

Voluntary Cleanup Tax Credits (VCTC)

Section 376.30781, Florida Statutes Chapter 62-788, Florida Administrative Code

Frequently Asked Questions

We are in the rulemaking process; please reference and use the draft VCTC rule and application form that are dated August 26, 2008, located at: <http://www.dep.state.fl.us/waste/categories/wc/pages/WCRuleddevelopment.htm>. In order to apply for the VCTC you must either have an executed Voluntary Cleanup Agreement or an executed Brownfield Site Rehabilitation Agreement by December 31 of the first year for which you are claiming tax credits.

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1. *What types of sites are eligible for the VCTC?*

- a) Brownfield sites in designated brownfield areas that have a Brownfield Site Rehabilitation Agreement with the Department of Environmental Protection (Department);
- b) Drycleaning Solvent Cleanup Program sites (DSCP) that have a Voluntary Cleanup Agreement (VCA) with the Department;
- c) Drycleaning Real Property Owner (DC-RPO)contaminated sites that are not eligible for the DSCP provided:
 - 1) The voluntary cleanup is undertaken by the real property owner (RPO),
 - 2) The RPO has never been the owner or operator of the drycleaning facility where the contamination exists, and
 - 3) The RPO has a VCA with the Department.

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2. *What can I use this tax credit for?*

The VCTC certificate can only be used to offset Florida corporate income tax.

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3. *Can I use my in-house CPA for my tax credit application?*

No. Use of an independent CPA is required by statute and rule for a VCTC application. Please also see question 4.

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4. *When is a CPA report required?*

A CPA report is required when an applicant is claiming annual site rehabilitation costs and/or solid waste removal costs.

If the tax credit applicant is only applying for Site Rehabilitation Completion Order (SRCO), Affordable Housing, or Health Care Provider/Facility tax credits, then neither a CPA nor a registered technical professional needs to review or sign the application, because the costs have already been verified in a prior application. To clarify this point we inserted the following note: *"The CPA and Technical Professional Certifications are not required if the applicant is only claiming the Affordable Housing, Health Care, and/or SRCO VCTC"* at the bottom of page 10 of the August 26, 2008 draft VCTC application. Please also review questions 10, 11 and 13 for more information on this matter.

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5. *Must the \$250 review fee be paid by either a cashier's check or money order?*

Yes, the \$250 review fee must be either a cashier's check or a money order made out to: The Water Quality Assurance Trust Fund.

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6. *If a site is eligible for the Drycleaning Solvent Cleanup Program but the cleanup is being conducted voluntarily by the real property owner who is also owner or operator of the drycleaning facility, can the real property owner apply for the VCTC?*

Yes. All sites eligible for the Drycleaning Solvent Cleanup Program (DSCP) are also eligible for the VCTC regardless of the real property owner's involvement with the site. However, the deductible due to the DSCP must be paid prior to, or included in, the first VCTC application submittal for the DSCP site.

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7. *If a site is not eligible for the Drycleaning Solvent Cleanup Program, and a voluntary cleanup is being performed by someone other than the real property owner, can the person performing the voluntary cleanup apply for the VCTC?*

No. Please see answer 1(c). [Back to questions](#)

8. *What kinds of costs can I claim to receive these tax credits?*

- a) Site Rehabilitation - Costs that are integral, necessary and required for site rehabilitation under either Chapter 62-782 or 62-785, F.A.C., may be submitted annually.
- b) Solid Waste Removal - Costs for solid waste removal, as provided in Chapter 62-788, F.A.C., from a brownfield site that was never operated as a permitted solid waste disposal area or was never operated for monetary compensation, may be claimed in a one-time application (may contain costs from multiple years).

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9. *Do I have to remove all of the solid waste?*

No. Unlike site rehabilitation, there is no defined endpoint in statute or rule for solid waste removal. Therefore, the applicant determines when these activities are complete. The applicant must be able to show that solid waste was removed from the site and whether it was transported to a disposal facility or to a recycling facility. Costs to manage or relocate solid waste that is to remain on the brownfield site are not eligible for a tax credit.

