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Testimony
of
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submitted to

Senate and Assembly Committees on Environmental Conservation

Joint Public Hearing on

New York State's Brownfields Cleanup and Opportunity Area Programs

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Thank you for inviting us to present testimony on this important subject. There are obviously many issues that have arisen concerning the implementation of these programs. As someone who studies New York State's tax system, I will direct my testimony to the manner in which the brownfield redevelopment tax credit is calculated.

As currently structured, the tax credit available for the expenses incurred in the cleanup of a brownfield site is the same percentage of those expenses as the tax credit that is available for the expenses incurred in erecting a new building on the remediated site. Under current law, those percentages can vary from 10% to 22% of those costs depending on (1) the income tax to which the taxpayer is subject, (2) whether or not the site is in an environmental zone, and (3) whether or not the site has been remediated to Track 1 of the law's four defined levels of cleanup. But those credits rates are the same for remediation and development costs.

In other words no matter how large and expensive a building is built on a remediated site, the state will provide a refundable tax credit of 10%, 12%, 14%, 18%, 20% or 22% of the cost of that building and all related tangible property. This is despite the fact that the size and cost of a building that someone will build on a specific site will be driven by local market conditions. The brownfields tax credit should be structured so as to even the playing field between remediating and developing on a brownfield site and developing elsewhere. In communities where land is scarce and the demand for office space is high, it will make economic sense to build large, expensive buildings. There is no reason for the state to subsidize the development costs in such a situation.

Because current law applies the same credit rates to remediation costs and development costs, and because many projects with high development costs are in the pipeline, this tax credit is projected to cost the state treasury much more than was originally anticipated. This means that for $1 billion in tax credits paid out under this program, as currently structured, New York State will end up remediating many fewer brownfield sites than could be remediated if the relationship between the credits available for remediation and the credits available for development were changed.

The program bill submitted earlier this year by Governor Spitzer (Governor's Program Bill #35) approaches this conundrum in a logical manner. This bill would greatly increase the state's participation in the costs of remediation and substantially reduce the share of the development costs covered by state credits. Under current law, the state's share of remediation costs (through its refundable tax credits) can range from 10% to 22%. Under the Program Bill #35, this would be changed to a 25% credit for "participants" (applicants who owned or operated the site involved at the time that hazardous waste or petroleum was discharged at that site or who were otherwise responsible for the site becoming contaminated) and a 100% credit for "volunteers" (applicants who are not liable for disposal of hazardous waste or petroleum at the site, or whose liability arises solely from having acquired the site after the discharge of hazardous waste or petroleum.) So for all applicants, whether participants or volunteers, the credit for remediation expenses would be greater than under current law, and for volunteers this credit would be substantially greater. There would be no cap on the remediation costs for which a credit can be taken.

The flip side of this proposed increase in the credits available for remediation expenses, is that Program Bill #35 would limit the credits available for development costs to $5 million. And, to encourage cleanups to higher standards the bill would provide that the credits for development costs would range from 0% for Track 4 cleanups to a maximum of 100% for Track 1 cleanups.

Under current law, the credits available to taxpayers who are subject to the personal income tax (i.e., individuals, partnerships, and other unincorporated businesses) are 2% less (e.g., 10% vs. 12%, or 18% vs. 20%, etc.) than the credits that can be taken, for similar expenses, by businesses that are subject to one or another of the state's corporate income taxes. This distinction would be eliminated by Program Bill #35.

In addition to the specific changes, discussed above, in the calculation of the credit, this bill would also establish useful disclosure requirements for firms participating in the program, and a requirement for an annual report by the Department of environmental Conservation. Overall, Program Bill #35 would move the brownfields tax credit program in a very positive direction.

Current Law

Article 9 Corporation Tax, Article 9-A Corporate Franchise Tax, Article 32 Bank Tax, and Article 33 Insurance Tax

		Not in an Environmental Zone	In an Environmental Zone
Site Preparation Credit Component	Remediated to Track 4	12%	20%
	Remediated to Track 3	12%	20%
	Remediated to Track 2	12%	20%
	Remediated to Track 1	14%	22%

		Not in an Environmental Zone	In an Environmental Zone
On-Site Groundwater Remediation Credit Component	Remediated to Track 4	12%	20%
	Remediated to Track 3	12%	20%
	Remediated to Track 2	12%	20%
	Remediated to Track 1	14%	22%

		Not in an Environmental Zone	In an Environmental Zone
Tangible Property Credit Component	Remediated to Track 4	12%	20%
	Remediated to Track 3	12%	20%
	Remediated to Track 2	12%	20%
	Remediated to Track 1	14%	22%

Article 22 Personal Income Tax

		Not in an Environmental Zone	In an Environmental Zone
Site Preparation Credit Component	Remediated to Track 4	10%	18%
	Remediated to Track 3	10%	18%
	Remediated to Track 2	10%	18%
	Remediated to Track 1	12%	20%

		Not in an Environmental Zone	In an Environmental Zone
On-Site Groundwater Remediation Credit Component	Remediated to Track 4	10%	18%
	Remediated to Track 3	10%	18%
	Remediated to Track 2	10%	18%
	Remediated to Track 1	12%	20%

		Not in an Environmental Zone	In an Environmental Zone
Tangible Property Credit Component	Remediated to Track 4	10%	18%
	Remediated to Track 3	10%	18%
	Remediated to Track 2	10%	18%
	Remediated to Track 1	12%	20%

Governor's Program Bill #35

Article 9 Corporation Tax, Article 9-A Corporate Franchise Tax, Article 22 Personal Income Tax, Article 32 Bank Tax, and Article 33 Insurance Tax

		Participant	Volunteer
Site Preparation Credit Component	Remediated to Track 4	25%	100%
	Remediated to Track 3	25%	100%
	Remediated to Track 2	25%	100%
	Remediated to Track 1	25%	100%

		Participant	Volunteer
On-Site Groundwater Remediation Credit Component	Remediated to Track 4	25%	100%
	Remediated to Track 3	25%	100%
	Remediated to Track 2	25%	100%
	Remediated to Track 1	25%	100%

		Participant	Volunteer
Tangible Property Credit Component	Remediated to Track 4	Not Available	Not Available
	Remediated to Track 3	25% of Tangible Property Costs up to the lesser of (I) $5 million, or (II) 25% of the sum of the credits for the other two components	100% of Tangible Property Costs up to the lesser of (I) $5 million, or (II) 25% of the sum of the credits for the other two components
	Remediated to Track 2	25% of Tangible Property Costs up to the lesser of (I) $5 million, or (II) 50% of the sum of the credits for the other two components	100% of Tangible Property Costs up to the lesser of (I) $5 million, or (II) 50% of the sum of the credits for the other two components
	Remediated to Track 1	25% of Tangible Property Costs up to the lesser of (I) $5 million, or (II) 100% of the sum of the credits for the other two components	100% of Tangible Property Costs up to the lesser of (I) $5 million, or (II) 100% of the sum of the credits for the other two components