

5838

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

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, as amended by section 1 of part H of chapter 577 of
3 the laws of 2004, are amended to read as follows:
4 (1) General. A taxpayer subject to tax under article nine, nine-A,
5 twenty-two, thirty-two or thirty-three of this chapter shall be allowed
6 a credit against such tax, pursuant to the provisions referenced in
7 subdivision (f) of this section. Such credit shall be allowed with
8 respect to a qualified site, as such term is defined in paragraph one of
9 subdivision (b) of this section. The amount of the credit in a taxable
10 year shall be the sum of the credit components specified in paragraphs
11 two, three and four of this subdivision applicable in such year.
12 NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THE QUALIFIED SITE IS
13 OWNED BY, OR WAS ACQUIRED BY A TAXPAYER FROM, A MUNICIPALITY, AS SUCH
14 TERM IS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION 27-1405 OF THE
15 ENVIRONMENTAL CONSERVATION LAW, THE CREDIT SHALL BE REDUCED BY THE
16 FOLLOWING AMOUNTS TO THE EXTENT THAT THEY WERE INCURRED AFTER THE DATE
17 OF THE BROWNFIELD SITE CLEANUP AGREEMENT EXECUTED BY THE TAXPAYER AND
18 THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO SECTION 27-1409
19 OF THE ENVIRONMENTAL CONSERVATION LAW (A) THE AMOUNT OF ALL SITE PREPA-
20 RATION COSTS AND ON-SITE GROUNDWATER REMEDIATION COSTS UNDERTAKEN
21 SPECIFICALLY ON SUCH QUALIFIED SITE BY OR AT THE EXPENSE OF SUCH MUNICI-
22 PALITY (OR ANY AFFILIATED MUNICIPALITY THEREOF), (B) THE AMOUNT OF ALL
23 COSTS OF ALL INFRASTRUCTURE WORK, AS DEFINED BELOW, UNDERTAKEN SPECIF-
24 ICALLY ON THE QUALIFIED SITE BY OR AT THE EXPENSE OF SUCH MUNICIPALITY
25 (OR ANY AFFILIATED MUNICIPALITY THEREOF) AND (C) THE AMOUNT OF ALL COSTS

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

LBD07967-01-9

1 FOR IMPROVEMENTS UNDERTAKEN BY OR AT THE EXPENSE OF THE MUNICIPALITY (OR
2 ANY AFFILIATED MUNICIPALITY THEREOF) SPECIFICALLY ON ANY PORTION OF THE
3 QUALIFIED SITE WHICH WILL BE AVAILABLE TO THE GENERAL PUBLIC FREE OF
4 CHARGE OR WHICH IMPROVEMENTS ARE MADE FOR ENVIRONMENTAL CONSERVATION
5 PURPOSES; AND SUCH AMOUNT OF ALL COSTS UNDER SUBPARAGRAPHS (A), (B) AND
6 (C) OF THIS PARAGRAPH SHALL INSTEAD BE PAID BY THE TAX DEPARTMENT TO
7 SUCH MUNICIPALITY (OR ANY AFFILIATED MUNICIPALITY DESIGNATED BY SUCH
8 MUNICIPALITY); PROVIDED, HOWEVER, THAT SUCH MUNICIPALITY MAY WAIVE ITS
9 RIGHT TO ANY SUCH PAYMENT, IN WHOLE OR IN PART, BY FILING WRITTEN NOTICE
10 OF SUCH WAIVER WITH THE COMMISSIONER ON OR BEFORE THE DATE THE TAXPAYER
11 FILES A RETURN CLAIMING THE CREDIT DESCRIBED IN THIS SECTION, AND THE
12 AMOUNT OF ANY SUCH PAYMENT SO WAIVED SHALL NOT BE A REDUCTION AGAINST
13 THE CREDIT AVAILABLE TO TAXPAYER HEREUNDER. FOR PURPOSES OF THIS
14 SECTION, "INFRASTRUCTURE WORK" MEANS ALL IMPROVEMENTS WHICH ARE CUSTOM-
15 ARILY CONSTRUCTED OR INSTALLED BY A MUNICIPALITY AND ARE GENERALLY
16 NECESSARY FOR A SITE TO BE DEVELOPED, INCLUDING WITHOUT LIMITATION
17 ROADS, CURBS, SIDEWALKS, SEWERS, UTILITIES, BULKHEADS, DRAINAGE FACIL-
18 ITIES AND RELATED EARTHWORK AND LANDSCAPING.

19 (2) Site preparation credit component. The site preparation credit
20 component shall be equal to the applicable percentage of the site prepa-
21 ration costs paid or incurred by the taxpayer OR THE MUNICIPALITY (OR
22 ANY AFFILIATED MUNICIPALITY THEREOF) ENTITLED TO A PAYMENT PURSUANT TO
23 PARAGRAPH ONE OF THIS SUBDIVISION with respect to a qualified site. The
24 credit component amount so determined with respect to a site's quali-
25 fication for a certificate of completion shall be allowed for the taxa-
26 ble year in which the effective date of the certificate of completion
27 occurs. The credit component amount determined other than with respect
28 to such qualification shall be allowed for the taxable year in which the
29 improvement to which the applicable costs apply is placed in service for
30 up to five taxable years after the issuance of such certificate of
31 completion.

