Claiming Brownfield Tax Credits

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Brownfield Credit Basics
3 Key Dates

- Acceptance into BCP
  - Determines program “generation”

- Date BCA is executed
  - Starts the cost clock

- COC issuance
  - Allows credit claim
3 Program Generations

- **Generation 1**: acceptance into BCP prior to 6/23/08
  - Uncapped redevelopment credit
  - Rates same for cleanup and property components of redevelopment credit

- **Generation 2**: acceptance into BCP on/after 6/23/08 but before 7/1/15
  - Tangible property component cap
    - $35m or 3x site prep and groundwater costs
    - $45m or 6x site prep and groundwater costs for a manufacturing site
  - New rate structure for cleanup components

- **Generation 3**: acceptance into BCP on/after 7/1/15
  - Credit component costs more explicitly defined
  - NYC site restrictions for tangible property component
  - No real property tax credit or environmental remediation insurance credit
BCA Execution Date

- Costs incurred from this point forward are credit-eligible.

- Site prep and groundwater costs preceding the COC are “banked”
  - Allowed as credit in year COC is issued.

- Eligible tangible property costs depend on Generation
  - Gen 1 & 2 – if placed in service prior to COC, no credit
  - Gen 3 – pre-COC costs allowed in year COC is issued.
COC Issuance

- This marks Tax Department’s first involvement in a project
- Taxpayers can file for the credits starting in the tax year in which the COC is issued
- Additional credit periods after the COC
  - Site prep and groundwater costs - 5 years
  - Tangible property costs - 10 years
## Credit Rates

<table>
<thead>
<tr>
<th>Rate Structure</th>
<th>Sites Prior to 6/23/08</th>
<th>Sites post-6/23/08</th>
<th>Sites 7/1/15</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tangible Property Component</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Base Rate</td>
<td>10%/12%</td>
<td>10%/12%</td>
<td>10%</td>
</tr>
<tr>
<td>Track 1 Remediation</td>
<td>+2%</td>
<td>+2%</td>
<td>+5%</td>
</tr>
<tr>
<td>50%+ in En-Zone</td>
<td>+8%</td>
<td>+8%</td>
<td>+5%</td>
</tr>
<tr>
<td>Brownfield Opportunity Area</td>
<td></td>
<td></td>
<td>+5%</td>
</tr>
<tr>
<td>Affordable Housing</td>
<td></td>
<td></td>
<td>+5%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td></td>
<td></td>
<td>+5%</td>
</tr>
<tr>
<td><strong>Site Preparation/On-Site Groundwater Remediation Components</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrestricted use</td>
<td></td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Residential use</td>
<td>40%</td>
<td>40%</td>
<td></td>
</tr>
<tr>
<td>Commercial Use</td>
<td>33%</td>
<td>33%</td>
<td></td>
</tr>
<tr>
<td>Industrial use</td>
<td>27%</td>
<td>27%</td>
<td></td>
</tr>
<tr>
<td>Residential – Track 4</td>
<td>28%</td>
<td>28%</td>
<td></td>
</tr>
<tr>
<td>Commercial – Track 4</td>
<td>25%</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Industrial – Track 4</td>
<td>22%</td>
<td>22%</td>
<td></td>
</tr>
</tbody>
</table>

The rates above apply to all 3 components; there are no separate rates for these categories.
Main Tax Forms

- Credit is claimed when tax returns are filed
  - Applied against liability first with remainder refunded
  - Attach copy of COC

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<tr>
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<th>Sites post-6/23/08</th>
<th>Sites 7/1/15</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Redevelopment Credit</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C and S corporations</td>
<td>CT-611</td>
<td>CT-611.1</td>
<td>CT-611.2</td>
</tr>
<tr>
<td>Corporate partners</td>
<td>CT-611</td>
<td>CT-611.1</td>
<td>CT-611.2</td>
</tr>
<tr>
<td>Partnerships</td>
<td>IT-611</td>
<td>IT-611.1</td>
<td>IT-611.2</td>
</tr>
<tr>
<td>Individuals</td>
<td>IT-611</td>
<td>IT-611.1</td>
<td>IT-611.2</td>
</tr>
<tr>
<td>Partners</td>
<td>IT-611</td>
<td>IT-611.1</td>
<td>IT-611.2</td>
</tr>
<tr>
<td>S corp shareholders</td>
<td>IT-611</td>
<td>IT-611.1</td>
<td>IT-611.2</td>
</tr>
<tr>
<td>Estates and trusts</td>
<td>IT-611</td>
<td>IT-611.1</td>
<td>IT-611.2</td>
</tr>
</tbody>
</table>

**Primary Tax Returns**

| C corps: CT-3, CT-3-A, CT-33, CT-33-A, CT-33-NL | S corps: CT-3-S CT-34-SH | Partnerships: IT-204 | Individuals: IT-201, IT-203 | Estates and trusts: IT-205 |
Record Keeping

Recordkeeping: brownfield redevelopment tax credit

When claiming this credit, you must keep the following required documentation for your records:

- Brownfield Cleanup Agreement
- Certificate of Completion
  - If the property or Certification of Completion was transferred, provide a copy of the purchase agreement and notifications of the transfer to the Department of Environmental Conservation (DEC). Visit DEC at Initial Notice and Transfer of Certificate of Completion.
- Site Management Plan
- Remedial Work Plan
- Certificate of Occupancy, if applicable
- Organizational chart that includes entity names, identification numbers, and percentage of ownership
- Complete federal Forms 1120 and 1065, including, but not limited to:
  - Consolidating spreadsheets, if applicable
  - All federal Forms 4562, Depreciation and Amortization, and attachments
  - Depreciation schedules and any related supporting schedules
  - All invoices, payments, contracts, or other documentation as verification of the costs you claim

Note: We may require additional information based on the specific facts of your credit claim.

Please use our spreadsheet to format your documentation: standardized initial information request.
Site Management & Remedial Work Plans

- Include only the narrative portion of reports
  - DTF doesn’t require test results obtained before, during, or after remediation

- Plans help Audit Division understand the remedial/engineering controls involved with COC issuance
Certificate Of Occupancy

- Placed in service date for condos and cooperative housing projects determined when certificate of occupancy issued

- Gen 3 adds bonus rate for affordable housing
  - Units must be sold as single family homes or multiple family dwellings
Organizational Chart

- Useful when the credit flows through various partnerships/S-corporations/LLCs

- Include partnership agreement for “special allocations”
  - Credit shares are not same as ownership percentages
Copies of Federal and NYS Tax Filings

- Credit-eligible costs must be charged to a capital account for Federal tax purposes
  - Buildings and depreciable assets, other assets, land, land improvements, inventory
- Tangible property costs must be depreciable
- Amount of eligible costs based on Federal basis for depreciation
  - Reported on Federal form 4562 *Depreciation and Amortization*
Invoices, payments, and contracts

DTF uses two different methods of reviewing source documentation

- Reviewing all documentation which supports costs claimed
- Selecting a sample of the source documentation
  - Review sample and apply an error percentage to the claim
Steps to Speed the Review Process

- Include as much documentation as you can when filing a credit claim.

- Information in an electronic form can be submitted through the DTF secure communication portal.
For more information


- https://www.tax.ny.gov/research/stats/statistics/special_interest_reports/brownfield_credit/brownfield_credit_reports_open_data.htm