enhanced the city's tax base;¹⁷ and that its overall impact has been, and will continue to be, beneficial to the city.¹⁸

10. *421a: A Subsidy that Cost \$551 Million*, N.Y. Times, Mar. 29, 1987, at R1, cols. 1, 3 ("spokesmen for the real-estate industry admit that the 421a program primarily produced luxury apartments") [hereinafter *Subsidy*].

11. See generally H. ACHTENTUCH, F. DOMURAD, R. MESSINGER & J. SILVERS, *THE RICH GET RICHER, PART II: 421A TAX BREAKS IN NEW YORK CITY 1981-1983*, (1984) (report issued by New York Public Interest Group criticizing § 421-a) [hereinafter *RICH GET RICHER*]; Letter from Rev. Donald Sakano of Catholic Charities, Archdiocese of New York to Mayor Edward I. Koch (Nov. 5, 1984) (available at *Fordham Urban Law Journal* office) (discussing reasons to discontinue § 421-a) [hereinafter *Sakano letter*].

12. See *supra* note 11.

13. *RICH GET RICHER*, *supra* note 11, at 1.

14. *Id.* at 3; *Sakano letter*, *supra* note 11, at 2 ("production of tax-subsidized rental housing for upper income people is a waste of our city's tax base").

15. *RICH GET RICHER*, *supra* note 11, at 20-24.

16. *Hearing Before the Board of Estimate on 421-a* (Nov. 29, 1984) (unpublished testimony of Willa Appel, Executive Director of the Citizen's Housing & Planning Council) (available at *Fordham Urban Law Journal* office) [hereinafter *Appel testimony*]; see *Hearing Before the City Council Committee on Housing and Buildings* (May 3, 1985) (unpublished statement submitted by Real Estate Board of New York, Inc.) (available at *Fordham Urban Law Journal* office).

17. K. FORD, *HOUSING POLICY AND THE URBAN MIDDLE CLASS* 56-58 (1978) [hereinafter *HOUSING POLICY*].

18. Biderman, *The 'Cost' of 421a*, N.Y. Times, Apr. 26, 1987, at R22, col. 5 (author is New York City's Commissioner of Finance) [hereinafter *The 'Cost'*]. Biderman stated:

When it became obvious that the program would expire in November 1985, developers rushed into construction, throwing 25,000 housing units into the market at once, a 20-year high.

Obviously, the program's benefits are such a strong inducement to construction that developers were willing to risk flooding the market and leaving units empty to gain benefits provided by the program. If the

This Note examines whether the 421-a program should remain applicable to all multi-family dwellings, including luxury rentals, cooperatives and condominiums. Part II provides an overview of the concept of real estate tax exemptions. Part III examines the legislative history behind the section 421-a program. Part IV then assesses the merits of 421-a's application to luxury housing. Based on that analysis, this Note concludes that the present standards for granting exemptions represent an inefficient use of tax dollars. Therefore, the legislature should act to limit the exemption to rental units, including luxury housing. The high costs of constructing buildings, the rent regulation system, and the low vacancy rate of rental units dictate that such units remain eligible for the exemption.

II. Tax Exemptions

This section will discuss the legislature's power to tax and to exempt, as well as the philosophy and goals of tax incentives.

A. The Power to Tax and the Power to Exempt

The state legislature's power to tax property and to exempt certain property from taxation is derived from several provisions in the New York State Constitution.¹⁹ This power is subject to the due process²⁰

program made such a big impact in Manhattan, how much more important is it to the other boroughs where over 90 percent of the future 421a benefits are expected? The program has 'costs,' but its benefits have far outweighed the 'costs' incurred.

Id.

19. N.Y. CONST. art. III, § 17 (cases in which private or local bills shall not be passed); *id.* § 22 (tax laws to state tax and object); *id.* § 23 (when yeas and nays necessary; three-fifths to constitute quorum); *id.* art. VIII, § 10 (limitations on amount to be raised by real estate taxes for local purposes; exceptions); *id.* § 10-a (disposition of local revenues received from public improvement or service); *id.* § 11 (taxes for certain capital expenditures to be excluded from tax limitation); *id.* § 12 (further limitations on contracting local indebtedness authorized); *id.* art. IX, § 1 (bill of rights for local governments); *id.* § 2 (powers and duties of legislature; home rule powers of local governments; statute of local governments); *id.* § 3 (certain powers of legislature as unimpaired; existing laws unaffected; construction of article; definitions); *id.* art. XVI, § 1 (power of taxation; exemptions from taxation); *id.* § 2 (assessment for taxation purposes); *id.* § 3 (situs and taxation of intangible personal property); *id.* § 4 (certain corporations not to be discriminated against); *id.* art. XVIII, § 1 (housing for persons of low income and nursing home accommodations; slum clearance); *id.* § 2 (power of legislature); *id.* § 10 (power of legislature; construction of article); see *Feld v. Hanna*, 4 Misc. 2d 3, 4, 158 N.Y.S.2d 94, 96 (Sup. Ct. St. Lawrence County 1956) ("right to tax is conferred upon the state as a necessary attribute of sovereignty"); see also *Mobil Oil Corp. v. Town of Huntington*, 85 Misc. 2d 800, 805, 380 N.Y.S.2d 466, 474 (Sup. Ct. Suffolk County 1975) (power to tax vested solely in state legislature).

20. U.S. CONST. amend. XIV, § 1.

and equal protection clauses²¹ of the United States Constitution, which provide that no state shall "deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."²²

Courts have broadly interpreted the due process clause and the equal protection clause to allow local governments substantial latitude in devising reasonable taxation systems.²³ An "iron rule of equality"²⁴ is nonexistent; states and localities retain sufficient flexibility to develop reasonable methods of taxation.²⁵ Thus, the courts hold that particular tax systems are constitutional if they have a rational basis and are not arbitrary.²⁶

The broad authority of the state legislature to devise a scheme for taxation permits flexibility in determining the amount of taxation,²⁷ and whether to grant specific exemptions from taxation.²⁸ Exemptions must appear unambiguously in a statute.²⁹ The taxpayer

21. *Id.*

22. *Id.*

23. See, e.g., *Association of the Bar of New York v. Lewisohn*, 34 N.Y.2d 143, 156, 313 N.E.2d 30, 36-37, 356 N.Y.S.2d 555, 564 (1974) (1971 statute authorizing local taxation of real property owned by corporation that is not organized or conducted exclusively for religious, charitable, hospital, educational or cemetery purposes complies with due process and equal protection clauses of federal and state constitutions); *American Bible Soc'y v. Lewisohn*, 48 A.D.2d 308, 313-14, 369 N.Y.S.2d 725, 731 (1st Dep't 1975) (real property owned by society unaffiliated with any particular denomination did not qualify for property tax exemption available to corporations or associations organized or conducted exclusively for religious, charitable, hospital, education, or cemetery purposes), *aff'd*, 40 N.Y.2d 78, 351 N.E.2d 697, 386 N.Y.S.2d 49 (1976).

24. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1958) (upholding Ohio statute exempting merchandise of nonresidents from taxation if such merchandise was held in warehouse only for storage); see also *Trump-Equitable Fifth Ave. Co. v. Gliedman*, 87 A.D.2d 12, 18-19, 450 N.Y.S.2d 321, 325 (1st Dep't) (when buildings are denied exemptions given to physically similar buildings, equal protection is not necessarily denied, so Trump Tower could be denied § 421-a exemption although Olympic Tower and Galleria received exemptions), *rev'd*, 57 N.Y.2d 588, 443 N.E.2d 940, 457 N.Y.S.2d 466 (1982), *later proceeding*, 98 A.D.2d 487, 471 N.Y.S.2d 580 (1st Dep't), *rev'd*, 62 N.Y.2d 539, 467 N.E.2d 510, 478 N.Y.S.2d 846 (1984). See *infra* notes 157-72 and accompanying text for a discussion of *Trump*.

25. *Allied Stores*, 358 U.S. at 526-27.

26. See *id.* at 527; *Ohio Oil Co. v. Conway*, 281 U.S. 146, 160 (1930) (act imposing oil taxes graduated according to gravity held constitutional because not arbitrary or unjustifiably discriminatory); see also *Trump*, 87 A.D.2d at 18, 450 N.Y.S.2d at 325.

27. *Association of the Bar*, 34 N.Y.2d at 156, 313 N.E.2d at 37, 356 N.Y.S.2d at 564.

28. *Id.*

29. *United Artists Theatre v. State Tax Comm'n*, 76 A.D.2d 995, 995, 429 N.Y.S.2d 299, 300 (3d Dep't 1980) (admission fee charged for motion picture

has the burden of establishing that he has fulfilled the criteria of the particular exemption.³⁰ Courts do not presume that an applicant is entitled to a tax benefit.³¹ In fact, exemptions are strictly construed against the taxpayer.³²

Administrative decisions to grant or to deny applications for tax exemptions are often upheld by the courts.³³ Under administrative law principles, questioning the wisdom of particular decisions *sua*

theaters is exempt from sales tax, regardless of event for which patron gains admission), *rev'd*, 52 N.Y.2d 1013, 420 N.E.2d 93, 438 N.Y.S.2d 295 (1981).

30. *United Artists*, 76 A.D.2d at 995, 429 N.Y.S.2d at 300.

31. *See, e.g., People ex rel. Mizpah Lodge v. Burke*, 228 N.Y. 245, 247-48, 126 N.E. 703, 704 (1920) (when realtor was unincorporated lodge of fraternal order and owned building that it used and leased to other associations, such property was not entitled to exemption); *Schwartzman v. Miller*, 262 A.D. 635, 636, 30 N.Y.S.2d 882, 884 (3d Dep't 1941) (although individual partners in sheet metal and roofing business are subject to Unemployment Insurance Law, salaries paid to their spouses are subject to payroll tax under subdivisions 1 and 3 of § 502 of New York Labor Law), *aff'd sub nom. In re Schwartzman*, 288 N.Y. 568, 42 N.E.2d 22 (1942).

32. *See Mobil Oil Corp. v. Finance Adm'r of New York*, 58 N.Y.2d 95, 446 N.E.2d 130, 459 N.Y.S.2d 566 (1983) (court of appeals ruled against tenants' argument that the tax levied under New York City commercial rent or occupancy tax law was invalid because such tax was partially assessed against sums tenant paid to landlord for janitorial services). The court stated:

Tax exclusions are never presumed or preferred and before petitioner may have the benefit of them, the burden rests on [petitioner] to establish that the item comes within the language of the exclusion. While it is the general rule that a statute which levies a tax is to be construed most strongly against the government and in favor of the taxpayer, the rule is otherwise with respect to the taxpayers' right to exclude items from taxation. In the case of statutory exclusions, the presumption is in favor of the taxing power.

Id. at 99, 446 N.E.2d at 132, 459 N.Y.S.2d at 568 (citations omitted); *see also Engle v. Talarico*, 33 N.Y.2d 237, 240, 306 N.E.2d 796, 798, 351 N.Y.S.2d 677, 679 (1973) (petitioner not entitled to depreciation deduction from her net rental income, but was entitled to offset capital losses against capital gains. The court subsequently cautioned, however, against narrow construction which might defeat settled purpose); *Pinelawn Cemetery v. Cesare*, 90 Misc. 2d 736, 738, 395 N.Y.S.2d 984, 986 (Sup. Ct. Suffolk County 1977), *rev'd*, 64 A.D.2d 607, 406 N.Y.S.2d 862 (2d Dep't 1978) (appellate division reversed supreme court's decision declaring property owner not entitled to exemption for three parcels of its cemetery land).

