

## ***THE NFR LETTER – A POTENTIAL PROPERTY TAX BLESSING IN DISGUISE***

The road to getting a No Further Remediation Letter from Illinois EPA can be long and costly. The benefit, of course, is that the Illinois EPA signs off on the clean up and you are free to develop the property in accordance with the terms of the NFR Letter. Local governments often benefit from the expanded tax base that occurs when old, contaminated industrial sites are cleaned up and redeveloped.

To encourage this process, state and local governments have enacted a number of financial incentives.<sup>1</sup> For example, in Cook County, an NFR Letter might cut your property taxes in half if you are willing to jump through a few hoops.

### ***A New Class of Property in Cook County***

By way of background, property taxes result primarily from a property's assessed value. Under the Illinois Property Tax Code, a property is supposed to be assessed at 33 1/3 % of its fair market value.<sup>2</sup> In Cook County, however, the Assessor classifies property and applies different assessment percentages for different types of property.<sup>3</sup> For example, industrial property is assessed at 36% of fair market value and commercial property is assessed at 38% of fair market value.<sup>4</sup>

Recognizing the importance of redeveloping contaminated properties; the Cook County Board created a separate classification for properties subject to an NFR Letter. These properties are known as Class C properties and qualify for a 12-year reduction in assessed value. The result—a substantial reduction in property taxes. Qualifying as a Class C property, however, is not automatic.

### ***Qualifying is a Challenge***

Generally, to qualify for Class C status: (1) a property must be used for industrial or commercial purposes or be vacant; (2) the property must have been subject to remediation; and (3) the Illinois EPA must have issued an NFR Letter for the remediation.<sup>5</sup> These properties, therefore, can be classic Brownfields or active facilities, as long as they have received an NFR Letter.

An application for Class C status must be made to the Cook County Assessor within one year of receiving the NFR Letter. Moreover, the estimated remediation costs (including, but not limited to, site investigation, oversight, remediation or removal costs, monitoring, and legal fees) must be at least \$100,000 or 25% of market value.

A Class C designation is valid for 12 years following the Assessor's approval. During the 12-year period, the assessed value of the property will be:

- 16% of market value for the first 10 years;

<sup>1</sup> See "Brownfield Tax Incentives Miss their Mark in Illinois," *The Carlson Report*, September 2000 (Available at [www.carlsonenv.com](http://www.carlsonenv.com)).

<sup>2</sup> 35 ILCS 200/9-145.

<sup>3</sup> Illinois Constitution, Article IX, Sec. 4 (1970).

<sup>4</sup> Cook County Real Property Assessment Classification Ordinance, Sec. 3

<sup>5</sup> *Id.* at Sec. 2

- 23% of market value in year 11; and
- 30% of market value in the year 12.<sup>6</sup>

For industrial properties, the classification may be renewed for additional 12-year periods. Commercial properties cannot renew the classification after it expires.

### **Two Big Hurdles**

While obtaining a Class C designation sounds reasonably straightforward, there are two significant hurdles that must be overcome. First, a property owner cannot obtain a Class C classification if the owner:

*.... previously owned or operated the Site, directly or indirectly, or having been a partner or being associated through a family or business relationship with anyone who has owned or operated the Site, which ownership or operation caused the contamination....<sup>7</sup>*

In short, if you caused the contamination, the Classification Ordinance prohibits you from obtaining Class C status for your property. Unfortunately, there is not an established body of case law or guidance clarifying the Assessor's analysis of this issue. The paragraph, however, looks quite similar to CERCLA's liability provisions. If the applicant has any doubts about his ability to meet this standard, CERCLA and state precedent may provide sufficient guidance.

The second, and probably more difficult hurdle, is that the applicant must obtain an ordinance or resolution from the municipality in which the property is located which states that the municipality consents to the classification and has determined that the classification is necessary for development to occur.

In the case of an operating facility, the ordinance or resolution must state that the municipality agrees to the classification and has determined that the classification is necessary for the operation of the facility. If the property is located in an unincorporated area, the ordinance or

resolution must be obtained from the Cook County Board. By agreeing to the classification, the municipality or county essentially agrees to accept fewer tax dollars from the property than would otherwise be paid under a standard commercial or industrial classification. But the municipality or county still receives more in taxes than had the property remained unimproved or vacant.

A Class C classification presents obvious financial benefits. In the first ten years of the incentive, the tax savings will be approximately 55% for industrial property and 58% for commercial property. A property owner that pays \$50,000 in property taxes may save between \$27,000 and \$29,000 annually, or between \$270,000 and \$290,000 over ten years. This savings will not only allow a property owner to recoup remediation costs, but may also return a significant portion of the development costs.

"This is a great opportunity to recoup some of the costs of cleanup," according to Kevin Hynes of O'Keefe, Lyons & Hynes. "But, depending upon where the property is located, it might take a major lobbying effort to get the City Council to sign off on a new classification. This may explain why few people have taken advantage of this opportunity."

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<sup>6</sup> Id at Sec. 3

<sup>7</sup> Id at Sec. 2