

BROWNFIELDS TAX INCENTIVE FREQUENTLY ASKED QUESTIONS

This document provides answers to some of the most frequently asked questions (FAQs) about the federal Brownfields Tax Incentive. The questions are divided into the following sections:

- I. Background on the Brownfields Tax Incentive**
- II. Meeting the Contamination Criteria**
- III. Determining Eligible Expenses**
- IV. Meeting the Ownership Criteria**
- V. Meeting the Geographic Criteria**
- VI. Securing State Eligibility Statements**

I. BACKGROUND ON THE BROWNFIELDS TAX INCENTIVE

Q1: When was the Brownfields Tax Incentive passed and why?

A1: The Brownfields Tax Incentive was passed as part of the Taxpayer Relief Act (Public Law 105-34), which was signed into law on August 5, 1997. EPA and the Department of the Treasury worked with lawmakers to create the Incentive, which was needed to spur the cleanup and redevelopment of brownfields in distressed areas. The Brownfields Tax Incentive was enacted, in part, to level the playing field between taxpayers who caused environmental contamination at certain properties and those who did not.

Since 1994, the Internal Revenue Service (IRS) has ruled that certain costs incurred to assess and clean up soil and groundwater could be deducted as business expenses in the year incurred (rather than having to be capitalized over time). The IRS ruling, however, only addressed cleanup costs incurred by taxpayers who had contaminated the property. It did not address cleanup costs incurred by taxpayers who had purchased previously contaminated property. These parties had to capitalize over several years the expenses incurred to clean up the property. The new tax law provided a powerful incentive to motivate taxpayers to purchase, clean up, and redevelop brownfields in distressed areas.

The Brownfields Tax Incentive originally only covered expenditures at properties that met specific land use, geographic, and contamination requirements. To expand the use of the tax incentive, the geographic requirements were eliminated when Public Law 105-34 was amended on December 21, 2000 (Public Law 106-554), leaving only land use and contamination qualifications for expenditures on or after December 21, 2000. However, expenditures prior to that date (and on or after the incentive's effective date of August 5, 1997) must have been paid or incurred at properties that also meet the geographic conditions.

Q2: Why is the Brownfields Tax Incentive beneficial?

A2: The Incentive permits a taxpayer to treat any "qualified environmental remediation expense" as a deductible expense in the year incurred, rather than charging the expense to a capital account. Deductible expenses reduce a taxpayer's taxable income and thus generally reduce his or her income tax liability. Without the Brownfields Tax Incentive,

new property owners had to capitalize, i.e., add to basis, the cost of their land remediation expenditures. These taxpayers could not recover these costs for tax purposes until they sold the land.

Q3: What properties are eligible for the Brownfields Tax Incentive?

A3: The Brownfields Tax Incentive was initially applicable to properties that met specific land use, geographic, and contamination requirements. The geographic requirements were removed in December 2000, leaving only land use and contamination qualifications for expenditures on or after December 21, 2000. To satisfy the land use requirement, the property must be held by the taxpayer incurring the eligible expenses for use in a trade or business or for the production of income; or the property must be included in the taxpayer's inventory. To satisfy the contamination requirement, the taxpayer must demonstrate that there has been a release, threat of release, or disposal of a hazardous substance at the property.

Amended tax returns may be filed to deduct expenditures from prior tax years, provided that the costs were incurred after August 5, 1997, the effective date of the initial tax incentive law. However, costs incurred prior to December 21, 2000 can be deducted in the same year only if the property also met the geographic criteria. The taxpayer should work with their state environmental agency to ensure that the property lies within an eligible area.

Applying only to expenditures incurred between August 5, 1997 and December 21, 2000, the four geographic areas of eligibility include:

- C Census tracts with poverty rates of 20 percent or more;
- C Census tracts with populations of less than 2,000 where more than 75 percent of the tract is zoned for commercial or industrial use, and the tracts are adjacent to one or more census tract(s) with poverty rates of 20 percent or more;
- C Federally designated Empowerment Zones (EZ) and Enterprise Communities (EC); and
- C EPA-designated Brownfields Pilot sites announced before February 1, 1997.