33. *See, e.g. Great Lakes Dredge & Dock Co. v. Dep't of Taxation & Fin.*, 39 N.Y.2d 75, 80, 346 N.E.2d 796, 799, 382 N.Y.S.2d 958, 961 (state tax commission properly assessed sales and use tax against vessels and supplies of corporation), *cert. denied*, 429 U.S. 832 (1976); *Grace v. New York State Tax Comm'n*, 37 N.Y.2d 193, 198, 332 N.E.2d 886, 890, 371 N.Y.S.2d 715, 720 (1975) (determination of tax commission denying taxpayer's deduction confirmed); *City of Lackawanna v. State Bd. of Equalization & Assessment of New York*, 16 N.Y.2d 222, 231, 212 N.E.2d 42, 47, 264 N.Y.S.2d 528, 535 (1976) (state board of equalization properly classified properties as taxable).

sponte is considered outside the purview of the judicial function.³⁴ Thus, courts routinely uphold agency determinations that are neither arbitrary or capricious.³⁵ The general rule is that the courts should not intervene in administrative decision-making unless the plaintiff objects in a timely manner and the agency's decisions are patently incorrect.³⁶

In the area of housing, courts take an expansive view of the state's taxation power.³⁷ For instance, the courts upheld legislation enacted to alleviate the 1920's housing crisis in New York City.³⁸ In passing upon such legislation, the courts held that the state's sovereign power in the taxing area justified the emergency housing laws providing for tax exemptions, suspending possessory remedies to regain possession of real property, and prohibiting landlords from collecting unreasonable rents.³⁹ For example, in *Edgar A. Levy Leasing Co. v. Siegel*,⁴⁰ the United States Supreme Court reasoned that the government was justified in resorting to the police power because the housing crisis, had it continued unabated, would have harmed

34. See generally *People ex rel. New York Lodge No. 1 of the Benevolent & Protective Order of Elks v. Purdy*, 179 A.D. 805, 810, 167 N.Y.S. 285, 287 (1st Dep't 1917) (pursuant to claim filed by taxpayers, court ruled that administrative decision denying tax exemption was proper); see also *Board of Educ. v. Cole*, 176 Misc. 509, 511, 29 N.Y.S.2d 59, 61 (Sup. Ct. Albany County 1941) (pursuant to claim filed by board of education, court confirmed orders by commissioner of education directing board of education to submit to voters proposition regarding construction of combined grade and high school).

35. See *Sigety v. Ingraham*, 29 N.Y.2d 110, 114, 272 N.E.2d 524, 526, 324 N.Y.S.2d 10, 13 (1971) (regulations of commissioner of health regarding nursing home rates were consistent with public health statute); see also *Park East Land Corp. v. Finkelstein*, 299 N.Y. 70, 75, 85 N.E.2d 869, 872 (1949) (in reviewing determination of Temporary City Housing Rent Commission refusing certificate of eviction, court is not to disturb decision if warranted under the record, reasonably based on law, and neither arbitrary nor capricious).

36. See *United States v. L.A. Tucker Truck Lines*, 344 U.S. 33, 37 (1952) (district court should not entertain inappropriately timed objection to administrative proceedings). In proceedings to set aside such agency determinations, plaintiffs typically assert that the decision is illegal, arbitrary, an abuse of discretion, and unsupported by the record. See *Hamilton v. Diamond*, 42 A.D.2d 465, 466-67, 349 N.Y.S.2d 146, 148-49 (3d Dep't 1973) (determination by commissioner of education was not illegal, arbitrary or capricious).

37. See *infra* notes 38-41.

38. See *infra* note 39 and accompanying text.

39. See, e.g., *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 243-45 (1922) (housing shortage in New York justified resorting to police power. In fact, state's power is so broad that it may act outside area of taxation to solve housing problems); *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 196-99 (1921) (laws enacted regulating rights and remedies with respect to dwelling houses held constitutional).

40. 258 U.S. 242 (1922).

the public welfare.⁴¹ In *People ex rel. Durham Realty Corp. v. La Fetra*,⁴² the New York Court of Appeals pointed out that "[housing] emergency may afford a reason for putting forth a latent governmental power already enjoyed but not previously exercised."⁴³

In addition, in *Hermitage Co. v. Goldfogle*⁴⁴ the New York courts upheld an exemption analogous to 421-a. The law in question in *Hermitage* authorized local legislative bodies to exempt new dwellings from local taxation, other than assessments for improvements, for a ten year period.⁴⁵ The court held that the initiative complied with the New York State Constitution.⁴⁶ Additionally, the program was necessary in light of the housing shortage in the state.⁴⁷ In sum,

41. *Id.* at 245.

42. 230 N.Y. 429, 130 N.E. 601 (1921). The court held constitutional a statute suspending for two years possessory remedies in New York City to regain possession of real property. *Id.*

43. *Id.* at 445, 130 N.E. at 606 (housing emergencies resulting from other emergencies such as floods).

44. 204 A.D. 710, 199 N.Y.S. 382 (1st Dep't 1923).

45. *Id.* at 717-18, 199 N.Y.S. at 387.

46. In passing upon the statute's constitutionality, the court reasoned as follows: (1) the prohibition against private or local bills granting tax exemptions is not violated merely because the statute happened to be of local application, *id.* at 720-25, 199 N.Y.S. at 389-93; (2) state constitutional provisions requiring legislative power to be vested in the New York Senate and Assembly permitted municipalities the discretion to determine whether their particular housing conditions warranted the tax exemption, *id.* at 725-26, 199 N.Y.S. at 393-94; (3) classifying structures into old and new buildings to determine eligibility was reasonable and proper, *id.* at 726-29, 199 N.Y.S. at 394-96; and (4) the exemptions authorized by the statute did not render the law unconstitutional because the legislature's right to authorize exemptions is a corollary of the right to tax. *Id.* at 729-31, 199 N.Y.S. at 396-98.

47. *Id.* at 731-32, 199 N.Y.S. at 398-99. Despite decisions such as *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N.Y. 429, 130 N.E. 601 (1921), and its progeny, *see, e.g., Mars Realty Corp. v. Sexton*, 141 Misc. 622, 626-29, 253 N.Y.S. 15, 21-24 (Sup. Ct. Bronx County 1931) (statute authorizing 20 year exemption of new dwellings from taxation held not violative of equal protection clause of United States Constitution or state prohibition against private or local bills granting tax exemptions), questions remain regarding the scope of the legislature's power to authorize tax exemptions. Specifically, the constitutionality of certain real property tax exemptions is uncertain in light of *Akari House, Inc. v. Irizzary*, 81 Misc. 2d 543, 366 N.Y.S.2d 955 (Sup. Ct. N.Y. County 1975). In *Akari*, the plaintiffs sought a declaratory judgment declaring unconstitutional a statute extending the 25 year real property tax exemption for redevelopment company projects. *Id.* at 544, 366 N.Y.S.2d at 958 (construing N.Y. PRIV. HOUS. FIN. LAW § 125 (McKinney 1976 & Supp. 1987)). The plaintiffs alleged that the statute was unconstitutional because the New York Constitution provides only a limited mandate for granting tax exemptions—that is, exemptions must serve slum clearance or low income housing purposes, and for a maximum of 60 years. *Akari*, 81 Misc. 2d at 544-45, 366 N.Y.S.2d at 959 (citing N.Y. CONST. art. XVIII, § 1

(housing for persons of low income and nursing home accommodations; slum clearance); *id.* § 2 (powers of legislature)). Thus, the exemptions should be discontinued because the areas are "pleasant residential communities no longer in need of rehabilitation." *Akari*, 81 Misc. 2d at 545, 366 N.Y.S. at 959.

In rejecting the plaintiff's claim, the *Akari* court failed to reach the issue of whether the legislature had power to grant tax exemptions to developers of multi-family units in non-slum areas. *Id.* at 547-50, 366 N.Y.S.2d at 961-63. Instead, the court asserted that it was unnecessary to consider whether article XVIII is the exclusive source of the legislature's power to authorize tax exemptions. *Id.* at 547, 366 N.Y.S.2d at 961 (construing N.Y. CONST. art. XVIII (housing)). The court pointed out in dictum, however, that deeming article XVIII the sole source of power would constrict the tenor of the legislation. *Id.* at 547-48, 366 N.Y.S.2d at 961. Article XVIII is not the origin of the state's tax exemption power in the area of housing. *Id.* at 548, 366 N.Y.S.2d at 962. Furthermore, article XVI and § 10 of article XVIII are permissive articles of authorization. *Id.* at 548, 366 N.Y.S.2d at 962 (construing N.Y. CONST. art. XVI, §§ 1-6). Section 1 of article XVI states:

The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law. Any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review.

Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.

Id. N.Y. CONST. art. XVI, § 1. Section 10 of article XVIII provides:

The legislature is empowered to make all laws which it shall deem necessary and proper for carrying into execution the foregoing powers. This article shall be construed as extending powers which otherwise might be limited by other articles of this constitution and shall not be construed as imposing additional limitations; but nothing in this article contained shall be deemed to authorize or empower the state, or any city, town, village or public corporation, to engage in any private business or enterprise other than the building and operation of low rent dwelling houses for persons of low income as defined by law, or the loaning of money to owners of existing multiple dwellings as herein provided.

Id. art. XVIII, § 10. Finally, the purposes of article XVIII did not include limiting the state's inherent power to accomplish valid goals in the area of housing. *Akari*, 81 Misc. 2d at 548, 366 N.Y.S.2d at 962.

Thus, *Akari* fails to present the definitive test for determining the constitutionality of tax exemption statutes. For one, the court did not reach the constitutionality issue since its discussion of the inherent nature of the state's taxing power over housing was mere dictum. See BLACK'S LAW DICTIONARY 409 (5th ed. 1979) (dictum is "an *observation or remark* made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar but *not necessarily involved in the case or essential to its determination*") (emphasis added)). Secondly, *Akari* was decided by the New York State Supreme Court for New York County, a court of original jurisdiction. *Akari*, 81 Misc. 2d at 543, 366 N.Y.S.2d at 955; see BLACK'S LAW DICTIONARY 991 (5th ed. 1979) (original jurisdiction is defined as "[j]urisdiction in the first instance"). Thus, the constitutionality of housing tax initiatives such as 421-a will remain unresolved until the New York Court of Appeals decides this issue. See N.Y. CONST. art. VI, § 1 (establishment and organization of unified

the legislature has broad power to establish rational taxation systems and to grant tax exemptions.⁴⁸

B. The Philosophy and Goals of Tax Incentives

Since the purpose of the 421-a program is to increase the number of multi-family units,⁴⁹ it is termed an incentive program.⁵⁰ Incentive programs are "tax expenditure[s] which [induce] certain activities or behavior in response to the monetary benefit available."⁵¹ Such programs indirectly provide monetary assistance for particular goals

court system); *id.* § 2 (court of appeals and judges thereof); *id.* § 3 (jurisdiction of court of appeals, New York's highest court). In other words, the extent to which tax incentives may be provided in non-slum areas and for luxury housing remains an open question. *See generally* N.Y.C. Housing Auth. v. Muller, 270 N.Y. 333, 342, 1 N.E.2d 153, 156 (1936) (article of state housing law providing that city may set up an authority with power of eminent domain for purpose of clearing slum areas to house low income persons does not violate due process clause of state constitution or fourteenth amendment to United States Constitution). The court stated:

Time and again, in familiar cases needing no citation, the use by the legislature of the power of taxation and of the police power in dealing with the *evils of the slums*, has been upheld by the courts. . . . The fundamental purpose of government is to protect the health, safety and general welfare of the public. . . . Its power plant for the purpose consists of the power of taxation, the police power and the power of eminent domain. Whenever there arise, in the State, a condition of affairs holding a *substantial menace to the public health, safety or general welfare*, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. But *if the menace is serious enough to the public* to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable relation to the evil, it seems to be constitutionally immaterial whether one or another of the sovereign powers is employed. The *menace of the slums* in New York City has been long recognized as serious enough to warrant public action.

