

Mohawk Valley Brownfield Redevelopment Summit

Building Your Capital Stack: Funding Redevelopment

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Administrating Agencies

- Two state agencies administer the NYS Brownfield Cleanup Program:

- NYSDEC

However, don't forget that the NYS Department of Health acts as a partner to the NYSDEC in implementation.

- NYS Department of Taxation and Finance

However, don't forget that the Comptroller's Office reviews and approves all refund payments.



Tax Credit Overview

Overview of the Brownfield Tax Credit Program (“BTCP”):

- BTCP 1.0 (Accepted before 6/23/08).
 - BTCP 2.0 (Accepted between 6/23/08 and 7/1/15).
 - BTCP 3.0 (Accepted after 7/1/15).
 - Hopefully 4.0 coming soon.....
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- Current sunset date for BTCP: December, 31, 2022 (must receive a certificate of completion on or before March 31, 2026)!!!
 - Various bills extending the BTCP are circulating as part of the NYS Budget process. We expect the program to be extended with some changes. Stay tuned!!

BCP ACTIVE SITES AND COCs ISSUED PER REGION

REGION	ACTIVE SITES	COCs ISSUED
1	22	11
2	249	203
3	71	82
4	9	9
5	5	3
6	6	5
7	29	24
8	39	38
9	88	131
TOTALS	518	506

REDEVELOPMENT CLAIMED COSTS AND CREDITS

- **Site Preparation**

- Costs - \$2,273,094,767

- Credits - \$698,101,131 (30.71%)

- **Onsite Groundwater Remediation**

- Costs - \$93,534,699

- Credits - \$24,250,622 (25.93%)

REDEVELOPMENT CLAIMED COSTS AND CREDITS

- **Tangible Property Component**
 - Costs - \$15,249,091,485
 - Credits - \$2,048,767,391 (13.44%)

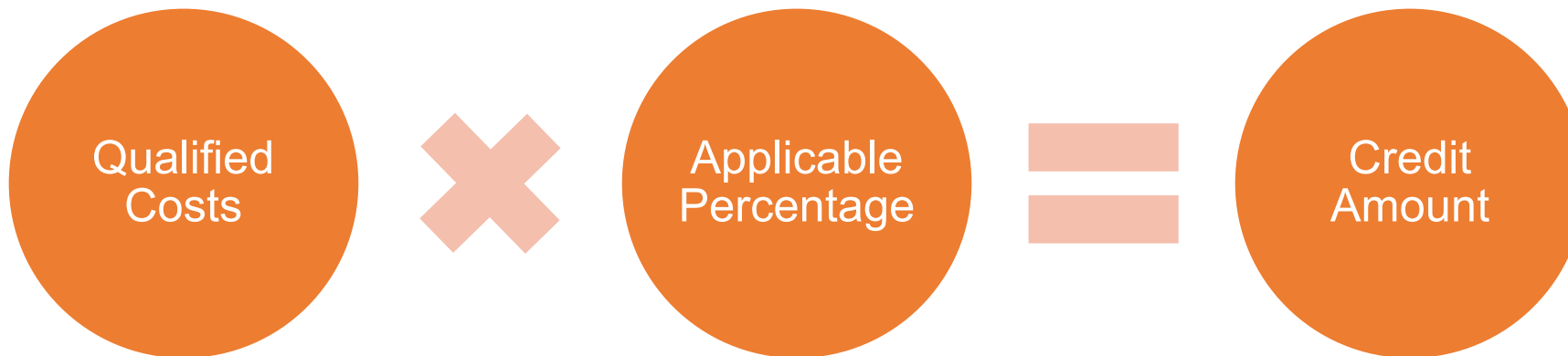
- **Total**
 - Costs - \$17,615,720,951
 - Credits - \$2,771,119,165 (15.73%)

REDEVELOPMENT CREDITS BY REGION

- Region 1 – \$24,748,781
- Region 2 – \$1,722,231,485
- Region 3 - \$419,919,664
- Region 4 - \$139,434,498
- Region 5 - \$1,665,107
- Region 6 - \$955,431
- Region 7 - \$96,807,696
- Region 8 - \$40,742,457
- Region 9 - \$324,613,546

Credit Calculation

- Credits are generated by two types of costs:
 1. Remediation costs
 2. Development/Construction costs
- Simple Calculation:



Audit Overview

- Assume all BTCP claims are audited by the NYS Department of Taxation and Finance. Specifically, the Tax Department's Desk Audit Bureau will begin an audit usually within 90 days of receiving a credit claim.
 - Partnerships and S corps – usually only one audit, but all partner and shareholder refunds are held until audit is complete.
- Brownfield Tax Credit (“BTC”) Audits are the Wild West of Tax Audits – no regulations mean significant uncertainty.
- Credit claims must be filed within the applicable statute of limitation (typically 3 years), or else be forfeited.
- Once the audit is completed and the credits are approved, if there is a refund, the refund payment is usually made within 90 to 120 days, though delays can occur – there is no mechanism within the Tax Law to force payment of the credit within a certain time frame.

Hot Audit Topics

- Be careful of trying to combine programs – some programs don't work well together.
- Even if no formal prohibition, operation of other program might raise issues.
- Grants cannot be used to pay costs that would otherwise kick off credits.

Hot Audit Topics

- Be careful of special allocations of credits
- Special allocations of the credits will generally be allowed if they correspond to a special allocation of the depreciation deductions and have substantial economic effect.
- In other words, it is generally safe for credits generally to follow depreciation deduction.

Hot Audit Topics

- Be careful of depreciation timelines under BCP 3.0
- Taxpayers must be careful when using accelerated depreciation for federal income tax purposes and cost segregation studies.
- Auditors have taken the position that if a taxpayer elects to depreciate property on a 5 or 7 year basis, but which could have been depreciated over 15 years or more, the Department will disallow those credits unless it qualifies for other reasons

Hot Audit Topics

- Be careful of property classified as “land improvements” and entering the basis of “real property” as defined by Treasury Regs.
- Audit takes the position that this property does not qualify as “tangible property or a building/structural component of a building.” Tax Law § 21(a)(3)(i).
- We have seen the Department disallow costs associated with property not part of the building that enter the basis of real property (e.g., [IRS Publication 946](#) and asset class 00.3 Land Improvements such as sidewalks, roads, canals, waterways, drainage facilities, sewers (not including municipal sewers in Class 51), wharves and docks, bridges, fences, landscaping shrubbery, or radio and television transmitting towers.).

Thank You

Call or email with questions!



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