



Brownfields Tax Incentive Guidelines

Background

The U.S. Environmental Protection Agency (EPA) is committed to helping clean up and revitalize former industrial or commercial property where reuse is complicated by environmental contamination concerns. EPA and its federal partners believe that with the right incentives, these former engines of industrial growth can once again generate value for both the private and public sectors.

These areas are “brownfields,” defined as “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” These properties may be large or small; urban or rural; former factories or warehouses. They have all been left idle due to concerns about cleanup costs and legal liabilities.

Originally signed into law as part of the Tax Relief Act of August 1997, and codified through Section 198(a) of the Internal Revenue Code, the Brownfields Tax Incentive is intended to spur the cleanup and revitalization of brownfield properties. Redevelopment can lead to a wide variety of public benefits, including environmental cleanup, reduced blight, new jobs, and higher tax revenues. Private sector companies have also seen the advantages of brownfields redevelopment. Many of these sites are located in areas with existing infrastructure, transportation, and promising markets.

Under the tax incentive, certain environmental cleanup costs at targeted sites may be fully deducted by eligible taxpayers in the year in which they are incurred, rather than having to be capitalized and spread over a period of years. This tax incentive is one of many federal initiatives to encourage business development and commercial economic revitalization. There are programs in existence that address a multitude of brownfields issues, including expanding access to capital, small business technical assistance, and workforce training and hiring incentives. Business owners should review the full range of initiatives available to help turn a brownfield into an attractive business location.

What’s in These Guidelines:

- An introduction to the Brownfields Tax Incentive
- A real life example
- Recommended steps for utilizing the Brownfields Tax Incentive
- A list of additional resources

An Introduction to the Brownfields Tax Incentive

The Brownfields Tax Incentive is not a tax credit, but reduces your tax burden indirectly by lowering your taxable income. The incentive does this by allowing you to claim eligible cleanup costs as a current expense, rather than capitalizing them as long-term assets. Companies prefer deductions because these substantially reduce their current income, allowing them to capture tax savings now rather than later.

The Brownfields Tax Incentive encourages brownfields cleanup and redevelopment by allowing taxpayers to immediately reduce their taxable income by the cost of their eligible cleanup expenses. The incentive creates an immediate tax advantage from these expenses, helping to offset short-term cleanup costs.

The Brownfields Tax Incentive: A Real Life Example

The following real life example demonstrates the benefits of the Brownfields Tax Incentive in practice. (Note: additional case studies involving the Brownfields Tax Incentive can be found at: <http://www.epa.gov/brownfields/bftaxinc.htm>.)

Project Background

Located in West Chester, Pennsylvania, Alliance Environmental is a demolition and environmental service company that was looking to expand its headquarters. The company identified a nearby, 8.5-acre property with a building that Alliance hoped to renovate. The site's former uses included a landfill and a pharmaceutical manufacturing facility that had produced penicillin during the 1970s and 1980s, contaminating the site's groundwater. Alliance purchased the property in 1998. Through a newsletter published by a local environmental consulting firm, Alliance became aware of the then relatively new Brownfields Tax Incentive, and immediately recognized it as a way to maintain adequate cash flow during cleanup and redevelopment. The tax incentive allowed Alliance to deduct cleanup expenses in the same year they were incurred, and receive a cash injection in the form of a tax refund.

Benefit #1 – An Upfront Cash Infusion

The approval process for Alliance's use of the Brownfields Tax Incentive was straightforward. The company obtained an eligibility statement from the Pennsylvania Department of Environmental Protection's (PA DEP) web site, and completed and submitted the tax incentive application in one day. Within a week, the PA DEP provided Alliance with a letter verifying that the site qualified for the tax incentive.

Use of the incentive benefited Alliance in the following ways:

- ❑ Expensing cleanup costs in the year incurred reduced the net income on which Alliance's taxes were paid.
- ❑ Because a smaller portion of Alliance's profit from that year went to pay taxes, Alliance used the resulting savings to defray redevelopment costs.
- ❑ Alliance's tax savings, combined with savings from a municipal tax incentive available in Pennsylvania's Chester County, totaled more than \$800,000.
- ❑ The value of Alliance's project was increased by the first year savings—and earnings on those savings—as measured by the time value of money (even if the savings could be realized over time, today's dollars are worth more than future dollars).

Benefit #2: A Lower Real Tax Burden

Because the actual value of taxes paid are affected by when payments are made, Alliance also benefited in the following ways:

- ❑ By realizing tax savings in the first year, Alliance's savings were impacted over the usable life of the improved property by inflation.
- ❑ Because of inflation, dollars saved in the present year are worth more than would be dollars saved in future years, if costs are amortized rather than expensed.