Id. at 339-41, 1 N.E.2d at 154-55 (citation omitted) (emphasis added). Although *N.Y.C. Housing Authority* substantiates the legislature's powers to stimulate low cost housing in slum areas, it does not reach the issue of luxury housing in non-slum areas. *Id.* at 341-42, 1 N.E.2d at 155.

48. *See supra* notes 19-47 and accompanying text.

49. *See* Legislative Memorandum, *supra* note 9, at 2551.

50. *See infra* note 51 and accompanying text for a definition of the incentive program.

51. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 711 (1970) [hereinafter Surrey]. Tax incentives are generally inferior to the direct subsidy as a method of achieving social goals. Incentives usually are more inequitable and more difficult to administer than direct subsidies. *Id.* at 726-31.

by reducing taxpayer liability—that is, by increasing disposable income.⁵²

Commentators often criticize tax expenditures as invisible, inequitable, and regressive measures that squander scarce public resources.⁵³ In addition, critics argue that the nature of tax expenditures renders budgetary scrutiny and control virtually nonexistent.⁵⁴ Consequently, opponents of tax expenditures assert that such expenditures tend to be economically inefficient⁵⁵ and overly generous.⁵⁶

52. S. SURREY & P. McDANIEL, *TAX EXPENDITURES* 3 (1985) [hereinafter SURREY & McDANIEL]. Disposable income is “[t]he income remaining to persons after deduction of personal taxes and all other payments to governments—the total of all individual savings and consumption expenditures.” *DICTIONARY OF ECONOMICS* 134 (H. Sloan & A. Zurcher 5th ed. 1970) [hereinafter *ECONOMICS*]. Analogously, the same principles should apply to a corporate taxpayer.

53. See RICH GET RICHER, *supra* note 11, at 8 (“troubling has been [New York] City’s growing penchant for relying on tax expenditures, as opposed to direct expenditures, to meet the housing needs of its citizens. It must be remembered that tax expenditures are almost always entitlement programs, open-ended in their fiscal generosity, and subject to little or no budgetary scrutiny and control”); see also C. BRANCATO, Y. BRAUNSTEIN, J. PERICONI & E. HILLMAN, *THE PROBLEM OF REAL PROPERTY TAX EXEMPTION: LEGISLATIVE OPTIONS* 2-3 (1977). Brancato and his associates maintain:

The complete removal of large blocks of taxable properties and the nibbling erosion of taxable revenues from the myriad of partial exemptions skews the entire system. This undermines not only the equitable basis for property tax imposition, but also impedes the efficiency of the system. . . . In addition, the amount of subsidy is not as visible and accessible to scrutiny as other portions of a government’s budget; tax-exemption subsidies can be looked upon as ‘invisible’ budgetary expenditures since they do not appear on the expenditure side of the budget, even though they represent a growing segment of revenue outlays and their imposition results in shifts to other portions of the tax base.

Id. Scholars have debated how the government should promote desired objectives—that is, by direct spending or tax incentives. See, e.g., SURREY & McDANIEL, *supra* note 52, at 1-6, 25-27; Surrey, *supra* note 51, at 713-38. See generally Dolbeare, *The low-income housing crisis*, in *AMERICA’S HOUSING CRISIS: WHAT IS TO BE DONE?* 29, 60-75 (C. Hartman ed. 1983) (discussing need to limit housing-related tax expenditures).

54. RICH GET RICHER, *supra* note 11, at 8.

55. SURREY & McDANIEL, *supra* note 52, at 82-83.

56. RICH GET RICHER, *supra* note 11, at 9. Section 421-a expenditures exceeded New York City’s capital commitments and were almost as great as the city’s funded operating expenses during fiscal year 1983. *Id.* City-funded capital commitments in 1983 equaled \$15,724,000, city-funded operating expenses equaled \$50,224,000 and 421-a costs equaled \$48,100,000. *Id.*; see also R. KUTTNER, *REVOLT OF THE HAVES: TAX REBELLIONS AND HARD TIMES* 170-71 (1980) [hereinafter KUTTNER]. Kuttner stated:

An audit by the city comptroller . . . concluded that of [84] million [dollars] in tax exemptions granted [from February 1977 to August 1978], [56] million [dollars] needlessly went to subsidize projects that probably

The significance of the magnitude of tax expenditures, such as section 421-a, is compounded by the role of real estate taxes in the local economy.⁵⁷ Although some scholars contend that the property tax is regressive,⁵⁸ inequitable,⁵⁹ and disruptive of the housing market,⁶⁰

would have gone forward without the tax subsidy. All told, New York City has [15] billion [dollars] worth of property on its rolls which is not taxed, thanks to one exemption program or another. Between 1973 and 1979, the exempt portion of the city's tax base increased from 35 percent to 41 percent. And the taxes forgone equaled more than a hundred million dollars yearly.

Id.

57: See C. MEEKS, HOUSING 287 (1980) [hereinafter MEEKS]. "The tax policies of local governments, especially on property, affect housing. *Property taxes* influence land price, use, and urban development. They also increase the cost of housing and influence the size and distribution of disposable income." *Id.* (emphasis in original).

58. Regressive taxes are defined as taxes which require poor families to pay a larger percentage of their income in taxes than do wealthy families. PROPERTY TAX REFORM 4 (G. Peterson ed. 1973). Progressive taxes impose a higher tax rate on the rich than the poor. MEEKS, *supra* note 57, at 288; see also G. PETERSON, A. SOLOMON, H. MADJID & W. APGAR, JR., PROPERTY TAXES, HOUSING AND THE CITIES 1-2 (1973) [hereinafter PETERSON & SOLOMON]. According to PETERSON & SOLOMON, *supra*:

[T]he property tax is alleged to be a regressive tax, in the sense that it seems to place a disproportionate financial burden on the poor, especially as compared to alternative[s] . . . such as the income tax. . . . [T]he property tax is compared to a sales tax which instead of being levied on luxury goods, like jewelry or restaurant meals, is imposed on the most vital of man's necessities: his home. This criticism is aimed at the choice of property, especially residential property, as the tax base.

Id. *Contra* KUTTNER, *supra* note 56, at 195 (discussing challenge by revisionist economists to view that property tax is regressive). Some revisionists "argue that since the property tax is a tax on capital, eventually it must filter through the economy to reduce the rate of return on *all* capital. Since by definition the owners of capital are wealthy, the property tax must be a progressive tax." *Id.* at 195 (emphasis in original).

59. PETERSON & SOLOMON, *supra* note 58, at 2. "[T]he property tax is alleged to have inequitable effects across jurisdictions, since wealthy communities are able to raise a given amount of public revenue per household at lower tax *rates* than are poor communities [I]t is the local character of the property-tax system that is judged to be inequitable." *Id.* (emphasis in original).

60. *Id.* Scholars assert:

[T]he property tax commonly is thought to disrupt the operation of the housing market. . . . [T]he imposition of a tax is likely to lead to a lower level of provision of the good in question. The housing market is thought to be no exception. If this reasoning is right, an increase in property-tax rates may lead directly to a lower supply of new housing, or . . . it may discourage upgrading and rehabilitation of the current housing stock and accelerate the decision of landlords in low-income areas to abandon their housing altogether. Variations in the effective rate of property taxation . . . should likewise affect the housing market, since a comparison of tax burdens is one of the calculations that a prudent household will make before deciding where to live.

Id.

it remains the largest source of local revenue.⁶¹ Therefore, by decreasing an important source of funds, exemptions such as section 421-a exert profound multiplier effects⁶² on the economy.

Critics of the tax system also assert that housing tax expenditures are inequitable since they favor those who invest in housing over many other assets.⁶³ As a consequence, the construction of new rental

61. According to some scholars:

[P]roperty taxation continues to account for the bulk of locally raised public revenue in the United States, just as it has throughout the country's history. In 1973 total property tax receipts came to some \$45 billion. And the locally raised portion represented about 85 percent of all tax revenue collected at the municipal level. While it is true that since World War II the property tax has slipped into third place on the list of tax-raising devices in the United States, falling behind the federally administered personal income and social security taxes, for many years the share of property taxes in national income accounts has risen gradually now standing at somewhat more than 4 percent.

Id. at 1; see SETTING MUNICIPAL PRIORITIES 1980, 18 (R. Horton & C. Brecher eds. 1979); *A Defense Against the Trump Tax*, N.Y. Times, July 10, 1984, at 42, col. 1 ("realty taxes produce about half of New York City's tax revenue"); see also P. SWORDS, CHARITABLE REAL PROPERTY TAX EXEMPTIONS IN NEW YORK STATE: MENACE OR MEASURE OF SOCIAL PROGRESS 24-25 (1981) [hereinafter SWORDS]. Swords stated:

[R]evenues from the real property tax constitute the single largest source of financing for local government. At one time property taxes were the major means of financing local government services. There has been a tremendous growth in intergovernmental grants to local municipalities over the past sixty to seventy years, and as a result property taxes have come to defray a smaller part of municipalities' operating budgets. . . . Property tax revenues . . . remain . . . an important continuing source of funding for local governments. The certain availability of this revenue source as compared, for instance, to the vagaries of intergovernment grants contributes to its significance. For many jurisdictions the property tax is the only available tax source. Only large cities have had success with the sales and income taxes.

Id.

62. Multiplier effects refers to the far-reaching consequences of particular actions. See ECONOMICS, *supra* note 52, at 292-93. "As applied to investments, [the multiplier principle is] an explanation . . . as to the way in which an increase or a decrease in new capital formation can cause cumulative effects in the national income through consumer expenditures." *Id.* at 292 (emphasis omitted).

63. Downs, *Too Much Capital for Housing*, 17 BROOKINGS BULL. 1, 1 (1980) [hereinafter Downs]. Downs stated:

Housing is no longer considered merely shelter. Many buyers now view it primarily as an investment that allows them to accumulate capital and to hedge against inflation. . . . [H]ousing as an investment offers extraordinary tax advantages compared to any alternative form of investment, such as corporate stocks, bonds, or even direct investment in small business. . . . The attraction of homeownership is increased by the deductibility of interest payments and property taxes from taxable income.

Id. at 1-2. *Contra* HOW TAXES AFFECT ECONOMIC BEHAVIOR 316-17 (H. Aaron & J. Pechman eds. 1981) (discussing arguments in support of favorable tax treatment of housing: (1) neighboring buildings benefit from improvement of one structure;

units is often economically undesirable to real estate developers.⁶⁴ Although the 1986 Tax Reform Act⁶⁵ includes provisions that are expected to curtail certain mechanisms of financing and profiting from real estate transactions, many benefits will remain intact.⁶⁶ It is against this backdrop that the 421-a program must be examined.

(2) property tax disproportionately burdens residential properties; (3) desirable to encourage saving by low rate of taxation, and housing is form of saving; and (4) homeownership should be stimulated because it produces better neighborhoods and better citizens).