32 (4) On-site groundwater remediation credit component. The on-site
33 groundwater remediation credit component shall be equal to the applica-
34 ble percentage of the on-site groundwater remediation costs paid or
35 incurred by the taxpayer OR THE MUNICIPALITY (OR ANY AFFILIATED MUNICI-
36 PALITY THEREOF) ENTITLED TO A PAYMENT PURSUANT TO PARAGRAPH ONE OF THIS
37 SUBDIVISION with respect to a qualified site (to the extent that such
38 groundwater remediation costs are not included in the determination of
39 the site preparation credit or the cost or other basis included in the
40 determination of the tangible property credit). The credit component so
41 determined for costs incurred and paid with respect to and prior to the
42 issuance of a certificate of completion shall be allowed for the taxable
43 year in which the effective date of the issuance of a certificate of
44 completion occurs. The credit component amount determined in taxable
45 years after the effective date of the issuance of a certificate of
46 completion shall be allowed in the taxable year such qualified costs are
47 incurred and paid for up to five taxable years after the issuance of
48 such certificate of completion.

49 (6) Site preparation costs and on-site groundwater remediation costs
50 paid or incurred by the taxpayer OR THE MUNICIPALITY (OR ANY AFFILIATED
51 MUNICIPALITY THEREOF) ENTITLED TO A PAYMENT PURSUANT TO PARAGRAPH ONE OF
52 THIS SUBDIVISION with respect to a qualified site and the cost or other
53 basis for federal income tax purposes of tangible personal property and
54 other tangible property, including buildings and structural components
55 of buildings, which constitute qualified tangible property shall only
56 include costs paid or incurred by the taxpayer OR THE MUNICIPALITY (OR

1 ANY AFFILIATED MUNICIPALITY THEREOF) ENTITLED TO A PAYMENT PURSUANT TO
2 PARAGRAPH ONE OF THIS SUBDIVISION on or after the date of the brownfield
3 site cleanup agreement executed by the taxpayer and the department of
4 environmental conservation pursuant to section 27-1409 of the environ-
5 mental conservation law.

6 (7) The amount of any grant received from the federal, state or a
7 local government or an instrumentality or public benefit corporation
8 thereof received by the taxpayer and used to pay for any of the costs
9 described in paragraphs two, three and four of this subdivision, which
10 was not included in the federal gross income of the taxpayer, shall be
11 subtracted in computing the credit components under this section;
12 PROVIDED THAT THE FOREGOING SHALL NOT APPLY TO ANY AMOUNTS THE SOURCE OF
13 WHICH ARE PAYMENTS PURSUANT TO PARAGRAPH ONE OF THIS SUBDIVISION.

14 S 2. Paragraph 3 of subdivision (b) of section 21 of the tax law, as
15 amended by chapter 420 of the laws of 2006, is amended to read as
16 follows:

17 (3) Qualified tangible property. "Qualified tangible property" is
18 property described in either subparagraph (A) or (B) of this paragraph
19 which:

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

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

23 (iii) has been acquired by purchase as defined in section one hundred
24 seventy-nine (d) of the internal revenue code BY THE TAXPAYER OR THE
25 MUNICIPALITY (OR ANY AFFILIATED MUNICIPALITY THEREOF) ENTITLED TO A
26 PAYMENT PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (A) OF THIS SECTION,

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

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

31 (B)(i) is, or when occupied becomes, part of a dwelling whose primary
32 ownership structure is covered under either article nine-B of the real
33 property law or meets the requirements of section 216 (b)(1) of the
34 Internal Revenue Code;

35 (ii) has been acquired by purchase (as defined in section one hundred
36 seventy-nine (d) of the Internal Revenue Code) BY THE TAXPAYER OR THE
37 MUNICIPALITY (OR ANY AFFILIATED MUNICIPALITY THEREOF) ENTITLED TO A
38 PAYMENT PURSUANT TO PARAGRAPH ONE OF SUBDIVISION (A) OF THIS SECTION;

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

40 (iv) for purposes of this subparagraph only, and notwithstanding any
41 other section of law to the contrary, property qualifying under this
42 subparagraph shall be deemed to be qualified tangible property for the
43 purposes of paragraph one of subdivision (d) of this section; and in
44 addition, for the purposes of this subdivision only, property qualifying
45 under this subparagraph shall be deemed to have been placed in service
46 for the purposes of paragraph three of subdivision (a) of this section
47 when a certificate of occupancy is issued for such property.

48 S 3. This act shall take effect immediately and shall apply to all
49 qualified sites from the date on which the brownfield site clean-up
50 agreement with respect to such qualified site was entered into, includ-
51 ing without limitation such brownfield site clean-up agreements entered
52 into prior to such effective date.