

# STATE OF NEW YORK

7210

2021-2022 Regular Sessions

## IN SENATE

June 7, 2021

Introduced by Sens. KENNEDY, KAMINSKY -- read twice and ordered printed,  
and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law and the tax law, in relation to eligibility for participation in the brownfield cleanup program, assignment of the brownfield redevelopment tax credits and brownfield opportunity areas; and to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites

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

1 Section 1. Subdivision 29 of section 27-1405 of the environmental  
2 conservation law, as added by section 2 of part BB of chapter 56 of the  
3 laws of 2015, is amended and a new subdivision 32 is added to read as  
4 follows:  
5 29. "Affordable housing project" shall mean either (a) a project as  
6 shall be defined in regulation by the department, after consultation  
7 with the division of housing and community renewal, which shall at a  
8 minimum, establish the percentage of units in the project that must be  
9 below a defined percentage of the area median income; or (b) a project  
10 situated on a brownfield site that is the subject of a determination by  
11 a state or local government housing agency that all or a portion of the  
12 project or site will qualify for benefits, including but not limited to  
13 real property taxation exemptions, under an affordable housing program  
14 which defines a percentage of residential rental or home ownership  
15 dwelling units to be dedicated to tenants or home owners at a defined  
16 maximum percentage or percentages of area median income based on the  
17 occupants' households annual gross income. For purposes of this subdivi-  
18 sion, "area median income" shall mean the area median income for the  
19 primary metropolitan statistical area or for the county if located

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

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1 outside a metropolitan statistical area, as determined by the United  
2 States department of housing and urban development or its successor for  
3 a family of four, as adjusted for family size.

4 32. "Conforming BOA site" shall mean a site located within an area  
5 designated by the secretary of state as a brownfield opportunity area  
6 pursuant to section nine hundred seventy-r of the general municipal law  
7 and for which the secretary of state has issued an affirmative conform-  
8 ance determination pursuant to subdivision ten of section nine hundred  
9 seventy-r of the general municipal law.

10 § 2. Subdivision 1-a of section 27-1407 of the environmental conserva-  
11 tion law, as added by section 3 of part BB of chapter 56 of the laws of  
12 2015, is amended to read as follows:

13 1-a. If the person is also seeking a determination that the site is  
14 eligible for the tangible property credit component of the brownfield  
15 redevelopment tax credit pursuant to paragraph three of subdivision (a)  
16 of section twenty-one of the tax law for a site located in a city having  
17 a population of one million or more, such person shall submit informa-  
18 tion sufficient to demonstrate that: (a) at least half of the site area  
19 is located in an environmental zone as defined in section twenty-one of  
20 the tax law; (b) the property is upside down or underutilized; or (c)  
21 the project is an affordable housing project as described in paragraph  
22 (a) of subdivision twenty-nine of section 27-1405 of this title. An  
23 applicant may request an eligibility determination for tangible property  
24 credits at any time from application until the site receives a certifi-  
25 cate of completion [~~pursuant to section 27-1419 of this title except~~  
26 ~~for sites seeking eligibility under the underutilized category~~].  
27 Notwithstanding the foregoing, a site located in a city having a popu-  
28 lation of one million or more and which is a conforming BOA site or  
29 which is described in paragraph (b) of subdivision twenty-nine of  
30 section 27-1405 of this title, shall also be eligible for the tangible  
31 property credit component of the brownfield redevelopment tax credit  
32 pursuant to paragraph three of subdivision (a) of section twenty-one of  
33 the tax law.

34 Sites are not eligible for tangible property tax credits if: (a) the  
35 contamination from ground water or soil vapor is solely emanating from  
36 property other than the site subject to the present application; or (b)  
37 the department has determined that the property has previously been  
38 remediated pursuant to titles nine, thirteen and fourteen of this arti-  
39 cle, title five of article fifty-six of this chapter and article twelve  
40 of the navigation law such that it may be developed for its then  
41 intended use.