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10. *What are the different tax credit types and award amounts?*

- a) **Site Rehabilitation**: While site rehabilitation pursuant to Chapter 62-782 or 62-785, F.A.C., is underway, one application per contaminated site per year may be submitted for 50% of the costs incurred and paid, up to a maximum award of \$500,000. Please also see 12(a) below.
- 1) **Site Rehabilitation Completion Order**: When the cleanup of a contaminated site results in the Department issuing an SRCO, a bonus tax credit for an additional 25% of the total eligible site rehabilitation costs, up to a maximum award of \$500,000, may be claimed. Please also see 11 & 12(a)(1) below.
 - 2) **Affordable Housing**: When redevelopment of the brownfield site is limited to affordable housing, a bonus tax credit for an additional 25% of the total eligible brownfield site rehabilitation costs, up to a maximum award of \$500,000, may be claimed on the costs incurred and paid since July 1, 2006. Please also see 12(a)(2) below.
 - 3) **Health Care Facility/Provider**: When the applicant constructs a new Health Care Facility or Health Care Provider, as provided in Chapter 62-788, F.A.C., a bonus tax credit for an additional 25% of the total eligible brownfield site rehabilitation costs, up to a maximum award of \$500,000, may be claimed on the costs incurred and paid since January 1, 2008. Please also see 12(a)(3) below.
- b) **Solid Waste Removal**: When the applicant determines that solid waste removal from a brownfield site, as provided in Chapter 62-788, F.A.C., is complete, a one-time application for the solid waste removal costs incurred and paid since July 1, 2006 may be submitted, claiming 50% of the total eligible costs, up to maximum award of \$500,000. Please also see 12(b) below.

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11. *Can I claim site rehabilitation costs even if I don't find any contamination?*

Yes. Annual site rehabilitation costs may be claimed for assessment, even if no contamination is found. However, the SRCO bonus discussed in 10(a)(1) is only applicable when contamination is documented and cleanup occurs.

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12. *When can I apply for each type of tax credit?*

- a) **Site Rehabilitation** –Annually, but no later than January 31 of the year following the claimed costs.
- 1) **Site Rehabilitation Completion Order**: Once, upon issuance of an eligible SRCO; please see number 11 above.
 - 2) **Affordable Housing**: Once, upon issuance of the required construction completion documents for the brownfield site (Section 376.30781(3)(d), F.S.).
 - 3) **Health Care**: Once, after the applicant constructs a new health care facility or health care provider on the brownfield site.
- b) **Solid Waste Removal**: Once, when the applicant decides the brownfield site solid waste removal is finished (Section 376.30781(3)(f)).

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13. *Can I claim costs for work that I performed prior to the Brownfield Area designation (designation) and Brownfield Site Rehabilitation Agreement (BSRA), or prior to signing a Voluntary Cleanup Agreement (VCA)?*

Yes, provided the VCA, or the designation and BSRA are effective by December 31 of the first calendar year for which the tax credit applicant is claiming costs, and provided the costs being claimed are certified as being either integral to site rehabilitation or for solid waste removal. The BSRA and VCA are negotiated documents that must be agreed upon between the person taking responsibility for the cleanup and the Department of Environmental Protection. Please be aware that the processes involved with designation and with executing a cleanup agreement may take weeks, so planning and scheduling are important.

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14. *Can I claim a tax credit for cleanup work that is performed in one year but paid for in the next?*

- a) **Annual Site Rehabilitation**: No. Site rehabilitation tax credits are available only for site rehabilitation conducted during the calendar year for which the tax credit application is submitted. Therefore, site rehabilitation must be conducted and paid for in the same calendar year, and the costs must be claimed in an application filed no later than January 31 of the following year.
- b) **Solid Waste Removal**: Yes, provided there is an executed Brownfield Site Rehabilitation Agreement by December 31 of the first year for which the applicant is claiming costs and provided the costs claimed were incurred and paid after July 1, 2006.

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15. *If multiple taxpayers submit a joint application, will they receive one tax credit certificate?*

No. The Department will issue separate tax credit certificates awarding tax credits in the same proportion as each tax credit applicant's contribution toward payment of cleanup costs.

