



BOUSQUET HOLSTEIN PLLC

Tax Credits Available Under the Brownfield Cleanup Program

June 2018





Overview of NYS BCP Tax Credits

BCP tax credit structure:	Accepted into BCP:	Must receive a CoC by:
BCP 1.0	Before 6/23/2008	December 31, 2017
BCP 2.0	6/23/2008 to 6/30/2015	December 31, 2019
BCP 3.0	7/1/2015 and after	March 31, 2026

- BCP 1.0 sites that did not receive a CoC by 12/31/2017 are now subject to BCP 3.0 credit structure



Overview of NYS BCP

Three tax credits:

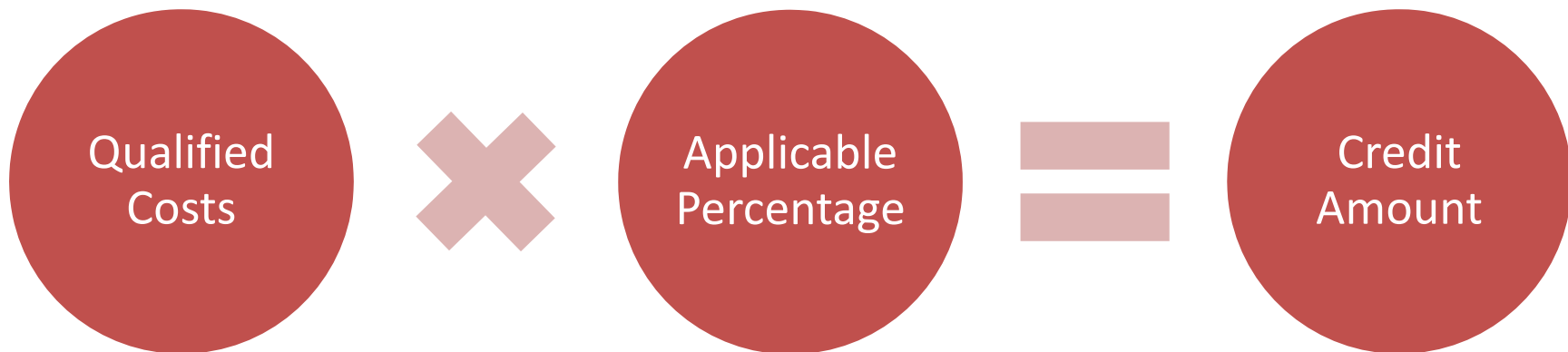
- Brownfield Redevelopment Tax Credit (BRTC) (Tax Law § 21)
 - Site Preparation credit component
 - On-site groundwater remediation credit component
 - Tangible property credit component
- Credit based on real property taxes (Tax Law § 22)
 - **BCP 1.0/2.0** only
- Credit based on qualified policies of environmental remediation insurance (Tax Law § 23)
 - **BCP 1.0/2.0** only





Overview of NYS BCP Tax Credits

- **Refundable** – treated like an overpayment of tax
- Brownfield Redevelopment Tax Credit components are product of certain **qualified costs** and **applicable percentage**





Site Preparation Credit Component under **BCP 1.0 and 2.0**

- Eligible costs: costs paid or incurred **in connection with** (1) qualification for CoC, AND (2) preparing site for construction of building
- Applicable Percentage:
 - **BCP 1.0**: 10% (individuals) or 12% (corporations) plus 2% for Track 1 and 8% for En-Zones
 - **BCP 2.0**: varies from 22% (track 4, industrial) to 50% (track 1, unrestricted), based on intended use of site and level of cleanup
- Timing: First claimed in year CoC is issued, then up to 5 taxable years after CoC





Site Preparation Credit Component under **BCP 3.0**

- Eligible costs:
 - Capitalized costs **necessary** to implement the site’s investigation, remediation, or qualification for a CoC
 - Post-CoC costs that are “**necessary** for compliance with the [CoC] or the remedial program defined in such [CoC]”
 - Limits site preparation costs foundations to the cost of a cover system pursuant to DEC regulations
- Applicable Percentage: same as BCP 2.0
- Timing: First claimed in year CoC is issued, then up to 60 months after the year the CoC is issued



