

STATE OF NEW YORK

3607

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to brownfield redevelopment tax credit

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

1 Section 1. Paragraphs 1, 2, 4, 6 and 7 of subdivision (a) of section
2 21 of the tax law, paragraph 1 as amended by section 39 of part A of
3 chapter 59 of the laws of 2014, paragraph 2 as amended by section 4 and
4 paragraph 4 as amended by section 5 of part LL of chapter 58 of the laws
5 of 2022 and paragraphs 6 and 7 as amended by section 1 of part H of
6 chapter 577 of the laws of 2004, are amended to read as follows:

7 (1) General. A taxpayer subject to tax under article nine, nine-A,
8 twenty-two or thirty-three of this chapter shall be allowed a credit
9 against such tax, pursuant to the provisions referenced in subdivision
10 (f) of this section. Such credit shall be allowed with respect to a
11 qualified site, as such term is defined in paragraph one of subdivision
12 (b) of this section. The amount of the credit in a taxable year shall be
13 the sum of the credit components specified in paragraphs two, three and
14 four of this subdivision applicable in such year. Notwithstanding the

15 foregoing, in the event that the qualified site is owned by, or was
16 acquired by a taxpayer from, a municipality, as such term is defined in
17 subdivision twenty-one of section 27-1405 of the environmental conserva-
18 tion law, the credit shall be reduced by the following amounts to the
19 extent that they were incurred after the date of the brownfield site
20 cleanup agreement executed by the taxpayer and the department of envi-
21 ronmental conservation pursuant to section 27-1409 of the environmental
22 conservation law (A) the amount of all site preparation costs and
23 on-site groundwater remediation costs undertaken specifically on such
24 qualified site by or at the expense of such municipality (or any affil-
25 iated municipality thereof), (B) the amount of all costs of all infras-

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

LBD08373-01-3

1 structure work, as defined below, undertaken specifically on the quali-
2 fied site by or at the expense of such municipality (or any affiliated
3 municipality thereof), and (C) the amount of all costs for improvements
4 undertaken by or at the expense of the municipality (or any affiliated
5 municipality thereof), specifically on any portion of the qualified site
6 which will be available to the general public free of charge or which
7 improvements are made for environmental conservation purposes; and such
8 amount of all costs under subparagraphs (A), (B) and (C) of this para-
9 graph shall instead be paid by the tax department to such municipality
10 (or any affiliated municipality designated by such municipality);
11 provided, however, that such municipality may waive its right to any
12 such payment, in whole or in part, by filing written notice of such
13 waiver with the commissioner on or before the date the taxpayer files a
14 return claiming the credit described in this section, and the amount of
15 any such payment so waived shall not be a reduction against the credit
16 available to the taxpayer hereunder. For purposes of this section,
17 "infrastructure work" means all improvements which are customarily
18 constructed or installed by a municipality and are generally necessary
19 for a site to be developed, including without limitation roads, curbs,
20 sidewalks, sewers, utilities, bulkheading, drainage facilities and
21 related earthwork and landscaping.

22 (2) Site preparation credit component. The site preparation credit
23 component shall be equal to the applicable percentage of the site prepa-
24 ration costs paid or incurred by the taxpayer or the municipality (or
25 any affiliated municipality thereof) entitled to a payment pursuant to
26 paragraph one of this subdivision with respect to a qualified site. The
27 credit component amount so determined with respect to a site's quali-
28 fication for a certificate of completion shall be allowed for the taxa-
29 ble year in which the effective date of the certificate of completion
30 occurs. The credit component amount determined other than with respect
31 to such qualification shall be allowed for the taxable year in which the
32 improvement to which the applicable costs apply is placed in service for
33 up to five taxable years after the issuance of such certificate of
34 completion; provided, however, that for any qualified site to which a
35 certificate of completion is issued on or after July first, two thousand
36 fifteen but on or before June twenty-fourth, two thousand twenty-one,
37 the site preparation credit component for such costs shall be allowed
38 for up to seven taxable years after the issuance of such certificate of
39 completion.

