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Incentives for Real Estate Developers

Presentation

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**BROWNFIELDS
VOLUNTARY CLEANUP
INCENTIVES**

BROWNFIELDS VOLUNTARY CLEANUP INCENTIVES

GENERAL

The General Assembly has provided two tax incentives to promote cleanup of brownfield sites: an income tax credit as well as a property tax exemption.

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INCOME TAXES

South Carolina Code §12-6-3550 allows a credit against taxes due for costs of voluntary cleanup activity by a nonresponsible party pursuant to the Brownfields Voluntary Cleanup Program in South Carolina Code Title 44 Chapter 56, Article 7.

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INCOME TAXES

The “basic” credit amount is equal to 50% of the cleanup expenses paid or accrued or cash contributions for site cleanup conducted during the tax year the tax credit application is submitted, not to exceed \$50,000 in a tax year. Any unused credit, up to \$100,000, may be carried forward 5 years. An “additional” credit equal to 10% of the total cleanup costs, not to exceed \$50,000, is allowed in the final year of cleanup, as evidenced by the South Carolina Department of Environmental Control (“DHEC”) issuing a certificate of completion. Section 12-6-3550(B)&(C).

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INCOME TAXES

Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to the payment of cleanup costs.
Section 12-6-3550(B).

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INCOME TAXES

The following requirements apply to the credit:

1. The taxpayer must have entered into a non-responsible party voluntary contract with the DHEC as provided in South Carolina Code §44-56-750.
2. The taxpayer must file a tax credit certificate application annually with DHEC in order to obtain a tax credit certificate. The tax credit application and required documentation must be received by DHEC by December 31.

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INCOME TAXES

Information included with the tax credit application form must include: (a) copies of contracts, invoices or payment records involving the actual costs incurred for the tax year related to the site rehabilitation and (b) a copy of an independent certified public accountant report attesting to the accuracy and validity of the cleanup costs.

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INCOME TAXES

DHEC will issue a tax credit certificate upon review of the application and documentation before April 1 if it determines that the applicant has met all requirements. It may revoke or modify any written decision granting eligibility for partial tax credits if it is discovered that the taxpayer submitted false information. The taxpayer must pay DHEC's administrative review costs pursuant to South Carolina Code §44-56-750(D).

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INCOME TAXES

The credit is claimed on Form TC-20, “Credit for Expenses Incurred Through Brownfields Voluntary Cleanup Program.”

DHEC may prescribe forms required to claim the credit and provide administrative guidelines and procedures required to administer this section. Section 12-6-3550(G).

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PROPERTY TAXES

Five Year Exemption

South Carolina Code §12-37-220(B)(44) provides a 5 year exemption from county property taxes (the exemption does not apply to school and municipal property taxes) for property and improvements subject to a non-responsible party voluntary cleanup contract for which a certificate of completion has been issued by the South Carolina Department of Health and Environmental Control pursuant to Article 7, Chapter 56, Title 44 (The Brownfields Voluntary Cleanup Program). The exemption applies beginning with the taxable year in which a certificate of completion is issued.

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PROPERTY TAXES

Five Year Exemption

This exemption is very similar to the manufacturer's abatement.

It exempts only the county millage, which is typically between 20-40% of the property tax bill depending upon whether the property is in a municipality.

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PROPERTY TAXES

Five Year Exemption

Although the exemption is automatic, the taxpayer should notify either the County Assessor (residential or commercial) or the Dor (manufacturing, utility, etc.) in the year in which the certificate of completion is issued.

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PROPERTY TAXES

Fee-in-Lieu

Fee-in-lieu is an important property tax incentive. The statutory minimum to enter into a fee with the county normally requires \$2.5 Million in new capital investment.

The minimum investment for a non-responsible party is a Voluntary Cleanup Program is only \$1 million, and amounts expended pursuant to the cleanup may be added to the \$1 million minimum investment.

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ISSUES

These incentives have been used very rarely. This probably results from a lack of knowledge of the incentives. More importantly, most people miss the deadline because they don't timely file for the Brownfield Voluntary Cleanup Program (i.e., they miss the DHEC Voluntary Cleanup Program deadline, not the tax deadline). In addition, there is a mismatch between those wanting and needing the credit (i.e. typically the investors for the purchaser of the property), and the person who incurs the costs of the cleanup (frequently the seller). Lastly, the income tax credit is modest. The property tax credit can be significant- 20-40% tax savings (which represents the county portion of the

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