

Georgia's Brownfield Tax Abatement Incentive

How to Recoup Your Brownfield Remediation Costs

Kimberley J. Hale

Golden Age of Brownfields in Georgia

- * Law has been recently expanded to allow more parties to qualify for the LOL
- * With the improvement in economy, the tax abatement incentive may make more sense than ever and can be used to pay for part or all of the cleanup

Georgia's Brownfield Tax Incentive

* OCGA 48-5-7.6:

- * For brownfield property with certified remediation costs
- * Freezes the taxable base value at the lesser of
 - * the acquisition cost of the property or
 - * fair market value as recorded in the county tax digest at the time Brownfield application was made to EPD. T
- * 10 years or until all certified costs recouped

A Few Brownfield Tax Facts:

- * OCGA 48-5-7.6-Brownfield Tax Incentive Enacted in 2003
- * More than 612 properties on the 2015 Brownfield Registry
- * Most of these properties are in the Metro-Atlanta area
- * Less than 20 applications for tax abatement have been filed in Metro-Atlanta:
 - * Fulton (14), Cobb (4) and DeKalb counties (1), Gwinnett (0).

Top 5 Reasons Tax Incentive not Utilized:

1. Brownfield buyer may not directly enjoy tax benefit if site is leased triple net because all tax obligations and benefits are passed on to tenants;
2. Brownfield buyer that sells quickly may not enjoy tax benefits because it can be hard to get downstream buyers to pay a higher price for lower taxes;
3. The decision to enter the Brownfield program sometimes occurs after most of the potentially eligible money is already spent;
4. Total costs incurred on many sites are not enough to justify hassle of perfecting benefit;
5. FMV before and after Delta may be inadequate to recapture costs through tax abatement.

Not so complicated...

- * AFTER CLEANUP, ask EPD to certify costs
- * Submit the County's required application form for the preferential assessment with the EPD certification of completed costs
- * Once approved, goes into effect the next tax year
- * Must submit annual disclosure affidavit recording the tax savings for that tax abatement year
- * 10 Year max (or until costs recouped)

What Costs Count?

- * Costs directly related to the “receipt of a limitation of liability” (i.e. remediation costs)
- * Statute lists ineligible costs
- * The Upshot:
 - * CAN include investigation costs (post-Brownfield application)
 - * MIGHT include construction costs if related to remediation (i.e. excavation, certain grading)
 - * CAN include the \$3,000 application fee
 - * CANNOT include legal expenses

The Math:

Tax Year	Tax Rate (can change)	*Taxable Base	FMV	Annual Tax Liability	Total Tax SAVINGS
2013	\$30.260 /\$1,000	\$156,000	\$1,020,470	\$1,888.22	\$10,463.55
... 10 years					
2022			(assuming FMV doesn't increase further)		**\$104,463.55

*Taxable base is lesser of purchase price or fair market value at time of Brownfield application

**\$832,000 in certified remediation costs

Better math:

Tax Year	Tax Rate (can change)	*Taxable Base	FMV	Annual Tax Liability	Annual Tax SAVINGS
2017	\$34.05 /\$1,000	\$4.408M	\$40M (after cleanup and new development)	\$60,036.96	\$484,763.04
...					
2018			Cap out at the remediation costs.	\$529,563.04	**\$15,236.69

*Taxable base is lesser of purchase price or fair market value at time of Brownfield application

**+/- \$500,000 in certified remediation costs (cleanup in progress)

A Few More Points of Interest...

- * Tax savings run with the land
- * Do not have to submit certified costs within certain time frame
- * May subdivide the property into smaller parcels

In SUM:

It makes sense to consider whether the Brownfield tax incentive is worth the effort.