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Brownfield Cleanup Program Tax Credit Update: Condos, Co-ops Eligible For BCP Tax Credits

By Philip S. Bousquet (August 2006)

New York's Brownfield Cleanup Program has been amended to provide that condominium and cooperative dwellings constructed on cleaned-up brownfield sites will qualify for state tax credits.

Under the Brownfield Cleanup Program, New York State offers refundable tax credits ranging from 10% to 22% of eligible costs for the cleanup and redevelopment of blighted industrial sites known as "brownfields." The tax credits are available for depreciable property placed in service on a cleaned-up brownfield site. Before the amendment, developers building condominium units for sale to third parties could not obtain the BCP tax credits for those units.

The amendment allows developers to claim tax credits for *residential* condominiums, and clarifies that cooperative apartments owned by a "cooperative housing corporation" will also qualify. The amendment was signed into law by Governor Pataki on July 26, 2006, and is effective immediately.

Unfortunately, the amendment raises some difficult questions.

First, developers may not be able to claim tax credits for *commercial* condominium units, because the amendment limits the condo credits to "dwellings." For example, a "mixed use" building may be subdivided into residential and commercial (office and/or retail) condominium units. Under current law, the developer of the building would be eligible to claim tax credits on the residential units, but may not be able to claim credits for the commercial units. This seems at odds with the overall intent of the BCP.

Second, the amendment appears to apply only to cooperative housing units that are owned by cooperative housing corporations (or CHCs), as defined in the federal tax law. Cooperative housing ownership can take many forms, and although CHCs are a common form of ownership, they are not universal. If the cooperative apartments are depreciable, they might qualify for the brownfield cleanup program credits under the original bill regardless of how they are owned. However, any cooperative apartments that are not depreciable and not owned by a CHC would not be eligible for the BCP tax credits. Again, this distinction among ownership structures for co-ops appears at odds with the broad, remedial goals of the BCP.

The "immediate" effective date of the legislation also raises questions as to the availability of the BCP credits for condos and co-ops built on brownfield sites admitted



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into the Brownfield Cleanup Program before July 26, 2006. Will those projects qualify for the credits? What about condos or co-ops placed in service before that date? It is hoped that these questions can be addressed in a technical amendment this fall.

Despite these questions, the new provisions ensure that the BCP now offers significant financial incentives for residential developers to seek out and revitalize New York's brownfields into centers of retail, commercial, and residential activity.

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