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MEMORANDUM

April 8, 2003

To: County Directors of Real Property Tax Services

From: Richard J. Sinnott, Counsel

Subject: Farm or food processing labor camps or commissaries exemption (Real Property Tax Law, §483-d)

New section 483-d of the Real Property Tax Law (added L.2002, c.684) has prompted a number of questions. Apparently, a number of farmers have already approached their assessors with inquiries and applications. The purpose of this memorandum, prepared by my colleague Robert Mark, is to provide some preliminary advice regarding the new law. Please direct additional questions to Bob at the above address or telephone number.

Introduction

Section 483-d of the RPTL totally exempts from real property taxes and special district charges farm or food processing labor camps or commissaries, as defined in Article seven of the Labor Law, and “other structures used to improve the health, living and working conditions for farm laborers,” so long as those improvements comply with applicable standards set by the State Departments of Labor and Health and the State Building Code Commission.* A one-time application (form RP-483-d, as prescribed by this agency) needs to be filed with the assessor, who is charged with determining if the improvements are in compliance with the aforementioned standards. If the exemption is approved, it is to be continued year-to-year unless the improvements fail to comply with those standards.

While the scope of the improvements the statute is intended to exempt might be subject to various interpretations, in our opinion, it was clearly intended to apply to migrant farm worker camps. We note that various units of government are involved in administering the “applicable standards” to which the law refers:

* The last named entity is now known as the State Fire Prevention and Building Code Council.

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- The State Department of Health and certain local health officials, pursuant to Part 15 of the State Sanitary Code, protect the health of persons living in a “migrant labor camp or migrant farmworker housing” as defined in 10 NYCRR §15.1(c).
- The local code enforcement officer safeguards the living conditions of migrant farm and food processing workers by determining whether their residences comply with the Uniform Fire Prevention and Building Code (see, Executive Law, §381).
- The State Department of Labor regulates the working conditions of those workers by deciding whether to grant applications for a “farm labor contractor certificate of registration,” a “permit to operate a farm labor camp commissary,” and a “migrant labor registration certificate” (see, 12 NYCRR §197.3).

As is true of any exemption statute, the burden of proving eligibility, i.e., of complying with all applicable standards, rests on the applicant. In our opinion, it would be unreasonable to assume that the assessor has, or must acquire a familiarity with, all of the standards relevant to this exemption, particularly where, as here, there are State and local officials responsible for the creation, implementation and enforcement of these standards.

Questions and answers concerning the farm or food processing labor camps or commissaries exemption (Real Property Tax Law, §483-d)

1. What documents should each applicant provide with the application?

Each applicant should provide the assessor with a copy of:

(i) a State Sanitary Code permit to operate a “migrant farmworker housing facility” (see, 10 NYCRR §15.3),

(ii) a State Labor Department “farm labor contractor certificate of registration,” “permit to operate a farm labor camp commissary,” and/or “migrant labor registration certificate” (see, 12 NYCRR §197.3), and

(iii) proof of compliance with the fire prevention and building code, which could include a copy of the certificate of occupancy, a statement from the code enforcement officer that the structure has not been determined to be in violation of the code, and/or a statement from the code enforcement officer that the fire prevention and building code does not apply to the structure. In the case of manufactured housing constructed on or after June 15, 1976, the proof of compliance with the fire prevention and building code could consist of a statement from the code enforcement officer that the manufactured home has “a manufacturer’s label certifying compliance with applicable Department of Housing and Urban Development (HUD) Manufactured Home Construction and Safety Standards and a data plate, affixed in the manufacturing facility” (see, 19 NYCRR §AE102.6).

2. How may an applicant acquire a permit, certificate or statement?

The applicant may obtain a copy of the State Sanitary Code permit from the county health department or from the State Health Department district office having jurisdiction (the permit application form is numbered DOH-3915). A copy of the applicable State Labor department certificate or permit may be obtained by sending a letter or by calling the State Labor Department (Building 12, Room 185C, Harriman State Office Campus, Albany, N.Y. 12240, telephone: (518) 457-4321). The code enforcement officer is an employee or official of the city, town, village or county where the property is located.

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3. Should the assessor deny an application if the applicant does not provide a copy of the required permits, certificates and proof of compliance with the fire prevention and building code?

