

## **Brownfield's Tax Incentive**

### **Overview:**

Originally enacted in the Taxpayer Relief Act of 1997 (P.L. 105-34), the Brownfields Remediation Expensing Tax Provision (Brownfields Tax Incentive) allows a taxpayer to fully deduct the costs of environmental cleanup in the year the costs were incurred (called "expensing"), rather than spreading the costs over a period of years ("capitalizing"). The provision was adopted to stimulate the cleanup and development of less seriously contaminated sites by providing a benefit to taxpaying developers of Brownfield properties.

Unfortunately, the Brownfields Tax Incentive has not been as widely used as originally anticipated. According to a 2007 CRS report, in 2003, 27 states reported that they had received a total of 161 applications since enactment in 1997, of which 147 were approved. In 2007, 29 states reported that they had received 175 applications over the previous four years, of which 170 were approved. These results were somewhat surprising. The Treasury Department and the Environmental Protection Agency had originally expected it to be used as many as 10,000 times per year.

### **Discussion:**

NAIOP's Environment and Infrastructure Committee discussed the usefulness of the tax provision during several committee meetings of the past two years. It was ultimately concluded that the Brownfields Tax Incentive needed to be amended in order for it to be better utilized.

### **Problem:**

Brownfields Redevelopment projects are often undertaken by non-profit organizations and Limited Liability Corporations that exist for a single project or property. Remedial costs are typically incurred early in the project. These businesses have difficulty taking advantage of the tax incentive because they do not generate the taxable income or the income is not generated in the year the expense is incurred.

### **Proposed Solution:**

The Brownfields Tax Incentive should include a carry forward provision that allows the deduction to be carried forward for five years until taxable income from the redevelopment can be earned toward which the deduction can be applied. This income would typically result from either a leasing activity or from the sale of the property.

It should be noted that any remediation expense deducted is recaptured as ordinary income to the extent of gain upon sale of the property. If the gain is more than the amount deducted, the entire cost of remediation is taxable. If the gain is less than the amount of expense deducted, then all of the gain is taxable. The recapture provision would not apply to a leasing activity.