42 § 3. Subparagraph (i) of paragraph 3 of subdivision (a) of section 21  
43 of the tax law, as amended by section 1 of part AA of chapter 58 of the  
44 laws of 2021, is amended to read as follows:

45 (i) The tangible property credit component shall be equal to the  
46 applicable percentage of the cost or other basis for federal income tax  
47 purposes of tangible personal property and other tangible property,  
48 including buildings and structural components of buildings, which  
49 constitute qualified tangible property and may include any related party  
50 service fee paid; provided that in determining the cost or other basis  
51 of such property, the taxpayer shall exclude the acquisition cost of any  
52 item of property with respect to which a credit under this section was  
53 allowable to another taxpayer. A related party service fee shall be  
54 allowed only in the calculation of the tangible property credit compo-  
55 nent and shall not be allowed in the calculation of the site preparation  
56 credit component or the on-site groundwater remediation credit compo-

1 nent. The portion of the tangible property credit component which is  
2 attributable to related party service fees shall be allowed only as  
3 follows: (A) in the taxable year in which the qualified tangible proper-  
4 ty described in subparagraph (iii) of this paragraph is placed in  
5 service, for that portion of the related party service fees which have  
6 been earned and actually paid to the related party on or before the last  
7 day of such taxable year; and (B) with respect to any other taxable year  
8 for which the tangible property credit component may be claimed under  
9 this subparagraph and in which the amount of any additional related  
10 party service fees are actually paid by the taxpayer to the related  
11 party, the tangible property credit component for such amount shall be  
12 allowed in such taxable year. The credit component amount so determined  
13 shall be allowed for the taxable year in which such qualified tangible  
14 property is first placed in service on a qualified site with respect to  
15 which a certificate of completion has been issued to the taxpayer, or  
16 for the taxable year in which the certificate of completion is issued if  
17 the qualified tangible property is placed in service prior to the issu-  
18 ance of the certificate of completion. This credit component shall only  
19 be allowed for up to one hundred twenty months after the date of the  
20 issuance of such certificate of completion~~[, provided, however, that for~~  
21 ~~qualified sites to which a certificate of completion is issued on or~~  
22 ~~after March twentieth, two thousand ten, but prior to January first, two~~  
23 ~~thousand twelve, the commissioner may extend the credit component for up~~  
24 ~~to one hundred forty-four months after the date of such issuance, if the~~  
25 ~~commissioner, in consultation with the commissioner of environmental~~  
26 ~~conservation, determines that the requirements for the credit would have~~  
27 ~~been met if not for the restrictions related to the state disaster emer-~~  
28 ~~gency declared pursuant to executive order 202 of 2020 or any extension~~  
29 ~~thereof or subsequent executive order issued in response to the novel~~  
30 ~~coronavirus (COVID-19) pandemic]; provided, however, with respect to any~~  
31 qualified site for which the department of environmental conservation  
32 has issued a notice to the taxpayer before July first, two thousand  
33 fifteen or the date of publication in the state register of proposed  
34 regulations defining "underutilized" as provided in subdivision thirty  
35 of section 27-1405 of the environmental conservation law, whichever  
36 shall be later, that its request for participation has been accepted  
37 under subdivision six of section 27-1407 of the environmental conserva-  
38 tion law, this credit component shall only be allowed for up to one  
39 hundred eighty months after the date of the issuance of such certificate  
40 of completion; provided, however, with respect to any qualified site for  
41 which the department of environmental conservation has issued a notice  
42 to the taxpayer on or after July first, two thousand fifteen or the date  
43 of publication in the state register of proposed regulations defining  
44 "underutilized" as provided in subdivision thirty of section 27-1405 of  
45 the environmental conservation law, whichever shall be later, that its  
46 request for participation has been accepted under subdivision six of  
47 section 27-1407 of the environmental conservation law, or which received  
48 such notice of acceptance prior to that date but is eligible for the  
49 brownfield redevelopment tax credits as if the site was accepted into  
50 the brownfield cleanup program after that date as provided in section  
51 thirty-three of chapter fifty-six of the laws of two thousand fifteen,  
52 this credit component shall only be allowed for up to one hundred eighty  
53 months after the date of the issuance of such certificate of completion.

