



## Governor Proposes Tax Credit Deferral

Syracuse, New York

January 2018

On January 16, Governor Cuomo introduced the New York FY 2019 Executive Budget ("Budget"). The Budget includes a proposal to revive an emergency measure, originally passed in the wake of the Great Recession, which would defer taxpayers' ability to claim certain tax credit amounts. Like the original version, which was passed in 2010, the Governor's proposal would limit taxpayers to \$2 million in business tax credits for tax years 2018, 2019, and 2020. The excess over \$2 million would be subject to deferral and available to be claimed starting in 2021.

For refundable credits (including the Brownfield Credits), the deferred portion would be allowed as follows: 50% in 2021, 75% percent of the balance (effectively 37.5% of the deferred portion) in 2022, and the remainder in 2023. For nonrefundable credits, the deferred portion of the credits could be claimed in the tax year beginning in 2021.

If passed, the deferral provision would affect credits under the New York Brownfield Cleanup Program ("Brownfield Credits"), the New York credits for low income housing and the rehabilitation of historic properties, the alcoholic beverage production credit, and others. In total, *thirty-five* tax credits would be subject to this provision. The film production and post-production tax credits and the commercial production tax credit would not be affected.

Brownfield projects would be hit particularly hard. Due in large part to the Brownfield Credits, the market has been willing to take on significant risk associated with cleaning up contaminated sites throughout New York. Many Brownfield projects in progress are now in danger of disruption or failure due to the delay of the Brownfield Credits, which are critical to the projects' financial viability. The effect would be disproportionately harsh for affordable housing projects developed on brownfield sites that rely on institutional credit investors. If enacted, the proposed deferral would jeopardize dozens of brownfield cleanups seeking to meet NYSDEC program deadlines.

If the bill is enacted, Brownfield projects that would be most significantly affected would include:

1. Projects receiving a Certificate of Completion from NYS Department of Environmental Conservation in 2018-2020;
2. Projects with qualified tangible property (including buildings and depreciable assets) placed in service on brownfield sites in tax years 2018-2020; and
3. Certain completed projects with 25 or more full-time employees on site that are claiming the tax credit for remediated brownfields.

The Governor's proposal would require taxpayers to make quarterly 2018 estimated tax payments (beginning June 15th for most taxpayers) as if the credit deferral had been in effect for the entire tax year. Taxpayers eligible for the affected credits should closely monitor the status of the Governor's proposal and be prepared to make estimated payments as if the proposal is enacted.

Please keep in mind that this is a proposal from the Governor and will not become law unless it is taken up and acted upon by the Legislature. This would likely be addressed in the overall negotiation of the fiscal year 2018-19 budget (if it is taken up at all). We will be following the progress of this bill, so please look for further Alerts.



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