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Environmental Business Association of New York State, Inc.

BCP Tax Credit Update Taking (BCP) Credit for Your Project

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Tax Credit Update

- Claiming BCP Tax Credits
 - Background
 - Forms
 - After Filing
- Site ownership planning and the BCP

Claiming BCP Tax Credits

- Quick Overview: NYS Tax Credits
 - Claimed on a New York income tax return
 - Returns are filed for a particular tax year
 - Claim BCP credits when a “trigger event” occurs in the tax year
 - Refundable credits – treated like you overpaid your taxes
- Trigger Events
 - Certificate of Completion (<http://www.ac-lawfirm.com>) is issued
 - Threshold for all three credits
 - Property is placed in service
 - Eligible Real Property Taxes are paid after CoC issued
 - Environmental Remediation Insurance

Tax Forms (Part of NYS Tax Return)

- Redevelopment Credit
 - IT-611 for individuals and other Article 22 taxpayers
 - CT-611 for corporate taxpayers
 - Partnerships (incl. most LLCs) file IT-611
- Credit based on Real Property Taxes
 - 612 series forms (IT- & CT-)
- Environmental Remediation Insurance Credit
 - 613 series forms (IT- & CT-)

Redevelopment Credit (-611 series forms)

- Accountant will need:
 - Date of BCA
 - Attach CoC; site transfer documentation if applicable
- Part 1: Site Preparation cost information
 - Description and Amount of Cost
 - Date cost paid or incurred (after date of BCA)
 - Vendor information (why the cost is capitalized)
- Be prepared to demonstrate
 - That the cost was properly capitalized
 - That the cost related to the CoC or that it was necessary to prepare the site for construction

Form ___-611, Part 2: Qualified Tangible Property

- Detailed listing of all depreciable assets, including:
 - Placed in service date (*compare to CoC date*)
 - Useful life (must be 4 years or more)
 - Federal cost basis (*exclude costs prior to BCA date*)
 - Location (must be on the brownfield site)
- Self-constructed assets (incl. buildings)
 - DTF may require a detailed listing of capitalized costs
 - Capitalized soft costs (describe services provided and relationship to construction of the asset)
 - Construction-period interest, property taxes (send bills)
 - Describe the book account to which capitalized

Form ___-611: “Double-Duty” Costs

- Capitalized Costs that:
 - were necessary to complete the remediation; and
 - were capitalized into an item of “qualified tangible property” (a depreciable asset)
 - Examples: vapor mitigation systems; shoring & sheeting; other engineering controls
- No “double dipping”
 - follow federal uniform capitalization rules – generally no choice about where to capitalize a cost
 - more favorable to capitalize into a depreciable asset (get tax credits and depreciation deductions)

Credit Based on Property Taxes (-612 series forms)

- Based on property taxes and on-site employment
- Attach to the form:
 - COC
 - Site transfer documents, if applicable
 - Property tax bills
 - Copy of PILOT Agreement, if applicable

Credit Based on Property Taxes (-612 series forms)

- Be ready to provide backup for employment numbers
 - Schedule of employees:
 - name & status (full-time, part-time)
 - social security numbers
 - DTF may ask for other employment information
 - Planning point: *tenant leases* should address the possibility that this information may be required
- Note: Environmental Remediation Insurance Credit
 - be prepared to submit copy of policies and proof of payment

After Filing

- Return will be assigned for review and processing within a few weeks after filing
- Large credit claims will be flagged to desk audit
 - 4-8 weeks for initial desk audit review
 - Desk Audit Bureau will review and may seek explanation and/or substantiation of line items on the return
 - Desk audit letter will go out to taxpayer and/or its designated representative
- Returns claiming large refund checks will rise through several layers of review and approval
 - very large QEZE refunds may take many months to process – 12 to 18 depending on the return
 - Expect similar time frames for large BCP credits

Good News and Bad News

- Good news: DTF has actually issued refund checks to taxpayers
- Bad news: Federal income tax consequence of BCP credits
 - BCP Credits can reduce NYS tax – eliminates an itemized deduction on federal return
 - Refund amounts will probably have to be included in federal gross income
 - DTF practice in QEZE area has been **not** to issue a 1099-G for refunded amounts of refundable credits (up to the taxpayer to claim)
- Bad news: About 35% of New York State's BCP tax credit dollars are going directly to the U.S. Treasury
 - Any solution would require amendment of the federal tax code

Part 2: Site ownership planning and the BCP

- The Question :
 - Property owner signs BCA, gets CoC for large site
 - Owner develops the north half of the site (parcel A), holds the south half (parcel B) for later development
 - Consider later transactions:
 - A Buyer wants to buy and develop parcel B; or
 - Owner needs to create a new entity to develop parcel B
 - different investors
 - project lender may require a "single purpose entity" (LLC dedicated just to Parcel B)
 - Question: can the Buyer or the new SPE/LLC claim the BCP tax credits?

Part 2: Site ownership planning and the BCP

- The Law:
 - The CoC covers the whole site – one CoC
 - The site is real property
 - can be subdivided, ground leased, divided into tenancies in common (TICs), etc.
 - The CoC is transferable in connection with a transfer of the site
 - Part 375 regs – CoC may be transferred to "successors and assigns" of the remedial party
 - Provide 60 days advance notice
 - Record notice of transfer in same manner as recording CoC
 - What happens to a CoC when a holder grants something less than a fee simple to the entire site?

Part 2: Site ownership planning and the BCP

- Solutions?
 - BEST: anticipate future entity needs prior to submitting the BCP application; form new entities, and include them as applicants
 - NEXT BEST: before CoC is issued, create new entities and amend the BCA to add them as parties (3-page form is on DEC web site)
 - OTHER POSSIBILITIES:
 - Holding company structure
 - New LLCs can be “disregarded” for tax purposes if wholly owned by the entity holding the CoC; transfers among disregarded entities don’t count for tax purposes
 - Grant partial interest in CoC commensurate with the real property interest (estate) being granted
 - What effect would notice and filing requirements have?
 - What if they are not complied with?

- **BOTTOM LINE: PLAN AHEAD FOR ANY SITE TRANSFERS**



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