54 § 4. Paragraph 2 of subdivision (a) of section 21 of the tax law, as  
55 amended by section 1 of part H of chapter 577 of the laws of 2004, is  
56 amended to read as follows:

1 (2) Site preparation credit component. The site preparation credit  
2 component shall be equal to the applicable percentage of the site prepa-  
3 ration costs paid or incurred by the taxpayer with respect to a quali-  
4 fied site. The credit component amount so determined with respect to a  
5 site's qualification for a certificate of completion shall be allowed  
6 for the taxable year in which the effective date of the certificate of  
7 completion occurs. The credit component amount determined other than  
8 with respect to such qualification shall be allowed for the taxable year  
9 in which the improvement to which the applicable costs apply is placed  
10 in service for up to five taxable years after the issuance of such  
11 certificate of completion, provided, however, that for any qualified  
12 site to which a certificate of completion is issued on or after March  
13 twentieth, two thousand fifteen the site preparation credit component  
14 for such costs shall be allowed for up to seven taxable years after the  
15 certificate of completion; and provided further that the credit compo-  
16 nent amount for any costs necessary for compliance with the certificate  
17 of completion or subsequent modifications thereof or the remedial  
18 program defined in such certificate which were paid or incurred but not  
19 included in the calculation of a credit allowed under this section in  
20 any taxable year beginning prior to January first, two thousand twenty-  
21 one, shall be allowed for the taxpayer's first taxable year beginning on  
22 or after January first, two thousand twenty-one, and the credit compo-  
23 nent amount for any such costs paid or incurred in any taxable year  
24 beginning on or after January first, two thousand twenty-one shall be  
25 allowed in the taxable year such costs are paid or incurred for up to  
26 seven taxable years after the issuance of the certificate of completion.

27 § 5. Paragraph 2 of subdivision (b) of section 21 of the tax law, as  
28 amended by section 23 of part BB of chapter 56 of the laws of 2015, is  
29 amended to read as follows:

30 (2) Site preparation costs. The term "site preparation costs" shall  
31 mean all amounts properly chargeable to a capital account, which are  
32 paid or incurred which are necessary to implement a site's investi-  
33 gation, remediation, or qualification for a certificate of completion,  
34 and shall include costs of: excavation; demolition; activities undertak-  
35 en under the oversight of the department of labor or in accordance with  
36 standards established by the department of health to remediate and  
37 dispose of regulated materials including asbestos, lead or polychlori-  
38 nated biphenyls; environmental consulting; engineering; legal costs;  
39 transportation, disposal, treatment or containment of contaminated soil;  
40 remediation measures taken to address contaminated soil vapor; cover  
41 systems consistent with applicable regulations; physical support of  
42 excavation; dewatering and other work to facilitate or enable remedi-  
43 ation activities; sheeting, shoring, and other engineering controls  
44 required to prevent off-site migration of contamination from the quali-  
45 fied site or migrating onto the qualified site; and the costs of fenc-  
46 ing, temporary electric wiring, scaffolding, and security facilities  
47 until such time as the certificate of completion has been issued. Site  
48 preparation shall include all costs paid or incurred within sixty months  
49 after the last day of the tax year in which the certificate of  
50 completion is issued that are necessary for compliance with the certif-  
51 icate of completion or subsequent modifications thereof, or the remedial  
52 program defined in such certificate of completion including but not  
53 limited to institutional controls, engineering controls, an approved  
54 site management plan, and an environmental easement with respect to the  
55 qualified site; provided, however, with respect to any qualified site  
56 for which the department of environmental conservation has issued a

