STATE OF NEW YORK

8636--A

IN SENATE

May 10, 2018

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the tax law, in relation to the calculation of the brownfield site preparation credit for certain taxpayers

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

Section 1. Subdivision 3 of section 27-1419 of the environmental conservation law, as amended by section 10 of part BB of chapter 56 of the laws of 2015, is amended to read as follows:

3. Upon receipt of the final engineering report, the department shall review such report and the data submitted pursuant to the brownfield site cleanup agreement as well as any other relevant information regarding the brownfield site. Upon satisfaction of the commissioner that the remediation requirements set forth in this title have been or will be achieved in accordance with the timeframes, if any, established in the remedial work plan, the commissioner shall issue a written **approval of the final engineering report and a** certificate of completion. The certificate shall include such information as determined by the department of taxation and finance, including but not limited to the brownfield site boundaries included in the final engineering report, the date of the brownfield site cleanup agreement, and the applicable percentages available as of the date of the certificate of completion for that site for purposes of section twenty-one of the tax law. For those sites for which the department has issued a notice to the applicant on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of this title, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law shall only be available to the taxpayer if the criteria for receiving such tax component have been met. For those sites for which the department has issued a notice to the taxpayer after June twenty-third, two

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

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thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the applicable percentage for the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law shall be based on the level of cleanup achieved pursuant to subdivision four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

(a) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

(b) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

(c) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

(d) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

§ 2. 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) **(A)** 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**; and the cost of activities set forth in all work plans and in the final engineering report approved under title fourteen of article twenty-seven of the environmental conservation law**. 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. Site preparation cost shall [~~not~~] include the costs of foundation systems that **are part of the site's engineering controls described in approved work plans**

or a final engineering report under title fourteen of article twenty-seven of the environmental conservation law, but only to the extent that such foundation system costs do not exceed costs for the cover system requirements which shall be defined in the regulations applicable to the qualified site.

(B) With respect to any site for which (1) the department of environmental conservation has issued a notice before July first, two thousand fifteen that a request for participation with respect to the qualified site has been accepted under subdivision six of section 27-1407 of the environmental conservation law, and (2) the taxpayer's claim for the site preparation credit component determined with respect to the site's qualification for the certificate of completion has not been finally determined: site preparation cost shall include the costs of foundation systems that are part of the site's engineering controls described in approved work plans or a final engineering report under title fourteen of article twenty-seven of the environmental conservation law, which are minimum cover system costs for at least one foot thickness of low permeable material such as concrete or asphalt at sites where the remedial cover system is being constructed after end point data has confirmed the selected remedial track pursuant to subdivision four of section 27-1415 of the environmental conservation law has been met and the remaining soil is structurally supportive; or costs for two feet thickness of low permeable material such as concrete or asphalt for sites where the remedial cover system is being constructed after end point data has confirmed the selected remedial track pursuant to subdivision four of section 27-1415 of the environmental conservation law has been met and the remaining soil is structurally unsound soil, such as historic fill or sand.

(C) Site preparation costs as defined in this paragraph, and which under the Internal Revenue Code, as amended, may also be properly included in the cost or other basis for federal income tax purposes of qualified tangible property, as described in paragraph three of this subdivision, shall be allowable for purposes of the calculation of the site preparation credit component under paragraph two of subdivision (a) of this section, but any such costs shall be excluded from such qualified tangible property basis for purposes of calculating the tangible property credit component under paragraph three of subdivision (a) of this section.

§ 3. This act shall take effect immediately and shall apply to all sites for which the taxpayer's claim for the site preparation credit component determined with respect to the site's qualification for the certificate of completion has not been finally determined as of such effective date. Any non-final determinations by the commissioner of the department of taxation and finance shall be subject to redetermination to give effect to this act. The taxpayer may seek redetermination by written notice to the commissioner given on or before the date which is one year from such effective date. Such redetermination shall be made by the department of taxation and finance desk audit bureau or other process established by the commissioner by regulation, and shall be subject to review pursuant to article 40 of the tax law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.