Sites listed, or proposed for listing, on EPA's Superfund National Priorities List (NPL) are not eligible for the Incentive. Only expenses that are paid or incurred in connection with the abatement or control of a hazardous substance qualify for the Incentive. Taxpayers should consult with their tax counsel to determine which expenses are eligible. Taxpayers must also consult with their appropriate state Brownfields Tax Incentive contact to verify a property's eligibility and obtain the required state property eligibility statement. A list of state Brownfields Tax Incentive contacts can be found at:

<http://www.epa.gov/brownfields/contacts.htm>.

Q4: Must the property meet all or only one of the listed "targeted area" (i.e., geographic) criteria?

A4: For expenses incurred between August 5, 1997 and December 21, 2000, the eligible property need only meet one of the four listed criteria. For expenses incurred on or after December 21, 2000, the property is not subject to the geographic requirements.

Q5: Are taxpayers who cause contamination eligible for the Brownfields Tax Incentive?

A5: Responsible parties who contaminate and remediate a property without changing its use have always been able to deduct environmental cleanup costs. The Brownfields Tax Incentive broadens this allowance by permitting these same property owners to also expense these costs if they are changing the use of the property. As noted in Answer 1, the Brownfields Tax Incentive seeks to “level the playing field” between polluting and non-polluting parties by providing both with the same advantages.

II. MEETING THE CONTAMINATION CRITERIA

Q6: Does “hazardous substance” as defined in the Brownfields Tax Incentive exclude contamination from oil and/or mixtures with oil?

A6: The definition of “hazardous substance” in the tax provision is in large part based on Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 101(14) contains a qualified exclusion for petroleum, including crude oil and its fractions. However, hazardous substances that are mixed with petroleum products may be included in the scope of CERCLA and may also be included under the Brownfields Tax Incentive.

Q7: Does the Brownfields Tax Incentive distinguish between hazardous wastes and hazardous substances?

A7: The definition of “hazardous substance” in CERCLA Section 101(14) includes certain “hazardous wastes.” For example, the CERCLA definition of hazardous substances includes wastes that EPA lists under RCRA or hazardous wastes that are ignitable, corrosive, reactive, or toxic.

Q8: Can EPA clarify “a release or threat of a release”?

A8: CERCLA 101(22) defines the term “release” to include, “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.” Much case law exists on what constitutes a release or threat of a release that should help the states in making this determination. Taxpayers should consult with tax counsel and their appropriate state agency contact to clarify whether the circumstances at their property qualify as a release or threat of release under the Tax Incentive. A list of state contacts be found at: <http://www.epa.gov/brownfields/contacts.htm>.

Q9: What documentation must taxpayers provide to their state to show that there has been a release or a threat of release?

A9: Taxpayers and/or their tax counsel should contact their designated state agency to determine what documentation the state will require in order to provide the state property eligibility statement. A list of state contacts be found at:
<http://www.epa.gov/swerosps/bf/stxcntct.htm>

III. DETERMINING ELIGIBLE EXPENSES

Q10: What is the difference between incurring and paying for an expenditure? If the taxpayer incurs an allowable expenditure in one tax year, but pays for it in another tax year, does the taxpayer get to elect in which tax year to take the deduction?

A10: Generally, the year in which the taxpayer may take a deduction will depend on the taxpayer's accounting method. Taxpayers should consult with tax counsel to determine when specific expenditures must be taken into account for tax purposes.

Q11: Referring to Section 198(b)(1)(A) of the Brownfields Tax Incentive, what does it mean to be "otherwise chargeable to capital account?" What are allowable expenses?

A11: The Brownfields Tax Incentive was created to permit a taxpayer to obtain a current deduction for certain environmental remediation costs, rather than delay the deduction to a future year. Certain environmental remediation costs must be capitalized, i.e., included in the cost of the taxpayer's property and recovered as the property is used, sold, or otherwise disposed of. Other environmental remediation costs may be expensed during the year in which they were paid for or incurred. The Brownfields Tax Incentive only seeks to impact the former category. If an expense is already deductible within the year it was incurred, there is no need to invoke the provisions of this Incentive.