64. See Downs, *supra* note 63, at 3. According to Downs:

[Developers] cannot charge rents high enough to make new units pay, since people would rather buy than pay rents sufficient to provide a fair return. As a result, rental housing is not being built in most areas in significant quantities. Moreover, existing rental units are being converted into condominiums because people will pay far more to own them than to rent them, thanks to the benefits of homeownership. These outcomes are contributing to rental housing shortages in many markets.

Id.

65. I.R.C. (West Supp. 1987).

66. Scardino, *Real Estate Loses Much of its Glory*, N.Y. Times, Mar. 8, 1987, § 12 (Financial Planning Guide: Your Taxes), at 46, col. 2 ("[a]s a result of last year's tax act, the real estate industry may no longer be the most favored child of the Internal Revenue Code, but it is still part of the royal family of investments"). The article discussed the impact of the new tax legislation on real estate. *Id.* The tax advantages include the leveraging of investment, the deductibility of interest costs associated with leveraging, the ability to defer taxes on a home so long as the profits are reinvested in a new residence within two years, and a one-time exclusion on the profits up to \$125,000 for those over 55 years old. *Id.* at 46, cols. 2-3. The new tax law retains many of the benefits. *Id.* at 46, col. 3. The lower tax rates, however, have decreased the after tax value of many of the deductions. *Id.* In addition, the new tax law eliminates the special treatment for capital gains and limits the ability to shelter wages or profits from the stock market by paper losses. *Id.* at 51, col. 1. Depreciation schedules have been lengthened, interest deductions have been limited, and the rules governing installment sales have been curtailed. *Id.*; see also *Report shows new law taxes housing market*, Daily News, Mar. 20, 1987, at 20, col. 1 (stating that developers are adjusting to new tax law). In attractive markets, new projects are being developed with taxable bonds and pension fund money that is loaned in exchange for sharing in the project's income. *Id.* at 20, col. 2. In East Coast markets, characterized by high land costs, developers are rehabilitating prime older buildings. *Id.* These approaches replaced the tax-shelter syndications and tax-exempt bonds used in the 1983-86 real estate boom. *Id.*; see also *Real Estate syndication to top \$12 billion in spite of new tax law adjustment*, Daily News, Mar. 20, 1987, at 22, col. 1 ("[r]eal estate deals are flourishing with a number of new financing methods taking hold and old favorites getting new twists, despite a considerable adjustment to the new tax act"). Stan Ross of Kenneth Leventhal & Co. stated:

At least the marketplace has a tax act and can function again within guidelines and ground rules, Although once declared a dying breed, we expect public real estate syndications to top \$12 billion and private deals to reach \$3.3 billion in 1987, almost double the \$6.3 billion in public partnerships completed in 1986. One change this year is that most

III. Section 421-a

This section will discuss the structure of section 421-a, as well as its legislative history and purposes.

A. Section 421-a Defined

Section 421-a of the Real Property Tax Law,⁶⁷ enacted in 1971,⁶⁸ provides for partial exemptions⁶⁹ from local property taxes for developers who construct new multiple dwellings⁷⁰ in cities with one million or more inhabitants.⁷¹ The legislation applies to construction

syndications have a strong focus on yield or cash flow as opposed to tax shelters.

Id. Other financing methods discussed by Mr. Ross include real estate mortgage investment conduits, passive income generators, master limited partnerships, publicly traded partnerships, A/B partnerships, land leases and land sale-leasebacks, and issuance of preferred stock. *Id.*

67. N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987).

68. *Id.*

69. See *infra* notes 87-126 and accompanying text.

70. See *supra* note 2.

71. The legislation limits the exemption to cities "having a population of one million or more." N.Y. REAL PROP. TAX LAW § 421-a(2)(a) (McKinney 1984). Only New York City has the population required under § 421-a. See Nelson A. Rockefeller Institute of Government, 1985 N.Y. ST. STATISTICAL Y.B. 2, 4. It is interesting to consider this approach in light of the requirement that statutes be of general applicability. See N.Y. CONST. art. XVI, § 1 (power of taxation; exemptions from taxation) ("[e]xemptions from taxation may be granted only by general laws"). In addition, private or local bills granting exemption from taxation on real or personal property are forbidden. See *id.* art. III, § 17 (cases in which private or local bills shall not be passed). The purpose of these provisions is to prevent the passage of legislation relating to private or local matters and to limit the legislature to enacting only general statutes benefiting the state as a whole. *Clay v. Saunders*, 184 Misc. 143, 145, 52 N.Y.S.2d 837, 839 (Sup. Ct. Monroe County 1945). In addition, these provisions are devised to restrict the legislature's ability to deal with purely local matters. *In re Burns*, 155 N.Y. 23, 28, 49 N.E. 246, 247 (1898); *In re Henneberger*, 155 N.Y. 420, 425, 50 N.E. 61, 62 (1898). It is difficult to devise a general rule for determining whether a law is local. *Id.* at 425, 50 N.E. at 62. See generally 56 N.Y. JUR. Statutes §§ 4-7 (1967). In determining whether a statute is general, the courts look to the special circumstances of the case instead of relying upon its form or language. *Henneberger*, 155 N.Y. at 425-26, 50 N.E. at 62. A statute, although of general application by virtue of its language, will be deemed a private or local statute if its conditions restrict it to only one particular case. See *id.* at 426, 50 N.E. at 62. Tax exemption statutes have been upheld despite appearing to be local or private. See *People ex rel. 1170 Fifth Ave. Corp. v. Goldfogle*, 254 N.Y. 476, 478-79, 173 N.E. 685, 685 (1930); *Ferguson v. Ross*, 126 N.Y. 459, 464, 27 N.E. 954, 955 (1891). *Ferguson* held:

[A]n act embracing within its scope all the cities of the state, or all things of a certain class, is a general and not a local act, although by reason of some limitation, based on population or other condition, only a particular city or the inhabitants of a single locality can in the actual

commenced after January 1, 1975 and before January 1, 1990, which is completed no later than December 31, 1991.⁷²

Development must occur on land that, three months before construction began, was vacant, predominantly vacant, underutilized, or improved with a non-conforming use.⁷³ The owner must continue to pay the prior level of taxes during the ten-year period of the exemption as well as all assessments for local improvements.⁷⁴

The statute provides for a ten-year exemption from taxes on the increased value of the land and on the value of improvements made on it.⁷⁵ During construction⁷⁶ and the first two years of the stipulated ten-year period, the exemption encompasses the entire increase in tax liability attributable to such improvements.⁷⁷ For every two years after that point, the exemption decreases by twenty percent.⁷⁸

Rental buildings constructed under section 421-a are subject to the Rent Stabilization Laws.⁷⁹ The New York City Department of Housing Preservation and Development (HPD) has the authority to

situation receive its benefits.

Id. See generally J. Bove, Constitutionality of legislation extending tax exemption for redevelopment companies (April 11, 1974) (unpublished N.Y.C. Hous. & Dev. Admin. Memorandum) (available at *Fordham Urban Law Journal* office) (discussing constitutional limitations on tax exemptions).

72. N.Y. REAL PROP. TAX LAW § 421-a(2)(c)(ii) (McKinney 1984 & Supp. 1987). These dates were modified in 1985, 1981, 1975, and 1973. *Id.*

73. See *supra* notes 4-7.

74. N.Y. REAL PROP. TAX LAW § 421-a(2)(b)(i),-(ii) (McKinney 1984).

75. *Id.* § 421-a(2)(a)(i) to -(v). The statute also authorizes exemption periods of 15 and 25 years provided that certain additional criteria are met. *Id.* § 421-a(2)(a)(ii)(A) to -(C) (McKinney Supp. 1987); see *infra* notes 116-22 and accompanying text. The 25 year exemption also is available in areas where "construction is carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality, or . . . the local housing agency has imposed a requirement or has certified that twenty percent of the units be affordable to families of low and moderate income." N.Y. REAL PROP. TAX LAW § 421-a(2)(a)(iii)(D). This 25 year exemption is not available, however, in Manhattan for tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street." *Id.* § 421-a(2)(a)(iii)(C).

76. The maximum construction period is three years. *Id.* § 421-a(2)(a)(i)(A). "[C]onstruction shall be deemed 'commenced' when excavation or alteration has begun in good faith on the basis of approved construction plans." *Id.* § 421-a(2)(g) (McKinney 1984).

77. *Id.* § 421-a(2)(a)(i)(A) (McKinney Supp. 1987).

78. *Id.* § 421-a(2)(a)(i)(A) to -(E).

79. *Id.* § 421-a(2)(f). The legislation provides that after the exemption period, the rents shall continue to be subject to such control. Decontrol may occur, however, if the unit becomes vacant after the expiration of the period. *Id.* The exemption also is available to developers of cooperatives and condominiums. *Id.* § 421-a(1)(c) (McKinney 1984). The legislation does not limit the prices developers may charge. *Id.* § 421-a(2)(f) (Supp. 1987).

establish the maximum initial rent for the 421-a units.⁸⁰ Although the rents charged are regulated, tenants may be from any income group.⁸¹

B. Legislative History and Purpose of the Program

A shortage of housing, and the lack of construction of multi-family units in the municipalities of New York State, gave rise to the necessity for legislative intervention in the form of a tax exemption for developers.⁸² In urging the legislature to enact the 421-a statute,⁸³ the Legislative Representative of the City of New York asserted that increasing the number of safe and decent dwellings in the state was a priority.⁸⁴ The Representative justified the legislation's approach by referring to a similar program, enacted in

80. *Id.* §§ 421-a(3)(i) to -(iv), (4) (McKinney 1984). See generally *Subsidy*, *supra* note 10, at R20, col. 3. This article asserted:

Over the course of the program, the average initial rent per room in 421a buildings in Manhattan has taken dramatic leaps, which is largely explained by increased land costs. From 1974 through 1977, the average monthly rent was \$140. In 1978, the average jumped to \$230 a room and stayed there through 1980.

In 1981, the average rent increased to \$387, and to \$552 in 1982. In 1983, no average was calculated because there were too few new rental buildings. In 1984, the average was \$569. In 1985, the average jumped to \$770 because one building: Riverterrace, a 410-unit building [in Manhattan] had approved rents of \$1080 per room. [In 1986], the average slipped back to \$617.

Id.

81. See N.Y. REAL PROP. TAX LAW § 421-a(2)(f) (McKinney Supp. 1987) (statute fails to exclude tenants based on income).

82. See Legislative Memorandum, *supra* note 9, at 2551 ("[t]he housing shortage afflicting the municipalities of this State is greatly exacerbated by the virtual cessation of new construction"). *Contra Subsidy*, *supra* note 10, at R20, cols. 3-4. The article stated:

The original intent of the 421a program is shrouded in controversy. Some say the 1971 program was sugarcoating on the pill of the Rent Stabilization Law, enacted in 1969, which harnessed landlord income on a million apartments. Others say it was intended to generate construction employment and was, only incidentally, a housing program.

City housing officials said the subsidy was supposed to encourage residential construction on underutilized sites—marginal sites, presumably, where the subsidy would be an essential counterweight to the development risks perceived by bankers and builders.

Id.

83. At the time that the legislation was enacted, it was referred to as the Section 421 program. The title later was changed to Section 421-a. See Ch. 110, § 1, 1 [1977] N.Y. Laws 167 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)).

