

Real Estate Journal

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Mass. Brownfield Tax Credit program allows those who qualify to recoup a portion of environmental costs



James Curtis Cooperstown Environmental, LLC
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Environmental costs may be the key factor in determining whether a new project proceeds or may represent a significant burden on existing businesses. While only a handful of sites require Superfund-type, multi-million dollar cleanups, it is not uncommon for developers or owners to spend many thousands of dollars to bring their sites into compliance with current standards. Few of them know that Massachusetts has a program, called the Brownfield Tax Credit, which allows developers, owners, and even tenants to recoup up to half of their environmental spending if certain criteria are met.

This program, which was created by the 1998 Brownfields Act, incentivizes and rewards environmental cleanups on commercial properties. The goal is to rejuvenate contaminated properties and turn them back into productive sites while resulting in a cleaner environment - a true win-win.

Many site development projects must address environmental contamination issues, particularly where previously-used properties are being redeveloped into a new use. At a minimum, such sites require investigation of the soil and groundwater to document the level of site contaminants. Where contamination exists above acceptable levels, remediation may be required to ensure that site conditions are compatible with the intended use of the site.

Even those aware of the Brownfield Tax Credit program often do not know whether they qualify or if so, how to recover the credit. Our firm has an in-depth knowledge of the program requirements and pitfalls and has extensive experience in filing refund applications. We have helped our clients obtain millions of dollars of tax credits and assisted them in selling their unused credits for cash.

Could this program apply to your site where environmental contamination costs were significant? The broad qualification criteria appear straightforward. You might be a candidate if you have completed a project in Massachusetts using a Licensed Site Professional (LSP). The work must have occurred since 1998. You cannot be responsible for the source of the contamination (you must be an "Eligible Person"). Your site must be

located in an economically distressed area (EDA). Your costs must exceed a minimum threshold.

While the basic guidelines appear simple, further analysis may find that many sites do not qualify for the tax credit for one reason or another. For those that qualify, however, the rewards can be rich: a 25% base credit on qualified spending to as much as a 50% credit if the site does not include an Activity and Use Limitation (AUL). These recoveries have been well into the six-figures for numerous clients.

The brownfields program at its core is an economic development program. And it is working. For example, Jay McNiff, Jr. and Todd Twombly are developers based in Gloucester. They completed two successful developments within the past five years on brownfields sites - previously vacant, contaminated eyesores - transforming the sites into thriving office and retail spaces that have helped to create jobs and revitalize the area. A third brownfield (the former Cape Ann Forge) is currently being cleaned up in preparation for waterfront housing. Proceeds from selling the tax credits obtained from their initial projects are being targeted towards a fourth potential development, demonstrating how the tax credits can be parlayed into further economic development. A mill owner in Lowell used the money obtained from a Brownfields Tax Credit to make expensive roof repairs, allowing increased occupancy of the building. A gasoline station owner in Weymouth, forced to spend thousands to remedy the previous owner's releases, recouped half his costs and is using the money to expand his business.

If you think that you might qualify for this program, more information can be found on the Massachusetts DEP's web site (www.mass.gov/dep/cleanup/bfhdout2.htm) or at www.brownfieldstaxcredit.com.

Many people will want to obtain expert assistance in determining their eligibility for the program or preparing an application for consideration by the state. To receive the tax credit, evidence is required that supports qualification on each of the many criteria. Also, the determination of which costs are eligible is an important aspect of the process; if you qualify, be sure that you receive your full credit. When seeking assistance, make sure to ask whether your consultant or accountant has actual experience with this program. The statute and the published guidance leave many important questions unanswered and the learning curve can be steep.

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