The category of allowable expenses under the Brownfields Tax Incentive is broad. Taxpayers should consult with tax counsel to determine whether specific cost items are allowable expenses.

Q12: Can the expenditures from the removal of asbestos or lead from a building be deducted under the Brownfields Tax Incentive?

A12: Section 198(d) of the Brownfields Tax Incentive excludes expenditures associated with substances for which a removal or remedial action would not be permitted under CERCLA §104(a)(3). CERCLA §104(a)(3) generally provides that a removal or remedial action cannot be taken to address products that are part of the building structure and result in exposure within residential buildings or business or community structures (e.g., interior lead-based paint contamination or asbestos which results in indoor exposure). Taxpayers should consult with tax counsel and their appropriate state agency contact to determine the circumstances in which a taxpayer's activities may qualify for deduction. A list of state contacts be found at:
<http://www.epa.gov/swerosps/bf/stxcntct.htm>.

Q13: Do costs for site assessment and investigation activities qualify as remediation expenditures under the Brownfields Tax Incentive?

A13: Yes. Site assessment and investigation activities are qualified environmental remediation expenditures if incurred “in connection with the abatement or control of hazardous substances at a qualified contaminated site.” Site assessment efforts must, therefore, be part of a larger abatement or control effort to qualify under the Tax Incentive.

Q14: Can expenditures for assessment or monitoring inside a building qualify for the Brownfields Tax Incentive?

A14: These expenditures may qualify for the Brownfields Tax Incentive if the costs can be characterized as environmental remediation costs and were used in connection with the abatement or control of a release or a threat of release of a hazardous substance. However, see Question 12 regarding limitations on expenditures associated with indoor contamination.

Q15: Do the costs related to construction of access roads and operations and maintenance (O&M) qualify as remediation expenditures?

A15: Yes, if the access road or O&M activity is paid or incurred in connection with the abatement or control of a release, threat of release, or disposal of a hazardous substance at the property.

Q16: Do state voluntary cleanup program (VCP) oversight fees qualify as remediation expenditures?

A16: Yes, if these costs are used in connection with the abatement or control of a release, threat of release, or disposal of a hazardous substance at the property.

Q17: Can taxpayers deduct and/or depreciate the remediation expenditures under the Brownfields Tax Incentive if they are going to reuse the property for a park or open space?

A17: No, the taxpayer must hold the property for use in trade or business or for the production of income to qualify for the Brownfields Tax Incentive.

Q18: How would the Brownfields Tax Incentive apply in a situation where a taxpayer capped soil contamination with a parking lot?

A18: The service costs related to the soil remediation and cap construction would be deductible. The portion of the parking lot truly functioning as the cap (underneath the asphalt) may qualify as a deductible expense under the Incentive.

Q19: Assume a responsible party settled with a state, and the state uses these settlement funds to conduct remediation activities over the next few years. Can the taxpayer claim these expenditures under the Brownfields Tax Incentive?

A19: Qualified settlement funds were not addressed in the legislation. It is unlikely that the taxpayer would be able to claim these expenses since the funds have already been turned over to the state.

Q20: Does the IRS plan to issue regulations listing those costs that qualify as eligible expenses under the Brownfields Tax Incentive and those that do not?

A20: No. At this point, the IRS does not plan to issue regulations about the Brownfields Tax Incentive.

Q21: What is the effective date of the tax law that triggers when a taxpayer's assessment and cleanup expenditures can be eligible for deduction under the Tax Incentive?

A21: The Brownfields Tax Incentive became law on August 5, 1997. Any expenditures paid for or incurred on or after that date and prior to the law's expiration on January 1, 2006, and that meet all other criteria, are eligible for the Tax Incentive. Please note that the geographic requirements are applicable only for expenses incurred between August 5, 1997 and December 21, 2000.