84. See Legislative Memorandum, *supra* note 9, at 2551.

1920, that provided tax incentives to reduce a housing shortage in New York City following World War I.⁸⁵

The initial 421-a legislation applied to all newly constructed multiple dwellings with a minimum of ten units.⁸⁶ The legislature intended a full exemption, limited to the value of the improvements,⁸⁷ during

85. *Id.* ("[s]imilar conditions a half century ago caused the state legislature to authorize local laws granting tax exemption[s] to new units for a brief period. This program acted as a tremendous stimulus to new construction") (citation omitted). The goals of the 1920's program and the controversy it engendered are analogous to the goals of 421-a and the debate regarding its merits.

The wisdom of the law was not universally acclaimed. Many felt that it would cause a serious loss of revenue to the city. Others objected to it as class legislation, insisting that a shift in tax burdens would result. Supporters of the measure pointed out that building operations were at a complete standstill; without tax exemption[s], no new buildings would be constructed. . . . There existed . . . a choice between no buildings with no tax, or untaxed new buildings. Since the exemption would ultimately provide a great source of permanent revenue, the proponents . . . argued that the city had little or nothing to lose financially and much to gain in improved general welfare. Tax exemption was a far wiser step than cash subsidies or public building.

CITIZENS' HOUSING AND PLANNING COUNCIL OF NEW YORK, INC., HOW TAX EXEMPTION BROKE THE HOUSING DEADLOCK IN NEW YORK CITY 1-8 (1960) [hereinafter HOUSING DEADLOCK]. The legislation stimulated a building boom.

Although [the] tax exemption stimulated new building, it did not achieve the more general aim of lowering rents through an equalization of supply and demand. The supply of buildings continued to increase for four years, but so did the rentals, especially in low-cost housing. It became obvious that, in spite of the limitations in the ordinance, the type of multi-family housing being built was for that level of apartment dweller who had never really felt the serious pressure of the housing shortage. Low-cost housing was not being produced. Consequently, . . . the city further limited the ordinance, granting to multi-family housing a total exemption of only \$15,000 per house. The limitation reflected the belief . . . that multi-family housing did not really need the benefits of the exemption. Rents in these new buildings, not subject to control, were generally much higher than in the old buildings. The benefits of the exemption were being retained by the speculators and the builders, rather than being passed on to the tenants in the form of low rents. The construction of multi-family housing did not decrease after the limitations; the high rents were a sufficient inducement to build.

Id. at 1-10.

86. Ch. 1207, §§ 1-2, II [1971] N.Y. Laws 3124-25 (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)). Hotels were excluded from the exemption. *Id.*

87. *See id.* The legislation further required the developer to pay at least the amount of the taxes paid on the land and any improvements thereon during the tax year before construction started. *Id.* In addition, the developer was prevented from concurrently receiving any additional exemption. *Id.*

construction and the first two years.⁸⁸ Thereafter, the exemption was phased out gradually during the ten-year period.⁸⁹

The legislation further mandated that rents charged on initial occupancy after construction be at least fifteen percent less than those in comparable newly constructed units.⁹⁰ The rents were to be subject to the provisions of any local rent stabilization law for a period of ten years, or the period of the rent stabilization law, whichever was shorter.⁹¹ When such time period elapsed, the rents were to be decontrolled, unless any other applicable law would mandate to the contrary.⁹²

Since the enactment of 421-a in 1971, the New York State Legislature and the New York City Council have modified it considerably.⁹³ The 1975 provisions, for example, altered the method for determining the amount of rent that landlords could initially charge in units constructed with the benefit of the exemption.⁹⁴ As was the case under the 1971 legislation, the revised legislation provided for decontrolling the apartments, unless any applicable law required otherwise.⁹⁵ In addition, the amendment expanded the number of eligible units to include rehabilitated multiple dwellings.⁹⁶

In 1976, the legislature adopted amendments which related to the ability of the local housing agency to rescind certificates of eligibility

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. The legislation was amended in 1985, 1984, 1983, 1981, 1978, 1977, 1976, 1975 and 1973. For a complete text of all the amendments, see Ch. 289, § 1, 4-5, 1 [1985] N.Y. Laws 679, 680-81 (McKinney); Ch. 288, §§ 1-4, 8, 1 [1985] N.Y. Laws 672-76, 678 (McKinney); Ch. 346, §§ 1-3, II [1984] N.Y. Laws 1939-40; Ch. 401, §§ 7-8, II [1983] N.Y. Laws 1769-71; Ch. 995, §§ 1-2, II [1981] N.Y. Laws 2598-2601; Ch. 655, § 111, [1978] N.Y. Laws 1334 (McKinney); Ch. 506, § 1, [1978] N.Y. Laws 900-904 (McKinney); Ch. 560, §§ 1-2, 1 [1977] N.Y. Laws 824-26 (McKinney); Ch. 110, §§ 1-2, 1 [1977] N.Y. Laws 167 (McKinney); Ch. 703, §§ 1-3, 2 [1976] N.Y. Laws 1468-70 (McKinney); Ch. 857, §§ 1-3, [1975] N.Y. Laws 1368-74 (McKinney); Ch. 480, §§ 1-2, I [1973] N.Y. Laws 1645-47; Ch. 1207, §§ 1-2, II [1971] N.Y. Laws 3124-25. For the current version of this law, see N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987). This Note will discuss only those changes deemed pertinent to an analysis of the merits of the program.

94. Ch. 857, § 1, [1975] N.Y. Laws 1371-73 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)). The local housing agency was charged with determining the amount of the initial adjusted monthly rent. *Id.* at 1371. The legislation set forth a formula, which included such items as the total project cost and the total expenses of the multiple dwelling. *Id.* at 1371-73.

95. *Id.* at 1371.

96. *Id.* at 1371-73.

for an exemption.⁹⁷ Specifically, the amendments provided that on or after July 1, 1976, the agency could no longer rescind preliminary or permanent certificates of eligibility.⁹⁸ The next amendment, in 1977, extended the 421-a program for an additional four years.⁹⁹

The 1978 amendments expanded the scope of the program by eliminating the requirement that the buildings contain more than six dwelling units.¹⁰⁰ The next series of amendments, in 1981, subjected 421-a non-condominium or cooperative units to the rent stabilization laws.¹⁰¹ The amendments also authorized HPD to promulgate regulations eliminating certain geographic areas from the program.¹⁰² HPD could exclude areas that either: (1) no longer had a significant need for tax incentives; or (2) should be used primarily as the site for non-residential construction.¹⁰³

97. Ch. 703, §§ 1-3, 2 [1976] N.Y. Laws 1468-70 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)).

98. *Id.*

99. Ch. 560, §§ 1-2, 1 [1977] N.Y. Laws 824-26 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)). In setting forth the reasons for extending the program, the New York City Legislative Representative stated:

[The program] . . . is responsible for and/or used in tandem with over ninety per cent of New York City's new construction of residential multiple dwellings, condominiums and cooperative housing. The construction industry is a major source of employment for New York City. The middle income residents attracted to these units represent a significant portion of the city's taxpayers.

When this program lapsed in 1975 for three months, new residential construction starts fell by 75%. The financing institutions have expressed concern about providing construction funds or mortgages for structures which may not be able to complete construction prior to the December 31, 1979 expiration date presently in the law, and they will soon act on this concern through a negative, passive failure to commit funds.

Memorandum of Legislative Representative of City of New York, *reprinted in* [1977] N.Y. Laws 2370-71 (McKinney 1977).

100. Ch. 506, § 1, [1978] N.Y. Laws 900 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)). In § 2, the legislature exempted certain private dwellings and improvements from local taxation. *Id.* at 902-904 (current version at N.Y. REAL PROP. TAX LAW § 421-b (McKinney 1984 & Supp. 1987)). The new program, beyond the scope of this Note, was referred to as section 421-b. *See id.* In 1978, the amendment clarified that the New York City housing agency referred to in the legislation is the Department of Housing Preservation and Development. *See* Ch. 655, § 111, [1978] N.Y. Laws 1334 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)).

101. Ch. 995, § 1(f), II [1981] N.Y. Laws 2598, 2601 (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)).

102. *Id.* at 2600.

103. *Id.* at 2600-2601. Regulations designating preservation areas became effective immediately. *Id.* at 2600. In contrast, regulations regarding areas no longer needing exemptions became effective after two years. *Id.* at 2601.

Amendments enacted in 1983 authorized certain cities to enact local laws to "restrict, limit or condition the eligibility, scope or amount of the benefits . . . in any manner, provided that the local law may not grant benefits greater than those [already] provided . . ."¹⁰⁴ Furthermore, the amendment eliminated from the scope of 421-a rehabilitated multiple dwellings and multiple dwellings resulting from the rehabilitation of existing non-residential buildings.¹⁰⁵

In 1984, the legislature adopted amendments mandating that buildings completed after January 1, 1974 remain stabilized through May 15, 1985, with the exception of those units subject to vacancy decontrol.¹⁰⁶ The legislature also enacted in 1984 a provision requiring the New York City Board of Estimate¹⁰⁷ to approve any local law restricting, limiting, or conditioning the eligibility, scope, or amount of the 421-a benefits.¹⁰⁸ Furthermore, the legislature prevented such local laws from becoming effective until one year after their approval by the Board of Estimate.¹⁰⁹

In 1984, using authority granted by the legislature in 1983, the New York City Council passed supplementary restrictions to the 421-a program.¹¹⁰ The legislation limited eligibility in the following manner: (1) areas in Manhattan qualifying for the exemption were further reduced;¹¹¹ and (2) sites formerly containing non-residential

104. Ch. 401, § 8, II [1983] N.Y. Laws 1771 (current version at N.Y. REAL PROP. TAX LAW § 421-a(2)(i) (McKinney 1984 & Supp. 1987)).

105. *Id.* § 7 at 1769.

106. Ch. 346, §§ 1, 3, II [1984] N.Y. Laws 1939, 1940 (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)). The amendment included anti-harassment provisions—specifically, the apartment would remain stabilized if the commissioner of the housing agency or a court found that the apartment had become vacant because the landlord or his agent had harassed the tenant. *Id.* at 1939.

107. The New York City Board of Estimate consists of the mayor, the comptroller, the president of the council, and the presidents of the city's five boroughs. NEW YORK, N.Y., CHARTER ch. 3, § 61 (1986). *See generally id.* §§ 62-68 (discussing operation of board).

108. Ch. 346, § 2, II [1984] N.Y. Laws 1939-40 (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)).

109. *Id.*

110. NEW YORK, N.Y., ADMIN. CODE ch. 2, § 11-245 to -245.1 (1986).

111. *Id.* § 11-245. The code provides that projects within the excluded zone remain eligible for an exemption if one of the following criteria are met:

(1) [C]onstruction [is] carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality, or (2) . . . the department of housing preservation and development has imposed a requirement or certified that twenty percent of the units be affordable to households of low and moderate income, or (3) con-

properties were required to be underutilized for at least thirty-six months prior to commencing construction.¹¹²

The 1985 amendments limited the open-ended definition of "construction period" to a maximum of three years.¹¹³ Furthermore, the legislation restricted the geographical areas in New York City qualifying for the exemption.¹¹⁴ Within the excluded zone, however, exemptions lasting up to a period of fifteen years¹¹⁵ would be available

struction [is] carried out pursuant to an agreement with the department of housing preservation and development to create or substantially rehabilitate housing units affordable to households of low and moderate income in a geographic area or areas outside the [excluded zone], provided that the number of such low and moderate income units must be equal to at least twenty percent of the number of units in the building [or] buildings located in the [excluded zone] which receive benefits pursuant to [§ 421-a].

