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The Massachusetts Brownfields Tax Credit

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Suppose you own property that becomes contaminated through no fault of your own. Due to the potential danger to the community, Massachusetts Law (MGL Ch 21E) forces you to clean up the contamination. This is strict liability, so there is no concern on the part of the Massachusetts Department of Environmental Protection (MassDEP) as to whether you caused the contamination or not. This would also apply if you buy property that is later determined to be contaminated. True, you can use the legal system to bring the responsible party into the equation, but you likely won't have the time to do that before you begin to face issues from MassDEP. Therefore, you may be stuck with the obligation of cleaning-up the property, which can be a very expensive process.

This is where tax credits can help you, and in this instance we are discussing the Massachusetts Brownfields Tax Credit. A tax credit is a dollar for dollar deduction against the taxes owed to the State. From this perspective, a tax credit is something that you want to secure but not necessarily use for yourself. You may not have enough of a tax burden to justify the use of the credit, or the credit may be worth more to you as a saleable asset. The Massachusetts Brownfields Tax Credit was made fully transferable in 2003 to any Massachusetts taxpayer. There is a demand for State tax credits from taxpayers that have large or continuing state tax obligations. These taxpayers are usually large corporations, insurance companies, banks, or small companies and individuals that have a significant annual or one-time tax obligation. For such a taxpayer, purchasing a tax credit for less than its dollar per credit value will result in an immediate tax savings corresponding to the price paid for the credit. For you, the sale of the tax credit can provide needed funds that can be used to pay for the remediation, or to pay off the loans that were used to cover the cost of the remediation.

To clearly understand these definitions, remember that a tax credit is very different from a tax deduction. A tax deduction helps you reduce your taxable income such that there is an adjusted gross income number from which the tax calculation is made. A deduction is, therefore, an above-the line item. A tax credit can offset the bottom line taxes due, and, therefore, acts as a payment source. From a pricing standpoint, a tax credit is worth \$1 per credit, whereas a tax deduction is worth the amount of your tax rate, such as 30-40 cents.

Tax credits in the context of environmental contamination can help you recover approximately 35% of the total cost expended on remediation costs after calculating in the purchase discount, and all associated filing fees, costs and expenses, depending on who you work with. Thus, if you are faced with a \$350,000 tab to clean-up contamination on your property that you didn't cause, the Massachusetts Brownfields Tax Credit can recover \$122,500 of those costs, leaving you with an obligation of only \$227,500. At that point, you could pursue the responsible party, if possible, without fear of action by the MassDEP.

The Massachusetts Brownfields Tax Credit is a very useful development tool as well, as it helps properties get cleaned up and developed that would otherwise never be cleaned up. In that way, it

creates construction jobs, engineering work, laboratory testing jobs, property tax income for the towns that the formerly contaminated property is located in, and ultimately revenue for the state in sales taxes, income taxes from the expansion of employment and local business revenue, and the reduced human cost of contamination seeping into our environment.

For assistance applying for, syndicating or monetizing Brownfields tax credits, contact The Cherrytree Group.

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