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Co-ops Get a Break on Revenue Rules

By [JAY ROMANO](#)

EARLIER this month, President Bush signed into law an antidote to a financial migraine that has been dogging co-ops for decades.

The antidote, tucked into the Mortgage Forgiveness Debt Relief Act of 2007, is a provision that could enable some co-ops to realize much more revenue without doing so the old-fashioned way — by raising their shareholders' maintenance fees.

A key provision of the new law modifies what is known as the 80-20 rule, which co-ops must meet so that their shareholders can get the same tax benefits as homeowners. (These benefits include deductions for property taxes and mortgage interest, and the shielding of up to \$500,000 from capital-gains taxes when the co-op is sold, assuming that it had been used as the principal residence.)

The 80-20 rule requires that no more than 20 percent of the co-op corporation's gross income come from sources that are not tenant-shareholders — usually, commercial tenants.

“The tax code will now treat people who live in co-ops the same as homeowners and condo owners are treated when renting out part of their property,” said Representative [Charles B. Rangel](#), Democrat of New York, a prime sponsor of the bill.

Stuart M. Saft, the chairman of the Council of New York Cooperatives and Condominiums, concurred.

“This law means that virtually every co-op with commercial income will no longer be at risk of losing shareholders' tax deductions if the co-op has excessive nonshareholder income,” he said. Mr. Saft said the rule was adopted in 1942 as part of an effort to give shareholders in co-ops the same tax treatment as homeowners. But over the years the rule has often worked to the detriment of apartment owners.

“Many co-ops have had to forgo potential income to comply with the rule,” he said.

Arthur I. Weinstein, a vice president of the co-op and condo council, said that while co-ops and their lawyers have gone to great lengths to avoid crossing the 80-20 line — including trying to sell shares for the commercial space and configuring it so that it can be used for residential purposes — the bottom line for most is that they ultimately had to accept less rent from commercial tenants than the market would dictate.

Mr. Weinstein likes the new law. “The nuts and bolts of this are marvelous,” he said. “And it goes into effect immediately.”

Dennis H. Greenstein, another [Manhattan](#) co-op lawyer, said the measure provided three ways for a co-

op to ensure that tenant-shareholders got the same tax treatment as homeowners.

The first, he said, is to comply with the original 80-20 rule. The second is for a co-op to ensure that at least 80 percent of its total square footage is used by tenant-shareholders for residential purposes. The third is for a co-op to spend at least 90 percent of its total income for the benefit of shareholders.

“The second and third alternatives are going to cover most co-op buildings with 80-20 problems,” Mr. Greenstein said. “There will be a lot of buildings that will benefit from it.”