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16. *If I submit a VCTC application, when can I expect to receive my tax credit certificate and/or eligibility determination letter?*

Provided an annual site rehabilitation tax credit application is complete by January 31, the annual site rehabilitation tax credit certificate and/or eligibility determination letter will be issued by May 1. Tax credit certificates and/or eligibility determination letters for all other types of applications, and for incomplete applications that have been corrected as described in answer 25(a), will be issued within 90-days of the application being determined complete.

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17. *What happens if the annual \$2 million cap on the VCTC program is reached before I receive my tax credit certificate?*

Eligible applicants that do not receive a tax credit certificate due to an exhaustion of the \$2 million annual tax credit authorization will receive their tax credits in first-come, first-served order, when the legislature establishes the next available fiscal year's annual tax credit allocation, normally July 1.

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18. *What types of costs are eligible for the VCTC?*

- a) **Site Rehabilitation:** Costs that are "integral to site rehabilitation" can be claimed in a VCTC site rehabilitation tax credit application. The governing cleanup rules (Chapter 62-785, F.A.C., for Brownfield sites, and Chapter 62-782, F.A.C., for drycleaning solvent contaminated sites) describe the various site rehabilitation program tasks that are associated with cleaning up a contaminated site and that are considered integral to site rehabilitation. Generally, the following site rehabilitation costs are eligible: fieldwork including soil and groundwater sampling; monitor well installation and sampling; remedial system purchase, installation, operation and maintenance; implementation of institutional and engineering controls required under Chapter 62-785 or 62-782, F.A.C.; and data analysis, project meetings and reporting directly related to these activities.
- b) **Solid Waste Removal:** Costs that are for solid waste removal from a brownfield site that was never operated as a permitted solid waste disposal area or was never operated for monetary compensation are eligible. These costs include excavation, sorting /screening, removal and transportation; costs associated with just moving or relocating solid waste within a brownfield site are not eligible. Solid waste that is removed must represent an existing condition, not one created by redevelopment activities, such as land clearing or building demolition.

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19. *Can legal fees be included with costs claimed in a VCTC application?*

In most cases, attorneys are involved in many aspects of cleanup and redevelopment of a site. Examples of legal fees that are directly related to either site rehabilitation or solid waste removal: negotiation of a Voluntary Cleanup Agreement or Brownfield Site Rehabilitation Agreement, drafting and negotiation of an institutional control as part of the final remedy for managing exposure to the contamination at a site, and assistance with rule and statutory interpretation as it relates directly to site rehabilitation or solid waste removal. Other legal fees associated with a site redevelopment project such as negotiation of real estate transactions, redevelopment project planning and contract negotiation, and review of insurance options/policies should not be claimed in a VCTC application. Any invoice for legal services that includes costs that are not integral to site rehabilitation or directly related to solid waste removal should be itemized and prorated to claim only appropriate costs for VCTC purposes.

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20. *Are the tax credits transferable?*

Yes, subject to the conditions in Section 220.1845(1)(g), F.S., including a one-time transfer limitation. The transfer request letter must include the name, address, telephone number, and FEID or Social Security number, as applicable, of each transferee, and it must indicate the portion (in whole or in units of no less than 25%) to be transferred. The original tax credit certificate must be returned to the DEP along with the transfer request, and all credits must be transferred at the same time. Transferred credits may not be transferred again although they may succeed to a surviving or acquiring entity after merger or acquisition. An applicant cannot transfer its right to apply for a tax credit. In other words, the application must be filed by the tax credit applicant(s) that incurred and paid the cleanup costs.

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21. *How can local governments without Florida corporate income tax liability benefit from the VCTC?*

They can transfer their tax credit certificate to an entity that has Florida corporate income tax liability.

22. *Does the transferee have to be connected to the site or the cleanup project in some way?*

No. The transferee can be any entity that the transferor chooses, but that entity must have the requisite tax liability because the tax credits cannot be transferred a second time.

