



**GREEN·SEIFTER**  
ATTORNEYS, PLLC

# New York's Brownfield Tax Credits: 2006 Planning Update

Presented By  
Philip S. Bousquet  
Lowell A. Seifter, CPA

April 2006

## Planning Topics

- Tax Credit Overview
- New York's Brownfield Cleanup Program Tax Credits
- Tax Credits, Project Structure, and Funding

## Tax Credit Recap

- **Brownfield Cleanup Program Tax Credits**
  - Dollar for dollar reduction of New York income tax
  - BCP tax credits are "refundable"
    - Treated like overpayment of tax to New York State
    - If credits exceed tax liability, NYS refunds the excess
  - Refundable Credits are taken ***last***
    - Non-refundable credits come off the top
  - Refunds may be subject to federal tax

## Brownfield Tax Credit Recap

### Example: New York State

New York Income Tax owed:	(\$45,000)
Non-refundable Tax credits:	<u>\$5,000</u>
Net Tax owed:	(\$40,000)
Withholdings/estimated pmts:	\$35,000
Refundable Tax Credits (BCP):	<u>\$75,000</u>
Tax Refund (Payable)	\$70,000

## New York's BCP Credits

- **Three Credits**

1. Brownfield Redevelopment Tax Credit
  - Three credit components
2. Tax Credit for Remediated Brownfields
  - Based on property taxes on the site
3. Environmental Remediation Insurance Credit

- **Timing**

- 2006 is the first year for calendar year taxpayers
- No credits if Certificate of Completion is issued after **March 31, 2015**

## Eligible Taxpayers

- Must hold a Certificate of Completion **and** be taxed under:
  - Article 9           Transmitting Utilities
  - Article 9A           Business Corporations ("C Corporations")
  - Article 22           Individuals and some trusts -  
                              "S" Corporations, LLCs, Partnerships
  - Article 32           Banks
  - Article 33           Insurance Companies

## Certificate of Completion

- Issued by NYSDEC to BCP applicants (named in brownfield cleanup agreement) that successfully clean up the brownfield site
- Certificate of Completion is a prerequisite to claiming the Brownfield Cleanup Program tax credits
  - Can't claim any BCP tax credits unless and until the C of C has been issued
  - BCP tax credits can be claimed on certain costs incurred before the C of C is issued and after a "Brownfield Cleanup Agreement" has been signed
- Certificate of Completion is transferable upon sale or transfer of the site

## Brownfield Redevelopment Credit

- Three credit “components”
  - Site Preparation Credit Component
  - Tangible Property Credit Component
  - Onsite Groundwater Remediation Credit Component

## Brownfield Redevelopment Credit

- Formula for the three components = “**Applicable Percentage**,” multiplied by capitalized cost of:
  - Site preparation
  - On-site groundwater remediation
  - Investment in tangible property (including buildings) on the site
- Only count costs incurred after BCA signed

## The Applicable Percentage

<u>Taxpayer</u>	<u>Base</u>	<u>Track 1</u>	<u>En-Zone*</u>	<u>Maximum</u>
Individuals	10%	+ 2%	+ 8%	20%
All others	12%	+ 2%	+ 8%	22%

\* See next slide. At least 50% of the site must be in the En-Zone.

## Environmental Zones ("En-Zones")

- Specifically defined Census tracts and block numbering areas under 2000 US Census
- 8% increase of the "Applicable Percentage" for Redevelopment Credit (50% of site in En-Zone)
- Credit for property taxes goes from 25% to 100% of taxes (depending on employment factor) for property in En-Zone
- En-Zones available at ESD's web site
  - [http://www.nylovesbiz.com/Productivity\\_Energy\\_and\\_Environment/BrownField\\_Redevelopment/default.asp](http://www.nylovesbiz.com/Productivity_Energy_and_Environment/BrownField_Redevelopment/default.asp)

## Component 1: Site Preparation

- Formula = Applicable Percentage multiplied by :
  - Remediation Costs; and
  - Other costs to prepare the site
  - Paid **after** the Brownfield Cleanup Agreement (BCA) is signed
- Does **not** include site acquisition costs
- **Capitalized** costs only
  - Federal tax rules about capitalization of cleanup costs will govern BCP treatment

## Component 2: Tangible Property

- Formula: Applicable Percentage × federal tax "basis" of "qualified tangible property"
- Qualified Tangible Property
  - Includes buildings and other depreciable property with a useful life of 4 years or more;
  - Located on the qualified site;
  - Principally used by the taxpayer for industrial, commercial, recreational, or conservation purposes ("qualified use");  
and
  - Placed in service within **10 years** after the Certificate of Completion is issued.
- "Basis" – tax concept roughly equivalent to acquisition cost; adjusted for depreciation

## Component 2: Tangible Property (cont'd)

- **2006 Law Change to "Qualified Tangible Property"**
  - Includes dwellings whose primary ownership structure is covered under either the New York Condominium Act or under the Internal Revenue Code's definition of a "Cooperative Housing Corporation" (Code section 216);
  - Located on the qualified site;
  - Is "acquired by purchase" (includes self-constructed assets); and
  - Receives a certificate of occupancy within **10 years** after the Certificate of Completion is issued.
- Intent is to allow Brownfield Cleanup Program tax credits for residential condominiums and cooperative apartments

## Component 2: Tangible Property (cont'd)

- Timing of Credit Component
  - Credit is allowed in the taxable year that qualified tangible property is “placed in service” (or deemed to be placed in service if a condo or coop)
  - Open question:
    - What if my property is placed in service before I get my C of C?
- No “Double Dipping” with investment tax credits on same assets

## Component 3: On-Site Groundwater

- Formula: Applicable Percentage x capitalized costs paid or incurred to remediate on-site groundwater contamination under the BCA
- Allowed in the year of issuance of the Certificate of Completion, and for capitalized costs paid or incurred within five taxable years after the issuance of the Certificate of Completion

