



# Federal Brownfield Tax Deduction

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## Introduction

The Internal Revenue Service (IRS) allows an income tax deduction to encourage the cleanup and redevelopment of brownfields. The deduction allows taxpayers to deduct environmental remediation costs in the year incurred, rather than amortizing them over several years.

Congress recently extended this deduction until December 31, 2009. Eligible activities include 1) expenses for the cleanup of hazardous substances after 1998, and 2) expenses for the cleanup of petroleum products after 2005.

## Requirements

For costs paid or incurred starting December 31, 2005, through December 31, 2009, the following eligibility requirements must be met [IRS Code, section 198(c)(1)(B)].

1. The property must be held by the taxpayer incurring the eligible expenses.
2. The property must be held for use in a trade or business or for production of income.
3. The property must not be listed, or proposed to be listed, on the U.S. Environmental Protection Agency's (EPA) National Priorities List (NPL). Current NPL sites in Wisconsin are shown in *Superfund Sites In Wisconsin*, RR-005, available at [dnr.wi.gov/org/aw/rr/archives/pub\\_index.html](http://dnr.wi.gov/org/aw/rr/archives/pub_index.html).

4. Either a. or b. must be true:
  - a. a hazardous substance defined in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, see box below) must be present or potentially present on the property;  
**OR**
  - b. a federally defined petroleum product, including crude oil, crude oil condensates and natural gas, must be present or potentially present on the property.

### What Contaminants Are Eligible?

#### a. CERCLA Hazardous Substances

A federal hazardous substance, as defined in section 101(14) of CERCLA, 1980 includes:

- (A) any substance designated pursuant to section 311(b)(s)(A) of the Federal Water Pollution Control Act,
- (B) any element, compound, mixture, solution or substance designated pursuant to section 102 of this Act,
- (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress),
- (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act,
- (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and
- (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

#### b. Petroleum Products

Federally defined petroleum products include crude oil, crude oil condensates and natural gas.



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## Eligible Costs

Eligible costs for the brownfield tax deduction include expenses associated with the abatement or control of hazardous substances or petroleum products at a qualified site.

Eligible expenses include:

- site assessment costs;
- site investigation costs;
- site monitoring costs;
- remediation costs;
- operation and maintenance costs;
- state voluntary cleanup program fees; and
- costs incurred for the removal of demolition debris.

The DNR cannot determine which project costs are eligible. Please consult a tax advisor for information on eligible expenses and to obtain the proper IRS forms.

## How to Get the Tax Deduction

**Step 1:** Determine whether you meet the requirements listed in the previous section.

**Step 2:** Consult a tax advisor to find out which investigation and cleanup costs may be deducted.

**Step 3:** Obtain a statement from the DNR that certifies that your site meets the hazardous substance or petroleum product discharge, threatened discharge or disposal requirement for the deduction. To obtain this statement from DNR, complete Form 4400-206, on the web at <http://dnr.wi.gov/org/aw/rr/archives/pubs/4400-206.pdf>, and include the required attachment.

Submit the DNR form and attachment to the address on the form. The DNR will either

send a letter certifying that the property meets the requirements of Internal Revenue Code Section 198(c)(1)(B), or a letter explaining why the certification cannot be given.

## For More Information

Please see the DNR's web page at [www.dnr.state.wi.us/org/aw/rr/financial/fed\\_tax.html](http://www.dnr.state.wi.us/org/aw/rr/financial/fed_tax.html) for more information about this federal income tax deduction, or call DNR at 608-267-7560.

Also, please see EPA's web site at [www.epa.gov/brownfields/html-doc/taxfs\\_2.htm](http://www.epa.gov/brownfields/html-doc/taxfs_2.htm) for more information, and to read about real projects that have used this tax deduction.

To find out more about brownfield cleanup and redevelopment, and DNR's Remediation and Redevelopment (RR) Program services, visit the RR web site at [dnr.wi.gov/org/aw/rr](http://dnr.wi.gov/org/aw/rr).

Many additional state and federal brownfield financial incentives are available. Please see the *Financial Resource Guide for Cleanup and Redevelopment* (publication RR-539) for more information at: [dnr.wi.gov/org/aw/rr/archives/pubs/RR539.pdf](http://dnr.wi.gov/org/aw/rr/archives/pubs/RR539.pdf).

This document contains information about certain federal statutes and regulations but does not include all of the details found in the statutes or regulations. Readers should consult the actual language of the statutes or regulations to answer specific questions.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240.