

Federal Brownfields Tax Incentive

Parties who enroll sites in the NYC Voluntary Cleanup Program can deduct the cost of implementing their city-approved remedy on their federal income tax returns. This incentive can significantly reduce the site cleanup costs, the single largest expense when taking on the redevelopment of contaminated property.

The Federal Brownfields Tax Incentive (more info available at <http://www.epa.gov/brownfields/tax>) reduces a taxpayer's taxable income by the cost of eligible cleanup expenses on a property in the city program in the year the cleanup costs are incurred. Without this incentive, remediation costs would be capitalized and depreciated over a period of years. By delivering the entire tax savings from remediation of a brownfield upfront, when the costs are incurred, this federal tax incentive, found at section 198(a) of the federal tax code, effectively boosts a project's cash flow.

Eligible remediation expenses include: removal and/or treatment of contaminated soil, construction of cap or cover system, site assessment activities undertaken in connection with the abatement or control of hazardous substances or petroleum; and the implementation and monitoring of institutional and engineering controls. Taxpayers should rely on tax counsel to determine which project costs are eligible for the incentive.

To qualify for the incentive:

- The taxpayer who incurs the cleanup expenses must own the property, which must be used in a trade or business for the production of income;
- Hazardous substances or petroleum contamination must be present or potentially present on the property; and
- A taxpayer must obtain a property eligibility statement from the state Department of Environmental Conservation (more info available at <http://www.dec.ny.gov/chemical/8453.html>).

OER will help parties enrolled in the city program obtain a Statement of Property Eligibility from DEC. Once prepared, OER will submit the application to DEC which will review and approve it, and then issue the taxpayer a Statement of Property Eligibility.

The incentive expired on December 31, 2011. Tax experts, however, expect Congress to renew section 198(a) of the tax code so that it will be available for parties who incur remediation expenses in 2012. Although Congress has allowed the provision to lapse in prior years, it has been available every year since it became law in 1997.

For further information, please contact:

Mark McIntyre
NYC OER
253 Broadway, 14th Floor
New York, NY 10007
(212) 788-3015
MMcIntyre@cityhall.nyc.gov