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**BROWNFIELD CLEANUP PROGRAM TAX CREDIT UPDATE:**  
**NEW YORK STATE TAX DEPARTMENT ADVISORY OPINION**

By Philip S. Bousquet

June, 2007

The New York State Department of Taxation & Finance ("DTF") has issued an advisory opinion regarding the tax credits available to participants in New York's Brownfield Cleanup Program. The advisory opinion confirms that adding a party to a Brownfield Cleanup Agreement (the agreement between the New York State Department of Environmental Conservation and the BCP participant) will not impair the ability of the other parties to claim tax credits after NYSDEC issues a certificate of completion.

The additional party in the ruling request was Queens West Development Corporation ("QWDC"). QWDC owns the site and ground-leased it to a group of LLCs, who will clean up and redevelop the site. As land owner, QWDC seeks the liability releases available under the BCP. QWDC is not a taxable entity and is eligible to claim any of the tax credits. DTF determined that the addition of QWDC as a party to the BCA (which would result in QWDC being named on the certificate of completion) would not impair the ability of the current parties to claim tax credits for their respective eligible costs. DTF also determined that if a subsequent transferee of the land from QWDC were to assume QWDC's obligations to construct infrastructure and parkland, then the transferee's possible right to claim credits on its costs would not impair the right of the current parties to claim tax credits with respect to their eligible costs.

The ruling confirms that adding parties to a brownfield cleanup agreement (and therefore to the CoC) would not impact the Brownfield tax credits for eligible costs paid or incurred by the existing parties to the cleanup agreement.

The ruling also assumes, without discussion, that a ground lessee of a brownfield site, and a transferee of the site, would be eligible for tax credits with respect to eligible costs that the ground lessee or transferee pays or incurs to improve the site.

If you would like to learn more regarding the above, the Brownfield Cleanup Program tax incentives, or further financial incentives for brownfield developers, please contact Phil Bousquet 315.701.6309 / [phil@gsllaw.com](mailto:phil@gsllaw.com).