

New York State Green Buildings Tax Credit

By David Freeman and Robert Wegman

The New York State Department of Environmental Conservation (NYS-DEC) has proposed regulations that will establish procedures and technical requirements for receiving tax credits under the New York State Green Buildings Tax Credit Statute. This legislation, passed in May 2000, establishes \$25 million in credits to offset some of the costs building owners and tenants incur to implement "green" measures that use environmentally preferable building materials, increase energy efficiency, decrease pollutants and improve the health and quality of life for building occupants. The proposed regulations are currently available for review during an informal public comment period, after which NYSDEC will publish them in the New York State Register. NYSDEC will promulgate final regulations following the formal comment period.

Eligibility Criteria

The Green Buildings Tax Credit legislation establishes the minimum criteria that buildings owners or tenants must meet to become eligible for tax credits. Only those persons or entities who own or occupy buildings of a certain size and use are eligible to apply for tax credits. These buildings include hotels and office buildings having greater than 20,000 square feet of interior space; residential multi-family buildings having more than 12 units with greater than 20,000 square feet of interior space; and residential multi-family buildings of more than two units that are part of a single or

phased construction with greater than 20,000 square feet of interior space, provided that greater than 10,000 square feet is under construction or rehabilitation in any single phase. Tax credits can be given for any combination of these structures as well. The \$25 million in tax credits are to be divided in yearly amounts ranging from one to five million dollars per year from 2001 to 2009.

The statute sets out specific technical criteria that must be met before a building will be declared "green." At a minimum, building owners or tenants must attain or comply with the following standards and procedures:

- New construction must use no more than 65% of the energy allowed under the New York State Energy Conservation and Construction Code ("ECC").
- Rehabilitated property must use no more than 75% of the energy allowed under the ECC.
- For buildings in which smoking is permitted, smoking must be restricted to areas in which the ventilation and circulation is separate from that of non-smokers.
- During construction or rehabilitation, the ventilation system components and pathways must be protected from contamination and an indoor air quality management plan must be instituted. Ventilation must be capable of purging two floors at a time.
- The building must comply with

other requirements: zoning, land use, erosion control, storm water management, building code and environmental regulations.

- Annual indoor air quality testing must be conducted to test for levels of carbon monoxide, carbon dioxide, volatile organic compounds, radon and particulates.

Tax Credit Provisions

Building owners and tenants can become eligible to receive a percentage of the credit depending on how much of the building is rendered "green." For example, those who construct or rehabilitate an entire building into a green building are eligible to receive a tax credit totaling 1.4 percent of their costs per year for five years. If the building is located in an economic development area, defined as an empowerment zone or enterprise community, the tax credit is 1.6 percent per year for five years. In either case, the allowable credit may not exceed, in the aggregate, \$150 per square foot for the base building and \$75 per square foot for tenant spaces. Owners and tenants are given less credit for constructing or converting spaces to meet green standards that fall short of rendering the entire building green. Those who use environmentally friendly energy sources and refrigerant systems are also eligible to receive tax credits.

The tax credits are designed to offset franchise taxes paid by corporations, utilities, banks and insurance compa-

utilities, banks and insurance companies under Articles 9, 9A, 32 and 33 of the New York Tax Law, and personal income taxes under Article 22. The credits are transferable to subsequent owners and tenants as long as buildings and tenant spaces continue to meet green criteria. Unused tax credits can be carried forward by the taxpayer until such credits are used. Taxpayers intending to take advantage of the credits are required to maintain records showing compliance with the green buildings criteria and must provide those records to the NYSDEC for each taxable year that credits are claimed.

Building owners who apply for green buildings tax credit and who meet statutory and regulatory criteria between years 2000-2004 will receive a Credit Component Certificate that will state the maximum amount of credit allowable for each of the five subsequent years for which a credit is authorized. To be eligible for a Credit Component Certificate, taxpayers must show that they are "likely within a reasonable time to place in service property that would warrant the allowance of a credit." The

statute authorizes credits for costs incurred after June 1, 1999 for properties meeting eligibility requirements and placed in service or receiving a final Certificate of Occupancy in taxable years beginning on or after January 1, 2001. Owners must be recertified during the first five years in order to maintain eligibility for the tax credits, obtaining an "Eligibility Certificate" from a licensed engineer or architect for the initial year and each succeeding year for which a credit is claimed. The Eligibility Certificate must certify that a building or tenant space meets the green building criteria.

Proposed Regulations

The NYSDEC's proposed regulations discuss the process and specifications for commissioning building components and for obtaining a Credit Component Certificate. The proposed regulations also establish requirements for building materials by defining the minimum percentages of recycled and rapidly renewable materials that must be used and the maximum levels of toxicity permissible. Green standards are also proposed

for concrete masonry units, wood and wood products, insulation, ceramic materials, glass, ceiling tiles, flooring and carpet, paints and coatings, sealants and adhesives, and furniture.

The regulations will be effective upon publication of the Final Rule, except that with respect to allowable costs already paid or incurred by a taxpayer, the effective date will be June 1, 1999. The regulations as currently proposed therefore would allow owners and tenants to receive tax credits for renovations begun in the latter half of 1999 and all of year 2000, but completed on or after January 1, 2001.

*Interested parties will have forty-five days in which to provide comments to the NYSDEC after the regulations are published in the New York State Register. If you would like a copy of the proposed regulations or guidance on preparing comments, please contact **David J. Freeman** at (212) 318-6555, or via email at davidfreeman@paulhastings.com; **Robert L. Wegman** at (212) 318-6499, or via email at robertwegman@paulhastings.com; or **Jessica Stopek** at (212) 318-6832, or via email at jessicastopek@paulhastings.com in our New York office.*

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