



The BCP – a Quick Overview

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The Brownfield Cleanup Program (BCP) was designed to foster two goals: (1) to encourage and expedite remediation of "brownfields" -- sites with contamination in excess of regulatory levels allowable for site-specific re-use; and (2) to foster economic development through private sector capital investment in the redevelopment of brownfield sites for productive use. To accomplish these goals, the BCP has two essential elements: (1) broad liability protection (in the form of a statutory covenant not to sue) from the State upon completion of a regulated cleanup under the BCP; and (2) a package of refundable New York State income tax credits available to those who successfully complete remedial activities under the BCP.

The BCP process starts with submission of an application to the NYS Department of Environmental Conservation (DEC) to determine whether the property and applicant entity are eligible for the BCP. If the application is approved, the Applicant must enter into a Brownfield Cleanup Agreement (BCA) with DEC. Under a BCA an Applicant assesses the nature and extent of contamination at the brownfield site and devises and implements a remedial program approved by DEC. Upon successful completion of the remediation of the site, DEC issues a written Certificate of Completion (COC) to the applicant. The COC confirms that that cleanup is complete, recites the liability protection, refers to ongoing restrictions applicable to the site (if any), and sets forth the "applicable percentages" used to calculate NYS tax credits allowable with respect to the site. The COC is the threshold requirement for BCP tax credit eligibility for a brownfield site.

For sites accepted into the BCP after June 30, 2015, BCP tax credits are available through the Brownfield Redevelopment Tax Credit (BRTC), a New York State income/franchise tax credit described in Section 21 of the New York State Tax Law. The BRTC is claimed by filing a New York State income (or franchise) tax return with credit forms attached.

The BRTC is allowed in three components, all of which are "refundable," meaning that the credit must first be used by the taxpayer to reduce income or franchise tax liability on a dollar-for-dollar basis (to zero, for individuals, or to the statutory minimum tax, for corporate taxpayers), and then any excess amount of the BRTC is treated by statute as an overpayment of tax for the year in which the BRTC is allowable, and may therefore be refunded to the taxpayer (without interest).

The three "credit components" of the BRTC are: (1) the site preparation credit component (based on remediation costs); (2) the on-site groundwater remediation credit component (specific to groundwater remediation); and (3) the tangible property credit component (based on the cost basis for federal tax purposes of certain tangible property (including buildings) placed in service on the site). Each BRTC component is calculated by multiplying an "applicable percentage" by certain allowable capital costs paid or incurred by the taxpayer. Each credit component may be earned in the same or different years, beginning with the taxable year in which the COC is issued. The tangible property credit component is earned in the year in which the qualified tangible property is placed in service on the site.