

STATE OF NEW YORK

7606

2021-2022 Regular Sessions

IN SENATE

December 15, 2021

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

AN ACT to amend the tax law, in relation to clarifying that aspects of certain athletic projects should be counted as capital improvements for the brownfield redevelopment tax credit

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

1 Section 1. Subparagraphs (i) and (iv) of paragraph 3 of subdivision
2 (a) of section 21 of the tax law, subparagraph (i) as amended by section
3 1 of part AA of chapter 58 of the laws of 2021, subparagraph (iv) as
4 amended by section 17 of part BB of chapter 56 of the laws of 2015, are
5 amended to read as follows:

6 (i) The tangible property credit component shall be equal to the
7 applicable percentage of the cost or other basis for federal income tax
8 purposes of tangible personal property and other tangible property,
9 including buildings and structural components of buildings, which
10 constitute qualified tangible property and may include any related party
11 service fee paid; provided that in determining the cost or other basis
12 of such property, the taxpayer shall exclude the acquisition cost of any
13 item of property with respect to which a credit under this section was
14 allowable to another taxpayer; and provided further that for the
15 purposes of this section, starting with taxable year two thousand eigh-
16 teen, stadiums, parks, basketball courts and other recreational facili-
17 ties shall be considered buildings, and that components of stadiums,
18 parks, basketball courts, and other recreational facilities including
19 sports field turf, site lighting, and other improvements not directly to
20 or added to land shall be considered structural components of buildings
21 under the internal revenue code, and shall be included in the definition
22 of tangible property for the purposes of this section, and shall not be
23 considered on the basis of real property. A related party service fee
24 shall be allowed only in the calculation of the tangible property credit

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

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1 component and shall not be allowed in the calculation of the site prepa-
2 ration credit component or the on-site groundwater remediation credit
3 component. The portion of the tangible property credit component which
4 is attributable to related party service fees shall be allowed only as
5 follows: (A) in the taxable year in which the qualified tangible proper-
6 ty described in subparagraph (iii) of this paragraph is placed in
7 service, for that portion of the related party service fees which have
8 been earned and actually paid to the related party on or before the last
9 day of such taxable year; and (B) with respect to any other taxable year
10 for which the tangible property credit component may be claimed under
11 this subparagraph and in which the amount of any additional related
12 party service fees are actually paid by the taxpayer to the related
13 party, the tangible property credit component for such amount shall be
14 allowed in such taxable year. The credit component amount so determined
15 shall be allowed for the taxable year in which such qualified tangible
16 property is first placed in service on a qualified site with respect to
17 which a certificate of completion has been issued to the taxpayer, or
18 for the taxable year in which the certificate of completion is issued if
19 the qualified tangible property is placed in service prior to the issu-
20 ance of the certificate of completion. This credit component shall only
21 be allowed for up to one hundred twenty months after the date of the
22 issuance of such certificate of completion, provided, however, that for
23 qualified sites to which a certificate of completion is issued on or
24 after March twentieth, two thousand ten, but prior to January first, two
25 thousand twelve, the commissioner may extend the credit component for up
26 to one hundred forty-four months after the date of such issuance, if the
27 commissioner, in consultation with the commissioner of environmental
28 conservation, determines that the requirements for the credit would have
29 been met if not for the restrictions related to the state disaster emer-
30 gency declared pursuant to executive order 202 of 2020 or any extension
31 thereof or subsequent executive order issued in response to the novel
32 coronavirus (COVID-19) pandemic.

33 (iv) Eligible costs for the tangible property credit component are
34 limited to costs for tangible property that has a depreciable life for
35 federal income tax purposes of [~~fifteen~~] four years or more, costs asso-
36 ciated with demolition and excavation on the site and the foundation of
37 any buildings constructed as part of the site cover that are not proper-
38 ly included in the site preparation component and costs associated with
39 non-portable equipment, machinery and associated fixtures and appurte-
40 nances used exclusively on the site, whether or not such property has a
41 depreciable life for federal income tax purposes of [~~fifteen~~] four years
42 or more.

43 § 2. This act shall take effect immediately.