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GBTC update: NYS prepares to accept applications for $25 million in tax credits

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NYS is preparing to accept a second round of applications for $25 million in tax credits available to owners and tenants of commercial and multifamily buildings looking to "go green." The state's latest effort to encourage environmentally conscientious construction coincides with a series of announcements about eco-friendly projects in N.Y. Only seven of those projects shared in the first $25 million of tax credits awarded under the first phase of NYS' Green Building Tax Credit (GBTC) program. Six of the seven buildings that were awarded tax credits in phase one are located in N.Y.C. As a result of criticism regarding the implementation of phase one of the GBTC program, this upcoming second round of credits will produce at least three times the number of recipients, since the credits have now been capped at $2 million per building.

The first-in-the-nation GBTC program was unveiled in 2000 to provide tax credits on a first come-first served basis to owners and tenants of eligible buildings, and for tenant spaces which meet certain "green" standards. These standards are intended to increase energy efficiency, improve indoor air quality, and reduce the environmental impacts of large commercial and residential buildings in NYS. The tax credits actually consist of six different credit components, each of which has its own requirements, formula for calculating the amount of the credit, and cap. The program is flexible in that applicants can focus on some or all of six components for which tax credits are awarded: a "whole building" credit appropriate where the whole structure and all the tenant space is green; a "base building" credit where areas not intended for occupancy are green; a "tenant space" credit; a fuel cell credit for qualifying alternative energy sources; photovoltaic module credit; and a "green refrigerant" credit for using EPA-approved refrigerants.

The second phase of the GBTC program was enacted into law in 2005 and added an additional $25 million in tax credits. It was originally anticipated that DEC would accept applications for and issue the initial tax credit component certificates under phase two of the GBTC program from 2005 through 2009. DEC cannot accept applications until the GBTC regulations found at 6 NYCRR Part 638 are updated. It is expected that these regulations will soon be updated. The DEC is advising that any building and/or tenant space that has a final certificate of occupancy issued in taxable years beginning on or after Jan. 1, 2005 will be able to apply for tax credits once the regulations are updated.

The GBTC is only one of several enticements for owners, developers and tenants to embrace environmentally-friendly construction. The NYS Energy Research and Development Authority (NYSERDA) provides grants for computer modeling, design assistance, LEED certification aid, recommendations for materials, and life cycle costing analysis. NYSERDA also offers rebates on many Energy-Star approved commercial appliances and systems.

At the federal level, the Energy Policy Act of 2005 provides tax breaks to commercial building owners who reduce heating and cooling energy use by 50%, measured against a set standard. The IRS also provides a 10% tax credit for the purchase of solar or geothermal energy equipment.

For some developers, though, "going green" may not be a choice as much as it is a requirement. N.Y.'s Executive Order 111, issued under former governor George Pataki in 2001, established green building requirements for most state-operated facilities. Mayor Michael Bloomberg signed Local Law 86 in 2005 which mandates new and renovated municipal buildings to conform to stringent environmental impact levels and have sustainable energy aspects incorporated into them. Syracuse recently adopted legislation that requires all new construction and major renovation of city-owned municipal buildings to meet the LEED "silver standard" as set by the U.S. Green Building Council.

These and other similar requirements may provide the stick to the tax credits' carrot. One reason more developers have not embraced the green building movement is the cost, or at least the perceived cost. But with the combination of tax credits - which, unlike tax deductions, are subtracted from the your tax bill's bottom line - and improved and cheaper green building technology, the cost argument may not be as persuasive as it once was.

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