IV. MEETING THE OWNERSHIP CRITERIA

Q22: With regard to the definition of "qualified contaminated site" in Section 198(c)(1)(A) of the Brownfields Tax Incentive, what types of uses constitute "a trade or business or for the production of income, or which is property described in section 1221(1) in the hands of the taxpayer?"

A22: Each of these terms is a term of art in the tax world. Generally, any property used for non-personal purposes will be considered qualified under this portion of the law. Section 1221(1) properties are generally inventory properties or properties held by the taxpayer for sale in the course of his or her trade or business.

Q23: Does an environmental assessment paid for by a prospective purchaser of a qualified contaminated site qualify as an environmental remediation cost?

A23: Generally, these costs are not eligible for the Tax Incentive since the law requires that the property must be "held by the taxpayer." Taxpayers should consult with tax counsel to determine circumstances in which property is considered "held by the taxpayer" for purposes of determining whether it is a "qualified contaminated site."

Q24: Can investment properties and properties held by a developer for future sale qualify for the Tax Incentive?

A24: Yes. Properties held by the taxpayer for use in trade or business or for the production of income, including investment properties and properties held by a developer for future sale, can qualify for the Brownfields Tax Incentive.

Q25: Are properties owned by a municipality, and leased to a taxpayer, eligible for the Brownfields Tax Incentive?

A25: The answer depends upon whether the property is considered “held by the taxpayer.” There are conceivable circumstances where a municipally owned property might be considered a qualified contaminated property and where environmental remediation costs might qualify for the Incentive. A taxpayer who pays for remediation at a property for which he or she has a long-term lease (e.g., 99 years) on municipally owned property might qualify for the Incentive. Taxpayers should consult with tax counsel to determine circumstances in which a taxpayer’s property may qualify for the Incentive.

Q26: Are there any circumstances where leased or rented properties would meet the criteria “held by the taxpayer?” For example, if a historic land trust specifically prevents ownership and the tenant operates on repeating 3-year leases, would the tenancy qualify as being held by the taxpayer-tenant?

A26: Again, the answer depends upon whether the property is considered “held by the taxpayer.” There are conceivable circumstances where a leased property might qualify for the Incentive. A taxpayer who pays for remediation at a property for which he or she has a long-term lease (e.g., 99 years) might qualify for the Incentive. Short-term leases, including 3-year leases, would probably not qualify unless there was a continuing commitment to renew the lease year after year. Taxpayers should consult with tax counsel to determine circumstances in which the taxpayer’s property may qualify.

V. MEETING THE GEOGRAPHIC CRITERIA (REQUIRED ONLY FOR EXPENSES INCURRED BETWEEN AUGUST 5, 1997 AND DECEMBER 21, 2000)**Q27: What criteria must a property meet to qualify as being located in a “targeted area”?** *(Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)*

A27: Section 198(c)(2)(A) of the Brownfields Tax Incentive states generally that properties must be located in one of the following four targeted areas to be eligible:

- C Census tracts with poverty rates of 20 percent or more;
- C Census tracts with populations of less than 2,000 where more than 75 percent of the tract is zoned for commercial or industrial use, and the tracts are next to other census tract(s) with poverty rates of 20 percent or more;
- C Federally designated EZs and ECs; and

C EPA-designated Brownfields Pilot sites announced before February 1, 1997.

Sites listed, or proposed for listing, on EPA's Superfund NPL are not eligible for the Incentive.

Q28: What criteria are used to determine whether the population in a census tract is "below the poverty level"? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A28: Poverty level determinations are based on data compiled and published by the Bureau of Census. Determination of poverty depends upon income and family size (generally, families of four or more with yearly incomes below \$20,000 a year are determined to be below the poverty level). Adjustments for regional or area variations in income and cost of living are not included in the nationally determined computations.

This poverty information is publicly accessible via the Internet at several different locations:

C The Federal Financial Institutions Examination Council provides an easy-to-use tool for looking up census tract numbers for a street address or zip code at <http://www.ffiec.gov/geocode/default.htm>.

C The Census Bureau provides state-by-state lists of census tracts with poverty rates of 20 percent or more at <http://www.census.gov/ftp/pub/housing/tracts/>.