Tangible Property Credit Component under **BCP 1.0 and 2.0**

- Eligible costs: cost or other basis of depreciable property with useful life of **4 years** or more with situs on brownfield site
- Applicable Percentage: max of 20% (**BCP 1.0**) or 22% (**BCP 2.0**)
 - **BCP 1.0**: 10% (individuals) or 12% (corporations) plus 2% for Track 1 and 8% for En-Zones
 - **BCP 2.0**: additional 2% for sites in BOA and developed in conformance with BOA plan
- Timing: claimed in year property is placed in service, for up to 10 taxable years after CoC is issued
- Cap (**BCP 2.0**):
 - Non-manufacturing sites: lesser of \$35M or 3 x site preparation costs
 - Manufacturing sites: lesser of \$45M or 6 x site preparation costs





Tangible Property Credit Component under **BCP 3.0**

- Eligible costs:
 - Cost or other basis of depreciable property with a useful life of **15 years** or more with a situs on the brownfield site; plus
 - Costs associated with non-portable equipment, machinery, associated fixtures and appurtenances used exclusively on the site, regardless of length of useful life
 - Costs associated with demolition, excavation, and foundation in excess of amount allowable for the *site preparation credit component*
 - “Related party service fees” includable only in year actually paid (related party service fees cannot be included in SPCC at any time)





Tangible Property Credit Component under **BCP 3.0**

- Applicable Percentage: 10% base plus, up to max of 24%:
 - +5% for BOA sites developed in conformance with BOA plan
 - +5% for affordable housing
 - +5% for manufacturing sites
 - +5% for sites within an En-Zone
 - +5% for sites remediated to Track 1
- Timing: claimed in year property is placed in service, for up to 120 months after date CoC is issued
- Cap: same as BCP 2.0, but can include IRC § 198 costs cap





Tangible Property Credit Component under **BCP 3.0**

- Additional Changes:
 - Sites are not eligible for the TPCC if either:
 - Contamination is “solely emanating” from property other than the site itself, OR
 - DEC has determined that the property has previously been remediated under other programs such that it may be developed for its then intended use, including: RCRA Corrective Action Program, Inactive Hazardous Waste Disposal Site Program (State Superfund), BCP, Environmental Restoration Program, and Navigation Law
 - Separate “gates” for sites in NYC only in order to be eligible to claim TPCC:
 - At least 50% in En-Zone (newly defined areas for BCP 3.0 sites based on updated census data)
 - “Upside down” (the projected cost of investigation and remediation exceeds 75% of the appraised value of the site without contamination)
 - “Underutilized” (defined in DEC regulations)
 - Developed as an “affordable housing project” (defined in DEC regulations)





BRTC Credit Illustrations

Component	Costs	App. %	Preliminary	Credit Cap	TOTAL
Site Preparation	\$2,000,000	50%	\$1,000,000		\$1,000,000
Tangible Property	\$35,000,000	(10%+2%+8%) 20%	\$7,000,000	\$6,000,000	\$6,000,000
BRTC UNDER <u>BCP 2.0</u>			\$8,000,000		\$7,000,000

Component	Costs	App. %	Preliminary	Credit Cap	TOTAL
Site Preparation	\$1,800,000	50%	\$900,000		\$900,000
Tangible Property	\$35,100,000	(10%+5%+5%) 20%	\$7,020,000	\$5,400,000	\$5,400,000
BRTC UNDER <u>BCP 3.0</u>			\$7,920,000		\$6,300,000



How BCP Credits Are Claimed

- Claimed on a NYS income or franchise tax return
- Claim is calculated at project entity; if passthrough, flows to upper-tier members to claim on their returns
- Credits are first applied to any tax due, then can be carried forward or refunded to taxpayer
- Return requires only minimal information (i.e., CoC, costs by broad categories, applicable percentage)
- BCP credit claims are routinely audited by NYS Tax Department
- On audit, NYS Tax Department will require detailed information about project costs and BCP credit calculations, including invoices





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THANK YOU!



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