STATE OF NEW YORK

3607

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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:

Section 1. Paragraphs 1, 2, 4, 6 and 7 of subdivision (a) of section 21 of the tax law, paragraph 1 as amended by section 39 of part A of chapter 59 of the laws of 2014, paragraph 2 as amended by section 4 and paragraph 4 as amended by section 5 of part LL of chapter 58 of the laws of 2022 and paragraphs 6 and 7 as amended by section 1 of part H of chapter 577 of the laws of 2004, 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 infras-**

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

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

(2) Site preparation credit component. The site preparation credit component shall be equal to the applicable percentage of the site preparation costs paid or incurred by the taxpayer or the municipality (or any affiliated municipality thereof) entitled to a payment pursuant to paragraph one of this subdivision with respect to a qualified site. The credit component amount so determined with respect to a site's qualification for a certificate of completion shall be allowed for the taxable year in which the effective date of the certificate of completion occurs. The credit component amount determined other than with respect to such qualification shall be allowed for the taxable year in which the improvement to which the applicable costs apply is placed in service for up to five taxable years after the issuance of such certificate of completion; provided, however, that for any qualified site to which a certificate of completion is issued on or after July first, two thousand fifteen but on or before June twenty-fourth, two thousand twenty-one, the site preparation credit component for such costs shall be allowed for up to seven taxable years after the issuance of such certificate of completion.

(4) On-site groundwater remediation credit component. The on-site groundwater remediation credit component shall be equal to the applicable percentage of the on-site groundwater remediation costs paid or incurred by the taxpayer or the municipality (or any affiliated municipality thereof) entitled to a payment pursuant to paragraph one of this subdivision with respect to a qualified site (to the extent that such groundwater remediation costs are not included in the determination of the site preparation credit or the cost or other basis included in the determination of the tangible property credit). The credit component so determined for costs incurred and paid with respect to and prior to the issuance of a certificate of completion shall be allowed for the taxable year in which the effective date of the issuance of a certificate of completion occurs. The credit component amount determined in taxable years after the effective date of the issuance of a certificate of completion shall be allowed in the taxable year such qualified costs are incurred and paid for up to five taxable years after the issuance of such certificate of completion; provided, however, that with respect to

any qualified site for which a certificate of completion has been issued on or after July first, two thousand fifteen but on or before June twenty-fourth, two thousand twenty-one, the credit component amount determined in taxable years after the effective date of the issuance of a certificate of completion shall be allowed in the taxable year such qualified costs are incurred and paid for up to seven taxable years after the issuance of such certificate of completion.

(6) Site preparation costs and on-site groundwater remediation costs paid or incurred by the taxpayer **or the municipality (or any affiliated municipality thereof) entitled to a payment pursuant to paragraph one of this subdivision** with respect to a qualified site and 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 shall only include costs paid or incurred by the taxpayer **or the municipality (or any affiliated municipality thereof) entitled to a payment pursuant to paragraph one of this subdivision** on or 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.

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

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

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

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

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

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

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

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

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

(ii) has been acquired by purchase (as defined in section one hundred seventy-nine (d) of the Internal Revenue Code) **by the taxpayer or the**

municipality (or any affiliated municipality thereof) entitled to a payment pursuant to paragraph one of subdivision (a) of this section;

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

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

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