C The Census Bureau also provides an electronic tool to look up census tracts, poverty rates, and other 1990 census data free of charge. For more information, visit <http://www.census.gov/apsd/www/censtats.html>.

C The Census Bureau provides a consolidated list for resources that includes links to many of the sources listed here at <http://www.census.gov/geo/www/tractez.html>.

C Links to these and other Tax Incentive-related web sites will be added to the EPA Brownfields web site (<http://www.epa.gov/brownfields/>) in the near future.

Q29: If a locality does not have zoning, can "land use" be substituted for "land zoned" to meet the eligibility criteria? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A29: Yes. Generally, "land use" is the same as "land zoned," unless a non-conforming use is being retained. If the local jurisdiction does not use the term "zoning," the state agency will likely use the local equivalent to make an eligibility determination. However, because zoning occurs at the local level, most states do not have zoning designations on a statewide basis.

Q30: Does eligibility apply beyond federally designated EZs and ECs? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A30: Only properties, or portions of properties, that lie within federally designated EZs and ECs are eligible. Properties designated as EZs or ECs by state or local governments are not considered targeted under the Tax Incentive law.

The Department of Housing and Urban Development (HUD) provides an easy-to-use Internet tool to check whether a street address is within the boundaries of an EZ or an EC (<http://www.hud.gov/ezec/locator/>). For a more general listing of EZ/ECs, visit <http://www.ezec.gov/Communit/index.html>. In addition, links to these and other Tax Incentive-related web sites are available on the EPA Brownfields web site (<http://www.epa.gov/brownfields/>).

Q31: Are all properties within the federally designated EZs and ECs eligible?
(Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A31: Yes. Any property within the boundaries of a federally designated EZ or EC meets the EZ/EC criteria.

Q32: What if only a portion of the site meets the EZ/EC requirement of the geographic criteria? Can appropriate costs be expensed for the entire property? *(Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)*

A32: The EZ/EC eligibility requirement applies to remediation costs attributable to the portion of a property that lays within a federally designated EZ or EC. If a property is only partially located within such a designated area, only remediation expenditures related to the portion of the property within that area will qualify for the Brownfields Tax Incentive.

Q33: Which of the EPA Brownfields Pilots were announced before February 1, 1997?
(Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A33: Before February 1, 1997, EPA had announced 75 Brownfields Pilots. The list of these 75 Pilots is accessible on the EPA Brownfields web site at http://www.epa.gov/brownfields/html-doc/list_st.htm. In addition, contact information for these Pilots is accessible on the web site at <http://www.epa.gov/brownfields/contacts.htm>.

Q34: Are all properties within a Brownfields Pilot's political boundaries eligible for the Incentive? Must the properties be inventoried and/or targeted by the Pilot?
(Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A34: Only those properties within a Brownfields Pilot's political boundaries that are actively involved in Pilot activities meet the Brownfields Pilot criteria. The property does not have to be using Pilot funds to be eligible, but must be acknowledged by the Pilot project manager as part of the Pilot. Most Brownfields Pilots have targeted specific areas or communities, and eligible properties must be in these areas. The designated Pilot project manager will provide a certification to the taxpayer and/or designated state agency if a property meets this eligibility criterion. Further, only those portions of the property that fall within the designated Pilot area boundaries are eligible for the Incentive. Again, the list of these 75 Pilots is accessible on the EPA Brownfields web site at http://www.epa.gov/brownfields/html-doc/list_st.htm.

Q35: Is the entire state eligible for the Brownfields Tax Incentive in statewide Brownfields Pilots? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A35: No. Only those properties officially recognized by the Pilot project manager as part of the Pilot are eligible for the Brownfields Pilot certification. For example, Minnesota initially identified approximately 50 properties in its Pilot application. Only these 50 properties would meet the Brownfields Pilot criterion.

Q36: If an eligible Brownfields Pilot has expanded since its cooperative agreement was signed, is the expanded area eligible? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A36: No. Only properties/areas targeted by the Pilot at the time of its cooperative agreement negotiations are eligible.

