

NEW YORK STATE TAX CREDITS AND GRANT MONEY AVAILABLE TO TAXPAYERS AND MUNICIPALITIES UNDER NEW YORK'S BROWNFIELD CLEANUP LAW

New York State's Brownfield Cleanup Law, signed into law on October 9, 2003, provides significant new benefits to New York state taxpayers and municipalities alike.

Of primary interest to New York State taxpayers, the new law established the Brownfield Cleanup Program (BCP). The BCP provides significant new tax benefits to New York taxpayers in the form of *refundable* New York State tax credits. These new credits cover between 10-22% of a brownfield site's cleanup and redevelopment costs, up to 100% of a site's real property tax expense, and a percentage of the cost of Environmental Remediation Insurance. The BCP also provides its applicants with a liability release from all New York state agencies.

In addition to the BCP, and of primary interest to municipalities, not-for-profit Community Based Organizations (CBO), and volunteer BCP applicants, new state grant money is now available under the new Brownfield Opportunity Area (BOA) program. BOA money can fund up to 90% of costs to inventory brownfield sites and to prepare brownfield site assessments within the designated BOA area. Although not discussed herein, municipalities can also benefit from enhancements made to the 1996 Clean Water/Clean Air Bond Act Environmental Restoration Project (ERP) program, including up to 90% state reimbursement for environmental cleanups.

Below is a brief summary of the benefits available to private parties under the BCP and to private parties, municipalities, and CBOs under the BOA program. This is followed by a brief summary of how a BCP volunteer and municipality can work together to maximize tax credits and state grant benefits by using the BCP and the BOA together to produce cash savings and better scoring state grant applications for brownfield site assessment money than if these programs were used individually. Finally, a summary table of the three new BCP tax credits is provided at the conclusion of this memorandum.

BCP TAX CREDITS AVAILABLE TO NEW YORK STATE TAXPAYERS

The BCP was established to encourage persons to voluntarily remediate brownfield sites for reuse and development. Simply put, the two most beneficial components of the BCP are: 1) its three new New York State *refundable* tax credits, covering from 10-22% of all capitalized costs associated with cleaning up and redeveloping a brownfield site, available to Article 9 (corporations), 9-A (franchise tax), 22 (individual), 32 (banks), and 33 (insurance corporation) taxpayers who volunteer to cleanup a contaminated site; and 2) a New York State liability release from all state agencies given to the BCP applicant (in the form of a covenant not to sue) that runs with the land to the sites successors and assigns.

MEMORANDUM

May 4, 2004

Page 2

HARRIS BEACH ^{LLP}

ATTORNEYS AT LAW

It is important to understand that the BCP applies to a brownfield site, defined broadly as "any real property whose redevelopment or reuse may be complicated by the presence of a hazardous waste, petroleum, pollutant, or contaminant." This definition is broad enough to capture most any site that may raise concerns on a Phase 1 study and any adjacent "clean" parcel whose business use is complicated by its proximity to such a contaminated site. Brownfield sites, for BCP purposes, do not include sites listed on the State's registry of inactive hazardous waste sites (Class 1 or Class 2 sites except certain Class 2 sites may be enrolled into the BCP until July 1, 2005), sites on the National Priorities List, and hazardous waste and oil spill sites subject to enforcement actions or cleanup orders.

Private parties who voluntarily enter the BCP are rewarded for doing so with a refundable New York State Brownfield Redevelopment Tax Credit (BRTC) that broadly and generously covers 10-22% of all capital costs related to remediating and redeveloping a brownfield site. The BRTC begins at 10% for individual taxpayers, 12% for corporate taxpayers, and it increases by an additional 8% for brownfield sites located in an Environmental Zone and by another additional 2% if the site is cleaned up to an unrestricted use standard. A BCP applicant can also earn a new refundable Tax Credit for Remediated Brownfields (TCRB) resulting in an additional tax credit equal to up to 100% of a brownfield site's real property tax expense. Finally, a BCP applicant can receive a new refundable Environmental Remediation Insurance Credit (ERIC) equal to a certain percentage of environmental remediation insurance costs for projects where such insurance may be required.

