The Role of Tax Credits in Economic Development:

62nd Annual Tax Institute

October 29, 2015
1. The Role of Tax Credits in Economic Development.
2. The Historic Tax Credit Process
3. Historic Boardwalk Impact.
4. A Brief Look at New York State Brownfield Cleanup Program.
5. Questions?
“Our inferiority complex as a downtrodden, Rust Belt city suffered a major blow over the past four days – and recovery may be difficult. … To borrow a line from Sally Fields’ 1985 Oscar acceptance speech: They liked you, Buffalo. They really liked you.”
Brownfields

“November 2014 Fact Sheet
HARBORcenter Update: Cleanup Action Completed at Brownfield Site”
The Role of Tax Credits in Economic Development.

The Historic Tax Credit Process

Historic Boardwalk Impact.

A Brief Look at New York State Brownfield Cleanup Program.

Questions?
§ 42. Low-income housing credit

§ 45D. New markets tax credit

§ 47. Rehabilitation credit
Available State and Federal Historic Rehabilitation Tax Credits

Federal Credits

10% Rehabilitation Tax Credit

20% Rehabilitation Tax credit

Charitable Contributions IRC 170(h)

New York State Credits

20% Income Producing Properties

Homeowners

Barns
# Comparison Chart: Federal and State Historic Preservation Tax Credits

**Disclaimers:**  The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) does not provide legal, tax or accounting advice; the information provided is intended to be general in nature; and tax credit applicants are strongly encouraged to seek their own professional tax, accounting and legal advice on individual tax matters, or consult the New York State Department of Taxation and Finance or the Internal Revenue Service (IRS). OPRHP is not responsible for the information or advice provided herein. It may affect the specific tax consequences to any individual. Including a proprietorship, partnership, estate or trust taxpayer, which will depend on many other facts and circumstances. The information is for the general benefit of persons interested in obtaining certifications from OPRHP that may allow them to qualify for federal and state historic preservation tax credits. Given the frequency of changes in federal and state tax laws, regulations and guidance, the information cannot be expected to be completely current and it represents a good faith effort to reference controlling laws and regulations as accurately as possible.

<table>
<thead>
<tr>
<th>Building Type</th>
<th>Federal Commercial Credit - 20%</th>
<th>State Commercial Credit - 20%</th>
<th>State Homeowner Credit - 20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nat. Register Timing</td>
<td>Commercial (includes rental residential)</td>
<td>By 30 months bldg. placed in service.</td>
<td>By 30 months bldg. placed in service.</td>
</tr>
<tr>
<td>Census Tract Limitations</td>
<td>None</td>
<td>Needs to be located in eligible census tract.</td>
<td>Needs to be located in eligible census tract.</td>
</tr>
<tr>
<td>Minimum Expenditure</td>
<td>Qualified rehab expenditures must exceed adjusted basis (AB).</td>
<td>Same as Federal program.</td>
<td>Same as Federal program.</td>
</tr>
<tr>
<td>Exterior Spending Requirements</td>
<td>Value of property - Value of land = AB.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Cap</td>
<td>None</td>
<td>None</td>
<td>At least 5% of total expenditures need to be on exterior.</td>
</tr>
<tr>
<td>Credit Carry Over</td>
<td>1 year before or 20 years after.</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Approvals</td>
<td>Must be approved by the State Historic Preservation Office and the National Park Service. Part 5 must be approved before building is placed in service. However, approval before work begins is very strongly encouraged.</td>
<td>Same as Federal program.</td>
<td>Work needs to be approved by the State Historic Preservation Office before it begins.</td>
</tr>
<tr>
<td>Refund</td>
<td>N/A</td>
<td>None currently. For buildings placed in service in or after 2015, unused credit may be taken as a refund.</td>
<td>If adjusted gross income is below $50,000.00, unused credit may be taken as a refund.</td>
</tr>
<tr>
<td>Fee</td>
<td>Between $500 and $2,500 depending on total expenditures</td>
<td>Between $100 and $5,000 depending on total expenditures</td>
<td>Between $50 and $500 depending on total expenditures.</td>
</tr>
<tr>
<td>Length of time owner must hold the building</td>
<td>5 years</td>
<td>5 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Is there an Application?</td>
<td>Yes</td>
<td>No. If federal credit is approved, the building is located in eligible census tract, and the state fee is received, a certification will be sent to owner.</td>
<td>Yes</td>
</tr>
<tr>
<td>When does the program sunset?</td>
<td>No date and updated.</td>
<td>12/31/2018. The law will revert back to 2005 version if it is not extended.</td>
<td>12/31/2013. The law will revert back to 2006 version if it is not extended.</td>
</tr>
</tbody>
</table>

---

http://www.nysparks.com/shpo/tax-credit-programs/documents/TaxCreditProgramsComparisonChart.pdf
AGENDA

