

Real Estate Title Insurance & Construction Law

Automatic Fire Suppression Systems Protect Property From Fires — and the Tax Man

By Christopher J. Caslin

For property owners who install an automatic fire suppression system in their building, buried deep in Title 54 of the New Jersey statutes is some helpful relief on their real-property taxes. Under N.J.S.A. 54:4-3.131, a residential, commercial or industrial building with an automatic fire suppression system that was installed after 1983 and that has been certified as an “automatic fire suppression system” is exempt from real property taxes.

According to the statute, an automatic fire suppression system is “a mechanical system designed and equipped to detect a fire, activate an alarm, and suppress or control a fire without the necessity of human intervention and activated as a result of a predetermined temperature rise, rate of rise of temperature, or increase in

Caslin is a Hackensack-based member of Cole, Schotz, Meisel, Forman & Leonard. His practice focuses on financing, acquisition, leasing and development of commercial real estate.

the level of combustion products.” In general, these systems are designed to detect and extinguish fires without the need for any human intervention and can be found in a variety of configurations and applications. Given the wide range of materials found in today’s environment, chemical-based fire extinguishing agents may be used instead of just water since water may not be effective depending on the uses and surroundings in a particular building.

Fire suppression systems can be “engineered” or “pre-engineered.” Engineered systems typically are used for larger projects where the system itself is designed for a specific application, such as a “clean” computer room or an electrical switch room. These systems can dispense a variety of solid and gaseous fire-extinguishing agents. By contrast, pre-engineered systems are less complex, using predesigned components that are capable of delivering both wet and dry chemical-based fire-extinguishing agents, such as potassium carbonate and sodium bicarbonate. These systems can be found in facilities such as commercial kitchens and storage areas, and are commonly used

in situations where installing a conventional fire sprinkler system would not be cost effective. Both engineered and pre-engineered systems detect fire through either mechanical or electrical means. When a certain temperature is reached, mechanical detectors separate and release tension on a mechanism; electrical detectors close a circuit that remains open in normal conditions. The piping and nozzle configurations used in each system are dependent upon the type of fire-extinguishing agent the system uses.

Pursuant to N.J.S.A. 54:4-3.132, the “enforcing agency” (defined as the enforcing agency in any municipality provided for under the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.)), which is typically the municipal building or construction official, has the responsibility for determining the eligibility of any proposed automatic fire suppression systems based on a form affidavit prescribed by the Director of the Division of Taxation and submitted to the enforcing agency by a property owner seeking an exemption. The statute provides the enforcing agency with

a right of inquiry at any time into the property owner's claim for exemption and may require the submission of any proof necessary to determine the right of the property owner to such exemption. The enforcing agency can review the cost estimates provided by the property owner and may require documentation in the form of signed contracts, contractor estimates and the like if deemed necessary by the enforcing agency. On-site inspections of the premises to review the installed fire suppression system may also be conducted by the enforcing agency.

The Commissioner of the Department of Community Affairs is responsible for adopting rules and regulations establishing technical standards for automatic fire suppression systems necessary to qualify those systems for exemption from taxation pursuant to the statute (see N.J.S.A. 54:4-3.137(b)). The enforcing agency must consult with the appropriate subcode officials in determining whether the system conforms with the building and fire protection subcodes and their referenced standards. In addition, and where applicable, the statute requires that the system also conform with the most recently published editions of National Fire Protection Association's (NFPA) Codes and Standards, specifically standards 13D, 20, 22 and 24.

NFPA 13D deals with the design, installation, and maintenance of automatic sprinkler systems for protection against fire hazards in one- and two-family dwellings and manufactured homes. Sprinkler systems installed under this standard are developed on the premise that the origin of a fire will be from a single source/location.

NFPA 20 addresses the selection and installation of pumps supplying liquid for private fire protection, which include liquid supplies, suction, discharge, and auxiliary equipment, power supplies, electric drive and control, diesel engine drive and control, and steam turbine drive and control.

NFPA 22 provides the minimum requirements for the design, construction, installation, and maintenance of tanks and accessory equipment that supply water for private fire protection, such as gravity tanks, pressure tanks and towers, and foundations. It also provides ways to protect the

tanks and equipment against freezing.

Finally, NFPA 24 establishes the minimum requirements for the installation of private fire service mains and the appurtenances supplying automatic sprinkler systems, private fire hydrants, standpipe systems and hose houses. NFPA 24 is applicable to combined service mains used to carry water for fire service and other uses with some exceptions (i.e., underground mains serving sprinkler systems designed and installed in accordance with NFPA 13D).

With the exception of NFPA 22 (which is current as of 2008), the standards are current as of 2010. All of the standards are scheduled to be updated in 2013.

An automatic fire suppression system is eligible for an exemption only if it conforms to each of the standards as are applicable to the type of suppression system and the installations appurtenant to such system. The statute does provide some flexibility, however; a system is not deemed ineligible because it is in a new building or because it only provides coverage to part of a building.

When the enforcing agency has determined that the equipment, facility or system installed in a building was "designed primarily as an automatic fire suppression system in accordance with regulations prescribed by the Commissioner of the Department of Community Affairs" (see N.J.S.A. 54:4-3.133), the enforcing agency may then certify that the system is exempt from taxation. For new construction, a decision granting or denying certification of the system must be made by the enforcing agency prior to issuance of the construction permit with written notice of the decision being given to the applicant at that time. Subject to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), the Director of the Division of Taxation is responsible for adopting rules and regulations necessary for the proper certification of a tax exemption and the form of the certificate to be issued (see N.J.S.A. 54:4-3.137(a)). If the enforcing agency grants certification, a certificate is issued to the applicant containing information identifying the system and its cost along with any other information as may be required from time to time by the Division of Taxation.

A copy of the certificate is retained on

file by the enforcing agency and another copy is sent to the assessor of the taxing district in which the property is located. The exemption commences in the tax year following the year in which certification was granted. The amount of the exemption is governed by N.J.S.A. 54:4-3.136, which provides that real property containing a "certified automatic fire suppression system may have exempted annually from the assessed valuation of the real property a sum equal to the remainder of the assessed valuation of the real property with the automatic fire suppression system included, minus the assessed valuation of the real property without the automatic fire suppression system."

If a property owner disagrees with the findings of the enforcing agency, N.J.S.A. 54:4-3.135(a) allows the owner to apply to the construction board of appeals for the county in which the property is located to review the enforcing agency's determination. Property owners may seek relief from any determination or inaction on the part of the assessor by filing an appeal with the county board of taxation or the tax court, as appropriate, pursuant to N.J.S.A. 54:4-3.135(b).

The enforcing agency does have the power to revoke a certificate that has been issued to a property owner if: (a) the certificate was obtained by fraud or misrepresentation; (b) the property owner has failed to proceed substantially with the construction, reconstruction, installation or acquisition of an automatic fire suppression system; (c) the mechanical system to which the certificate relates is no longer used for the primary purpose of providing automatic fire suppression and is being used for a different primary purpose; or (d) the property owner has so departed from the equipment, design and construction previously certified by the enforcing agency that, in the opinion of the enforcing agency, the automatic fire suppression system is not suitable and reasonably adequate for the purpose of providing automatic fire suppression (see N.J.S.A. 54:4-3.134).

Property owners with automatic fire suppression systems in some or all of the buildings they own may want to take a closer look at whether they qualify for this exemption if they are not already taking advantage of it. ■