

State Brownfield Tax Incentives

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www.nemw.org

October 2006

In many ways, the states have built the financing foundation that communities rely on to advance their brownfield efforts. Nearly half the states have focused on tax incentives to advance brownfield efforts. What is interesting is the variety in these tax-based programs. States are putting many different – but equally effective – approaches in place to meet the diverse challenges of brownfield reuse – challenges that range from basic financing for site assessment and cleanup, to supporting more complicated planning and transaction costs that brownfield typically require.

Tax incentives in place include tax credits, abatements, and other tax incentives applied to brownfield projects. These programs basically help with a project's cash flow, by allowing revenue to be used for brownfield purposes rather than for tax payments. This can help site developers get the cash together to deal with some of the site preparation costs associated with contamination; it can also help a project's financial outlook in the eye of a lender.

State and federal tax incentives historically have been used to channel investment capital and promote economic development in areas that have needed it – and brownfield targeting is a natural evolution of this type of program tool. Most tax incentives are targeted to offset cleanup costs or to provide a buffer against increases in property value that would raise tax assessments before the site preparation costs are paid off.

Florida: Voluntary Cleanup Tax Credit and Tax Refund for Job Creation

The 1998 Florida Legislature created the Voluntary Cleanup Tax Credit to encourage voluntary cleanup at brownfield sites in designated Florida Brownfield Areas and other specified sites contaminated by dry-cleaning solvents. One key to the program's success is that the credits are transferable, so that local governments and nonprofit developers that cannot use the credits may transfer them to businesses as an incentive to reuse brownfield sites or to mitigate costs incurred to perform brownfield site rehabilitation.

The program provides tax credits to eligible applicants for up to 35 percent of the costs of voluntary cleanup activities that are integral to site rehabilitation, not to exceed \$250,000 per site per year. Each year FDEP may grant up to \$2 million in tax credits, which can be applied to the state's Corporate Income Tax or Intangible Personal Property Tax in Florida. In fiscal 2003-2004, the program awarded tax credits totaling \$1 million for 16 sites. The Voluntary Cleanup Tax Credit Rule (Chapter 62-788, F.A.C.) provides the administrative process, guidelines and forms for application for these tax credits.

Florida's Brownfield Redevelopment Bonus encourages redevelopment and job creation in designated Brownfield Areas through a tax refund of up to \$2,500 for each new job, or 20 percent of the average wage of the jobs created, whichever is less. Of the \$2,500, \$500 is a fully optional match, so that the bonus often functions as a \$2,000-job bonus. All tax refunds can be applied to many tax categories, including corporate income, ad valorem, intangible personal property, insurance premium, and sales and use taxes.

The refund is available to any business that locates at a brownfield site designated under Florida guidelines as a Brownfield Area and qualifies under Florida's Qualified Target Industry (QTI) tax refund

program. This program provides a tax refund of at least \$3,000 per job created to businesses in targeted industries that create at least 10 jobs and pay an average annual wage of at least 155 percent of the local, state, or MSA average.

Applicants that do not qualify under the QTI program may still qualify for the brownfield bonus by creating at least 10 jobs (with benefits) in a designated Brownfield Area and making a fixed-capital investment of at least \$2 million in mixed-use business activities. Applicants also must show that the project will diversify and strengthen the local economy and promote capital investment in the area surrounding the rehabilitated site.

Michigan: Tax Increment Financing

In 1996, Michigan authorized cities and counties to establish Brownfield Redevelopment Authorities, which have TIF and bonding authority. Structurally, they are based on the widely recognized and popular development authority approach, which increases their acceptance among communities and private entities that might be uncomfortable with a strictly environmental program. The authorities can adopt brownfield plans that identify the eligible activities to be conducted on an eligible property and provide for the use of TIF to capture property taxes to reimburse the costs of the eligible activities.

TIF is based on the tax increment of a targeted brownfield site. The tax revenues it generated the year the property was included in the brownfield plan are held constant as the base. When cleanup and redevelopment of the property increases its value, and thus the tax revenues it generates, the increased tax revenues (captured taxes) are used to pay the cost of eligible environmental response and redevelopment activities at the site. Tax increment revenues that are eligible for capture include all property taxes including taxes levied for school operating purposes (with approval from the DEQ or MEGA). Taxes already captured as part of an existing tax increment financing plan (under other state laws) and taxes levied to pay off specific obligations are exempt.

Under the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), only a BRA can capture new property tax value from a redeveloped eligible property and use the captured funds to reimburse those who incurred eligible expenses on that property. The BRA may also establish a Local Site Remediation Revolving Fund from eligible tax capture to cover eligible expenses on other eligible properties within the BRA's jurisdiction.

The property owner also may apply for a Single Business Tax Brownfield Redevelopment Credit for eligible investments made at an eligible property, if it is included in a brownfield plan. This credit can total 10 percent of any innocent party's development (not cleanup) costs, up to \$1 million. In urban communities that have created an Obsolete Property Rehabilitation District, property owners can receive an abatement of up to 100 percent of real property taxes for a brownfield site for up to 12 years.

By October 2004, some 225 cities and towns and 11 counties had set up authorities that provide one-stop shops for information, technical assistance, and resources. They have proven especially helpful in small towns, where they have spearheaded redevelopment projects in towns with as few as 1,500 people.

