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NY Brownfield Cleanup Program Tax Credits Update & Introduction to Opportunity Zones

Prepared for

CENTER FOR CREATIVE LAND RECYCLING

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Presented by
Michael W. Tyszko, Esq.
Bousquet Holstein PLLC

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BCP Tax Credits

Basics and Current Trends

Basics

- **Refundable** – treated like an overpayment of tax
- Brownfield Redevelopment Tax Credit components are product of certain **qualified costs** and **applicable percentage**

Qualified Costs × Applicable Percentage = Credit Amount

Three “generations” of credit rules

BCP tax credit structure:	Accepted into BCP:	Must have CoC by this date to get credits:
“BCP 1.0”	Before 6/23/2008	December 31, 2017
“BCP 2.0”	6/23/2008 - 6/30/2015	December 31, 2019*
“BCP 3.0”	7/1/2015 and after	March 31, 2026

- BCP 1.0 and 2.0 Sites that do not receive a CoC by the dates listed above become subject to the BCP 3.0 credit rules.*
- All BCP sites must receive a CoC by March 21, 2026 to get any tax credits.

What's the difference between BCP 1.0/2.0/3.0?

Number of available credits:

- Brownfield Redevelopment Tax Credit (BRTC) (Tax Law § 21)
  - Site preparation credit component
  - On-site groundwater remediation credit component
  - Tangible property credit component
    - **BCP 1.0/2.0/3.0, but different definitions/eligibility for each generation**
- 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**

Site Preparation Credit Component - Comparison

	BCP 2.0	BCP 3.0
Eligible Costs	Costs paid or incurred **in connection with** (1) qualification for CoC, AND (2) preparing site for construction of building	(1) Costs **necessary to implement** site's investigation, remediation, or qualification for a CoC (2) Post-CoC costs that are necessary for BCP compliance (3) Foundation system limit
Applicable Percentage	Varies from 22% to 50% based on intended use of site and level of cleanup	Same as BCP 2.0
Timing	First claimed in year CoC is issued, then up to **5 taxable years** after CoC	First claimed in year CoC is issued, then up to **60 months** after the year the CoC is issued

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Tangible Property Credit Component - Comparison

	BCP 1.0	BCP 2.0
Eligible Costs	Cost or other basis of depreciable property placed in service on brownfield site ($\geq$ **4 years** useful life)	Same as BCP 2.0
Applicable Percentage	Maximum **20%** - Base 10% (individual) or 12% (corporation) - +2% for Track 1 - +8% for En-Zone	Maximum **22%** - Same as BCP 2.0 **PLUS** - +2% possible for BOA project
Timing	Claimed in year property is placed in service, for up to **10 taxable years** after CoC is issued	Same as BCP 2.0

- 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**

- Eligibility Hurdles:
  - **Any BCP site** not eligible for the TPCC if:
    - 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
  - **NYC BCP sites** *must* have *at least one* of the following to be eligible:
    - At least 50% in En-Zone (new BCP 3.0 En-Zones defined by reference to census data)
    - Developed as an "affordable housing project" (defined in DEC regulations)
    - "Upside down" (projected cost of investigation and remediation exceeds 75% of the appraised value of the site without contamination)
    - "Underutilized" (defined in DEC regulations)

Tangible Property Credit Component under BCP 3.0

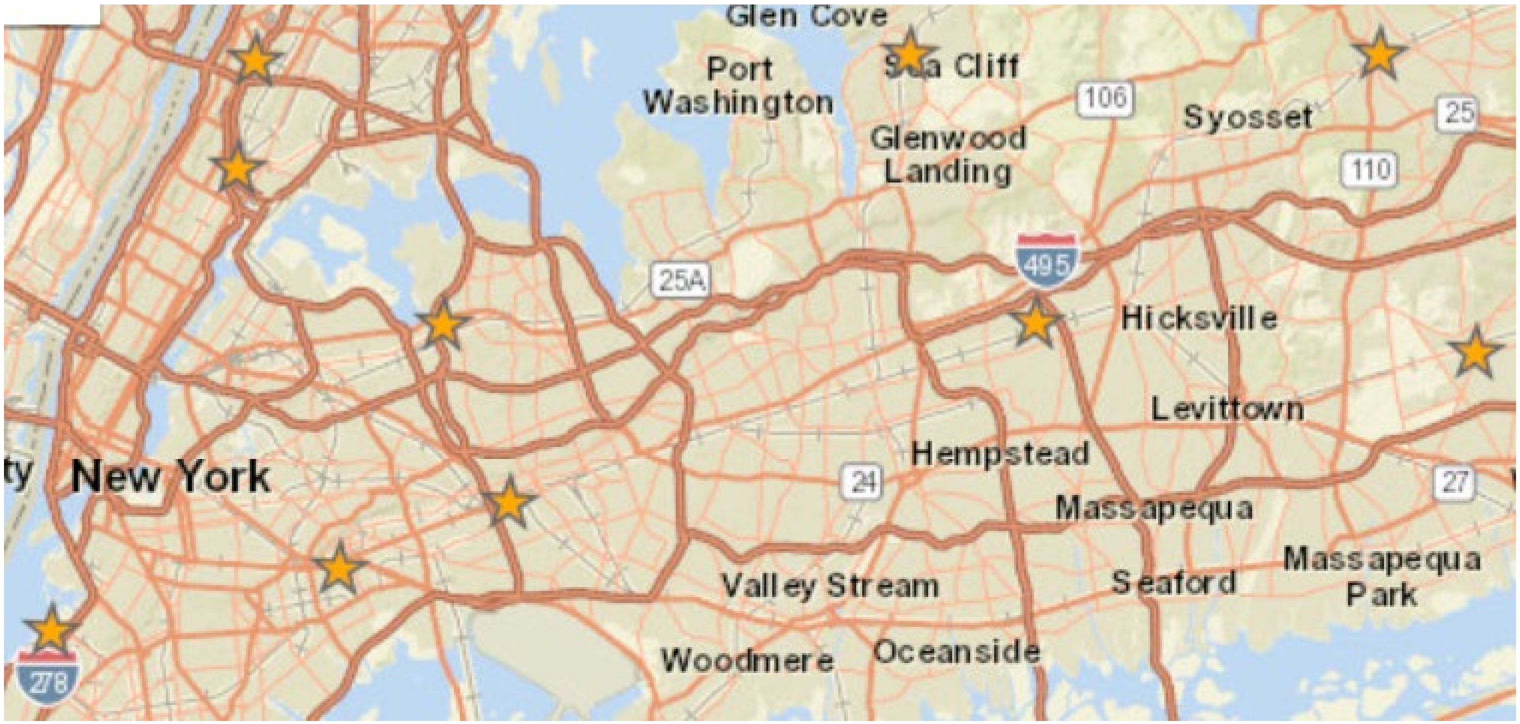
- Narrower Definitions of Eligible Costs:
  - Cost or other basis of depreciable property with a useful life of **15 years** or more with a situs on the brownfield site; plus
  - Costs associated with non-portable equipment, machinery, associated fixtures and appurtenances used exclusively on the site, 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