Outcome



The new headquarters of the Good Will Fire Department

Having saved more than \$800,000 through the Brownfields Tax Incentive and another, local tax incentive, Alliance developed the property into Good Will Park, bringing new commerce and services to the area with more than 100,000 square feet of retail space. One of the park's tenants, the local volunteer fire department, now has a more central location for responding to emergency calls. Adjacent properties have also increased in value, which their owners attributed to the Good Will Park redevelopment. Alliance

has since used the Brownfields Tax Incentive to enable additional projects, including the cleanup and redevelopment of a 13.5-acre, former concrete plant.

Recommended Steps for Using the Tax Incentive

Step 1: Determine whether you meet the taxpayer requirements.

- ❑ The property must be “held by the taxpayer.” This definition includes outright ownership. However, some types of long-term lease arrangements may qualify. If there is a question, taxpayers should consult with their tax counsel to determine whether their circumstances qualify. A list of state Brownfields Tax Incentive contacts can be found at: <http://www.epa.gov/swerosps/bf/stxcntct.htm>.
- ❑ The taxpayer must hold the property for business or income generation purposes. This may include trade or business property, investment property, or property held as inventory. This does not include personal use property.

Step 2: Find out whether your property meets eligibility requirements.

In general, a property is eligible for the tax incentive if it is an area at or on which there has been:

- ❑ A release or threat of release of a hazardous substance (including petroleum products).
- ❑ Disposal of a hazardous substance (including petroleum products).

However, the property must not be listed or proposed for listing on EPA's Superfund National Priorities List.

What constitutes a release or a threat of release?

A release under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous substances into the environment. The “environment” under CERCLA includes surface water, ground water, ambient air, and land, but does not include indoor areas. Therefore, for a release or a threat of release to exist, it must involve or threaten the outdoor environment.

What is a hazardous substance?

The Brownfields Tax Incentive defines “hazardous substance” as any substance that is defined under CERCLA. The list of CERCLA hazardous substances can be found at 40 CFR §302.4, Table 302.4. However, the Brownfields Tax Incentive excludes products that are part of the structure of a building and result in exposure within that building (e.g., interior lead-based paint or asbestos that results in indoor exposure) from its definition of a “hazardous substance,” even if that substance is listed on Table 302.4.

To determine whether a particular substance is a “hazardous substance,” you should consult an environmental attorney. U.S. EPA Regional offices may also be a source of information on defining a hazardous substance.

In December 2006, changes to provisions of the Brownfields Tax Incentive were made to allow the deduction of expenses for the cleanup of petroleum products (e.g., crude oil, crude oil condensates, and natural gasoline), which had previously been ineligible. This new eligibility for petroleum products applies to cleanup expenses incurred from January 1, 2006 to the incentive’s current expiration on December 31, 2007.

What expenses are eligible?

Generally, taxpayers may deduct those expenses that are paid or incurred in connection with the abatement or control of hazardous substances. For example, the cost of building an access road could be eligible if it was paid or incurred in connection with the abatement or control of hazardous substances, but not if it would just speed construction of a new building. If a taxpayer acquires otherwise depreciable property in connection with such an activity, the property’s cost will not be immediately deductible, but may be expensed over the life of the property. Absent the Brownfields Tax Incentive, such depreciation would not be allowed.

Types of eligible expenses include:

- Site assessment and investigation;
- Site monitoring;
- Cleanup costs;
- Operation and maintenance costs;
- State voluntary cleanup program oversight fees; and
- Removal of demolition debris.

Step 3: Ask your state for a statement that you are eligible for the tax incentive.

Before the IRS will accept the deduction, a designated state agency must provide you with a statement that there has been a release, threat of release, or disposal of a hazardous substance at or on the property. You can find your state’s designated agency by visiting EPA’s Web site at <http://www.epa.gov/brownfields/stxcntct.htm>. You may also call EPA’s Office of Brownfields Cleanup and Redevelopment at (202) 566-2777.

Each state agency will have a different application process and documentation requirements. Please note that the designated state agencies do not determine whether a given expenditure is eligible. Taxpayers should work with their tax counsel on the matter of eligible expenses.

Additional 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. 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 state contacts available at <http://www.epa.gov/brownfields/stxcntct.htm> may provide needed technical assistance on using the tax incentive.
- ❑ U.S. Environmental Protection Agency. For more information, please contact EPA's Office of Brownfields Cleanup and Redevelopment at (202) 566-2777 or your Regional Brownfields Coordinator.
- ❑ 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>.
- ❑ A Frequently Asked Questions (FAQ) document regarding the Brownfields Tax Incentive, as well as a general fact sheet, can be found at: <http://www.epa.gov/brownfields/bftaxinc.htm>.
- ❑ Additional case studies on the Brownfields Tax Incentive can also be found at: <http://www.epa.gov/brownfields/bftaxinc.htm>.