

NEW BROWNFIELDS LEGISLATION ADDS NEW INCENTIVES IN NEW JERSEY

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This past January 2004, New Jersey Governor James McGreevy signed two bills into law (A2585 and A2628) that sweeten the pot of brownfields reimbursement opportunities for developers.

First, when redevelopment of the site is performed in phases, reimbursement payments may be made in the same percentages as the occupancy rate of that portion of the site where a No Further Action letter has been issued. This benefit removes the existing requirement that construction and occupancy be 90% complete before reimbursement.

Next, sales taxes paid on the purchases of building materials for any structure will be counted towards the tax revenue generated from which reimbursements will be made. Previously, the sales tax was limited to purchases for residential projects.

Additionally, in lieu of an exact accounting from the developer, suppliers, contractors and subcontractors, the developer and the State may stipulate that the sales tax paid on building materials equals one percent (1%) of the developer's contract price for remediation and improvements. The State may further allow that percentage to be as high as three percent (3%), as long as the developer presents clear and convincing evidence that the percentage should be greater than 1% (i.e., by demonstrating actual taxes paid with documentation). By opting for the flat 1%, the administrative burden of tracking all costs and sales taxes is greatly reduced. Moreover, agreeing to the flat 1% will not trigger the automatic tax audit of the developer and his or her contractors when an exact accounting of sales taxes must be made.

Finally, a Corporation Business Tax ("CBT") credit for certain remediation costs has been established. The bill amends New Jersey's tax laws to provide that a taxpayer is allowed a credit against the CBT it would ordinarily pay in an amount equal to 100% of the eligible costs of the remediation for remediation performed between January 1, 2004 and January 1, 2007. The annual amount of the tax credit may not exceed 50% of the tax liability otherwise due. As with the other requirements under the brownfields program, this tax credit, when taken together with other tax credits (such as property tax exemptions received in an Environmental Opportunity Zone), may not exceed 100% of the total cost of the remediation.

In order to be eligible, the taxpayer must submit an application to the NJDEP to certify the eligible costs and that the developer meets the requirements of the brownfields program. The legislation further provides that the remediated site must be located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban), as designated pursuant to New Jersey's State Planning Act, N.J.S.A. 52:18A-196. The business activity at the remediated site must represent new CBT, or sales or use tax, or gross income tax receipts. This law further provides that the CBT credit may be transferred from the person who performs the remediation for use by other CBT taxpayers in New Jersey, so long as the receiving entity is not affiliated with the corporation surrendering its tax benefits. The maximum amount that may be transferred over the three-year period is \$4 million.

This new legislation makes brownfields redevelopment even more attractive in New Jersey and will further encourage residential projects in areas where the the state government is encouraging "Smart Growth." In effect, certain developers now have an opportunity to recover 100% of their remediation costs by being reimbursed 75% of the costs through the brownfields program and by obtaining CBT credits to recoup the remaining 25%.