1 notice to the taxpayer on or after July first, two thousand fifteen or  
2 the date of publication in the state register of proposed regulations  
3 defining "underutilized" as provided in subdivision thirty of section  
4 27-1405 of the environmental conservation law, whichever shall be later,  
5 that its request for participation has been accepted under subdivision  
6 six of section 27-1407 of the environmental conservation law, site prepa-  
7 ration shall include all costs paid or incurred within eighty-four  
8 months after the last day of the tax year in which the certificate of  
9 completion is issued that are necessary for compliance with the certifi-  
10 cate of completion or subsequent modifications thereof, or the remedial  
11 program defined in such certificate of completion including but not  
12 limited to institutional controls, engineering controls, an approved  
13 site management plan, and an environmental easement with respect to the  
14 qualified site. Site preparation cost shall not include the costs of  
15 foundation systems that exceed the cover system requirements in the  
16 regulations applicable to the qualified site.

17 § 6. Subdivision (b) of section 21 of the tax law is amended by adding  
18 a new paragraph 7 to read as follows:

19 (7) Certain environmental zones (EN-Zones). An "environmental zone"  
20 shall mean, with respect to any qualified site for which the department  
21 of environmental conservation has issued a notice to the taxpayer on or  
22 after July first, two thousand fifteen or the date of publication in the  
23 state register of proposed regulations defining "underutilized" as  
24 provided in subdivision thirty of section 27-1405 of the environmental  
25 conservation law, whichever shall be later, that its request for partic-  
26 ipation has been accepted under subdivision six of section 27-1407 of  
27 the environmental conservation law:

28 (A) an area designated as such by the commissioner of labor. Such  
29 areas shall be census tracts that satisfy either of the following crite-  
30 ria:

31 (i) areas that have both:

32 (I) a poverty rate of at least twenty percent based on the most recent  
33 five year American Community Survey; and

34 (II) an unemployment rate of at least one and one-quarter times the  
35 statewide unemployment rate based on the most recent five year American  
36 Community Survey, or;

37 (ii) areas that have a poverty rate of at least two times the poverty  
38 rate for the county in which the areas are located based on the most  
39 recent five year American Community Survey.

40 (iii) Such designation shall be made and a list of all such environ-  
41 mental zones shall be established by the commissioner of labor based on  
42 the most recent American Community Survey, or its successor.

43 (B) an area designated by the commissioner of the department of envi-  
44 ronmental conservation to be a potential environmental justice area.

45 (i) "Potential environmental justice area" means a minority or low-in-  
46 come community that may bear a disproportionate share of the negative  
47 environmental consequences resulting from industrial, municipal, and  
48 commercial operations or the execution of federal, state, local, and  
49 tribal programs and policies and which are shown on maps created by the  
50 department of environmental conservation.

51 (ii) "Minority community" means a census block group, or contiguous  
52 area with multiple census block groups, having a minority population  
53 equal to or greater than 51.1 percent in an urban area and 33.8 percent  
54 in a rural area of the total population.

1 (iii) "Minority population" means a population that is identified or  
2 recognized by the United States Census Bureau as Hispanic, African-Amer-  
3 ican or Black, Asian and Pacific Islander or American Indian.

4 (iv) "Low-income community" means a census block group, or contiguous  
5 area with multiple census block groups, having a low-income population  
6 equal to or greater than 23.59 percent of the total population.

7 (v) "Low-income population" means a population having an annual income  
8 that is less than the poverty threshold, as such thresholds are estab-  
9 lished by the United States Census Bureau.

10 (vi) "Census block group" means a unit for the United States census  
11 used for reporting. Census block groups generally contain between two  
12 hundred fifty and five hundred housing units.

13 (vii) "Urban area" means all territory, population, and housing units  
14 located in urbanized areas and in places of two thousand five hundred or  
15 more inhabitants outside of an urbanized area. An urbanized area is a  
16 continuously built-up area with a population of fifty thousand or more.

