

BROWNFIELD TAX INCENTIVES

OVERVIEW

“Brownfield” is a term describing the obstacle to property redevelopment caused by the threat of liability from existing contamination. In Michigan, that obstacle has been removed. Buyers and lenders are now reliably protected from liability under Michigan law.

LIABILITY PROTECTION

Title may be taken to environmentally impaired property without assuming liability for existing contamination, provided the buyer or operator conducts a baseline environmental assessment (BEA) and discloses it to the state.

TIMELY GOVERNMENT RESPONSE

The Michigan Economic Development CorporationSM (MEDC) and the Michigan Department of Natural Resources and Environment (MDNRE) are working together to make brownfield redevelopment a high priority and to help expedite redevelopment projects.

BROWNFIELD MICHIGAN BUSINESS TAX INCENTIVES

In order to promote the redevelopment of brownfield sites, the state of Michigan provides Michigan Business Tax (MBT) credits, on a case-by-case basis, for projects that redevelop a contaminated, blighted or functionally obsolete property.

Credits are available for up to 12.5 percent of eligible investments, or up to 20 percent for certain Urban Development Area Projects as designated by the Michigan Economic Growth Authority (MEGA) Board.

Tax credits are available in three categories:

1. “Large” credits, with investment greater than \$10 million; “small” credits, with investment between \$2 million and \$10 million; and “mini” credits, with investment of \$2 million or less.
2. Projects with eligible investment greater than \$10 million require approval by the MEGA board, with concurrence of the state treasurer. Credits for these projects are limited to \$10 million, except for one project that can not exceed \$30 million.
3. Projects with eligible investment of \$10 million or less require approval by the chairperson of the MEGA. Applications for credits are authorized by the MEDC.

ELIGIBILITY STATUTORY REQUIREMENTS

Eligible property must be designated in a locally approved brownfield plan created under the Brownfield Redevelopment

Financing Act (Act 381 of 1996). If the property is located in a **Qualified Local Governmental Unit** it can qualify as contaminated, blighted or functionally obsolete. If not located in a Qualified Local Governmental Unit, then the property must be contaminated and defined as a “facility.”

Projects that are seeking a “mini” brownfield credit (investment of \$2 million or less) also may qualify as contaminated, blighted or functionally obsolete, if the property is located within the boundaries of a Downtown Development Authority, even if not located in a Qualified Local Governmental Unit.

Properties that qualify as functionally obsolete are required to submit an affidavit signed by a level III or level IV assessor stating that the property is functionally obsolete and the underlying statutory basis for that opinion.

Properties that qualify as blighted are required to provide a statement by the governing body explaining how the property meets the standard for blighted property per Act 381 of 1996, MCL 125.2652(e).

A qualified taxpayer must own or lease the eligible property, or be a party to a purchase or lease agreement, and must certify that the MDNRE has not sued or issued a unilateral order to the taxpayer to compel response activity on the eligible property.

Eligible investments include the hard costs associated with demolition, construction, restoration, alteration, renovation or improvement of buildings or site improvements on eligible property and the addition of machinery, equipment and fixtures. These investments must occur after the approval of a brownfield plan but no earlier than 90 days prior to date of the pre-approval letter.

SELECTION PRIORITIES

Credits will be awarded to projects that best meet the following criteria:

- The host community is a willing participant in the project and is making a substantial local financial/fiscal contribution to the project through programs such as Tax Increment Financing (TIF), property tax abatements, Neighborhood Enterprise Zones, local revolving funds or other programs.
- The project is a mixed-use project that is located in the traditional downtown or within immediate walking distance of the downtown area, including development “nodes” or walkable neighborhoods.
- Projects that still need an incentive to reuse the site due to market conditions, risk or other factors, even after the Brownfield Redevelopment Authority TIF has

mitigated the excess costs of the site related to brownfield conditions.

- Project plans that reasonably improve the condition that qualifies the project as a brownfield.
- Projects that assist our state's manufacturers in meeting the pressures of national or international competition by reusing existing facilities and preserving or creating new jobs.

PROCESS

All Brownfield MBT credits are applied for through the MEGA. There is a four-step process to become eligible for a credit.

1. A Brownfield Redevelopment MBT Credit Application — Part I must be filed with the MEGA that outlines the project and allows MEGA staff to make a determination whether the project has a reasonable chance of being approved by the chair of the MEGA or by the MEGA board.
2. An invitation to complete and submit a full application (Part I and Part II) is given if the project meets both the statutory requirements and selection priorities outlined above. If the application is complete, it is forwarded to the MEGA for approval or denial.
3. Approved projects then receive a pre-approval letter from the MEGA which establishes the date investments may be undertaken on the eligible property and be eligible for the MBT credit.
4. When the project is completed, the qualified taxpayer must submit a Certificate of Completion Request for the eligible investment and identify each taxpayer entitled to a credit for the project. If all requirements are met, the state will then issue a Certificate of Completion, after which the taxpayers may claim an MBT credit.

FEES

- Applications considered by the MEGA with eligible investment exceeding \$10 million require a \$10,000 application fee. In addition to the application fee, there is an administrative fee of seven-tenths of 1% (0.7%) of the pre-approved credit amount, not to exceed \$100,000. One-half is to be paid prior to the issuance of the pre-approval letter, and the remainder is due one year from the date of the letter.
- Applications approved for projects with eligible investment between \$2 million and \$10 million require a \$5,000 application fee. In addition, an administrative fee based on 1.4% of the pre-approved credit amount is due at the time the Certificate of Completion is requested. The application fee

will be applied to the administrative fee, and will reduce the amount due.

- Applications approved for projects with \$2 million and less of eligible investment require a \$2,500 application fee. There is no administrative fee due for credits of this size.

TAX INCREMENT FINANCING

In addition to MBT credits, contaminated properties defined as "facilities" may be eligible for tax increment financing (TIF) through the MDNRE for eligible environmental activities, including BEAs, due care and additional response activities. Tax increment financing allows projects to capture state and local property taxes (including school taxes) to pay for costs related to brownfield sites.

In addition to environmental activities, projects locating in a Qualified Local Governmental Unit (PA 146 of 2000) may also be eligible for TIF to perform non-environmental activities, including demolition, lead and asbestos abatement, infrastructure improvements and site preparation.

These projects must occur on eligible property (contaminated, blighted or functionally obsolete) that is included in a locally approved brownfield plan. Projects seeking the use of state school tax capture must receive approval from the MEGA board. In addition, a development or reimbursement agreement between the community and the developer must be included along with an Act 381 work plan detailing the eligible activities to be completed for the project.

Recent changes to the Brownfield Redevelopment Financing Act (Act 381 of 1996) allow projects to seek TIF reimbursement for demolition and lead and asbestos abatement on eligible property (contaminated, blighted or functionally obsolete) included in a locally approved brownfield plan that is not located in a Qualified Local Governmental Unit.

An additional change includes the ability to qualify a property as blighted if that property has substantial subsurface demolition debris which prohibits that site from being used as originally intended.

FEES

There is no application fee for Act 381 work plan submittals; however, the MEDC will bill the Brownfield Redevelopment Authority that submitted the Act 381 plan a review fee, currently set at \$1,000.

CONTACT INFORMATION

For more information, contact the MEDC Customer Assistance Center at 517.373.9808 or visit www.TheMEDC.org/brownfields.