

**To:** Judith Enck  
**From:** Ken Pokalsky  
**Subject:** Program Bill #35/Brownfields Tax Credit  
**Date:** June 12, 2007

Here are our initial thoughts on the draft amendments to brownfield tax credits.

- We thought the original law had significant flaws. In our view, it needed its generous tax credits as a means to offset a relatively difficult, stringent, uncertain cleanup program. This proposed legislation will limit redevelopment credit for some projects, while doing nothing to address the problems on the administrative side of the bill. We believe any reform legislation should include adjustments to both the remediation and tax credit provisions of the law.
- Even with the increased credit for remediation costs, this legislation will make the redevelopment of large, upstate brownfield sites significantly less attractive by limiting the redevelopment credit to \$5 million (or less). This proposal will help offset the cost of remediating a brownfield site for purposes of redevelopment – but not the time delay, opportunity costs, administrative burden and long-term liability risk. Under current law, the redevelopment tax credits provided a significant incentive to take on the burdens associated with brownfield site cleanup -- in other words, the developer could come out much farther ahead doing a brownfield site versus a greenfield site. Under this proposal, we do not believe that brownfield sites will be seen as an attractive choice, especially in areas of the state where there are ample “greenfield” alternatives.
- This proposal takes what is basically a one-size-fits-all redevelopment tax credit -- criticized by some as too generous in some instances -- and replaces it with a one-size-fits-all cap on tax credits -- which is being criticized by some as too limiting for some projects. A more effective, efficient alternative to be considered is a fixed credit for remediation, but a negotiable tax credit for redevelopment. Legislation could establish minimum and maximum credits, with criteria (e.g., ratio of cleanup to redevelopment costs, total investment, jobs created/retained, local economic significance of the project, etc.) This approach could have ESDC involved at an early stage of the application/review process to negotiate a redevelopment incentive package tailored to the project and location.
- We do not support the significantly different treatment proposed for brownfield program “participants.” If the intent of this law is to encourage voluntary remediation of sites, participants that are not subject to state or federal enforcement authority should be provided with

the same level of remediation credit as are “volunteers.”

- The “transition dates” will be unworkable for some projects. Any tax credit changes should hold harmless any current applicant; or the legislation could provide a taxpayer election to chose applicability of the current or modified tax credit. Otherwise, entities that were not subject to any federal or state enforcement authority, but brought a site to the Department’s attention through a brownfield application will be subject to a change in tax credits that may influence the viability of the proposed remediation/redevelopment project.

- We do not understand, nor do we support, the diminished redevelopment tax credits for a track 3 cleanup, nor the elimination of redevelopment tax credits for Track 4 cleanups. By design of the program, all cleanups are environmentally protective; likewise, by statutory mandate, unless the Commissioner approves a site specific alternative, all cleanups are based on achievement of the same target risks. Therefore, there should be no difference in the “protectiveness” of a track 2, 3 or 4 cleanup. If a track 3 or 4 cleanup represents a significantly more cost effective technical approach to a site, it should be supported by the state. Likewise, while Track 1 cleanups are most likely for marginally contaminated properties, Track 4 cleanups, and the deployment of institutional and/or engineering controls, may be the only technically feasible, financially viable cleanup option for a significantly contaminated site. We believe the elimination of redevelopment credits for such sites diminishes the potential for remediation and reuse of such sites.

- While we understand the interest in providing better data on the program’s performance, we cannot support specific provisions of your proposed annual report. The requirement of an annual report identifying the tax liability of specific taxpayers is unprecedented in state tax law, and serves no apparent public purpose. Further, it is unclear what public purpose is served by identifying the amount of tax credit by taxpayer. In our view, the purpose of this report is to identify the overall level of tax credits provided, and their impact on the state’s financial plan. The detailed reporting proposed here suggests that this report is intended to somehow support a reassessment the appropriateness of tax credits based on their recipients, an approach that has no basis in the tax law.