

# STATE OF NEW YORK

1892

2021-2022 Regular Sessions

## IN ASSEMBLY

January 11, 2021

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

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:

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

(1) General. A taxpayer subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Such credit shall be allowed with respect to a qualified site, as such term is defined in paragraph one of subdivision (b) of this section. The amount of the credit in a taxable year shall be the sum of the credit components specified in paragraphs two, three and four of this subdivision applicable in such year. Notwithstanding the foregoing, in the event that the qualified site is owned by, or was acquired by a taxpayer from, a municipality, as such term is defined in subdivision twenty-one of section 27-1405 of the environmental conservation law, the credit shall be reduced by the following amounts to the extent that they were incurred after the date of the brownfield site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law (A) the amount of all site preparation costs and on-site groundwater remediation costs undertaken specifically on such qualified site by or at the expense of such municipality (or any affiliated municipality thereof), (B) the amount of all costs of all infrastructure work, as defined below, undertaken specifically on the qualified site by or at the expense of such municipality (or any affiliated municipality thereof) and (C) the amount of all costs for improvements undertaken by or at the expense of the municipality (or any affiliated 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.