Brownfield Opportunity Areas

Lots of BOAs on Long Island



Not pictured: Downtown Riverhead, Riverside BOAs (Suffolk County)

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Illustration – Assumes En-Zone Site, Track 1 Cleanup

Component	Costs	App. %	Preliminary	Credit Cap	TOTAL
Site Preparation	$800,000	50%	$400,000		$400,000
Tangible Property	$12,000,000	(10%+2%+8%) 20%	$2,400,000	$1,200,000	$1,200,000
BRTC UNDER BCP 2.0			$2,800,000		**$1,600,000**

Component	Costs	App. %	Preliminary	Credit Cap	TOTAL
Site Preparation	$600,000	50%	$300,000		$300,000
Tangible Property	$12,200,000	(10%+5%+5%) 20%	$2,440,000	$900,000	$900,000
BRTC UNDER BCP 3.0			$2,740,000		**$1,200,000**

How BCP Credits Are Claimed

- Claimed on a NYS income or franchise tax return
- Claim is calculated at project entity; if pass-through, 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

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Federal Opportunity Zones Program

Introduction and Basics

Qualified Opportunity Zones

- Federal tax legislation to encourage investment in qualified low income communities designated as Opportunity Zones through the creation of tax incentives.
- Over 8,700 census tracts designated Opportunity Zones in 50 states, DC and 5 territories including all of Puerto Rico.
- 75% within metropolitan areas; nearly evenly split between high density (urban) zip codes and low density (rural) ones, with the rest in medium density (suburban) communities.
- 514 in New York State; ten on Long Island outside the five boroughs.

Qualified Opportunity Zones

Long Island

Census Tract #	Map #	County	City
36103122501	1225.01	Suffolk	Town of Babylon - Wyandanch
36059406801	4068.01	Nassau	Village of Hempstead
36103110902	1109.02	Suffolk	Town of Huntington
36059416500	4165	Nassau	City of Long Beach
36103169800	1698	Suffolk	Town of Riverhead
36103169704	1697.04	Suffolk	Town of Riverhead - EPCAL
36059406802	4068.02	Nassau	Village of Hempstead
36059517200	5172.00	Nassau	City of Glen Cove
36103146203	1462.03	Suffolk	Town of Islip - Central Slip
36103159103	1591.03	Suffolk	Town of Brookhaven - North Bellport

Qualified Opportunity Funds

- Investment vehicle organized as a corporation or partnership for the purpose of investing at least **90% of its assets** in "Qualified Opportunity Zone Property”.
- Created when a developer or third party establishes either a partnership, a limited liability company or corporation and designates it, through **self-certification (no IRS approval)**, as a qualified opportunity fund (“**<u>QOF</u>**”).
- QOF can be created by a developer for investment in a single qualified project or another sponsor to invest in one or more qualified projects or businesses. Different models are arising in the market.

Eligible Investments

Qualified Opportunity Zone Property:

- A trade or business which has **substantially all** of its tangible property located in a qualified opportunity zone; ***and***
- At least 50% of the business's total gross income is derived from the active conduct of such business within a qualified opportunity zone.

Examples: New businesses, expanding businesses, commercial, residential rental and mixed use projects, brownfield clean up. ***Not limited to real estate***

Impermissible Investments:

- Private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

How It Works

Taxpayer(s) with Capital Gains

Invest capital gain $ within 180 days of sale

Ownership Interest

Qualified Opportunity Fund

Investment $

Equity Interest

QOZ Business
$ invested used for tangible property construction, rehabilitation, new business, expansion of existing business within OZ

Tax Incentives to Investors

- **Defer** paying tax on capital gains from any third-party sale or exchange (e.g., sale of business, property or sale of stock).

- Realize a **reduction** in the amount of capital gain tax on prior sale if gain is invested in qualified opportunity fund for at least 5 years (10% reduction) or 7 years (additional 5% reduction).

- **Avoid** tax on any appreciation of the qualified opportunity fund investment if held for 10 years.

- ***Potential investors***: taxpayers with capital gains to defer, including high net worth individuals, banks, community investors, venture capital and tax credit investors.

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THANK YOU!

www.bhlawpllc.com/brownfields

mtyszko@bhlawpllc.com

315-701-6366

@NYBCPtaxcredits