

STATE OF NEW YORK

7210

2021-2022 Regular Sessions

IN SENATE

June 7, 2021

Introduced by Sens. KENNEDY, KAMINSKY -- read twice and ordered printed,
and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law and the tax law, in relation to eligibility for participation in the brownfield cleanup program, assignment of the brownfield redevelopment tax credits and brownfield opportunity areas; and to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites

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

1 Section 1. Subdivision 29 of section 27-1405 of the environmental
2 conservation law, as added by section 2 of part BB of chapter 56 of the
3 laws of 2015, is amended and a new subdivision 32 is added to read as
4 follows:
5 29. "Affordable housing project" shall mean either (a) a project as
6 shall be defined in regulation by the department, after consultation
7 with the division of housing and community renewal, which shall at a
8 minimum, establish the percentage of units in the project that must be
9 below a defined percentage of the area median income; or (b) a project
10 situated on a brownfield site that is the subject of a determination by
11 a state or local government housing agency that all or a portion of the
12 project or site will qualify for benefits, including but not limited to
13 real property taxation exemptions, under an affordable housing program
14 which defines a percentage of residential rental or home ownership
15 dwelling units to be dedicated to tenants or home owners at a defined
16 maximum percentage or percentages of area median income based on the
17 occupants' households annual gross income. For purposes of this subdivi-
18 sion, "area median income" shall mean the area median income for the
19 primary metropolitan statistical area or for the county if located

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

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1 outside a metropolitan statistical area, as determined by the United
2 States department of housing and urban development or its successor for
3 a family of four, as adjusted for family size.

4 32. "Conforming BOA site" shall mean a site located within an area
5 designated by the secretary of state as a brownfield opportunity area
6 pursuant to section nine hundred seventy-r of the general municipal law
7 and for which the secretary of state has issued an affirmative conform-
8 ance determination pursuant to subdivision ten of section nine hundred
9 seventy-r of the general municipal law.

10 § 2. Subdivision 1-a of section 27-1407 of the environmental conserva-
11 tion law, as added by section 3 of part BB of chapter 56 of the laws of
12 2015, is amended to read as follows:

13 1-a. If the person is also seeking a determination that the site is
14 eligible for the tangible property credit component of the brownfield
15 redevelopment tax credit pursuant to paragraph three of subdivision (a)
16 of section twenty-one of the tax law for a site located in a city having
17 a population of one million or more, such person shall submit informa-
18 tion sufficient to demonstrate that: (a) at least half of the site area
19 is located in an environmental zone as defined in section twenty-one of
20 the tax law; (b) the property is upside down or underutilized; or (c)
21 the project is an affordable housing project as described in paragraph
22 (a) of subdivision twenty-nine of section 27-1405 of this title. An
23 applicant may request an eligibility determination for tangible property
24 credits at any time from application until the site receives a certif-
25 icate of completion [~~pursuant to section 27-1410 of this title except~~
26 ~~for sites seeking eligibility under the underutilized category~~].
27 Notwithstanding the foregoing, a site located in a city having a popu-
28 lation of one million or more and which is a conforming BOA site or
29 which is described in paragraph (b) of subdivision twenty-nine of
30 section 27-1405 of this title, shall also be eligible for the tangible
31 property credit component of the brownfield redevelopment tax credit
32 pursuant to paragraph three of subdivision (a) of section twenty-one of
33 the tax law.

34 Sites are not eligible for tangible property tax credits if: (a) the
35 contamination from ground water or soil vapor is solely emanating from
36 property other than the site subject to the present application; or (b)
37 the department has determined that the property has previously been
38 remediated pursuant to titles nine, thirteen and fourteen of this arti-
39 cle, title five of article fifty-six of this chapter and article twelve
40 of the navigation law such that it may be developed for its then
41 intended use.