The BCP tax credits rival, and in most cases exceed similarly designed tax benefits offered under New York's Empire Zone program because: 1) all BCP tax credits are refundable in cash; 2) BCP tax credits are not limited in application to designated "zones" and apply to any brownfield site located anywhere in the State; 3) property leased to third parties does not result in BCP tax credit recapture; and 4) BCP tax credits broadly apply to all capitalized soft and hard costs related to developing a remediation plan and cleaning up the site and to all tangible personal property costs, including buildings, placed on the site for any commercial, industrial, recreational, conservation or residential housing purpose.

The BCP tax credits combined with the BCP liability release provides current brownfield site owners with an "exit strategy" preferable to the standard alternative of letting potentially viable business realty lay dormant to avoid New York State scrutiny. If you currently own environmentally problematic property, or can envision restoring such a site to a business use, the BCP may point the way towards a profitable exit strategy. If you are currently eying a piece of environmentally problematic property, the BCP tax credits and liability release require that such sites be given more than just a second look.

STATE GRANTS FOR MUNICIPALITIES AND CBOs UNDER THE BOA PROGRAM

The BOA program is an area wide planning tool providing state grant money to municipalities and CBOs to conduct site assessments and to develop conceptual remediation

MEMORANDUM

May 4, 2004

Page 3

HARRIS BEACH ^{LLP}

ATTORNEYS AT LAW

plans for contaminated property owned by a municipality or by a BCP volunteer that is located within a BOA. To fund these activities, a BOA applicant can receive a state grant of up to 90% of these costs. Because BOA state grant money will be used to assess contaminated sites and to develop a conceptual remediation plan, the overall costs incurred by a municipality or a BCP volunteer to redevelop the parcel will be drastically reduced. The result will be the creation of “clean-up” ready sites whose re-use can be made even more attractive by the availability of BCP tax credits associated with each such site.

TAXPAYERS CAN BENEFIT FROM BOTH THE BCP AND THE BOA

Are you a taxpayer that owns or would like to develop contaminated realty that would otherwise be attractive for a business use but for the contamination concerns and unknown costs related thereto? Do you know of a municipality that is eyeing a certain contaminated parcel within its borders that it would like to cleanup and reuse for a productive business purpose? If so, the new BOA program may be for you because both municipally held contaminated property and contaminated property held by a BCP volunteer is eligible to receive state grant money for purposes of undertaking site assessments.

By way of an example, a private party can “partner” with a municipality to include its privately held contaminated land within the BOA borders. This “partnership” can improve the scoring of the BOA application. If the BOA is so designated, state dollars could be used to fund the site assessment on that piece of privately held land provided that the owner enters the parcel into the BCP as a volunteer. BOA grant money could also be used to develop a conceptual remediation strategy, thereby identifying cleanup costs up-front, on that same parcel. By positioning a brownfield site owned by a BCP volunteer within the BOA, pre-cleanup costs can be reduced by up to 90%, a conceptual remediation strategy can be relied upon to eliminate certain “unknowns” related to the remediation strategy, and the BCP volunteer can be better positioned to continue with the cleanup and redevelopment project knowing that BCP tax credits can be used to finance the project.

Whether the BCP is used by a private party acting alone or in conjunction with a municipality to leverage additional state grant money under the BOA program, these new programs provide tremendous savings and incentives to private developers and municipalities alike.

NEW YORK STATE'S BROWNFIELD CLEANUP PROGRAM TAX CREDITS

Robert G. Murray, Esq. BMurray@HarrisBeach.com 1-800-685-1429

Three new refundable New York State tax credits are offered to Brownfield Cleanup Program (BCP) volunteers or participants who cleanup and redevelop brownfield sites. BCP tax credits include the Brownfield Redevelopment Tax Credit (BRTC), the Tax Credit for Remediated Brownfields (TCRB), and the Environmental Remediation Insurance Credit (ERIC). These tax credits apply against a taxpayer's income/franchise tax in tax years beginning after March 31, 2005. No tax credit shall apply to property where the Certificate of Completion (COC) is issued after March 31, 2015.