Q37: Will those Pilots whose cooperative agreements are closed or coming to a close still be eligible for the Incentive? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A37: Yes. The only requirement is that they were designated as a Brownfields Pilot before February 1997.

Q38: Does the Tax Incentive apply to a Resource Conservation and Recovery Act (RCRA) facility meeting all geographic and other property requirements? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A38: Yes.

Q39: Are assessment and cleanup expenses incurred at NPL sites eligible for the Incentive? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A39: Sites listed, or proposed for listing, on EPA's NPL are not eligible for the Incentive.

VI. SECURING STATE PROPERTY ELIGIBILITY STATEMENTS**Q40: What are the states doing under the new tax law?**

A40: States address two basic requirements under the Tax Incentive. First, the law required that each state designate, within sixty (60) days after the law's enactment (August 5, 1997), a lead agency as the "appropriate state environmental agency" to handle inquiries and requests for property certifications from its taxpayers. The law authorized EPA to make this designation if states did not make it within 60 days.

Second, the law required that states provide each of their taxpayers, upon request, a written statement that a specific property meets the following two elements of the "qualified contaminated site" requirement: (a) the property is within a defined targeted area (applicable only for expenses incurred between August 5, 1997 and December 21, 2000.); and (b) there has been a release, threat of release, or disposal of any hazardous substance at or on the property. It is expected that taxpayers will rely upon tax counsel, not their designated state agency, for clarification of other issues related to the Brownfields Tax Incentive.

If contact information at the designated state agency changes, the state should notify EPA of the information change. States can send updated contact information to Ellyn Krevitz Fine at EPA Headquarters, or contact her at (202) 566-2775 or krevitz.ellyn@epa.gov. She will make sure the information is kept current on the EPA Brownfields web site. A listing of state contacts can be found here: <http://www.epa.gov/brownfields/stxtnctc.htm>.

Q41: How can a taxpayer verify that a property is eligible for the Brownfields Tax Incentive?

A41: Taxpayers need to receive a statement from their designated state agency (usually the department responsible for environmental protection) that there has been a release, threat of release, or disposal of any hazardous substance at or on the property (note: for expenditures between August 5, 1997 and December 21, 2000, the statement must also indicate that the property qualifies under the geographic criteria discussed in Section V). Taxpayers and/or their tax counsel should contact their designated state agency to learn what documentation the state requires the taxpayer to submit in order to obtain this statement. Once the statement is issued, the IRS will consider it valid for the life of the Tax Incentive. To claim the deduction, you need simply write "Section 198 Election" on your income tax return next to the line where you claim the deduction. Any written verification received from the state should be maintained in the taxpayers records.

Taxpayers can find contact information for their designated state agencies by accessing the EPA Brownfields web site at <http://www.epa.gov/brownfields/stxtnctc.htm>. The taxpayer is responsible for certifying that he or she holds the property for business purposes and that he or she incurred qualified environmental remediation expenses.

Q42: Do the states require proof of a property's geographic eligibility? (Applicable only for expenses incurred between August 5, 1997 and December 21, 2000.)

A42: Taxpayers and/or their tax counsel should contact their designated state agency to determine what documentation the state requires be submitted in order to obtain the property eligibility statement. Taxpayers can find contact information for their designated state agencies by accessing the EPA Brownfields web site at <http://www.epa.gov/swerosps/bf/stxctct.htm>.

Q43: How do states verify a property's eligibility?

A43: Methods of verifying a property's eligibility vary from state to state. Wisconsin, for example, will require that the applicant attach a letter from the appropriate municipality indicating that the area meets the industrial zoning criteria. Even if zoning information was available in a geographic information system (GIS) at the state level, it would be practically impossible to monitor because zoning is conducted at the local level and is constantly changing.

Q44: How are states designing their property eligibility statement processes?

