

816

2015-2016 Regular Sessions

I N A S S E M B L Y

January 7, 2015

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, paragraph 1 as amended by section 39 of part A of
4 chapter 59 of the laws of 2014, are amended to read as follows:
5 (1) General. A taxpayer subject to tax under article nine, nine-A,
6 twenty-two or thirty-three of this chapter shall be allowed a credit
7 against such tax, pursuant to the provisions referenced in subdivision
8 (f) of this section. Such credit shall be allowed with respect to a
9 qualified site, as such term is defined in paragraph one of subdivision
10 (b) of this section. The amount of the credit in a taxable year shall be
11 the sum of the credit components specified in paragraphs two, three and
12 four of this subdivision applicable in such year. NOTWITHSTANDING THE
13 FOREGOING, IN THE EVENT THAT THE QUALIFIED SITE IS OWNED BY, OR WAS
14 ACQUIRED BY A TAXPAYER FROM, A MUNICIPALITY, AS SUCH TERM IS DEFINED IN
15 SUBDIVISION TWENTY-ONE OF SECTION 27-1405 OF THE ENVIRONMENTAL CONSERVA-
16 TION LAW, THE CREDIT SHALL BE REDUCED BY THE FOLLOWING AMOUNTS TO THE
17 EXTENT THAT THEY WERE INCURRED AFTER THE DATE OF THE BROWNFIELD SITE
18 CLEANUP AGREEMENT EXECUTED BY THE TAXPAYER AND THE DEPARTMENT OF ENVI-
19 RONMENTAL CONSERVATION PURSUANT TO SECTION 27-1409 OF THE ENVIRONMENTAL
20 CONSERVATION LAW (A) THE AMOUNT OF ALL SITE PREPARATION COSTS AND
21 ON-SITE GROUNDWATER REMEDIATION COSTS UNDERTAKEN SPECIFICALLY ON SUCH
22 QUALIFIED SITE BY OR AT THE EXPENSE OF SUCH MUNICIPALITY (OR ANY AFFIL-
23 IATED MUNICIPALITY THEREOF), (B) THE AMOUNT OF ALL COSTS OF ALL INFRAS-
24 TRUCTURE WORK, AS DEFINED BELOW, UNDERTAKEN SPECIFICALLY ON THE QUALI-
25 FIED SITE BY OR AT THE EXPENSE OF SUCH MUNICIPALITY (OR ANY AFFILIATED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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