The amount of the BRTC can be significantly increased if the BCP brownfield site is located in an Environmental Zone (EN Zone). With careful tax planning, BCP tax credits may *significantly reduce* a company's New York State income (franchise) tax and real property tax and produce significant cash refunds equal to credit amounts that cannot be otherwise claimed. Brownfield Cleanup Program tax credits may also be used in conjunction with New York State Empire Zone Program tax credits and exemptions thereby producing even greater tax savings or refunds.

Brownfield Cleanup Program (BCP) Tax Credits:

To claim BCP Tax Credits, the BCP volunteer/participant must:

1. Be taxed under Article 9 (corporations), Article 9-A (franchise tax), Article 22 (individual), Article 32 (banks), or Article 33 (insurance corporation)
2. Execute a Brownfield Site Cleanup Agreement and for the TCRB, be issued a COC or purchase land subject to a COC w/in 7 years of COC issuance
3. To claim the TCRB, the BCP volunteer/participant and or its tenants must have at least 25 employees on the brownfield site

Brownfield Redevelopment Tax Credit	Tax Credit for Remediated Brownfields	Environmental Remediation Insurance Credit
The BRTC is an investment incentive tax credit based on site cleanup and redevelopment costs. BRTC credits not deductible in the current tax year are fully refundable in cash.	The TCRB is based on the brownfield site's real property tax expense. TCRB credits not deductible in the current tax year are fully refundable in cash.	The ERIC is based on the amount of environmental insurance premiums paid by the taxpayer. ERIC credits not deductible in the current tax year are fully refundable in cash.
The BRTC equals the sum of 10 - 22% of the following capitalized costs: 1) preparing a site for cleanup; 2) tangible property costs including buildings; 3) on-site groundwater remediation. The BRTC begins at 10% for individual taxpayers, 12% for corporate taxpayers, and it increases by an additional 8% for brownfield sites located in an En Zone and by another additional 2% if the site is cleaned up to an unrestricted use standard.	The TCRB is claimed by the site developer. <i>Eligible developers include the entity that was issued the COC or an entity that purchases all or any portion of a qualified site from the taxpayer who was originally issued the COC provided the purchase of the site occurs within 7 years of COC issuance.</i>	Environmental remediation insurance is insurance complying with New York State Insurance Law containing coverage for excess cleanup costs, 3 rd party claims for damage, caps for remedial clean up work and costs of state re-openers.
<u>Site preparation costs</u> include <i>all capital costs incurred after execution of the Brownfield Site Cleanup Agreement for purposes of obtaining a COC</i> , including architectural, engineering, legal, and consulting fees, and all costs to prepare/improve the site for commercial, industrial, recreational, conservation, or residential housing purpose such as excavation, scaffolding, demolition, and fencing. The site preparation cost credit component incurred for purposes of obtaining a COC shall apply in the year of COC issuance. Credit mounts determined other than with respect to COC issuance shall apply in the tax year in which the improvement is placed in service for up to five years after issuance of the COC.	The TCRB equals 25% of the product of a site's real property taxes multiplied by the employment number factor consisting of the developer's and lessee's full time on-site employees. The employment number factor is .25 for 25-49 employees, .50 for 50-75 employees, .75 for 75-99 employees, and 1.0 for 100 or more employees. The first multiplier in this formula increase from 25% to 100% if the site is in an EN Zone. Bottom Line: TCRB = 6.25% to 100% of the site's real property tax expense	The ERIC equals the lesser of \$30,000 or 50% of the premiums paid for such insurance. The ERIC can be claimed only by the taxpayer issued the COC and shall apply in the year of COC issuance.
<u>Tangible property costs</u> include capital costs of all tangible property placed on site, including buildings and components thereof, that are principally used for industrial, commercial, recreational, conservation, or residential housing purposes and that are placed in service within three of and no more than ten years after COC issuance. No credit recapture for property leased to others.	Amount of credit in any given year shall not exceed the product of \$10,000 and the number of full time employees of the developer and the lessee.	
<u>Groundwater remediation costs</u> are capital costs incurred for remediation of groundwater contamination and to implement groundwater remediation work plans and can be claimed within five years of COC issuance.	As currently drafted, this credit can be claimed perpetually; however, pending legislation will limit the TCRB to a 10 – 14 year time period.	