A44: Several states have developed their programs to provide property eligibility statements for taxpayers. The Michigan Department of Environmental Quality (DEQ) serves as one example. Michigan attempted to develop the quickest, most cost-effective way to collect the essential information required to make a property eligibility decision. Michigan relies on taxpayers to verify that their properties are in a target area (applicable only for expenses incurred between August 5, 1997 and December 21, 2000) and that there has been a release or threat of a release, or disposal, of a hazardous substance at or on the property. Michigan has developed a checklist that walks taxpayers through eligibility requirements and provides guidance on the type of information they must submit to prove that a property meets the established criteria. In addition, Michigan developed an affidavit template for taxpayers to complete and submit to the DEQ. Once the taxpayer has submitted the affidavit and supporting documents, Michigan conducts a quick desktop review of the materials and either declares the property eligible or tells the taxpayer what sort of additional information is needed.

Q45: How long are state property eligibility statements valid? Will the states have to issue statements for sites incurring ongoing O&M costs each year?

A45: Property eligibility statements are valid for the applicable life of the Incentive (currently scheduled to sunset on January 1, 2003). The IRS, not the states, has the authority to determine whether the ongoing O&M costs are eligible remediation expenditures.

Q46: Can a state declare a property eligible before any work has been done on abatement and control?

A46: Yes. States are responsible for providing a statement that the geographic criteria (applicable only for expenses incurred between August 5, 1997 and December 21, 2000) have been met and that there has been a release or threat of a release, or disposal, of a hazardous substance at or on the property. States are not responsible for determining whether or not any abatement or control activities have taken or will take place.

Q47: What if a request for a state property eligibility statement identifies a contaminated property of which the state was not previously aware? Do properties identified pursuant to the Tax Incentive go on a federal cleanup “list?”

A47: If a state learns about a property through its property eligibility process, it may determine that the property warrants state involvement. EPA does not believe this will create a disincentive to requesting a state property eligibility statement. This does, however, raise the point that the taxpayers may want to gather some preliminary information on their property before talking to the state about it. Taxpayers can use tools available over the Internet, such as census data , to do this. There is no federally maintained list of properties identified under the Brownfields Tax Incentive. States, however, may maintain such a list and may choose to refer sites of potential federal interest to EPA.

Q48: Can a state that requires taxpayers by law to inform the state of a release or threat of a release use the Brownfields Tax Incentive state property eligibility statement requests as a form of such notification and require the owner to undergo cleanup?

A48: A state may determine, based on information provided in order to obtain a state property eligibility statement, that a release or threat of release warrants state involvement, including a state enforcement action. EPA recommends that states that plan on using submitted information in this manner inform taxpayers of this possibility on the property eligibility statement application.

Q49: How are the Tribal reservations being handled with regard to the Brownfields Tax Incentive?

A49: The statute does not specifically address this issue. The Department of the Treasury indicated that this will be handled on a case-by-case basis.

Other Resources

These guidelines were prepared in partnership with Department of Treasury, Department of Commerce's Economic Development Administration, Department of Housing and Urban Development, and the Small Business Administration. Taxpayers should also consider the following resources for information on the Brownfields Tax Incentive.

- **Internal Revenue Service publications.** Further information is available in IRS publication 954, "Tax Incentives for Empowerment Zones and Other Distressed Communities" at <http://www.irs.gov/pub/irs-pdf/p954.pdf>. To confirm whether property or expenses are eligible for deduction under the tax incentive, taxpayers should consult with tax counsel. It may also be useful to consult with an environmental attorney. In addition, the identified state contacts listed below may provide needed technical assistance on using the tax incentive.
- **U.S. Environmental Protection Agency.** For more information, please contact headquarters at (202) 566-2777 or your Regional Brownfields Coordinator at: <http://www.epa.gov/swerosps/bf/corcntct.htm>
- **HUD's Community Connections Service.** You can receive technical assistance and printed materials on the Brownfields Tax Incentive by calling (800) 998-9999.
- **U.S. EPA's Enviromapper.** This web-based database enables a user to map various types of environmental information, including air releases, drinking water, toxic releases, hazardous wastes, water discharge permits, and Superfund sites. Enviromapper can be accessed at <http://www.epa.gov/enviro/html/em/index.html>.

Contact List for States and Territories

List available on the Internet at www.epa.gov/brownfields/stxcntct.htm