

Amesbury Brownfields Redevelopment Workshop

Brownfields Tax Credits

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Newbury Five Community Room*



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History and Overview of the MA Brownfields Tax Credit

- **1998:** Massachusetts Brownfields Program first enacted. It was initially applicable to the tax years commencing on or after January 1, 1999.
- **2000:** The Massachusetts legislature passed, "*An Act Making Appropriations for the Fiscal Year 2001*," extending the time for incurring eligible costs that qualify for the credit and changed the limitations rules where the taxpayer has received state financial assistance ("first amendment").
- **2006:** The program was expanded in 2006 to allow transfer of the tax credit certificate, and to include nonprofit organizations.



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History and Overview of the MA Brownfields Tax Credit

- **2010:** The Legislature extended the MA Brownfields tax credit program previously scheduled to expire on August 5, 2011, for two additional years to August 2013.
- **2013:** Governor Deval Patrick signed a \$33.6 billion Fiscal Year 2014 (FY14) balanced budget for the Commonwealth of Massachusetts. Included in the approved budget was a provision extending the sunset date of the Massachusetts Brownfields Tax Credit (BTC) from its original expiration date of August 2013 until August 2018.
- **2015:** Bill 2455, sponsored by House of Representative Antonio Cabral of New Bedford, was referred to the Joint Committee on Revenue on January 20, 2015. A hearing on the Bill was held on 9/22/2015. The Bill if passed will broaden eligibility of the BTC by replacing the “lease” requirement with an “operating” requirement. Specifically, the property operator, rather than only a landlord or a tenant, will now be eligible for the BTC. The Bill also proposes limiting AULs to a particular date.

The Massachusetts Brownfields Model: MCP

- The *Massachusetts Contingency Plan (MCP)*, guides reporting, assessment, and remediation of soil, sediments and groundwater that have been impacted by the release of oil or hazardous materials.
- It is a risk based regulation.
- The MCP helps assess whether a disposal site poses a significant risk to human health and the environment.
- The MCP is semi-privatized, utilizing Licensed Site Professionals (LSPs) to administer cleanups (reducing the State's DEP workforce)

What is an Eligible Property?

1. Commercial property owned or leased by the taxpayer for business purposes;
2. Release of contaminants reported to the *Department of Environmental Protection (DEP)* and DEP issues a Release Tracking Number (RTN);
3. Located in an economically distressed area (EDA); and
4. Expenses must be incurred by an entity, trust, or non-profit corporation.
(*i.e. not municipality, city, etc.*)



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Eligible Taxpayer

1. Useable by any Massachusetts taxpayer as a direct dollar-for-dollar offset against taxes owed to the Commonwealth (50% annual cap except insurance co.'s & financial institutions);
2. BTC claimant cannot have caused the contamination;
3. BTC claimant must be the *owner or lessee* of the contaminated site during the cleanup period.



Eligible Costs

- Eligible costs must be equal to or greater than **15%** of the assessed value of the property *prior to remediation*, and must be directly related to the remediation.

- **Examples of Eligible Costs:**

- LSP fees;
- Testing;
- Clean fill;
- Demolition (fact specific);
- Legal (only environmental related); and
- Soil Disposal.



Procedure

- ✓ Complete a Brownfields Credit Application (BCA);
- ✓ Create Analysis of Eligibility by review of environmental reports, assessor data, and corporate filing records;
- ✓ Gather all invoices and cancelled checks;
- ✓ Build Spreadsheet of eligible costs, cross-referenced to backup documents such as invoices and payment data;
- ✓ Submit BTC package with DOR;
- ✓ Receive tax credit issuance or proposed denial;
- ✓ File appeal (if applicable);
- ✓ Use the tax credit, broker the credit.

Brownfields Tax Credit Award

The Certificate is issued by MA Department of Revenue.

- It may be used to offset up to 50% of taxes owed to the Commonwealth in current year with a 5 year carry forward (financial institutions or insurance companies can offset 100%);
- OR, may be transferred to another MA taxpayer;
- Certificate dated in year permanent solution was achieved;
- If filing of BTC is in later year, it can only transfer the follow-on years and apply for tax return amendment for “gap” period.



