

ADVISORY

SULLIVAN & WORCESTER ENVIRONMENTAL AND TAX ADVISORY

New York State Offers Tax Incentive for Green Buildings

New York State offers a tax incentive program for owners and tenants of green buildings. The Green Building Tax Credit (GBTC) program was signed into law in May 2000 and the regulations that govern the program (6 NYCRR Part 638) became effective in May 2002. During Period One (2001-2004), seven buildings received \$25 million in tax credits, which was the complete allocation for Period One. Period Two runs from 2005 until 2009.

To qualify for the tax credit, buildings must meet criteria for energy, indoor air quality, materials, commissioning (ensuring that components and systems have been installed and properly started-up and are correctly operating), water conservation, appliances (clothes washers, refrigerators, dishwashers, and room air conditioners must have the Energy Star label), and size. Taxpayers receive 20% of the credits for which they are eligible each year for five years, as long as they continue to meet the criteria. Eligible buildings include multi-family residential, business, mercantile, assembly and institutional. The building, however, must have at least 20,000 square feet of interior space, or for the tenant credit, the leased space must be at least 10,000 square feet.

Credits are available for several types of building configurations: green base buildings, which do not require tenants to meet the program criteria; green tenant space, which may or may not be within a green base building; and green whole buildings, in which the base building is green and 100% of the tenant space is green. Owners of green base buildings can receive tax credits against their New York State taxes of 5% of allowable costs, up to \$7.50 per square foot. Allowable costs include "amounts properly chargeable to capital account, other than for land," such as construction, commissioning, professional fees allocable to construction, and site costs. Owners and tenants of green tenant space can receive tax credits of 7% of allowable costs, up to \$5.25 per square foot. Owners and tenants of green whole buildings can receive tax credits of 7% of allowable costs, up to \$10.50 for the base building and \$5.25 for the tenant space. There are additional credits available for fuel cells, photovoltaics, and air-conditioning equipment that uses green refrigerants.

Green Building Tax Credits are allowable against the taxes imposed under Tax Law Articles 9 (Tax on Certain Business Corporations and

IF YOU WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT:

Jerome C. Muys, Jr.
202.370.3920
jmuys@sandw.com

Jeffrey M. Karp
202.370.3921
jkarp@sandw.com

Victor N. Baltera
617.338.2945
vbaltera@sandw.com

Julie A. Weisman
202.775.1221
jweisman@sandw.com

Laura Ford Brust
202.370.3923
lbrust@sandw.com

David J. Nagle
617.338.2873
dnagle@sandw.com

Joseph X. Donovan
617.338.2860
jdonovan@sandw.com

WASHINGTON, DC

Sullivan & Worcester
1666 K Street, NW
Washington, DC 20006

BOSTON

Sullivan & Worcester
One Post Office Square
Boston, MA 02109

NEW YORK

Sullivan & Worcester
1290 Avenue of the Americas
New York, NY 10104

SULLIVAN &
WORCESTER

other Business Entities), 9-A (Franchise Tax on Business Corporations), 22 (Personal Income Tax) 32 (Franchise Tax on Banking Corporations) and 33 (Franchise Taxes on Insurance Corporations) The credits are non-refundable but unused tax credits can be carried forward by the taxpayer indefinitely. Successor owners and/or tenants are entitled to any remaining credits if the building and/or tenant space continues to meet the green building requirements.

Currently, the New York State Department of Conservation (DEC) is updating the GBTC program regulations in response to changes to Section 19 of the Tax Law included in the 2005 state budget bill. The new regulations will provide \$25 million in tax credits to be issued during Period Two (with tax credits being received between 2006 and 2014). There will be a cap of \$2 million per building. Applications for credits will not be accepted until the regulations are promulgated in final form. DEC expects to issue proposed regulations for public comment in Spring 2007, with final regulations being promulgated in late summer or early fall.

Applications are evaluated by DEC on a first-come, first-served basis. If DEC determines that the application meets the eligibility criteria, it will issue a credit component certificate. The applicant must certify its eligibility annually.

Maryland, Oregon and a number of municipalities also offer tax credits for green buildings, and tax incentive legislation has been introduced in Massachusetts, New Jersey, and Pennsylvania.

If you have any questions about the GBTC program or other incentives for green building, please contact any member of our Environmental & Natural Resources or Tax Group.