17 (viii) "Rural area" means territory, population, and housing units  
18 that are not classified as an urban area. The determination whether a  
19 site is located in an environmental zone pursuant to this subdivision  
20 shall be based on the date the department of environmental conservation  
21 issued a notice to the taxpayer that its request for participation in  
22 the brownfield cleanup program has been deemed complete pursuant to  
23 subdivision three of section 27-1407 of the environmental conservation  
24 law; provided, however, if the area in which a site is located is desig-  
25 nated an environmental zone subsequent to the issuance of such notice  
26 and before qualified tangible property as defined in paragraph three of  
27 this subdivision is placed in service, then the site shall be deemed  
28 located in an environmental zone.

29 § 7. Section 31 of part H of chapter 1 of the laws of 2003, amending  
30 the tax law relating to brownfield redevelopment tax credits, remediated  
31 brownfield credit for real property taxes for qualified sites and envi-  
32 ronmental remediation insurance credits, as amended by section 32 of  
33 part BB of chapter 56 of the laws of 2015, is amended to read as  
34 follows:

35 § 31. The tax credits allowed under section 22 or 23 of the tax law  
36 and the corresponding provisions in articles 9, 9-A, 22 and 33 of the  
37 tax law, as added by the provisions of sections one through twenty-nine  
38 of this act, shall not be applicable to any site accepted into the  
39 brownfield cleanup program on and after July 1, 2015 or the date of  
40 publication in the state register of proposed regulations defining  
41 "underutilized" as provided in subdivision 30 of section 27-1405 of the  
42 environmental conservation law, whichever shall be later. The tax cred-  
43 its allowed under section 21 of the tax law and the corresponding  
44 provisions in articles 9, 9-A, 22 and 33 of the tax law, as added by the  
45 provisions of sections one through twenty-nine of this act, shall not be  
46 applicable to any site accepted into the brownfield cleanup program  
47 after December 31, [~~2022~~] 2027, provided, however that any sites  
48 accepted on or before December 31, [~~2022~~] 2027 must have received the  
49 certificate of completion required to qualify for any of such credits on  
50 or before [~~March~~] December 31, [~~2026~~] 2031.

51 § 8. A site which is in a potential environmental justice area, as  
52 defined in clause (i) of subparagraph (B) of paragraph 7 of subdivision  
53 (b) of section 21 of the tax law, as of the effective date of this act  
54 shall be deemed to be in an environmental zone from and after January 1,  
55 2021 for all purposes including but not limited to the site's eligibil-  
56 ity for the tangible property credit component under subdivision 1-a of

1 section 27-1407 of the environmental conservation law and the calcu-  
2 lation of the brownfield redevelopment tax credit pursuant to section 21  
3 of the tax law as amended by this act for all taxable years beginning on  
4 or after January 1, 2021.

5 § 9. This act shall take effect immediately; provided, however:

6 (a) The amendments made by sections one and two of this act shall  
7 apply to sites for which the department of environmental conservation  
8 has issued a notice to the applicant that its request for participation  
9 has been accepted under subdivision 6 of section 27-1407 of the environ-  
10 mental conservation law, regardless of the date of such notice;  
11 provided, however, that the amendments made by section two of this act  
12 regarding eligibility for the tangible property credit component of the  
13 brownfield redevelopment tax credit under paragraph 3 of subdivision (a)  
14 of section 21 of the tax law shall apply to taxable years beginning on  
15 and after January 1, 2021; and

16 (b) a site which is in a potential environmental justice area as of  
17 such effective date shall be deemed to be in an environmental zone from  
18 and after January 1, 2021 for all purposes including but not limited to  
19 the site's eligibility for the tangible property credit component under  
20 subdivision 1-a of section 27-1407 of the environmental conservation law  
21 and the calculation of the brownfield redevelopment tax credit pursuant  
22 to section 21 of the tax law as amended by this act for all taxable  
23 years beginning on and after January 1, 2021.