42 § 3. Subparagraph (i) of paragraph 3 of subdivision (a) of section 21
43 of the tax law, as amended by section 1 of part AA of chapter 58 of the
44 laws of 2021, is amended to read as follows:

45 (i) The tangible property credit component shall be equal to the
46 applicable percentage of the cost or other basis for federal income tax
47 purposes of tangible personal property and other tangible property,
48 including buildings and structural components of buildings, which
49 constitute qualified tangible property and may include any related party
50 service fee paid; provided that in determining the cost or other basis
51 of such property, the taxpayer shall exclude the acquisition cost of any
52 item of property with respect to which a credit under this section was
53 allowable to another taxpayer. A related party service fee shall be
54 allowed only in the calculation of the tangible property credit compo-
55 nent and shall not be allowed in the calculation of the site preparation
56 credit component or the on-site groundwater remediation credit compo-

1 nent. The portion of the tangible property credit component which is
2 attributable to related party service fees shall be allowed only as
3 follows: (A) in the taxable year in which the qualified tangible proper-
4 ty described in subparagraph (iii) of this paragraph is placed in
5 service, for that portion of the related party service fees which have
6 been earned and actually paid to the related party on or before the last
7 day of such taxable year; and (B) with respect to any other taxable year
8 for which the tangible property credit component may be claimed under
9 this subparagraph and in which the amount of any additional related
10 party service fees are actually paid by the taxpayer to the related
11 party, the tangible property credit component for such amount shall be
12 allowed in such taxable year. The credit component amount so determined
13 shall be allowed for the taxable year in which such qualified tangible
14 property is first placed in service on a qualified site with respect to
15 which a certificate of completion has been issued to the taxpayer, or
16 for the taxable year in which the certificate of completion is issued if
17 the qualified tangible property is placed in service prior to the issu-
18 ance of the certificate of completion. This credit component shall only
19 be allowed for up to one hundred twenty months after the date of the
20 issuance of such certificate of completion~~[, provided, however, that for~~
21 ~~qualified sites to which a certificate of completion is issued on or~~
22 ~~after March twentieth, two thousand ten, but prior to January first, two~~
23 ~~thousand twelve, the commissioner may extend the credit component for up~~
24 ~~to one hundred forty-four months after the date of such issuance, if the~~
25 ~~commissioner, in consultation with the commissioner of environmental~~
26 ~~conservation, determines that the requirements for the credit would have~~
27 ~~been met if not for the restrictions related to the state disaster emer-~~
28 ~~gency declared pursuant to executive order 202 of 2020 or any extension~~
29 ~~thereof or subsequent executive order issued in response to the novel~~
30 ~~coronavirus (COVID-19) pandemic]; provided, however, with respect to any~~
31 qualified site for which the department of environmental conservation
32 has issued a notice to the taxpayer before July first, two thousand
33 fifteen or the date of publication in the state register of proposed
34 regulations defining "underutilized" as provided in subdivision thirty
35 of section 27-1405 of the environmental conservation law, whichever
36 shall be later, that its request for participation has been accepted
37 under subdivision six of section 27-1407 of the environmental conserva-
38 tion law, this credit component shall only be allowed for up to one
39 hundred eighty months after the date of the issuance of such certificate
40 of completion; provided, however, with respect to any qualified site for
41 which the department of environmental conservation has issued a notice
42 to the taxpayer on or after July first, two thousand fifteen or the date
43 of publication in the state register of proposed regulations defining
44 "underutilized" as provided in subdivision thirty of section 27-1405 of
45 the environmental conservation law, whichever shall be later, that its
46 request for participation has been accepted under subdivision six of
47 section 27-1407 of the environmental conservation law, or which received
48 such notice of acceptance prior to that date but is eligible for the
49 brownfield redevelopment tax credits as if the site was accepted into
50 the brownfield cleanup program after that date as provided in section
51 thirty-three of chapter fifty-six of the laws of two thousand fifteen,
52 this credit component shall only be allowed for up to one hundred eighty
53 months after the date of the issuance of such certificate of completion.

54 § 4. Paragraph 2 of subdivision (a) of section 21 of the tax law, as
55 amended by section 1 of part H of chapter 577 of the laws of 2004, is
56 amended to read as follows:

