

STATE OF NEW YORK

8636

IN SENATE

May 10, 2018

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the tax law, in relation to the calculation of the brownfield site preparation credit for certain taxpayers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 3 of section 27-1419 of the environmental
2 conservation law, as amended by section 10 of part BB of chapter 56 of
3 the laws of 2015, is amended to read as follows:

4 3. Upon receipt of the final engineering report, the department shall
5 review such report and the data submitted pursuant to the brownfield
6 site cleanup agreement as well as any other relevant information regard-
7 ing the brownfield site. Upon satisfaction of the commissioner that the
8 remediation requirements set forth in this title have been or will be
9 achieved in accordance with the timeframes, if any, established in the
10 remedial work plan, the commissioner shall issue a written approval of
11 the final engineering report and a certificate of completion. The costs
12 of activities set forth in the final engineering report, and the costs
13 of activities set forth in all work plans approved under this title,
14 shall be used by the department of taxation and finance for purposes of
15 calculating the site preparation credit component under section twenty-
16 one of the tax law. The certificate shall include such information as
17 determined by the department of taxation and finance, including but not
18 limited to the brownfield site boundaries included in the final engi-
19 neering report, the date of the brownfield site cleanup agreement, and
20 the applicable percentages available as of the date of the certificate
21 of completion for that site for purposes of section twenty-one of the
22 tax law. For those sites for which the department has issued a notice to
23 the applicant on or after July first, two thousand fifteen or the date
24 of publication in the state register of proposed regulations defining
25 "underutilized" as provided in subdivision thirty of section 27-1405 of
26 this title, whichever shall be later, that its request for participation

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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has been accepted under subdivision six of section 27-1407 of this title, the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law shall only be available to the taxpayer if the criteria for receiving such tax component have been met. For those sites for which the department has issued a notice to the taxpayer after June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the applicable percentage for the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law shall be based on the level of cleanup achieved pursuant to subdivision four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

(a) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

(b) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

(c) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

(d) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

§ 2. Paragraph 2 of subdivision (b) of section 21 of the tax law, as amended by section 23 of part BB of chapter 56 of the laws of 2015, is amended to read as follows:

(2) (A) Site preparation costs. The term "site preparation costs" shall mean all amounts properly chargeable to a capital account, which are paid or incurred which are necessary to implement a site's investigation, remediation, or qualification for a certificate of completion, and shall include costs of: excavation; demolition; activities undertaken under the oversight of the department of labor or in accordance with standards established by the department of health to remediate and dispose of regulated materials including asbestos, lead or polychlorinated biphenyls; environmental consulting; engineering; legal costs; transportation, disposal, treatment or containment of contaminated soil; remediation measures taken to address contaminated soil vapor; cover systems consistent with applicable regulations; physical support of excavation; dewatering and other work to facilitate or enable remediation activities; sheeting, shoring, and other engineering controls required to prevent off-site migration of contamination from the qualified site or migrating onto the qualified site; and the costs of fencing, temporary electric wiring, scaffolding, and security facilities until such time as the certificate of completion has been issued. Site preparation shall include all costs paid or incurred within sixty months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the remedial program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved

1 site management plan, and an environmental easement with respect to the
2 qualified site. Site preparation cost shall not include the costs of
3 foundation systems that exceed the cover system requirements in the
4 regulations applicable to the qualified site.

5 (B) With respect to a taxpayer to whom a certificate of completion was
6 issued as provided under subdivision five of section 27-1419 of the
7 environmental conservation law after July twenty-first, two thousand
8 eight but prior to the effective date of section twenty-three of part BB
9 of chapter fifty-six of the laws of two thousand fifteen, but who has
10 yet to be granted the site preparation credit from the department for
11 such site as provided in this section, site preparation cost shall not
12 include the costs of foundation systems that exceed the cover system
13 requirements in the final engineering report and work plans for the
14 qualified site.

15 § 3. This act shall take effect immediately. Effective immediately,
16 the addition, amendment and/or repeal of any rule or regulation neces-
17 sary for the implementation of this act on its effective date are
18 authorized and directed to be made and completed on or before such
19 effective date.