Yes. As with any other exemption, it is the applicant's responsibility to establish eligibility. However, since the necessity for documentation may not have been clear to everyone at first, we recommend that the assessor notify the applicant of the necessary permits, certificates and proof of compliance with the fire prevention and building code, and the applicant's right to seek administrative review of the assessor's determination by filing a written complaint with the board of assessment review. In the case of Labor Department migrant labor registration certificates, the proof may consist of a copy of the certificate for the period of 4/1/02 to 3/31/03 and a statement that the applicant intends to apply for such a certificate for the period of 4/1/03 to 3/31/04. If the proper documentation is submitted, the assessor may wish to stipulate to the granting of the exemption.

4. Does section 483-d apply to housing receiving or eligible to receive exemption pursuant to section 483?

No. In our opinion, the two exemptions, though related, are separate and distinct. Neither section 483-d nor the Sponsor's Memorandum for that provision mentions the section 483 exemption. Instead, section 483-d specifically refers to a limited class of housing for farm employees: "[f]arm or food processing labor camps or commissaries, as defined in article seven of the labor law." Eligible structures must be "in compliance with all applicable standards set by the departments of health and labor." This is an apparent reference to the health regulations set forth in Part 15 of the State Sanitary Code that only apply to a "farm or food processing labor camp" (see, Public Health Law, §225(5)(m)), and to the labor standard regulations set forth in 12 NYCRR Part 197, which apply to "migrant registration" and to "farm labor camp commissaries" (see, Labor Law, §§212-a(9) and 212-b(6)).

5. What types of structures are covered by the reference in section 483-d to "any other structures used to improve the health, living and working conditions for farm laborers?"

We believe that the "any other structures" clause refers to ancillary facilities of "farm or food processing labor camps or commissaries." Such ancillary structures may include "toilet and handwashing facilities" for such employees (see, Labor Law, §212-d), and the camp or commissary's "heat producing equipment," "potable water system," and sewage disposal system (see, 10 NYCRR §15.3(b) and Labor Law, §212).

6. Must the assessor deny the application when in doubt as to whether the applicant has received all the Labor Department certificates or permits required by 12 NYCRR §197.3?

Yes. In that situation, the assessor should advise the applicant to contact the State Labor Department for help in obtaining the necessary documentation.

7. Should the assessor annually review the property's eligibility despite the fact that a renewal application is not required by section 483-d?

Yes. Section 483-d states that "no renewal thereof shall be necessary, unless the structure or structures no longer are in compliance with the standards required by section one of this section." We note that the applicable State Sanitary Code permit "cannot be issued for a term greater than 12 consecutive months" (10 NYCRR §15.4(b)) and that the applicable State Labor Department certificates and permits are subject

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to revocation (12 NYCRR §197.4). The assessor, therefore, should annually ask the owner of a property receiving this exemption to provide a current State Sanitary Code permit, a current State Labor Department certificate or permit, and current documentation concerning compliance with the fire prevention and building code.

8. If there is change in the use of a labor camp or commissary that has been granted a section 483-d exemption, is the property subject to “roll-back” payments?

No. RPTL, §483-d, does not impose “roll-back” payments for conversion to an ineligible use.

9. Does the land under an eligible farm or food processing labor camp or commissary qualify for the section 483-d exemption?

A. Yes.

10. How should the assessor determine whether specific structures are covered by the State Sanitary Code permit?

If the assessor is uncertain after reviewing the permit which structures are covered by the permit, the assessor should ask the applicant to obtain additional documentation from the applicable county or State Health Department district office having jurisdiction.

11. When a farm operation is owned by a corporation, whose principals, shareholders or members reside on the farm, are the residences of those individuals eligible to receive the section 483-d exemption?

No. Seemingly, the required State Sanitary Code permit and State Labor Department certificate or permit would not be applicable to such residences.

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This memo and the statutes and rules cited above are available on our Internet website (www.orps.state.ny.us). Click on “Tax Policy & Exemptions”, then click on “Agriculture, Farms, Land, Buildings & Forests” and finally, scroll down to “Farm Building Exemptions” and click on “Farm or food processing labor camps or commissaries exemption (RPTL, §483-d).”