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Countdown begins on Brownfields tax credit expiration: scheduled for Jan. 1, 2014

May 16, 2013 - Construction Design & Engineering

Developers hoping to take advantage of the Mass. tax credits for cleaning up property with environmental issues, known as "Brownfields", need to act expeditiously if they want to qualify under existing legislation.

Initially created in 1998, the tax credit is currently due to expire on Jan. 1, 2014. While legislation now pending would extend many of the current provisions, it may also mean that those who are currently eligible may no longer be if certain of the requirements for eligibility get changed.

Two different proposals are currently before the legislature. One calls for a five-year extension of the credit, while the second calls for just a two-year extension. Efforts to shorten the eligibility period on the part of the Dept. of Revenue reflect both the success of the initiative and budgetary concerns about the total cost of the program. The legislature elected to move forward with a five year extension by attaching it to the budget in order to "fast track" the approval so that the credit did not expire before the bills were approved. According to Warren Kirshenbaum, president of the Cherrytree Group, LLC, a Newton based tax credit consultant, broker, and syndicator, the current political jockeying on Beacon Hill is "directly related to budgetary constraints". Kirshenbaum believes that there is a need for the Dept. of Revenue to tighten up the procedures for granting the credit, but once detailed procedures are in place "this tax credit should be extended, as it that has shown a net long term economic gain for the Commonwealth; is generally supported by both the development and the environmental communities; and it makes legislative and political sense".

Developers who want to remain eligible for consideration need to make sure that they get their applications submitted by year end. Those who miss the Jan. 1 deadline may find they no longer qualify under whatever modifications the new legislation may impose.

Currently, there are close to 1,000 Brownfield sites in the state. The Brownfields tax credits were created as an incentive for developers to reclaim polluted property and stimulate economic growth by restoring affected properties, putting them back in use and thereby creating jobs and generating taxes.

Under the legislation as it stands currently, in order for a project to qualify, it must meet all of the following criteria:

The environmental damage must have been reported to the Mass. Department of Environmental Protection (DEP) and a permanent solution to clean the property and keep it clean must have been achieved. If the source of the pollution continues to contaminate the property, it will not qualify for a tax credit.

The implementation must be conducted based on the Mass. Contingency Plan, generally under the direction of a licensed site professional.

The property must be located in an economically distressed area (EDA), as determined by the DEP.

Mass. alone has 351 cities and towns, of which 233 of them are either completely or partially in an EDA. Boston is one of those cities.

The cost of the clean up must exceed 15% of the appraised value of the property at the time of clean-up.

The owner must be in good standing with the DEP, with no violations of any environmental restrictions, orders or mandates.

The property must be used for business purposes.

The credits can be used to recover as much as 50% of clean-up costs, including expenditures to assess, contain, remove or otherwise respond to the contamination. Covered expenses may include engineering fees, laboratory analyses, testing, legal fees, agency fees and contractors. The tax credit can be used in the year of issuance to offset 50% of a taxpayer's annual tax owed to the Commonwealth, or can be carried forward for up to five years, or transferred to another Mass. taxpayer.

If a project fails to qualify for the 50% credit, it may still qualify for a 25% credit if the cleanup includes an activity and use limitation, which specifies allowable and prohibited uses for the property.

The state Brownfields tax credit can also be used in conjunction with other grants and tax credits, including the federal historic tax credit for projects listed on the National Register of Historic Places. Anyone with a Brownfields site that may qualify should seek professional advice quickly, while the act is still in place.

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