Id. § 11-245(b)(1)-(3). The code authorizes the Department of Housing Preservation and Development to promulgate rules and regulations to achieve the purposes of the legislation. *Id.* § 11-245(e). Rules and regulations regarding these provisions became final as of August 27, 1987. City Rec., Sept. 3, 1987, at 3099, col. 2. An analysis of these regulations was impossible because of the publication schedule for this Note. Specifically, data is needed regarding the number of units actually constructed pursuant to the new regulations.

112. *Id.* § 11-245.1. The 421-a legislation merely requires that construction "take place on land which, thirty six months prior to the commencement of such construction was . . . under-utilized." N.Y. REAL PROP. TAX LAW § 421-a(2)(d) (McKinney 1984). The legislation does not distinguish between land formerly improved with residential as opposed to non-residential properties. *Id.* In contrast, the City Council's legislation restricted the standard of underutilization with regard to sites formerly containing non-residential properties. NEW YORK, N.Y., ADMIN. CODE ch. 2, § 11-245.1 (1986). The standard for land improved with a nonresidential building or buildings is as follows:

[T]he underutilization of the land must have been such that each building or buildings: (1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a floor area ratio which was twenty percent or less of the maximum floor area ratio for residential buildings, or (2) has an assessed valuation equal to or less than twenty percent of the assessed valuation of the land on which the building or buildings were situated, or (3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

Id. § 11-245.1(a)(1)-(3).

113. Ch. 288, § 1, 1 [1985] N.Y. Laws 672-73 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)).

114. *Id.* at 673-74.

115. *Id.* at 673. During the construction period, the exemption is 100%. Following the project's completion, the exemption is 100% for years one through 11. Thereafter, the exemption decreases by 20% each year. *Id.*

only by fulfilling certain conditions. Specifically, exemptions would be provided if: (1) the development was carried out with the substantial help of grants, loans, or subsidies from any federal, state, local agency, or instrumentality; or (2) HPD had required or certified that twenty percent of the units be affordable to low and moderate income families.¹¹⁶

The 1985 legislation also authorized a twenty-five year exemption¹¹⁷ provided that the project was situated in: (1) a neighborhood preservation program area;¹¹⁸ (2) an area eligible for mortgage insurance provided by the rehabilitation mortgage insurance corporation;¹¹⁹ or (3) an area receiving funding for a neighborhood preservation project under the Neighborhood Reinvestment Corporation Act.¹²⁰ Furthermore, the legislation extended the program to projects commenced before January 1, 1990 and completed no later than December 31, 1991.¹²¹

In summary, as of 1985,¹²² the primary provisions of section 421-a include a ten year exemption¹²³ from an increase in property taxes resulting from the construction of new multiple dwellings.¹²⁴ In Manhattan, the areas eligible to receive exemptions were substantially restricted.¹²⁵ Exceptions exist, however, enabling developers who fulfill certain criteria to still receive exemptions within the excluded zone.¹²⁶

116. *Id.*

117. *Id.* at 674-75. During the construction period, the exemption is complete. Following the completion of the work, the exemption is 100% for years one through 21. Thereafter, the exemption decreases by twenty percent each year. *Id.*

118. *Id.* The legislation states that the local housing agency or the New York City Planning Commission is to determine whether the site is within a neighborhood preservation program area. *Id.*

119. *Id.*

120. *Id.* (citing Neighborhood Reinvestment Corporation Act, 42 U.S.C. §§ 8101-8146 (1983 & Supp. 1987)).

121. Ch. 288, § 2, 1 [1985] N.Y. Laws 675 (McKinney) (current version at N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987)). The prior legislation required developers to start the projects before January 1, 1986, and complete them by December 31, 1987.

122. This Note analyzes the modifications to the § 421-a legislation through September 3, 1987. As of that date, the legislature had not amended the program since 1985. See N.Y. REAL PROP. TAX LAW § 421-a (McKinney Supp. 1987).

123. See *supra* notes 117-22 and accompanying text for a discussion of the 15 and 25 year exemptions authorized under the program.

124. See N.Y. REAL PROP. TAX LAW § 421-a(2)(a)(i) (McKinney Supp. 1987).

125. See *id.* § 421-a(2)(a)(iii)(C).

126. *Id.* § 421-a(2)(a)(ii)(C), (2)(a)(iii)(A), (2)(a)(iii)(D).

IV. Analysis of the 421-a Program and its Application to Luxury Housing

While the residents of the South Bronx make do with vinyl decals of potted plants stuck on abandoned buildings, the wealthy of the Upper East Side get marble bathrooms and health clubs, courtesy of the taxpayers.¹²⁷

This section will analyze the scope of the 421-a program. It will conclude that the construction of luxury units, per se, does not render the program undesirable. Luxury development contributes by: (1) easing the housing shortage; and (2) strengthening the local economy.

The New York City rental market, termed the oldest housing shortage in America,¹²⁸ has been likened to a unique Rube Goldberg contraption¹²⁹—a contraption that is guaranteed to maintain the high cost of rental units and thereby justify its continued existence.¹³⁰ Specifically, New York City residents face a “nightmarish ordeal”¹³¹ to find satisfactory housing, the number of federally subsidized low-income apartments is insufficient,¹³² and the vacancy rate is extremely low.¹³³ Furthermore, analysts predict that the availability of housing will decrease even further in the foreseeable future, especially for moderately priced rental apartments.¹³⁴

127. See *A move to evict luxury nontax*, Daily News, Sept. 18, 1984, at 12, col. 3 (quoting Councilwoman Ruth Messinger).

128. *Rent Curbs Foster Inequities Among Tenants, Experts Say*, N.Y. Times, June 3, 1985, at A1, col. 5 (quoting Dr. George Sternlieb, Director of the Center for Urban Policy Research at Rutgers University) [hereinafter *Rent Curbs*].

129. Rube Goldberg contraption refers to “[a] much overcomplicated machine or arrangement.” NEW DICTIONARY OF AMERICAN SLANG 364 (R. Chapman ed. 1986).

130. *Rent Curbs*, *supra* note 128, at A1, col. 6 (quoting Dr. George Sternlieb).

131. RICH GET RICHER, *supra* note 11, at 4.

132. *Id.* at 3.

133. *Id.* at 4 (vacancy rate refers to number of apartments offered for rent); see also M. STEGMAN, HOUSING IN NEW YORK: STUDY OF A CITY, 1984, 3 (1985) [hereinafter HOUSING IN NEW YORK]. The overall vacancy rate in 1984 was 2.04%. *Id.* The rate was 2.13% in 1981. *Id.* The city lost 69,000 housing units from 1981-1984. *Id.* at 8. During the same period, however, 81,000 units were rehabilitated or built, resulting in a net increase of 12,000 units. *Id.*

134. RICH GET RICHER, *supra* note 11, at 4; see also *The Illusive Low-Rent Apartments*, N.Y. Times, Apr. 12, 1987, at R1, col. 2 (discussing difficulty in finding bottom-of-the-market apartments in New York City) [hereinafter *The Illusive Apartments*]; *Tightening State's Grip on Housing*, N.Y. Times, Feb. 1, 1987, at

The nature of the rental market in New York City results from a confluence of factors. In particular, the city's rent regulations,¹³⁵

R6, col. 1 (explaining that shortage is of affordable apartments in decent condition in neighborhoods where rental seekers desire to live).

135. The legislature found a "serious public emergency" in housing in New York State when it authorized rent regulations. See N.Y. UNCONSOL. LAWS § 8622 (McKinney Supp. 1987). The regulations must be based upon a finding of a local housing emergency—a vacancy rate less than five percent. *Id.* § 8623(a). Once a housing emergency is declared, it continues until the local governing body reaches a contrary finding or concludes that the regulations fail to abate such emergency. *Id.* § 8623(b); see THE REAL ESTATE BOARD OF NEW YORK, INC., 1985 HOUSING IN CRISIS: 1985, 15 (1985) [hereinafter HOUSING IN CRISIS].

Rent control has been in effect in New York City since 1942. Originally enacted as part of the emergency wartime wage and price freeze, rent control was designed by the federal government to curb temporarily the inflation induced by the war effort It should be noted, however, that the freeze, while doing nothing to help housing, also did little harm because the costs of fuel, labor and materials were also frozen at that time.

Rent stabilization, the successor program to rent control, was enacted in 1969 to cover units in post-war buildings containing six or more apartments, and has since been applied to units which formerly were rent controlled. At present, about two-thirds of the stabilized units are in pre-war buildings. It, too, was promoted as a temporary measure and is designed to self-destruct once a 5 percent vacancy rate is achieved. The problem is that the regulations themselves help assure that a healthy vacancy rate will not be attained. By depressing income, they simultaneously discourage production and maintenance of the existing rental stock while artificially increasing demand by capping rents below market, or in some cases, even below cost of providing mandated levels of service.

Id.; see *Rent Curbs*, *supra* note 128, at B5, col. 3 (regulations increase costs of new buildings so dramatically that rent necessary to make such buildings commercially viable can only be charged in Manhattan; and the regulations cause landlords to abandon older housing stock); see also *The Illusive Apartments*, *supra* note 134, at 20. Some owners contend:

[L]ow rents make it impossible to run a building, and, in the end, fan antagonism between [the owners] and their tenants. [Owners] are especially perturbed by instances where low-rent apartments are held by people who clearly can afford to pay much more.

[In addition,] when rents are too low to cover expenses and support a reserve fund for emergencies, the buildings themselves deteriorate.

Id.; see *State to Compare Rents with Incomes*, N.Y. Times, Apr. 19, 1987, at R1, col. 2 (discussing study comparing rents charged in regulated buildings with incomes of the residents). According to the study:

[New York City's] housing market is filled with anomalies and distortions that tend to turn reality on its head. There is a crushing demand for housing, yet developers do not build anything affordable by any part of the population but the upper middle class. Some people live in far more space than they need, while others squeeze whole families into closet-sized apartments. People who could afford to pay far more live in bargain penthouses for decades, while working families on the lower end of the economic scale move from place to place, paying more each

the high costs of buying land and constructing buildings,¹³⁶ the city's land use policies¹³⁷ and the conversion of buildings into cooperatives and condominiums¹³⁸ have all contributed to the housing crisis. The 421-a program must be assessed within this context.

time for less of an apartment. Personal decisions such as when to marry, or whom, or whether to have children, become, in New York, matters of real estate.

Id. at R13, col. 1. *But see* Achtenberg, *The Social Utility of Rent Control*, in *HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES* 427 (R. Montgomery & D. Mandelker eds. 1979) ("[w]hile rent control [in New York City] has not reduced rents to levels that low and moderate income tenants would consider 'fair,' in terms of ability to pay, it has left them considerably better off than they would have been in an uncontrolled market"). Achtenberg states:

Past experience offers little evidence that control of the existing stock has substantially deterred new housing construction. The volume of housing construction generally in the postwar period, and specifically in New York City during the past 25 years, has not been out of line with available resources In general, it appears that broader economic factors—such as the availability and cost of land and mortgage money—are far more critical than rent control in determining the volume of new housing construction.

Id. at 429.

A more detailed analysis of rent regulations in New York City exceeds the scope of this Note. For additional information, see Stegman, *The Model: Rent Control in New York City*, in *THE RENT CONTROL DEBATE* 29 (P. Niebanck ed. 1985).

136. *See, e.g., Facing Up to the Housing-Supply Issue*, N.Y. Times, Dec. 29, 1985, at R1, col. 2 (quoting John D. Schick, a partner at Widnell & Trollope, an international cost consulting company) [hereinafter *Housing Supply*].

