

STATE OF NEW YORK

2666

2019-2020 Regular Sessions

IN ASSEMBLY

January 24, 2019

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
26 municipality thereof) and (C) the amount of all costs for improvements
27 undertaken by or at the expense of the municipality (or any affiliated
28 municipality thereof) specifically on any portion of the qualified site

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

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

17 (2) Site preparation credit component. The site preparation credit
18 component shall be equal to the applicable percentage of the site prepa-
19 ration costs paid or incurred by the taxpayer or the municipality (or
20 any affiliated municipality thereof) entitled to a payment pursuant to
21 paragraph one of this subdivision with respect to a qualified site. The
22 credit component amount so determined with respect to a site's quali-
23 fication for a certificate of completion shall be allowed for the taxa-
24 ble year in which the effective date of the certificate of completion
25 occurs. The credit component amount determined other than with respect
26 to such qualification shall be allowed for the taxable year in which the
27 improvement to which the applicable costs apply is placed in service for
28 up to five taxable years after the issuance of such certificate of
29 completion.

30 (4) On-site groundwater remediation credit component. The on-site
31 groundwater remediation credit component shall be equal to the applica-
32 ble percentage of the on-site groundwater remediation costs paid or
33 incurred by the taxpayer or the municipality (or any affiliated munici-
34 palilty thereof) entitled to a payment pursuant to paragraph one of this
35 subdivision with respect to a qualified site (to the extent that such
36 groundwater remediation costs are not included in the determination of
37 the site preparation credit or the cost or other basis included in the
38 determination of the tangible property credit). The credit component so
39 determined for costs incurred and paid with respect to and prior to the
40 issuance of a certificate of completion shall be allowed for the taxable
41 year in which the effective date of the issuance of a certificate of
42 completion occurs. The credit component amount determined in taxable
43 years after the effective date of the issuance of a certificate of
44 completion shall be allowed in the taxable year such qualified costs are
45 incurred and paid for up to five taxable years after the issuance of
46 such certificate of completion.

47 (6) Site preparation costs and on-site groundwater remediation costs
48 paid or incurred by the taxpayer or the municipality (or any affiliated
49 municipality thereof) entitled to a payment pursuant to paragraph one of
50 this subdivision with respect to a qualified site and the cost or other
51 basis for federal income tax purposes of tangible personal property and
52 other tangible property, including buildings and structural components
53 of buildings, which constitute qualified tangible property shall only
54 include costs paid or incurred by the taxpayer or the municipality (or
55 any affiliated municipality thereof) entitled to a payment pursuant to
56 paragraph one of this subdivision on or after the date of the brownfield

1 site cleanup agreement executed by the taxpayer and the department of
2 environmental conservation pursuant to section 27-1409 of the environ-
3 mental conservation law.

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

12 § 2. Paragraph 3 of subdivision (b) of section 21 of the tax law, as
13 amended by chapter 420 of the laws of 2006, clause (i) of subparagraph
14 (B) as amended by section 22 of part BB of chapter 56 of the laws of
15 2015, is amended to read as follows:

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

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

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

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

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

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

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

37 (ii) has been acquired by purchase (as defined in section one hundred
38 seventy-nine (d) of the Internal Revenue Code) by the taxpayer or the
39 municipality (or any affiliated municipality thereof) entitled to a
40 payment pursuant to paragraph one of subdivision (a) of this section;

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

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

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