STATE OF NEW YORK

7606--A

2021-2022 Regular Sessions

IN SENATE

December 15, 2021

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to clarifying that aspects of certain athletic projects should be counted as capital improvements for the brownfield redevelopment tax credit

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

Section 1. Subparagraphs (i) and (iv) of paragraph 3 of subdivision (a) of section 21 of the tax law, subparagraph (i) as amended by section 1 of part AA of chapter 58 of the laws of 2021, subparagraph (iv) as amended by section 17 of part BB of chapter 56 of the laws of 2015, are amended to read as follows:

(i) The tangible property credit component shall be equal to the applicable percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property and may include any related party service fee paid; provided that in determining the cost or other basis of such property, the taxpayer shall exclude the acquisition cost of any item of property with respect to which a credit under this section was allowable to another taxpayer**; and provided further that for the purposes of this section, starting with taxable year two thousand eighteen, stadiums, parks, basketball courts and other recreational facilities shall be considered buildings, and that components of stadiums, parks, basketball courts, and other recreational facilities including sports field turf, site lighting, parking lots, sidewalks, access and entry ways, and other improvements not directly to or added to land shall be considered structural components of buildings under the inter-**

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

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nal revenue code, and shall be included in the definition of tangible property for the purposes of this section, and shall not be considered on the basis of real property. A related party service fee shall be allowed only in the calculation of the tangible property credit component and shall not be allowed in the calculation of the site preparation credit component or the on-site groundwater remediation credit component. The portion of the tangible property credit component which is attributable to related party service fees shall be allowed only as follows: (A) in the taxable year in which the qualified tangible property described in subparagraph (iii) of this paragraph is placed in service, for that portion of the related party service fees which have been earned and actually paid to the related party on or before the last day of such taxable year; and (B) with respect to any other taxable year for which the tangible property credit component may be claimed under this subparagraph and in which the amount of any additional related party service fees are actually paid by the taxpayer to the related party, the tangible property credit component for such amount shall be allowed in such taxable year. The credit component amount so determined shall be allowed for the taxable year in which such qualified tangible property is first placed in service on a qualified site with respect to which a certificate of completion has been issued to the taxpayer, or for the taxable year in which the certificate of completion is issued if the qualified tangible property is placed in service prior to the issuance of the certificate of completion. This credit component shall only be allowed for up to one hundred twenty months after the date of the issuance of such certificate of completion, provided, however, that for qualified sites to which a certificate of completion is issued on or after March twentieth, two thousand ten, but prior to January first, two thousand twelve, the commissioner may extend the credit component for up to one hundred forty-four months after the date of such issuance, if the commissioner, in consultation with the commissioner of environmental conservation, determines that the requirements for the credit would have been met if not for the restrictions related to the state disaster emergency declared pursuant to executive order 202 of 2020 or any extension thereof or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic.

(iv) Eligible costs for the tangible property credit component are limited to costs for tangible property that has a depreciable life for federal income tax purposes of [~~fifteen~~] four years or more, costs associated with demolition and excavation on the site and the foundation of any buildings constructed as part of the site cover that are not properly included in the site preparation component and costs associated with non-portable equipment, machinery and associated fixtures and appurtenances used exclusively on the site, whether or not such property has a depreciable life for federal income tax purposes of [~~fifteen~~] four years or more.

§ 2. This act shall take effect immediately.