## Example – Redevelopment Credit

### Assumptions

Site Preparation Costs	\$1,000,000
Qualified Tang. Prop. (Bldgs., equip.)	\$20,000,000
Annual Property Taxes	\$500,000
Employees on-site	80
Property in En-Zone	<b>Yes</b>
Clean up to Track 1	No
Taxpayer Type	Individuals (LLC)

## Example – Redevelopment Credit

### Calculate "Applicable Percentage"

Rate for Individuals (LLC Owners)	10.00%
Bonus for En-Zone	8.00%
Bonus for Track 1	<u>-0-</u>
<b>TOTAL:</b>	<b>18.00%</b>

## Example – Redevelopment Credit

	<u>Cost</u>	<u>App. %</u>	<u>Credit</u>
Site Preparation	\$1,000,000	18.00%	\$180,000
Qualified Tangible Property	\$20,000,000	18.00%	\$3,600,000
On-Site GWR	<u>-0-</u>	18.00%	<u>-0-</u>
TOTAL:	\$21,000,000	18.00%	<b><u>\$3,780,000</u></b>

## Brownfield Cleanup Program Credit Based on Property Taxes

- Credit based on Property taxes or PILOT payments
- This is an Income Tax Credit
  - Not a credit against *property* taxes (or PILOT payments) (like EZ credit)
  - Still pay property taxes or PILOT payments to local taxing authorities
  - Claim the credit on state income tax return
  - No effect on deduction for property taxes

## BCP Credit Based on Property Taxes (cont'd)

- **Formula – Multiply:**

**25% (100% if site in En-Zone)**

×

**Eligible real property taxes**

×

**Employment Number Factor (following slide)**

**= Credit (before limit)**

- Limit: \$10,000 × avg. number of FTE on-site
- 10 years from year C of C is issued

## BCP Credit Based on Property Taxes (cont'd)

### ■ Employment Number Factor

<u>Full-Time Employees*</u>	<u>Employment No. Factor</u>
0 – 24	0%
25 – 49	25%
50-74	50%
75-99	75%
100 or more	100%

\* The **average** number of full-time employees employed by the Developer and the Developer's tenants at the site during the year.

## Example - Credit for Property Taxes

Annual Taxes	\$500,000
Multiplier (25%, or 100% in En-Zone)	× 100.00%
Employment Number Factor (table)	<u>× 75.00%</u>
Annual Credit Amount:	<b>\$375,000</b>
Credit Period (Years)	<u>× 10</u>
<b>Gross Value of Credit:</b>	<b>\$3,750,000</b>
Discount Rate (for "present value")	5.00%
<b>Discounted (present) Value:</b>	<b>\$2,895,650</b>

## Environmental Remediation Insurance Credit

- **Credit amount = lesser of:**
  - \$30,000; or
  - 50% of premiums paid after the date BCA signed
- One-time credit – not available on a year-to-year basis
- Credit allowed in the taxable year in which the Certificate of Completion is issued

## Environmental Remediation Insurance Credit

- Qualified coverage – all or any of :
  - Onsite cleanup of pre-existing pollution outside the scope of the work plan under the BCA;
  - Related third-party claims; stop-loss (clean-up cost caps) relating to work plans; or
  - state re-openers under the C of C, or modifications to the work plan to fill in any gap in BCP's statutory liability limitation
- As a **source of funding**, this credit rewards the purchase of insurance as a risk management tool – makes a BCP project more attractive to investors by reducing likelihood of a catastrophic loss after closing

## Key Concept #1: Cash Flow

- WHO Realizes the Economic Benefit
  - Flow-through site owners (LLCs) - credits to remote investors
  - Increase return but don't reduce project cost
- WHEN
  - Summer 2007 for calendar year taxpayers (12/31/06 Y/E)
  - Large refunds likely to be scrutinized & delayed
- WHAT
  - Real dollars, but not always a check from NYS
  - Return on investment
  - Other uses in project finance – more slides to follow

## Key Concept #2: "Recapture"

- Definition
  - "Recapture" means that the taxpayer has to **pay back** some or all of the credits
- Two "trigger" events:
  - Certificate of Completion is revoked – all credits must be paid back
  - Qualified tangible property (depreciable property) is no longer in "qualified use" – Portion of tangible property credit component must be repaid based on useful life of asset
- **NOTE: Recapture due to disposition of qualified tangible property was eliminated by the 2004 technical corrections bill**

## Key Concept #3: C of C Transfers

- C of C is transferable upon a transfer or sale of the brownfield site – transferee holds the C of C after transfer (ECL 27-1419, subd. 5)
  - BCP owner/applicant must file a notice of the C of C in the county’s real property records w/in 30 days
  - DEC proposed regulations provide that on transfer of C of C, DEC must be notified, and a notice of the transfer must be filed in the county’s real property records within 30 days of transfer (see prop. DEC reg. § 375-1.9(f))
- Purpose of subd. 5 was to ensure that transferees can also claim the redevelopment credit for post-transfer improvements

## Summary

- Consider role of brownfield sites in community planning; take inventory of sites and compare for ERP, BOA, and/or BCP.
- Brownfield Cleanup Program Tax Credits provide a very powerful investment incentive.
- BCP credits will attract investment to brownfield projects.
- Credits available for 2006 and beyond; begin planning now.



---

**GREEN-SEIFTER**  
ATTORNEYS, PLLC

Philip S. Bousquet  
Lowell A. Seifter, CPA  
110 West Fayette Street  
One Lincoln Center, Suite 900  
Syracuse, New York 13202  
(315) 422-1391

[www.GSLAW.com](http://www.GSLAW.com)