(2) Site preparation credit component. The site preparation credit component shall be equal to the applicable percentage of the site preparation costs paid or incurred by the taxpayer with respect to a qualified site. The credit component amount so determined with respect to a site's qualification for a certificate of completion shall be allowed for the taxable year in which the effective date of the certificate of completion occurs. The credit component amount determined other than with respect to such qualification shall be allowed for the taxable year in which the improvement to which the applicable costs apply is placed in service for up to five taxable years after the issuance of such certificate of completion, provided, however, that for any qualified site to which a certificate of completion is issued on or after March twentieth, two thousand fifteen the site preparation credit component for such costs shall be allowed for up to seven taxable years after the certificate of completion; and provided further that the credit component amount for any costs necessary for compliance with the certificate of completion or subsequent modifications thereof or the remedial program defined in such certificate which were paid or incurred but not included in the calculation of a credit allowed under this section in any taxable year beginning prior to January first, two thousand twenty-one, shall be allowed for the taxpayer's first taxable year beginning on or after January first, two thousand twenty-one, and the credit component amount for any such costs paid or incurred in any taxable year beginning on or after January first, two thousand twenty-one shall be allowed in the taxable year such costs are paid or incurred for up to seven taxable years after the issuance of the certificate of completion.

§ 5. 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) 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 site management plan, and an environmental easement with respect to the qualified site; provided, however, with respect to any qualified site for which the department of environmental conservation has issued a

1 notice to the taxpayer on or after July first, two thousand fifteen or
2 the date of publication in the state register of proposed regulations
3 defining "underutilized" as provided in subdivision thirty of section
4 27-1405 of the environmental conservation law, whichever shall be later,
5 that its request for participation has been accepted under subdivision
6 six of section 27-1407 of the environmental conservation law, site prepa-
7 ration shall include all costs paid or incurred within eighty-four
8 months after the last day of the tax year in which the certificate of
9 completion is issued that are necessary for compliance with the certif-
10 icate of completion or subsequent modifications thereof, or the remedial
11 program defined in such certificate of completion including but not
12 limited to institutional controls, engineering controls, an approved
13 site management plan, and an environmental easement with respect to the
14 qualified site. Site preparation cost shall not include the costs of
15 foundation systems that exceed the cover system requirements in the
16 regulations applicable to the qualified site.

17 § 6. Subdivision (b) of section 21 of the tax law is amended by adding
18 a new paragraph 7 to read as follows:

19 (7) Certain environmental zones (EN-Zones). An "environmental zone"
20 shall mean, with respect to any qualified site for which the department
21 of environmental conservation has issued a notice to the taxpayer on or
22 after July first, two thousand fifteen or the date of publication in the
23 state register of proposed regulations defining "underutilized" as
24 provided in subdivision thirty of section 27-1405 of the environmental
25 conservation law, whichever shall be later, that its request for partic-
26 ipation has been accepted under subdivision six of section 27-1407 of
27 the environmental conservation law:

28 (A) an area designated as such by the commissioner of labor. Such
29 areas shall be census tracts that satisfy either of the following crite-
30 ria:

31 (i) areas that have both:

32 (I) a poverty rate of at least twenty percent based on the most recent
33 five year American Community Survey; and

34 (II) an unemployment rate of at least one and one-quarter times the
35 statewide unemployment rate based on the most recent five year American
36 Community Survey, or;

37 (ii) areas that have a poverty rate of at least two times the poverty
38 rate for the county in which the areas are located based on the most
39 recent five year American Community Survey.

40 (iii) Such designation shall be made and a list of all such environ-
41 mental zones shall be established by the commissioner of labor based on
42 the most recent American Community Survey, or its successor.

43 (B) an area designated by the commissioner of the department of envi-
44 ronmental conservation to be a potential environmental justice area.

45 (i) "Potential environmental justice area" means a minority or low-in-
46 come community that may bear a disproportionate share of the negative
47 environmental consequences resulting from industrial, municipal, and
48 commercial operations or the execution of federal, state, local, and
49 tribal programs and policies and which are shown on maps created by the
50 department of environmental conservation.

51 (ii) "Minority community" means a census block group, or contiguous
52 area with multiple census block groups, having a minority population
53 equal to or greater than 51.1 percent in an urban area and 33.8 percent
54 in a rural area of the total population.

1 (iii) "Minority population" means a population that is identified or
2 recognized by the United States Census Bureau as Hispanic, African-Amer-
3 ican or Black, Asian and Pacific Islander or American Indian.

4 (iv) "Low-income community" means a census block group, or contiguous
5 area with multiple census block groups, having a low-income population
6 equal to or greater than 23.59 percent of the total population.

7 (v) "Low-income population" means a population having an annual income
8 that is less than the poverty threshold, as such thresholds are estab-
9 lished by the United States Census Bureau.