1. The Role of Tax Credits in Economic Development.
2. The Historic Tax Credit Process
3. Historic Boardwalk Impact.
4. A Brief Look at New York State Brownfield Cleanup Program.
5. Questions?
Historic Preservation Certification Application

- Part 1  Evaluation of Significance
- Part 2  Description of Rehabilitation
- Part 3  Request for Certification of Completed Work
- Amendment / Advisory Determinations
- Appeals

http://www.nps.gov/tps/tax-incentives/application.htm
AGENDA

1. The Role of Tax Credits in Economic Development.
2. The Historic Tax Credit Process
3. Historic Boardwalk Impact.
4. A Brief Look at New York State Brownfield Cleanup Program.
5. Questions?
Historic Boardwalk Background

1929 East Hall placed in service
1987 East Hall declared an Historic Landmark
1998 East Hall rehabilitation begins
2000 Pitney Bowes enters the picture as a Tax Equity Investor in the project

The IRS rejects Pitney Bowes attempt to us the credits. Litigation ensues
UNITED STATES TAX COURT

HISTORIC BOARDWALK HALL, LLC, NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, TAX MATTERS PARTNER, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 11273-07.
Filed January 3, 2011.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11-1832
HISTORIC BOARDWALK HALL, LLC, NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, TAX MATTERS PARTNER

v.

COMMISSIONER OF INTERNAL REVENUE, Appellant

On Appeal from the United States Tax Court
(No. 11273-07)
Judge: Hon. Joseph Robert Goeke

Argued
June 25, 2012
Historic Boardwalk Decisions:

US Tax Court: Overturned the IRS’s determination to disallow the use of the credits

“We agree with petitioner that respondent’s decision to recharacterize the East Hall transaction pursuant to section 1.701-2(b), Income Tax Regs., was inappropriate. NJSEA and Pitney Bowes had the legitimate business purpose, as discussed above, of allowing Pitney Bowes to invest in the East Hall’s rehabilitation.”

Third Circuit Court of Appeals: Reversed and remanded

“And, after looking to the substance of the interests at play in this case, we conclude that, because PB lacked a meaningful stake in either the success or failure of HBH, it was not a bona fide partner”

United States Supreme Court: Refused certiorari
Historic Boardwalk Hall Aftermath

“Bond will pay settlement over Boardwalk Hall renovation”

“New Jersey and Pitney Bowes, of Stamford, Conn., formed a partnership in 2000 to take advantage of federal historic building rehabilitation tax credits in connection with the project at the Boardwalk complex that hosts the Miss America pageant.”

“New Jersey was on the hook because the 2000 partnership agreement included a "Tax Benefits Guaranty" to the benefit of Pitney Bowes. The $60 million was a negotiated payment, not the full amount for which New Jersey could have been liable.”

http://articles.philly.com/2014-10-22/business/55284933_1_tax-credits-luxury-taxes-irs
Historic Boardwalk Hall Aftermath

- Freeze on projects as investors and developers tried to understand the impact
- IRS developed “Safe harbor rules”
- Safe harbor rules are applied to the “real world”

Rev. Proc. 2014–12

Internal Revenue Bulletin: 2014-3

January 13, 2014
SECTION 1. PURPOSE

“This revenue procedure establishes the requirements (the Safe Harbor) under which the Internal Revenue Service (the Service) will not challenge partnership allocations of § 47 rehabilitation credits by a partnership to its partners. The Treasury Department and the Service intend for the Safe Harbor to provide partnerships and partners with more predictability regarding the allocation of § 47 rehabilitation credits to partners of partnerships that rehabilitate certified historic structures and other qualified rehabilitated buildings. “

SECTION 4. SAFE HARBOR

“Investor”

“.01 Investors Defined.

Investors are Partnership partners (other than Principals) that hold an interest in the Partnership that is described in section 4.02(2) of this revenue procedure. An Investor may be an initial partner in the Partnership or may be a person who later becomes an Investor by purchasing a Partnership interest. If the Investor receives an allocation of § 47 rehabilitation credits from a Master Tenant Partnership, the Investor cannot also invest in the Developer Partnership other than through an indirect interest in the Developer Partnership held through the Master Tenant Partnership. This prohibition does not apply to a separately negotiated, distinct economic arrangement (e.g., a separate arm’s length investment into the Developer Partnership to share in allocations of federal new markets tax credits or low income housing credits).”

SECTION 4. SAFE HARBOR:
Investors Partnership interest

.02(2)(b) Requirements regarding the Investor’s Partnership interest.

The Investor’s Partnership interest must constitute a bona fide equity investment with a reasonably anticipated value commensurate with the Investor’s overall percentage interest in the Partnership, separate from any federal, state, and local tax deductions, allowances, credits, and other tax attributes to be allocated by the Partnership to the Investor. An Investor’s Partnership interest is a bona fide equity investment only if that reasonably anticipated value is contingent upon the Partnership’s net income, gain, and loss, and is not substantially fixed in amount. Likewise, the Investor must not be substantially protected from losses from the Partnership’s activities. The Investor must participate in the profits from the Partnership’s activities in a manner that is not limited to a preferred return that is in the nature of a payment for capital.