New York: Cleanup, Real Property, and Insurance Tax Credit

Effective in the tax years beginning April 1, 2005, New York State offered tax credits to participants in the Brownfield Cleanup Program and have entered into a brownfield cleanup agreement with the Department of Environmental Conservation. The tax credits offset the costs of site preparation, property improvements, on-site groundwater cleanup costs, real property taxes, and environmental insurance premiums. Tax credit eligibility requires a certificate of completion, issued by DEC, stating that remediation requirements that were set forth in the brownfield cleanup agreement have been achieved. To claim the tangible property credit (similar to an investment tax credit for development), the property must be placed in service after the certificate of completion is issued. All the credits available under the Brownfield Cleanup Program are refundable credits.

The state offers three types of credits:

- The brownfield redevelopment credit consists of three separate and distinct credits that provide a business tax credit of 12 percent or a personal tax credit of 10 percent for the costs of site preparation, tangible property (i.e., development), and on-site groundwater remediation. These percentages increase by 2 percent for sites cleaned up to unrestricted condition, and increase by 8 percent if at least half of the qualified site is located in an area designated as an environmental zone by the commissioner of economic development.
- The remediated brownfield credit for real property taxes provides a tax credit based on the real property taxes imposed on a qualified site. The credit is available for 10 consecutive years, beginning in the year a taxpayer is issued a certificate of completion. The credit is for 25 percent of the eligible real property taxes imposed on the site, multiplied by the “employment number factor”—a percentage based on the number of people employed by the taxpayer or his lessee. If the entire qualified site is located in an environmental zone, the percentage for purposes of calculating the credit increases from 25 percent to 100 percent. There is no limit on the total amount of this credit allowed for a qualified site, which is determined by multiplying \$10,000 times the number of employees at the site. If the taxpayer also is eligible to claim the HEZE real property tax credit, he or she must make an irrevocable choice between the two.
- The environmental remediation insurance credit provides a one-time credit for up to \$30,000 or 50 percent of the premiums paid for environmental remediation insurance, whichever is less. Such insurance is required for one or more of the following: on-site cleanup of pre-existing pollution; third-party claims (for bodily injury or property damage); cost of each policy covering on-site cleanup of pre-existing pollution conditions; cost-coverage; and re-opener coverage.

Wisconsin: Cancellation of Delinquent Taxes

In 1999, Wisconsin’s legislature adopted tax provisions that can help local governments achieve the cleanup and redevelopment of contaminated, tax-delinquent properties. For many brownfield sites—especially where the local government has used various grant programs to complete preliminary assessments of contamination—the provisions have removed the combined barriers of contamination and tax delinquency that prevented developers from acquiring them.

The provision for cancellation of delinquent taxes (s. 75.105, Wis. Stats.) enables counties and the

City of Milwaukee to cancel all or a portion of unpaid property taxes on a contaminated property, provided that the Wisconsin Department of Natural Resources has approved a written agreement with the party receiving the tax benefit to investigate and clean up the contamination. This party can be the current property owner or a third party proposing to acquire the property or work with the current owner.

To develop a tax cancellation agreement, the dialogue starts with the local taxing authority to determine the extent to which the authority is willing to reduce or eliminate the delinquent taxes (discretionary authority). Then an agreement is prepared with the DNR that details the investigation and cleanup required in exchange for canceling the taxes. In many cases, the party receiving the tax benefit develops a separate agreement with the local taxing authority regarding tax, schedule, and redevelopment issues. If for any reason the tax cancellation agreement is not implemented, the cleanup agreement with the DNR is nonbinding.

By January 2005, taxes were cancelled at eight brownfield properties, and several had been cleaned up and redeveloped. Examples include the former Pingle Oil bulk plant property in Ashland, which has been redeveloped as a towing service/auto repair business, and a contaminated property on 1420 State Street in Racine, which has been redeveloped as a large supermarket and adjacent parking.

Another tax provision (s. 75.106, Wis. Stats.) enables counties and the City of Milwaukee to foreclose on tax-delinquent brownfields and assign the foreclosure judgment to a new owner for redevelopment. The party requesting assignment of the foreclosure judgment must have a written agreement, approved by the DNR, regarding cleanup of the contamination. Before the law was enacted, municipalities had to take ownership of foreclosed property and assume the liability for cleaning it up and selling it. Fearing the costs of remediation, cities often chose not to pursue ownership of abandoned properties.

This provision has been used at six brownfield sites, and other sites are under consideration. A notable example is the Sherman Perk coffee shop, located in a formerly vacated gas station, which became a pilot case for the new foreclosure provision. By 2000, the Sherman Perk building had been vacant for 10 years, tax delinquent for nine, and scheduled to be razed by city order because of structural deterioration and fuel contamination. At that point, Bob Olin became interested in developing the property and began negotiating an agreement with the city and DNR, under the new tax provisions, to acquire it through foreclosure and clean it up.

The foreclosure process began in October 2000 and concluded five months later in March 2001, with finalization in court on April 9. As a small, community-based developer, Olin faced critical financial hurdles in getting his project underway. He worked with a variety of public agency partners, obtaining \$30,000 in grants from the city and county of Milwaukee to help cover the costs of site cleanup, and \$100,000 from the Wisconsin Department of Commerce Brownfield Revitalization Program to help finance redevelopment.

In addition, ESV, LLC, used the foreclosure provision to redevelop the former Wisconsin Waste Paper property on Newhall Street in Milwaukee into a new small animal hospital, and Ralos, LLC, redeveloped the former Solar Paints and Varnish property into a new manufacturing plant for construction equipment.