10 (vi) "Census block group" means a unit for the United States census
11 used for reporting. Census block groups generally contain between two
12 hundred fifty and five hundred housing units.

13 (vii) "Urban area" means all territory, population, and housing units
14 located in urbanized areas and in places of two thousand five hundred or
15 more inhabitants outside of an urbanized area. An urbanized area is a
16 continuously built-up area with a population of fifty thousand or more.

17 (viii) "Rural area" means territory, population, and housing units
18 that are not classified as an urban area. The determination whether a
19 site is located in an environmental zone pursuant to this subdivision
20 shall be based on the date the department of environmental conservation
21 issued a notice to the taxpayer that its request for participation in
22 the brownfield cleanup program has been deemed complete pursuant to
23 subdivision three of section 27-1407 of the environmental conservation
24 law; provided, however, if the area in which a site is located is desig-
25 nated an environmental zone subsequent to the issuance of such notice
26 and before qualified tangible property as defined in paragraph three of
27 this subdivision is placed in service, then the site shall be deemed
28 located in an environmental zone.

29 § 7. Section 31 of part H of chapter 1 of the laws of 2003, amending
30 the tax law relating to brownfield redevelopment tax credits, remediated
31 brownfield credit for real property taxes for qualified sites and envi-
32 ronmental remediation insurance credits, as amended by section 32 of
33 part BB of chapter 56 of the laws of 2015, is amended to read as
34 follows:

35 § 31. The tax credits allowed under section 22 or 23 of the tax law
36 and the corresponding provisions in articles 9, 9-A, 22 and 33 of the
37 tax law, as added by the provisions of sections one through twenty-nine
38 of this act, shall not be applicable to any site accepted into the
39 brownfield cleanup program on and after July 1, 2015 or the date of
40 publication in the state register of proposed regulations defining
41 "underutilized" as provided in subdivision 30 of section 27-1405 of the
42 environmental conservation law, whichever shall be later. The tax cred-
43 its allowed under section 21 of the tax law and the corresponding
44 provisions in articles 9, 9-A, 22 and 33 of the tax law, as added by the
45 provisions of sections one through twenty-nine of this act, shall not be
46 applicable to any site accepted into the brownfield cleanup program
47 after December 31, ~~2022~~ 2027, provided, however that any sites
48 accepted on or before December 31, ~~2022~~ 2027 must have received the
49 certificate of completion required to qualify for any of such credits on
50 or before ~~March~~ December 31, ~~2026~~ 2031.

51 § 8. A site which is in a potential environmental justice area, as
52 defined in clause (i) of subparagraph (B) of paragraph 7 of subdivision
53 (b) of section 21 of the tax law, as of the effective date of this act
54 shall be deemed to be in an environmental zone from and after January 1,
55 2021 for all purposes including but not limited to the site's eligibil-
56 ity for the tangible property credit component under subdivision 1-a of

1 section 27-1407 of the environmental conservation law and the calcu-
2 lation of the brownfield redevelopment tax credit pursuant to section 21
3 of the tax law as amended by this act for all taxable years beginning on
4 or after January 1, 2021.

5 § 9. This act shall take effect immediately; provided, however:

6 (a) The amendments made by sections one and two of this act shall
7 apply to sites for which the department of environmental conservation
8 has issued a notice to the applicant that its request for participation
9 has been accepted under subdivision 6 of section 27-1407 of the environ-
10 mental conservation law, regardless of the date of such notice;
11 provided, however, that the amendments made by section two of this act
12 regarding eligibility for the tangible property credit component of the
13 brownfield redevelopment tax credit under paragraph 3 of subdivision (a)
14 of section 21 of the tax law shall apply to taxable years beginning on
15 and after January 1, 2021; and

16 (b) a site which is in a potential environmental justice area as of
17 such effective date shall be deemed to be in an environmental zone from
18 and after January 1, 2021 for all purposes including but not limited to
19 the site's eligibility for the tangible property credit component under
20 subdivision 1-a of section 27-1407 of the environmental conservation law
21 and the calculation of the brownfield redevelopment tax credit pursuant
22 to section 21 of the tax law as amended by this act for all taxable
23 years beginning on and after January 1, 2021.