



Alert

Brownfields

Governor Proposes 50% Tax Credit Deferral; Tax Department Issues Brownfield Tax Credit Publication

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Governor Proposes 50% Tax Credit Deferral

Earlier this week, the Governor released a "fact sheet" for a proposal to generate \$620M in "additional savings actions" (gap fillers) designed to supplement the Governor's Executive Budget. One of the proposed "gap fillers" would defer 50% of business-related tax credits for three tax years, 2010, 2011, and 2012. The proposal would affect credits that "would otherwise be used or refunded" in those years, which would include credits earned in prior years and carried forward into tax years 2010-2012, as well as credits generated (earned) in those tax years. In all, thirty-three tax credits would be subject to this provision.

The deferred portion of the credits would be allowed (i.e., could be claimed) in taxable years beginning in 2013 and ending with taxable years beginning in 2015. The draft bill that would implement the proposal does not allow for interest to be paid by the State on the deferred portion of the credits.

Taxpayers would be required to make quarterly estimated tax payments (beginning June 15th for most taxpayers) as if the credit deferral had been in effect for the entire tax year. Taxpayers eligible for the affected credits should closely monitor the status of the Governor's proposal and be prepared to make estimated payments if the proposal is enacted.

The Brownfield Cleanup Program (BCP) and Empire Zone (EZ) tax credits are included in the list of deferred tax credits. If the bill is enacted, BCP projects that would be most affected would include: (1) projects receiving certificates of completion in 2010-2012, and (2) projects with qualified tangible property (including buildings and depreciable assets) placed in service on brownfield sites in tax years 2010-2012.

For brownfield projects, please note that this credit deferral would be in addition to the provision previously added to the pending Executive Budget that would impose the 3X/6X \$35M/\$45M caps on the tangible property credit component (enacted in 2008) on all BCP applicants/sites accepted into the BCP before June 23, 2008 that have not yet received a Certificate of Completion from NYSDEC.

For Empire Zone certified businesses, under current law the "QEZE" credits will survive the sunset of the Empire Zones program on June 30, 2010. However, the Governor's proposal would defer half of those credits for up to three years. New York law currently provides for numerous other business-related tax credits. In all, thirty-three credits would be affected by this proposal if it is enacted. These credits would include the state low-income housing tax



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credit, the state historic rehabilitation tax credit, tax credits for qualified emerging technology companies, the research and development credit, and more.

The fact sheet is on-line at:

<http://www.ny.gov/governor/press/GapClosingPlanFactSheet.html>

[Click here](#) to review a copy of the proposed bill which is available on our website.

Please keep in mind that this is a proposal from the Governor and will not become law unless it is taken up and acted upon by the Legislature. This could occur as part of the overall negotiation of the fiscal year 2010-11 budget (if it is taken up at all). We will be following the progress of this bill, so please look for further Alerts.

Tax Department Issues Brownfield Tax Credit Publication

On April 10th, the New York State Department of Taxation and Finance released Publication 300, entitled "New York State Tax Credits Available for Remediated Brownfields." Publication 300 provides a general summary of the three tax credits available under the Brownfield Cleanup Program (BCP): the Environmental Remediation Insurance Credit, the Remediated Brownfields Credit for Real Property taxes, and the Brownfield Redevelopment Tax Credit.

Within the Brownfield Redevelopment Tax Credit there are three different credit components: the site preparation credit component, the tangible property credit component, and the on-site groundwater remediation credit component. Publication 300 describes these credits and components in detail. Publication 300 also summarizes the Brownfield Redevelopment Report, Form DTF-70, a reporting requirement for developers introduced in the 2008 changes to the BCP. Publication 300 is available at <http://www.tax.state.ny.us/pdf/publications/multi/pub300.pdf>.

Publication 300 does not introduce any new concepts or interpretations of the BCP tax credits, and it does not reflect controversial positions taken by the tax department on audits (such as disallowing the tangible property credit component for residential condominium projects to the extent relating to "soft costs").

This alert was prepared by our Economic Development Incentives Practice Group. Please contact Phil Bousquet at (315) 701-6309 or phil@gslaw.com if you would like further information or if you have any questions regarding this alert.