40 (4) On-site groundwater remediation credit component. The on-site
41 groundwater remediation credit component shall be equal to the applica-
42 ble percentage of the on-site groundwater remediation costs paid or
43 incurred by the taxpayer or the municipality (or any affiliated muni-
44 city thereof) entitled to a payment pursuant to paragraph one of this
45 subdivision with respect to a qualified site (to the extent that such
46 groundwater remediation costs are not included in the determination of
47 the site preparation credit or the cost or other basis included in the
48 determination of the tangible property credit). The credit component so
49 determined for costs incurred and paid with respect to and prior to the
50 issuance of a certificate of completion shall be allowed for the taxable
51 year in which the effective date of the issuance of a certificate of
52 completion occurs. The credit component amount determined in taxable
53 years after the effective date of the issuance of a certificate of
54 completion shall be allowed in the taxable year such qualified costs are
55 incurred and paid for up to five taxable years after the issuance of
56 such certificate of completion; provided, however, that with respect to

1 any qualified site for which a certificate of completion has been issued
2 on or after July first, two thousand fifteen but on or before June twen-
3 ty-fourth, two thousand twenty-one, the credit component amount deter-
4 mined in taxable years after the effective date of the issuance of a
5 certificate of completion shall be allowed in the taxable year such
6 qualified costs are incurred and paid for up to seven taxable years
7 after the issuance of such certificate of completion.

8 (6) Site preparation costs and on-site groundwater remediation costs
9 paid or incurred by the taxpayer or the municipality (or any affiliated
10 municipality thereof) entitled to a payment pursuant to paragraph one of
11 this subdivision with respect to a qualified site and the cost or other
12 basis for federal income tax purposes of tangible personal property and
13 other tangible property, including buildings and structural components
14 of buildings, which constitute qualified tangible property shall only
15 include costs paid or incurred by the taxpayer or the municipality (or
16 any affiliated municipality thereof) entitled to a payment pursuant to
17 paragraph one of this subdivision on or after the date of the brownfield
18 site cleanup agreement executed by the taxpayer and the department of
19 environmental conservation pursuant to section 27-1409 of the environ-
20 mental conservation law.

21 (7) The amount of any grant received from the federal, state or a
22 local government or an instrumentality or public benefit corporation
23 thereof received by the taxpayer and used to pay for any of the costs
24 described in paragraphs two, three and four of this subdivision, which
25 was not included in the federal gross income of the taxpayer, shall be
26 subtracted in computing the credit components under this section;
27 provided that the foregoing shall not apply to any amounts the source of
28 which are payments pursuant to paragraph one of this subdivision.

29 § 2. Paragraph 3 of subdivision (b) of section 21 of the tax law, as
30 amended by chapter 420 of the laws of 2006, clause (i) of subparagraph
31 (B) as amended by section 22 of part BB of chapter 56 of the laws of
32 2015, is amended to read as follows:

33 (3) Qualified tangible property. "Qualified tangible property" is
34 property described in either subparagraph (A) or (B) of this paragraph
35 which:

36 (A) (i) is depreciable pursuant to section one hundred sixty-seven of
37 the internal revenue code,

38 (ii) has a useful life of four years or more,

39 (iii) has been acquired by purchase as defined in section one hundred
40 seventy-nine (d) of the internal revenue code by the taxpayer or the
41 municipality (or any affiliated municipality thereof) entitled to a
42 payment pursuant to paragraph one of subdivision (a) of this section,

43 (iv) has a situs on a qualified site in this state, and

44 (v) is principally used by the taxpayer for industrial, commercial,
45 recreational or environmental conservation purposes (including the
46 commercial development of residential housing); or

47 (B) (i) is, or when occupied becomes, part of a dwelling whose primary
48 ownership structure is covered under either article nine-B of the real
49 property law or meets the requirements of section 216 (b)(1) of the
50 Internal Revenue Code or is part of an affordable housing project as
51 defined in subdivision twenty-nine of section 27-1405 of the environ-
52 mental conservation law, where units are sold as single family homes or
53 multiple family dwellings;

54 (ii) has been acquired by purchase (as defined in section one hundred
55 seventy-nine (d) of the Internal Revenue Code) by the taxpayer or the

1 municipality (or any affiliated municipality thereof) entitled to a
2 payment pursuant to paragraph one of subdivision (a) of this section;

3 (iii) has a situs on a qualified site in this state; and

4 (iv) for purposes of this subparagraph only, and notwithstanding any
5 other section of law to the contrary, property qualifying under this
6 subparagraph shall be deemed to be qualified tangible property for the
7 purposes of paragraph one of subdivision (d) of this section; and in
8 addition, for the purposes of this subdivision only, property qualifying
9 under this subparagraph shall be deemed to have been placed in service
10 for the purposes of paragraph three of subdivision (a) of this section
11 when a certificate of occupancy is issued for such property.

12 § 3. This act shall take effect immediately and shall apply to all
13 qualified sites from the date on which the brownfield site clean-up
14 agreement with respect to such qualified site was entered into, includ-
15 ing without limitation such brownfield site clean-up agreements entered
16 into prior to such effective date.