Tax Credits

Barclay Damon's tax credits attorneys provide legal counsel to developers, lenders, owners, governmental agencies, syndicators, local housing authorities, and both not-for-profit and for-profit organizations on the planning and implementation phases of all deals where tax credits and similar incentives may be available. Our goal is to create legal structures to maximize the economic benefits available to clients while also contributing to community development. In some cases, we do this work across the United States.

Working with our network of consultants as needed, we help clients determine their eligibility for and maximize their use of tax credits. Our team also advises on how to best combine various tax credit programs, advises on sustainability and ESG issues, and coordinates between all relevant participants in transactions.

In particular, Barclay Damon Tax Credits Team members have provided counsel and support for clients entering into:

- Qualified opportunity zone investments
- Historic tax credit projects
- Low-income housing tax credit (LIHTC), affordable housing, and senior housing projects
- Investments that produce energy-related tax credits
- Brownfield cleanup program projects
- Large community development projects, including infrastructure, that utilize tax credits
- Qualified active low-income community business (QALICB) projects
- Community development entity projects

Working collaboratively with other teams across our full-service firm, including our Construction, Land Use & Zoning, Public Finance, and Real Estate Practice Areas, among others, we also assist clients with the following projects:

- Condominium projects
- Contracts
- Credit enhancements, including letters of credit
- Ground and space leases
- HUD loans
- Industrial development authority investments, including industrial development revenue bonds
- Interest-rate protections, including caps, collars, and swaps
- Mortgage loans
- New York State consolidated funding applications
- Not-for-profit issues
- Payment in lieu of taxes (PILOT) agreements
- Permitting
- Property tax exemptions
- Public-private partnerships
- Real property tax abatements
- RestoreNY funding
- Tax credit syndication and direct placement transactions

- Taxable and tax-exempt private activity bonds for multi-family housing and community development transactions

Our attorneys' extensive knowledge of applicable tax laws and regulations as well as community development and other relevant laws, combined with decades of public and private financing experience, including municipal finance and the use of securitized debt instruments, allow our clients to have a distinct advantage when structuring and negotiating transactions that offer potential tax credits and other financial incentives. In addition, our attorneys' experience handling various complex and complicated transactions has enabled them to develop close relationships with many individuals at governmental agencies that administer tax credit and other programs at the federal, state, and local levels. These relationships facilitate more efficient progress throughout the entire—often frustrating—transactional process, resulting in numerous repeat clients.

Examples of recent transactions completed by Barclay Damon tax credits attorneys include:

Historic Tax Credits

Our attorneys have recently closed a number of historic tax credit transactions for various clients, representing both tax credit investors and developers. In each instance, our team members guided and supported clients through the complexities and highly technical requirements to qualify for the available tax credits.

Supportive and Affordable Housing

For many not-for-profit service providers, mission-based supportive housing is an effective way to meet their clients' needs while generating developer-fee income that can be used to enhance existing programs. New York State provides service, rental, and operating subsidies and grants to not-for-profit service providers for supportive housing initiatives. These subsidies can be paired with low-income housing tax credits, tax-exempt revenue bonds, and other financing tools to acquire property and develop high-quality rental housing tailored to the needs of not-for-profit service providers' clients.

Participating NYS agencies include:

- Office of Mental Health (OMH)
- Office of Addiction Services and Supports (OASAS)
- Office for People With Developmental Disabilities (OPWDD)
- Department of Health (DOH)
- NYS Homes & Community Renewal (HCR)
- NYC Housing Preservation & Development (HPD)

Brownfield Credits

Our regulatory and tax attorneys have worked with both governmental agencies and private clients to minimize exposure to environmental-related liabilities and to qualify for state tax credits available under the Brownfield cleanup program. Our tax credits attorneys have provided guidance in the context of structures aimed to allow both purchasers and sellers to claim available tax credits.

Energy Tax Credits

Our attorneys have been involved in numerous energy-related projects that rely significantly on tax credits to assist with financing projects, including solar, wind, and solid waste projects, throughout the country. We have represented both developers and investors in ensuring the projects will qualify for available energy tax credits, including projects involving sale lease-back transactions and complicated partnership tax structures.

Opportunity Zones

We have helped design and implement a number of qualified opportunity zone and qualified opportunity fund investments on behalf of both investors looking to defer the tax on the sale of an asset producing a

capital gain as well as developers wanting to use the tax benefits available to a qualified opportunity zone business to raise capital for a number of different projects.