.05(2)(a) Impermissible guarantees. 

(a) No person involved in any part of the rehabilitation transaction may directly or indirectly guarantee or otherwise insure the Investor’s ability to claim the § 47 rehabilitation credits, the cash equivalent of the credits, or the repayment of any portion of the Investor’s contribution due to inability to claim the § 47 rehabilitation credits in the event the Service challenges all or a portion of the transactional structure of the Partnership. Further, no person involved in any part of the rehabilitation transaction may guarantee that the Investor will receive Partnership distributions or consideration in exchange for its Partnership interest (except for a fair market value sale right described in section 4.06(2)). This requirement does not prohibit the Investor from procuring insurance from persons not involved with the rehabilitation or the Partnership.

(b) No person involved in any part of the rehabilitation transaction may pay the Investor’s costs or indemnify the Investor for the Investor’s costs if the Service challenges the Investor’s claim of the § 47 rehabilitation credits.

(c) No person involved in any part of the rehabilitation transaction may offer a guarantee described in section 4.05(1) of this revenue procedure that is not an unfunded guarantee described in section 4.05(1)(c).

(3) Loans. A Developer Partnership, a Master Tenant Partnership, or the Principal of either the Developer Partnership or the Master Tenant Partnership may not lend any Investor the funds to acquire any part of the Investor’s interest in the Partnership or guarantee or otherwise insure any indebtedness incurred or created in connection with the Investor’s acquisition of its Partnership interest.

AGENDA

1. The Role of Tax Credits in Economic Development.
2. The Historic Tax Credit Process
3. Historic Boardwalk Impact.
4. A Brief Look at New York State Brownfield Cleanup Program.
5. Questions?
New York State Brownfield Cleanup Program

- **Background**
  - “Love Canal” – CERCLA- *Fleet Bank* – abandoned industrial property (“brown fields”)
  - Two issues;
    - fear of liability
    - additional cost to clean up
  - Voluntary Clean up Program
    - Limited protection. NYS DEC program. Not Federal
    - No tax incentive
New York State Brownfield Cleanup Program

- **Statute**
  - Original 2007 Statute:
    - Unlimited tax credits
    - No relationship of clean up to credits
    - New York Times building
  - First Amendment
    - Ties available credits to cost of clean up and site preparation
    - Sunsets program as of December 31, 2015
  - Second Amendment
    - Higher burden on showing eligibility but expands eligible sites
    - Limits benefits
      - eliminates real property tax and environmental remediation insurance credits
      - higher eligibility requirement for sites in NYC
    - Reestablishes voluntary clean up (no credit) option.
# New York State Brownfield Cleanup Program

## BCP Tangible Property Tax Credits

<table>
<thead>
<tr>
<th>BCP Tangible Property Tax Credits</th>
<th>Current, Accepted Prior to June 23, 2008</th>
<th>Current, Accepted after June 23, 2008</th>
<th>Reformed, Accepted after July 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Baseline (Based on Tax Status)</strong>*</td>
<td>10-12%</td>
<td>10-12%</td>
<td>10%</td>
</tr>
<tr>
<td><strong>Plus the sum of the following:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Environmental Zone:</strong> At least 50% of the site is located in an EN-zone (high poverty and unemployment rates)</td>
<td>8%</td>
<td>8%</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Track 1 Cleanup:</strong> Unrestricted soil and groundwater cleanup</td>
<td>2%</td>
<td>2%</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Brownfield Opportunity Areas:</strong> Development conforms with the goals and priorities of the designated Brownfield Opportunity Area (BOA) in which the site is located</td>
<td>N/A</td>
<td>2%</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Affordable Housing</strong></td>
<td>N/A</td>
<td>N/A</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Manufacturing</strong></td>
<td>N/A</td>
<td>N/A</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Maximum Percentage</strong></td>
<td>22%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td><strong>Cap Non-Manufacturing</strong></td>
<td>N/A</td>
<td>$35M or 3X Site Prep</td>
<td>$35M or 3X Site Prep</td>
</tr>
<tr>
<td><strong>Cap Manufacturing</strong></td>
<td>N/A</td>
<td>$45M or 6X Site Prep</td>
<td>$45M or 6X Site Prep</td>
</tr>
</tbody>
</table>

*Note: The baseline is based on the tax status of the property.*

AGENDA

1. The Role of Tax Credits in Economic Development.
2. The Historic Tax Credit Process
3. Historic Boardwalk Impact.
4. A Brief Look at New York State Brownfield Cleanup Program.
5. Questions?
The Role of Tax Credits in Economic Development:

62nd Annual Tax Institute

October 29, 2015

Robert E. Knoer, Esq
The Knoer Group, PLLC
rknoer@knoergroup.com