



COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Governor Baker Extends the Brownfields Tax Credit Program Until 2023

BY DONNA TRUEX AND CHRISTOPHER MARQUIS • OCTOBER 2, 2018

The [Brownfields Tax Credit](#) program was due to expire on August 5, 2018. However, on May 31, 2018, [Governor Baker signed the Housing Bond Bill, H4536](#), which, among other things, extended the Brownfields Tax Credit program for an additional five years to August 23, 2023. The Brownfields Tax Credit program is important to incentivize innocent developers (i.e. those that did not contaminate the property or own the property when it was contaminated) to clean up and develop contaminated sites. Currently, there are an estimated [40,000 hazardous waste sites in Massachusetts](#) ranging from small oil spills to Superfund sites.

The Brownfields Tax Credit allows individual taxpayers, non-profit organizations, and corporations that undertake clean-up efforts of these Massachusetts sites to obtain a credit equal to a portion of the cost of the clean-up. To be eligible for the credit, the property involved must be owned or leased by the taxpayer for business purposes and located in an economically distressed area. Additionally, the cost of the environmental remediation must be at least 15% of the assessed value of the property prior to the remediation.

To obtain the credit, a taxpayer must commence and diligently pursue remediation on or before August 5, 2023 – when the program is next due to expire – and either achieve and maintain a permanent solution or remedy operation status in compliance with Department of Environmental Protection requirements. The credit amount is 25% of the “net response and removal costs” if remediation includes an activity and use limitation (or 50% of such costs if it does not). For corporations, the credit cannot exceed 50% of the corporation’s corporate excise tax and cannot reduce the corporate excise due below \$456. Any unused credit can be carried forward for five years and the credit is transferrable. If the permanent solution or remedy operation status ceases to be maintained by the taxpayer, The Commonwealth can recapture a portion of the credit based on the ratio of how long the remedy was maintained to the useful life of the property.

The availability of the Brownfields Tax Credit program makes it important to have appropriate guidance when developing a contaminated site to minimize costs and maximize credits.