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Recapture:

- If a taxpayer ceases to maintain the remedy operation status or permanent solution prior to the sale of the property or the termination of the lease, the difference between the credit taken and the credit allowed for maintaining the remedy is added back as additional taxes due in the year in which the failure occurs. The sale of the property or the termination of the lease, in and of itself, will not result in recapture.



Recapture is a low risk event and past history has shown limited or even no history of recapture.

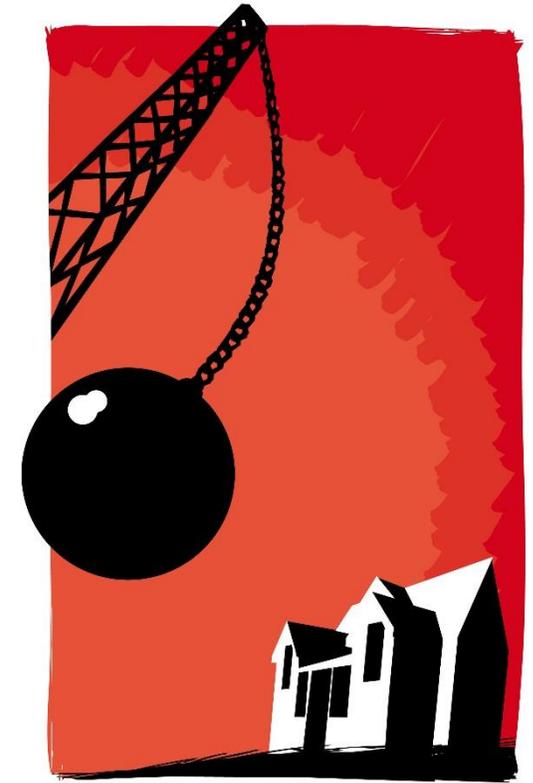
New Appeals Procedure:

- In November 2013, the Department created an Appeal Process for Denial or Partial Denial of Applications for the BTC (i.e. AP 636). The AP covers procedures relating to representation, review, approval or proposed denial (or partial denial) of applications, the Department's appeals conference process, and potential further remedies upon the Department's final determination.



Example of New Appeal Procedure:

- Property owner/lessee applies for \$1.3mm Brownfields Tax Credit with the DOR.
- The DOR reviews the application and approves \$1mm in BTCs and proposes to deny \$300K (In this example the site achieved a permanent solution by remediating to residential standards. The \$300K denied is from demolition costs for a building atop the contaminated soils).
- The property owner is issued a tax credit certificate for the approved amount (\$1mm), and has the option to appeal the proposed denial of expenses (\$300K).
- The property owner/lessee must file an intent to appeal within 30 days of receiving the proposed denial.
- The owner or tax credit consultant appears in front of an appeals officer to justify why the demolition of the building should be included as a tax credit eligible cost.
- The appeals officer then either accept, deny, or reduce the percentage of the appealed expenses.



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Case Study 1: *Everett Brownfields*

- Two story masonry and wood commercial building, circa 1920.
- Release discovered 1989, caused by prior owner.
- Reported to DEP, generating RTN and triggering remediation.
- A Class C-2 RAO was filed, indicating a temporary solution.
- We advised the client to move to RAO or ROS status.
- LSP filed ROS in June 2014.
- We verified \$607,929.45 in eligible costs and applied for a \$303,964.72 BTC (as the solution contained no restrictions, the site qualifies for 50% tax credit).



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Summary of MA BTC Requirements:

- The taxpayer cannot have been the cause of the contamination.
- The taxpayer must be the owner or lessee of the contaminated site during the cleanup period.
- The site must be closed out with a permanent solution (RAO or ROS) with or without conditions.
- The money spent on the remediation must amount to at least **15%** of the site's assessed value at the time the remediation began.
- The site must be in an *Economically Distressed Area*.
- The site must be used for business purposes.
- The remediation expenses must be incurred by an entity, trust, non-profit corp. (i.e. not a government, state, municipal entity)



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Thank you!



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Questions?

