Opportunity Zones and Brownfield Cleanup Program

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THE OPPORTUNITY ZONES PROGRAM
Tax Incentives to Investors

**Delay** paying tax on capital gains invested until earlier of disposition or 12/31/2026

**Reduce** the amount of tax on original capital gain if hold for at least 5 years (10% reduction) or 7 years (additional 5% reduction)

**Avoid** tax on any appreciation of the Fund investment if held for 10 years
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
- Self-certification (no IRS approval)
How a Qualified Opportunity Fund Works

Taxpayer with Capital Gains

Invest capital gains within 180 days of sale

Other Member

Investment $  
Equity Interest

Qualified Opportunity Zone Fund

Investment $

Other Member

Equity Interest

Qualified Opportunity Zone Business

Other Member

Investment $
Qualified Opportunity Zone Business

A trade or business that satisfies 5 tests:

• "Substantially all" test
• Working capital test
• "Serious business" test
• Intangible property test
• Gross income test
“Substantially All” Test

• 70% of *tangible* property must be *Zone Business Property*
  • owned (directly or indirectly)
  • “acquired by purchase” (including self-constructed assets) after 12/31/2017
  • Either:
    • First use of the tangible property is in the Zone; OR
    • Property is substantially improved (don’t have to improve land)
    • Special “first use” rules for vacant structures, land, and tenant improvements

• Leased property can also be Zone Business Property (counts toward the 70% test) if conditions
“Working Capital” Test

• Not more than 5% can be in non-qualified funds
• To meet the working capital safe harbor:
  • Amounts must be designated in writing for acquisition, construction, or substantial improvement
  • Must have a written budget with schedule for deploying funds
  • Must actually deploy funds consistent with the written plan within 31 months of receipt
May Proposed Regs Response to EPA Comments

• “Original Use”
  • Clarify the definition of original use to be clear the term applies to brownfield sites under CERCLA
  • Original use should apply to property that is underutilized or vacant for a period of one year or more
  • Original use should include new uses for existing properties

• “Substantial Improvement”
  • Brownfield assessment, cleanup, and site preparation should count
  • “Stacked” 30-month window for site preparation and 30-month window for vertical development

• Allow carryover of gains from one Fund investment to other Fund investments without triggering recognition
Where Do We Go From Here?

• It is unlikely that there will be additional proposed regulations issued in 2019
• There is strong incentive for investors to make Opportunity Zone investments in 2019
• Taxpayers may generally rely on the proposed regulations if they are applied *consistently and in their entirety* by the taxpayer
NYS BROWNFIELD CLEANUP PROGRAM TAX CREDITS
# Overview of NYS BCP Tax Credits

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<th>Accepted into BCP:</th>
<th>Must receive a CoC by:</th>
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<td>Before 6/23/2008</td>
<td>December 31, 2017</td>
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<td>Generation 2</td>
<td>6/23/2008 to 6/30/2015</td>
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Overview of NYS BCP

- **Refundable** – treated like an overpayment of tax
- Three tax credits:
  - Credit based on real property taxes and employment
  - Credit based on qualified policies of environmental remediation insurance
  - Brownfield Redevelopment Tax Credit (BRTC)
    - Site Preparation credit component
    - On-site groundwater remediation credit component
    - Tangible property credit component
Overview of BRTC

- BRTC components are product of certain **qualified costs** and applicable percentage.
Site Preparation Credit Component under Gen 2

- **Eligible costs**: costs paid or incurred in connection with (1) qualification for CoC, AND (2) preparing site for construction of building
- **Applicable Percentage**: varies from 22% to 50% 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 Gen 3

• **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
  – Related party service fees are not eligible

• **Applicable Percentage:** same as Gen 2

• **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 Gen 2

- **Eligible costs**: cost or other basis of depreciable property with useful life of **4 years** or more with situs on brownfield site
- **Applicable Percentage**: 10% (individuals) or 12% (corporations) plus:
  - 2% for sites remediated to Track 1
  - 8% for sites within an En-Zone
  - 2% for sites in BOA and developed in conformance with BOA plan
- **Cap**:
  - Non-manufacturing sites: lesser of $35M or 3 x site preparation costs
  - Manufacturing sites: lesser of $45M or 6 x site preparation costs
- **Timing**: claimed in year property is placed in service, for up to 10 taxable years after CoC is issued
Tangible Property Credit Component under Gen 3

- **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
Tangible Property Credit Component under **Gen 3**

- **Applicable Percentage**: 10% base plus, up to max of 24%:
  - 5% for sites remediated to Track 1
  - 5% for sites within an En-Zone
  - 5% for sites in BOA and developed in conformance with BOA plan
  - 5% for affordable housing
  - 5% for manufacturing sites

- **Cap**: same as Gen 2

- **Timing**: claimed in year property is placed in service, for up to 120 months after date CoC is issued

- Additional restrictions for sites in NYC (not applicable to upstate brownfield sites)
THANK YOU!

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