



BOUSQUET HOLSTEIN PLLC

# Tax Credits Available Under the Brownfield Cleanup Program

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## 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

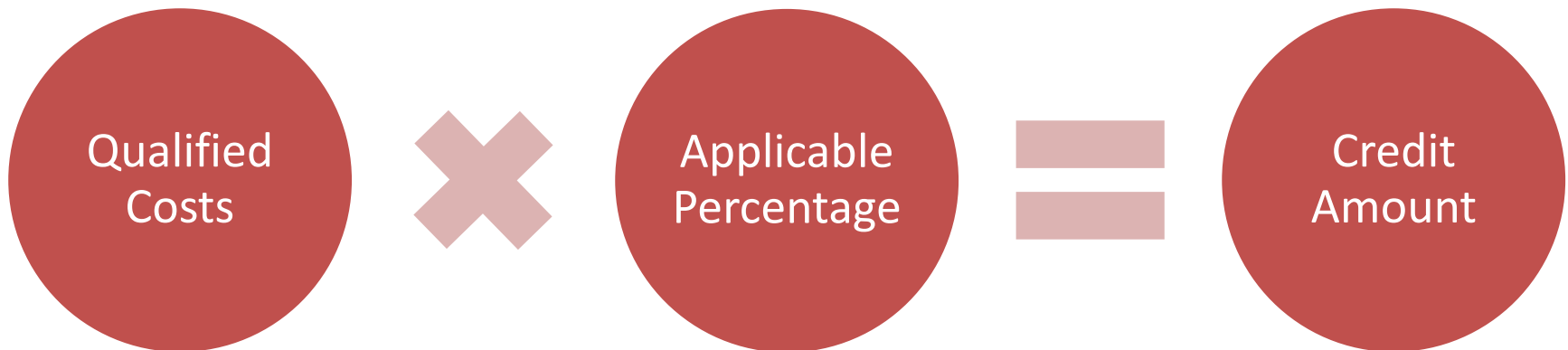
### Three tax credits:

- 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
<b>BRTC UNDER <u>BCP 2.0</u></b>			\$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
<b>BRTC UNDER <u>BCP 3.0</u></b>			\$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



## Pending Legislation (as of 6/4/2018)

- A10954/S8472
  - Defines “remedial action cover systems” to include “foundation slabs or sidewalls of a building, which is designed to serve a remedial purpose notwithstanding that the hardscape cover system may also serve another purpose for building construction or end use of the site.”
  - Provides that ICs/ECs (including remedial action cover systems) can be used on Track 1-4 sites to address contaminated groundwater/soil vapor and on Track 3 or 4 sites to address soil contamination above SCOs
  - Costs that are otherwise eligible as site preparation costs and are included in the basis of a depreciable asset for federal purposes are eligible for the site preparation credit component, but may not be also included in the tangible property credit component

## Pending Legislation (as of 6/4/2018)

- S8636
  - Costs of activities set forth in the FER are to be used by Tax Department for purposes of calculating the site preparation credit component
  - For BCP 2.0 sites, site preparation costs can only include costs of foundations to the extent of costs of cover systems required by FER and work plans for the site (similar to current language on foundation costs for BCP 3.0 sites)



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**THANK YOU!**



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