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23. *If my total tax credit amount exceeds my tax liability for the year, what happens to the remaining credit?*

The unused amount of tax credits may be carried forward for a period not to exceed five years from the date the tax credit certificate was issued. The Department of Revenue (DOR) will track the carry-over credits, however, it is the certificate holder's responsibility to clearly represent the amount of tax credit being claimed in its tax credit return. Credits will not result in the payment of refunds by the DOR if the total credits exceed the amount of tax owed.

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24. *If I transfer the credit, does the transferee have to use it within the amount of time that is left on the original 5-year time period (i.e., from the issue date on the original certificate)?*

No. When a transfer occurs, the five-year clock restarts. The transferee will receive a certificate with a new issue date on it (i.e., the date of transfer), and the transferee will have five years from that date to use the certificate.

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25. *What are the common mistakes made in tax credit applications that result in either the tax credit being denied or the amount of the tax credit award being reduced?*

- a) Submittal of an incomplete application. "Complete" means that all required parts of Form 62-788.900(1) have been filled in, signed and appropriately notarized or sealed, and that the supporting documentation has been submitted. Supporting documentation includes the Brownfield Site Rehabilitation Agreement (BSRA) or the Voluntary Cleanup Agreement (VCA), contractual records, payment requests, payment records and the CPA report, all of which must support the claim for tax credits. Upon notification that the Department has determined an application incomplete, an applicant has a one-time opportunity to correct the deficiency. However, the additional information must be received by the Department within 30-days of the applicant's receipt of the deficiency notice; during this time the application cannot be otherwise altered or amended.
- b) Claiming ineligible costs. One of the most common errors in tax credit applications that results in a denied or reduced tax credit award is the inclusion of redevelopment costs. Although the ultimate goal of the Brownfield Redevelopment Program is redevelopment, the VCTC is limited to the costs associated with site rehabilitation and/or solid waste removal. Examples of redevelopment costs that have been denied because they were neither integral to site rehabilitation nor for solid waste removal include: building demolition, storm water retention pond installation, land clearing and grubbing, site grading, and methane assessment and/or methane mitigation system installation.
- c) Failure to prorate costs when appropriate. There are some site activities that contain aspects of both site rehabilitation and site redevelopment. While all of those costs may be discussed in a Remedial Action Plan (RAP), the approval of that RAP does not mean all of those costs will be approved in a tax credit application. Such costs should be clearly prorated to reflect the proportion applicable to site rehabilitation only. Examples of costs that were reduced, and in some cases denied, because they were not appropriately prorated include: installation of an impermeable cap where a permeable cap was sufficient for site rehabilitation purposes; installation of a high strength building slab or parking lot for redevelopment purposes when a less robust impermeable cap was sufficient for site rehabilitation purposes; installation of a "cap" over an area that did not require site rehabilitation; removal of more soil than was documented as being contaminated; and delivery and placement of more clean fill than was required to replace the volume of contaminated soil that was removed from a site.
- d) Submittal of invoices for site rehabilitation work that was performed, or partially performed, in one year but paid for in the next. In cases where the site rehabilitation work performed spans two calendar years, the applicant cannot claim the costs associated with the prior year's work, even if the entire invoice was paid in the current year. The only exception to this is in the case of a solid waste removal tax credit application. Since there is only one tax credit application submittal allowed for solid waste, multiple years (subsequent to June 30, 2006) may be claimed in a solid waste tax credit application.

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- e) Discrepancies between the applicant and the entity that incurred and paid for all costs and/or the entity that executed the BSRA or VCA. In order to be eligible for the tax credit, the same entity must execute the VCA or BSRA, incur and pay the cleanup costs, and apply for the tax credit.

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26. *Where can I find the VCTC application form?*

While we are in the rule development process, please reference and use the following August 26, 2008 draft versions of the rule, application form and CPA Guidelines located at:

<http://www.dep.state.fl.us/waste/categories/wc/pages/WCRuleddevelopment.htm>.

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27. *Whom can I call if I have further questions about the VCTC?*

At DEP, contact Beth Walker at 850-245-8933 or Beth.Walker@dep.state.fl.us, and visit our website at: <http://www.dep.state.fl.us/waste/categories/vctc/default.htm>.

At the Florida Department of Revenue, call Robert DuCasse at 850-922-4715.

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