"There is no question that building in New York City is the most expensive of any place in the lower 48 states. . . ." Construction costs, for example, are 30 percent more expensive than in Alabama, where wage rates are half those in New York, and productivity averages 20 to 30 percent higher—and, in some cases, 100 percent higher.

Id. at R6, col. 2; *The Controversy Over Apartment Tax Breaks*, N.Y. Times, Oct. 21, 1984, at E6, col. 1. Real estate developers contend that the cost of constructing buildings in New York City makes it uneconomical to develop anything other than luxury housing. *Id.* Richard M. Rosan, of the Real Estate Board of New York, asserts that development costs are \$185 per square foot. This figure includes the cost of land, bricks, mortar, architectural fees and interest. *Id.* Therefore, a 1,000 square-foot, two-bedroom apartment costs \$185,000 to build. *Id.* Such an apartment, he contends, would rent for \$3,100 per month, assuming the landlord did not receive an abatement. *Id.*

137. Rose, *Rental Housing: A Sad Case*, N.Y. Times, Aug. 23, 1986, at 23, col. 2 ("[o]ur land-use policies rule out residential development of vast areas, such as most of the lower West Side of Manhattan"). The author points out that housing production in the United States has averaged 1.7 million to 1.8 million units per year. *Id.* New York City should produce 50,000 units per year because it represents three percent of the nation's population. *Id.* In practice, however, only 10,000 units are constructed during an average year. *Id.*

138. *HOUSING IN NEW YORK*, *supra* note 133, at 204 (estimates net loss of rental units due to conversion as 42,612 units—3.1% of 1984 rental housing stock). *Contra* *HOUSING IN CRISIS*, *supra* note 135, at 26-29 (discussing benefits of conversion).

Proponents of 421-a contend that the program not only retains the work force as residents but attracts new residents to the city as well.¹³⁹ In addition, they argue that the young, well-educated, highly paid tenants of 421-a buildings will contribute to the local economy.¹⁴⁰ Factors that strengthen the tax base include the following: (1) increased spending and taxes that tenants pay;¹⁴¹ (2) construction expenditures;¹⁴² and (3) higher assessments on the property once the exemption ends.¹⁴³ Thus, the cost of foregone tax revenue is more than offset by the program's long-range benefits.¹⁴⁴

139. See K. FORD, HOUSING POLICY AND THE URBAN MIDDLE CLASS xvi-xvii (1978) [hereinafter HOUSING POLICY].

140. *Id.* at 201. Ford contends:

The diagnosis of an adversary relationship existing between rich and poor within cities is substantially fallacious. If the poor are to secure the means of bettering their status, if bridges are to be provided to middle class roles, then the presence of the more affluent is required to create a healthy business climate. If a city is to have an independent income which permits it to provide a unique and attractive variety of specialized services, it requires a tax base of substance. A sturdy tax base is founded largely upon the presence of the affluent.

Id. at xxiv-xxv.

141. See, e.g., *id.* at 201. "By encouraging . . . new construction, New York City is adding attractive housing options to its stock of dwelling units. These are providing homes for young, well-educated, highly paid tenants . . . who make important contributions of their skills and their spending to the city's economy." *Id.* "George Sternlieb . . . concluded that the costs of the Section 421 provisions were probably exceeded by its economic benefits if the multiplier effects of spending induced by the program were taken into account." *Id.* at 56-58 (citing G. STERNLIEB, E. ROISTACHER & J. HUGHES, TAX SUBSIDIES AND HOUSING INVESTMENT 6 (1976)). See generally *id.* at xiv. "[T]he city economy is helped if housing policies increase the number of city residents, specifically those who spend far more in private goods and services in New York than they demand in services or payments supported by the city treasury." *Id.*; see *The 'Cost,' supra* note 18, at R22, col. 5 (New York City will receive \$5 billion in taxes from residents of 421-a buildings that it would not have received if such residents lived elsewhere).

142. See HOUSING POLICY, *supra* note 139, at 58 (citing D. FANKUCHEN, A REVIEW OF REAL ESTATE TAX INCENTIVE PROGRAMS IN NEW YORK CITY, MARCH 1977, 16-17 (1977) (\$20 million worth of new construction was generated by 421-a during 1976, supporting between 680-850 jobs).

143. See *Subsidy, supra* note 10, at R20, col. 3 ("[i]n the last six years, the [City's] finance department valued new 421-a projects at \$3.5 billion and these projects paid \$313 million in real estate taxes. If the buildings had not been built, the tax receipts on the undeveloped property would only have been a fraction of that figure").

144. See *The 'Cost,' supra* note 18, at R22, col. 5.

[O]ver the next 20 years the buildings receiving [421-a] benefits [will] pay nearly \$4.5 billion in real estate taxes alone. The city will receive an additional \$5 billion in other taxes from the residents in those buildings that it would not have received if they were living elsewhere. [The question remains whether] \$551 million is a lot to invest in order to generate a total return of \$10 billion?

Citizens groups condemn the 421-a program and refer to it as a scandalous waste of public funds that provides for the wrong economic constituency—upper-income individuals.¹⁴⁵ They argue that the legislature should instead target incentives to low- and middle-income housing; wealthy individuals should not reside in buildings receiving abatements.¹⁴⁶ Additionally, some critics argue that developers would have constructed the luxury buildings regardless of the exemption.¹⁴⁷

In fact, economists and developers explain that tax programs such as 421-a that uniformly reduce development costs tend to increase the value of land.¹⁴⁸ Consequently, "[l]and sellers . . . appear to be the primary beneficiaries of [421-a] in that . . . the benefits are already incorporated in the price of the property being offered."¹⁴⁹ Accordingly, the ultimate value of 421-a to developers is diminished because the exemption has stimulated the market thereby increasing the price of land.¹⁵⁰

Citizens groups, on the other hand, point to the contrast between the luxury housing market and its moderately priced counterpart.¹⁵¹

Even if one were to compute the present value (discounted for future inflation) of . . . future benefits [from 421-a] and compare them with the current costs of the program, the cost-benefit ratio would still be one to seven. In other words, even if six out of seven buildings receiving 421-a benefits would have been built without incentives, the program would still have been a success. The one building in seven that would not otherwise have been built will pay enough taxes to recoup the benefits provided to the remaining buildings.

Id.

145. RICH GET RICHER, *supra* note 11, at 3.

146. *Id.*

147. See *Subsidy*, *supra* note 10, at R20, col. 5 (quoting Assemblyman Grannis). Jeffrey Glick, the only major developer in New York who has completely ignored the new 421-a program, stated: "Right now, I don't need 421a. People said construction would end when 421a ended [in the restricted zone], but I'm building and I don't find it to be a problem at all." *Id.* at R21, col. 4. *Contra id.* at col. 2 (Arthur Margon, Senior Vice-President of Real Estate Board of New York, stated that "[t]he concept of foregone taxes is erroneous because a substantial number of these buildings would not have been built without the program"). See generally *New Rules on 421a Tax Incentives*, N.Y. Times, Jan. 11, 1987, at R6, col. 3 ("[s]ince developers do not have to figure full taxes in preconstruction cost projections, their projects become more economically feasible with 421a designation and can be undertaken with normal bank financing").

148. See *Subsidy*, *supra* note 10, at R20, col. 5.

149. *Id.* (quoting Winthrop D. Chamberlain, partner at Orb Management Co.)

150. See *id.* On the other hand, some argue that development became more dependent on 421-a to the extent that the exemption was incorporated into inflated land prices. *Id.*

151. RICH GET RICHER, *supra* note 11, at 4.

Luxury condominiums, cooperatives and rentals, particularly in Manhattan, are largely unaffected by the problems of scarcity and decline.¹⁵² For instance, the sales volume for condominiums increased 103 percent from \$365,000,000 in 1982 to \$738,000,000 in 1983.¹⁵³ More than 2,325 new condominium apartments were prepared for occupancy in 1983.¹⁵⁴ Prices in these buildings ranged from \$90,000 to \$140,000 for studios, from \$110,000 to \$237,000 for one-bedroom apartments, and from \$256,000 to \$645,000 for two-bedroom apartments.¹⁵⁵

Despite the relatively strong market for luxury housing in Manhattan, such units have remained eligible for the 421-a exemption since the program was enacted by the legislature.¹⁵⁶ The HPD promulgated regulations in 1976, however, which might have limited the development of luxury units.¹⁵⁷ These regulations defined the statutory term underutilized land as "land or space which was substantially underutilized by virtue of the fact that . . . it is occupied by functionally obsolete non-residential or residential buildings."¹⁵⁸

HPD's use of these regulations in 1981 to deny the abatement application for the Trump Tower represented a turning point in the history of 421-a; its goals and criteria were brought into sharp focus by the *Trump-Equitable Fifth Ave. Co. v. Gliedman* litigation.¹⁵⁹ In

152. *Id.*; see *Housing Supply*, *supra* note 136, at R1, col. 2 to R6, col. 1 ("private developers in the city have found it feasible in recent years to build only for-sale housing for middle- to upper-income buyers, or, occasionally, expensive rentals").

153. RICH GET RICHER, *supra* note 11, at 4.

154. *Id.*

155. *Id.*

156. See N.Y. REAL PROP. TAX LAW § 421-a (McKinney 1984 & Supp. 1987) (statute does not exclude luxury housing).

157. See Housing and Development Rules and Regulations Governing 421 Partial Tax Exemption, § 4(b)(iii) (1976), *quoted in* *Trump-Equitable Fifth Ave. Co. v. Gliedman*, 87 A.D.2d 12, 15, 450 N.Y.S.2d 321, 323 (1st Dep't), *rev'd*, 57 N.Y.2d 588, 443 N.E.2d 940, 457 N.Y.S.2d 466 (1982), *later proceeding*, 98 A.D.2d 487, 471 N.Y.S.2d 580 (1st Dep't), *rev'd*, 62 N.Y.2d 539, 467 N.E.2d 510, 478 N.Y.S.2d 846 (1984).

158. *Trump*, 87 A.D.2d at 15, 450 N.Y.S.2d at 323.

159. See *id.* at 12-20, 450 N.Y.S.2d at 321-26. Donald Trump, in a joint venture with Equitable Life Assurance Society of the United States, constructed a 49-story building with 266 luxury condominiums and 18 floors of retail and commercial space on Fifth Avenue. *Id.* at 13, 450 N.Y.S.2d at 322. The tower was built on the former site of Bonwit Teller and Company, whose 12-story building was constructed in 1930 and subsequently demolished. *Id.* Prices for apartments started at \$407,000 for the smallest one-bedroom apartment. *Id.* The price of triplexes was greater than \$3,150,000. *Id.*

Donald Trump contended that the exemption should have been granted because "a structure of greater height, more completely utilizing the site, might have been a better utilization." *Id.* at 17, 450 N.Y.S.2d at 324. HPD denied Trump's ap-

deciding the *Trump* case, the New York Court of Appeals examined the regulations in the context of the program's legislative history.¹⁶⁰ In so doing, the court discovered that income restrictions were nonexistent.¹⁶¹ Specifically, the housing shortage was discussed in the most general terms; nothing was stated to imply that the program was supposed to stimulate low- and middle-income housing.¹⁶²

The *Trump* court therefore found that the legislature had not restricted the exemption to low- and middle-income housing.¹⁶³ "421-a requires only 'underutilization' of the land. . . . [T]he statute does not require 'substantial' underutilization."¹⁶⁴ Additionally, the luxurious nature of the Trump Tower was irrelevant.¹⁶⁵

In reaching its decision, the court of appeals ignored the lower court's reasoning that: (1) granting an exemption for the building would provide an incentive for landlords to tear down numerous buildings in prime locations throughout New York; and (2) it was necessary to consider the aggregate impact of individual exemptions.¹⁶⁶ In other words, more landlords might eventually be induced to tear down profitable buildings so that they could also receive an

plication for an abatement "on the ground that the land had not been underutilized within the meaning of the statute and the HPD regulation." *Id.* at 13, 450 N.Y.S.2d at 322. Mr. Trump ultimately prevailed in the court of appeals. *Trump*, 62 N.Y.2d at 547, 467 N.E.2d at 514, 478 N.Y.S.2d at 850.

