

# TAX CREDITS

Hodgson Russ's tax credits team provides comprehensive legal counsel to developers, lenders, owners, investors, and municipalities on a wide range of real property and renewable energy tax credits involving historic rehabilitation, low income housing, renewable energy, new markets, and brownfields.

Our multidisciplinary lawyers guide clients through the requirements and intricacies of each tax credit available to help assure transactional efficiency and optimal project viability. Our attorneys are knowledgeable in all related regulatory processes and have close relationships with government agencies that oversee these programs at the federal, state, and local levels.

Hodgson Russ also has extensive experience obtaining other public financial incentives available for real estate and renewable energy development projects, including public-private partnerships, industrial development agency incentives, benefits from the Empire Zone Program (now the Excelsior Program), and other similar state and local financial incentives. Our attorneys are involved at all levels of these transactions, which often require the creation and utilization of complicated, multi-tiered ownership structures to maximize financial incentive eligibility.

We welcome the opportunity to help clients maximize opportunities, minimize risk, avoid pitfalls, and comply with all applicable laws and regulations. Examples of our tax credit work include the following.

## **Historic Preservation**

Our attorneys have assisted in all aspects of transactions using federal and state historic preservation tax incentives, taking part in numerous real estate investment and community revitalization initiatives for commercial, industrial, and rental properties. We are especially proud of our work on the Guaranty Building, the Louis Sullivan masterpiece that is home to our firm's Buffalo, New York, headquarters, and on the historic Equinox Hotel in Manchester, Vermont. Hodgson Russ recently became one of the first law firms to successfully process a residential rehabilitation project through the State Historic Preservation Office.

## **Low Income**

Hodgson Russ helps spur economic development in low income communities across New York State by structuring, documenting, negotiating, and finalizing numerous transactions involving low income housing tax credits on behalf of developers, investors, and construction lenders. We have acted as developer's counsel most recently on the St. Martin Village project in Buffalo, New York. We also have

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## **Professionals**

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advised a public housing authority on financing new projects. In addition, we frequently advise nonprofit clients on senior housing. Hodgson Russ is a proud member of the New York State Association for Affordable Housing.

### **Renewable Energy**

Working in conjunction with our environment and energy and renewable energy attorneys as well as other appropriate groups within our firm, we assist clients on financing and structuring commercial renewable energy development using appropriate tax credit programs. These include the Treasury 1603 program as well as unique credits such as those for cellulosic biofuel added to the Internal Revenue Code by the Heartland, Habitat, Harvest, and Horticulture Act of 2008. We also advise clients on various state incentives and subsidies available to renewable energy projects, including preparation of renewable energy credit purchase and sale agreements.

### **New Markets**

Our attorneys have served developers and lenders using new market tax credits since the program's inception. Our firm helped a developer combine new market tax credits and historic tax credits for the Electric Tower in Buffalo, New York, and assisted another developer using new market tax credits for a mixed office and hotel project in Ithaca, New York. We regularly assist lenders on projects receiving lower interest rates through new market tax credits.

### **Brownfield Remediation**

Our Environmental Practice has extensive experience assisting clients in managing environmental liability and meeting their obligations on various fronts. The attorneys in our Brownfield Redevelopment Practice are experienced in managing the complicated tax structure in the New York brownfield remediation program as well as other federal, state and local tax credit and redevelopment incentive programs. We do this while helping maintain their business's competitiveness, protecting the public health and the environment, and, with the assistance of our tax attorneys, structuring projects to help maximize tax benefits.

### **Experience**

Hodgson Russ represented the Collateral Agent in connection with an approximately \$27 million syndicated construction loan. The transaction involved the construction of a mixed use facility, and the capital stack for the development included brownfield tax credits and various state and local tax incentives.

Hodgson Russ represented a Canadian lender in connection with the U.S. aspects of revolving and term loans aggregating \$40 million. The loans were used to finance the borrower's new manufacturing operation in Western New York, including a bridge loan pending receipt of brownfield tax credits.

Hodgson Russ represented a client that was certified as a New York State Empire Zone business in its challenge to the state's retroactive denial of tax benefits. The New York Court of Appeals ruled that it was unconstitutional to take away the previous year's Empire Zone tax credits from businesses that were kicked out of the program when the state changed the rules of participation midstream.

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Hodgson Russ assisted client Community Action Organization of Erie County, Inc. (CAO) on a \$16.25 million development project that turned a long-vacant orphanage on Buffalo's East Side into St. Martin Village, a low-income housing project comprising 60 housing units and related facilities and grounds. The project involved rehabilitating three architecturally significant buildings, demolishing eight other buildings, and constructing six new buildings. Hodgson Russ attorneys assisted CAO in securing \$1.32 million annually in low-income housing tax credits from the New York State Division of Housing and Community Renewal, with a total of \$13.2 million in tax credits anticipated. The firm also provided project-financing assistance, negotiating a construction loan not to exceed approximately \$9.5 million from KeyBank National Association; a permanent loan of \$1 million from Community Preservation Corporation; and secondary loans in varying amounts from the New York State Housing Trust Fund Corporation, the City of Buffalo, and CAO. The firm also assisted St. Martin Village in obtaining, through CAO, a grant from the New York State Urban Initiatives Program Fund and an approximately \$1 million federal home loan grant.

### In the News

NY Tax Panel Boosts Developer's Case For \$7M Tax Credit  
*Law 360*, June 2, 2016

Brownfield Program Fuels Buffalo Growth  
*Buffalo Business First*, May 25, 2015

### Press Releases

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*  
*Hodgson Russ Press Release*, August 19, 2022

Two Hodgson Russ Attorneys Selected to Author Monthly Columns in *Tax Notes State*  
*Hodgson Russ Press Release*, April 27, 2020

### Publications

Empire Zone Strikes Back: A New Hope in an Apportionment Battle  
*Tax Notes State*, March 4, 2024

Renewable Energy Projects and Brownfield Redevelopment in New York State – The Risk can be Worth the Increasing Reward  
*Hodgson Russ Renewable Energy Alert*, June 3, 2020

Federal Court Rules Refunded NYS Brownfield Tax Credits Are Taxable Federally  
*Hodgson Russ Environmental Alert*, May 7, 2019

Empire Zone Litigation - Taking the 'Reduction' Out of the Tax Reduction Credit  
*State Tax Notes*, December 17, 2013

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Moving Forward With The NY-Sun Initiative

*Law360*, September 5, 2012

New York Solar Initiative Moves Forward

*Cleantech Alert*, August 22, 2012

More Battles in New York's Empire Zones

*State Tax Notes*, July 28, 2010

Excelsior Program Replaces Empire Zones

*Tax Credit Alert*, July 1, 2010

IRS Now Accepting Applications for \$1 Billion Therapeutic Discovery Credit Program

*Life Sciences Alert*, June 23, 2010

New York State Empire Zones Update

June 16, 2010

## Presentations & Events

A Practical Introduction to Nontaxable Corporate Reorganizations

ABA Section of Taxation 2022 Fall Tax Meeting

Dallas, TX, October 13, 2022

Nonresident and Mobile Workers: Nexus Triggers, State Tax Traps

March 17, 2022

2020 Hodgson Russ/CCH (Summer) Tax Webinar Series

Wednesdays, May 6 - June 17

Tax Treatment of Energy Storage Facilities in New York State - Class Two

March 5, 2020

2019 Summer Tax Series

Understanding New York State Tax Issues of 2019

The Harvard Club 35 W. 44th Street, New York, NY, June 12 - August 7, 2019

New York State Brownfield Cleanup Program - Environmental and Tax Credit Overview

Harvard Club of NYC, February 12, 2019