160. See Legislative Memorandum, *supra* note 9, at 2551, *cited in Trump*, 62 N.Y.2d at 542-43, 467 N.E.2d at 511-12, 478 N.Y.S.2d at 848.

161. *Trump*, 62 N.Y.2d at 542-43, 467 N.E.2d at 511-12, 478 N.Y.S.2d at 848.

162. See Legislative Memorandum, *supra* note 9, at 2551 ("[n]o efforts should be spared to increase the number of safe and decent dwelling units in our cities"), *cited in Trump*, 62 N.Y.2d at 542-43, 467 N.E.2d at 511-12, 478 N.Y.S.2d at 848; see also *Teleon Realty Corp. v. City of New York*, 88 Misc. 2d 767, 771, 391 N.Y.S.2d 282, 285 (Sup. Ct. N.Y. County 1977) ("statute has a specific and limited purpose: to encourage residential construction"), *modified*, 68 A.D.2d 858, 414 N.Y.S.2d 566 (1st Dep't 1979), *aff'd*, 50 N.Y.2d 824, 407 N.E.2d 1346, 430 N.Y.S.2d 50 (1981).

163. *Trump*, 62 N.Y.2d at 543, 467 N.E.2d at 512, 478 N.Y.S.2d at 848.

164. *Id.* at 545, 467 N.E.2d at 513, 478 N.Y.S.2d at 849.

165. *Id.* at 543, 467 N.E.2d at 512, 478 N.Y.S.2d at 848.

166. The appellate division stated:

It may well be that the site was not occupied for its highest and best use. Trump argued that a structure of greater height, more completely utilizing the site, might have been a better utilization. If we accept that view of underutilization, it would have to be concluded that most sites in Manhattan, and perhaps elsewhere in the city, should also be included within the compass of the statute, because larger or taller buildings might better utilize the space. This would amount, in effect, to a universal tax exemption hardly consonant with the statutory purpose.

Trump, 87 A.D.2d at 17, 450 N.Y.S.2d at 324-25.

exemption.¹⁶⁷ The court of appeals did not address this issue, and instead focused on the statute's objective criteria.¹⁶⁸

By deciding in favor of an exemption, the court of appeals created a public relations nightmare for Mayor Edward I. Koch's administration.¹⁶⁹ The Trump Tower, a symbol of wealth and power on Fifth Avenue,¹⁷⁰ became a blatant reminder that 421-a is not restricted to low-income housing or to the poorest neighborhoods. Thus, critics called the decision "outrageous."¹⁷¹ Debate regarding the merits of the program crystallized. Opponents of the ruling asserted that the

167. Cf. *id.* (more landlords would be able to argue that their property was underutilized).

168. See *Trump*, 62 N.Y.2d at 545-47, 467 N.E.2d at 513-14, 478 N.Y.S.2d at 849-50.

169. See *infra* notes 170-72 and accompanying text.

170. See *Trump Finds Big "Bonus" on 5th Ave.*, N.Y. Times, Feb. 8, 1986, at 33, col. 3. The article explains:

[A] 61-story building . . . the tower has already produced a sizeable fortune for Mr. Trump and his partner, the Equitable Life Assurance Society of the United States, from the sale of the apartments on the upper floors. The 251 sold so far have brought in \$277 million And when the last 15 are sold—Mr. Trump says they have done so well he may buy them himself—the partners will split a profit of \$87 million. Mr. Trump and Equitable are also earning nearly \$1 million a month from the commercial and retail space that make up the bottom third

. . . .
Mr. Trump put the cost of the project at \$190 million, "including land, construction, fees, everything." That's about \$235 per square foot, expensive even by New York standards but not out of bounds. As Mr. Trump points out, the partners have already recovered more than that from the sale of the condominiums.

Id. at 33, col. 3 to 44, col. 2.

171. *Top State Court Rules Trump Is Entitled to Tax Break for Midtown Tower*, N.Y. Times, July 6, 1984, at B1, col. 1. Mayor Koch sharply criticized the decision:

Most people in this state, including me, believe that [421-a] was intended to stimulate much-needed housing construction in areas where no housing would otherwise be built. Now the Court . . . has found that some of the most expensive and luxurious accommodations, not only in the United States but in the world, are entitled to a tax break. Does that make sense? Not to me.

Id. at B1, cols. 1-2. Certain of the Mayor's critics questioned the sincerity of his opposition to the decision. New York Assemblyman Pete Grannis and New York State Senator Fritz Lichter accused the Mayor of shedding "crocodile tears" over the decision because he could have pushed for restrictions on the program before the 1984 amendments were adopted. *Call Koch False*, Daily News, July 10, 1984, at M1, col. 3. *Newsday* concurred with this viewpoint. *Trimming the City's Tax Breaks*, N.Y. Newsday, July 16, 1987, at 40, col. 1 (1984 amendments added additional requirement of Board of Estimate approval of amendments to the legislation and one-year lag was also imposed); see *supra* notes 107-109 and accompanying text.

building is at a prime location and that it would have been constructed without any assistance being provided.¹⁷²

As is the case with many controversial issues on the public agenda, rhetorical posturing frequently takes the place of common sense and logic. Critics ignore the achievements of the program—21,253 condominiums and 42,389 rental units were constructed under 421-a.¹⁷³ In a city characterized by a low vacancy rate¹⁷⁴ and high construction costs,¹⁷⁵ even luxury units should be considered a welcome addition. Specifically, new luxury units increase the supply in the housing market.¹⁷⁶ As a result, moderately priced housing that would have remained occupied becomes available to other renters.¹⁷⁷

In addition, the inhabitants of luxury buildings are helping to solidify the city's tax base.¹⁷⁸ Finally, improvements to the land ultimately lead to a higher tax rate for the 421-a sites.¹⁷⁹ Thus, the legislature should continue the 421-a program, subject to the modifications discussed below.¹⁸⁰

172. See *No More Giveaways on Taxes*, N.Y. *Newsday*, Sept. 26, 1984, at 64, col. 1. See generally Schanberg, *Tax Breaks Never Die*, N.Y. *Times*, Sept. 22, 1984, at 25, col. 1. Schanberg stated:

In New York City, tax concessions for those who don't need them never die. In fact, they don't even seem to fade away [T]he waste of tax dollars continues, in large amounts. The latest giveaway involves . . . [§] 421-A No one imagined in 1971 that the Trump Tower, on "underutilized" Fifth Avenue, would qualify for these tax gifts, but it has them—\$40 to \$50 million worth.

Id.

173. See *Subsidy*, *supra* note 10, at R1, col. 3. See generally *Sellers Finding Condo Resales Shaky*, N.Y. *Times*, Apr. 5, 1987, at R1, col. 2. "[S]purred by revisions in . . . 421-a . . . developers expect to complete more than 11,000 [condominium] units by the end of next year. Before the current rush, Manhattan had barely 20,000 condominiums—some in converted rental buildings, but most of them in buildings erected within the past few years." *Id.* at R20, col. 1.

174. See *supra* notes 133, 135 and accompanying text.

175. See *supra* note 136 and accompanying text.

176. See *Subsidy*, *supra* note 10, at R21, col. 2 (citing Arthur Margon, Senior Vice-President of Real Estate Board of New York).

177. *Id.*; see *Q. & A. With a Philosopher—Expert on City's Housing*, N.Y. *Times*, Feb. 9, 1986, at R7, col. 1 (interview with Louis Winnick, retired Vice-President of Ford Foundation). Winnick opined:

If a shallow subsidy for the affluent can induce them to upgrade, it will leave decent housing for people less well fixed than they are. Studies have shown that when a new unit is occupied somewhere between three or four families are accommodated through the chain of moves that follows.

Id. at R18, col. 5.

178. See *supra* notes 140-43 and accompanying text.

179. See *supra* note 143 and accompanying text.

180. See *supra* note 111. An analysis of the 1987 regulations designed to provide affordable apartments to persons earning 80% of the area's median income was im-

V. Recommendations

The legislature should continue to authorize the 421-a tax exemptions. Modifications to the existing legislation, however, are necessary. Specifically, the legislature should restrict 421-a to rental housing.¹⁸¹

As this Note indicates, the tax system provides adequate incentives for constructing and purchasing luxury cooperatives and condominiums.¹⁸² The necessity for providing any additional incentives to construct such housing is dubious.¹⁸³ With respect to rental housing, however, legitimate arguments exist that tax exemptions provide a much needed stimulus.¹⁸⁴

An income restriction on the inhabitants of 421-a buildings ought not exist. As studies by Kristina Ford, George Sternlieb, Elizabeth Roistacher, and James Hughes indicate, the benefits of luxury development exceed the costs, and the residents of these buildings have strengthened the tax base.¹⁸⁵

Legislation should prevent landlords from circumventing the intent of this proposal—to increase the number of available rental units. Specifically, the legislation should prohibit landlords from receiving a windfall by immediately converting 421-a buildings at the end of the exemption period. If a landlord would like to convert within ten years after the exemption period, he should be required to reimburse the city a proportional amount. Thereafter, landlords should be free to convert 421-a buildings. Allowing developers to ultimately convert buildings should facilitate neighborhood development and stability,¹⁸⁶ while preventing an abuse of the exemption.

possible because of the publication schedule for this Note. Data is necessary regarding the number of units constructed under this new program and the income of the residents.

181. These recommendations are not meant to be all-inclusive. For instance, reforming the real estate tax assessment system, mandating that tax expenditure legislation include sunset provisions, requiring increased financial disclosure by landlords in order to set more reasonable rent guidelines, and eliminating the rent regulation system might increase the development of multi-family housing in New York City. These reforms, however, exceed the scope of this Note. *See generally* Appel testimony, *supra* note 16, at 3-4 (proposes modifications to 421-a legislation).

182. *See supra* notes 63-66 and accompanying text.

183. *Id.*

184. *See supra* notes 128-37, 147 and accompanying text.

185. *See supra* notes 140-41 and accompanying text.

186. *See* OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES: A NATIONAL STUDY OF SCOPE, CAUSES AND IMPACTS VIII-1 to VIII-36.

VI. Conclusion

Enhanced development of housing by the private sector is vital to the continued economic growth of New York City. Nonetheless, the present approach is an inefficient use of tax dollars. Once modified, however, 421-a should continue.

The high cost of developing buildings, the rent regulation system, and the low vacancy rate of rental units dictate that incentives remain available to developers of rental buildings. New York City will continue to benefit from the increased housing stock constructed under the 421-a program.

Deborah Ann Konopko

Most converted buildings in central cities are in sound condition and generally undergo little or no major repairs at the time of conversion. In these cases, there is little short-term impact on the buildings' condition. However, in the longer run, these buildings may be better maintained than if they had remained in the rental stock.

A considerable number of conversions, particularly those in revitalizing neighborhoods, undergo major rather than cosmetic changes at the time of conversion. For these buildings, conversion contributes to structural improvement.

Id. at VIII-31.