

Update to Publication 300, *New York State Tax Credits Available for Remediated Brownfields*

Extension of brownfield credits

Chapter 474 of the Laws of 2012 extended the eligibility timeframe for the brownfield tax credits from March 31, 2015, to December 31, 2015.

Accordingly, to be eligible for the brownfield redevelopment tax credit, the remediated brownfield credit for real property taxes, and the environmental remediation insurance credit, the Department of Environmental Conservation must issue a certificate of completion on or before December 31, 2015.

Therefore, please disregard the date of March 31, 2015, in the last paragraph on page 6 of this publication. The new date is December 31, 2015.

Publication 300 begins below.



Publication 300
New York State
Tax Credits Available for
Remediated Brownfields

Table of Contents	Page
Introduction.....	5
Part I: Brownfield redevelopment tax credit	6
General.....	6
Site preparation credit component.....	10
Tangible property credit component.....	11
On-site groundwater remediation credit component	15
Part II: Remediated brownfield credit for real property taxes	15
General.....	15
Part III: Environmental remediation insurance credit.....	20
General.....	20
Part IV: Reporting requirements for developers	22
Glossary	24

Introduction

This publication describes the New York State tax credits associated with the “Brownfield Cleanup Program” established under Title 14 of Article 27 of the Environmental Conservation Law (ECL).

For tax years beginning on or after April 1, 2005, a taxpayer participating in the “Brownfield Cleanup Program” who has entered into a *brownfield site cleanup agreement* (BCA) with the Department of Environmental Conservation (DEC) may be eligible for three tax credits relating to the cleanup and redevelopment of a *brownfield site*. (For more information about participating in the Brownfield Cleanup Program, visit the DEC’s Web site at www.dec.ny.gov.)

The **brownfield redevelopment tax credit** consists of the sum of three separate credit components involving costs related to (1) site cleanup, (2) groundwater cleanup, and (3) development on a brownfield site (Tax Law section 21).

Corporate taxpayers claim this credit by filing:

- Form CT-611, *Claim for Brownfield Redevelopment Tax Credit For Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*; or
- Form CT-611.1, *Claim for Brownfield Redevelopment Tax Credit For Qualified Sites Accepted into the Brownfield Cleanup Program on or after June 23, 2008*.

Personal income tax taxpayers claim this credit by filing:

- Form IT-611, *Claim for Brownfield Redevelopment Tax Credit For Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*; or
- Form IT-611.1, *Claim for Brownfield Redevelopment Tax Credit For Qualified Sites Accepted into the Brownfield Cleanup Program on or after June 23, 2008*.

The **remediated brownfield credit for real property taxes** is based on real property taxes paid for qualified sites (Tax Law section 22).

- Corporate taxpayers claim this credit on Form CT-612, *Claim for Remediated Brownfield Redevelopment Credit for Real Property Taxes*.
- Personal income tax taxpayers claim this credit on Form IT-612, *Claim for Remediated Brownfield Redevelopment Credit for Real Property Taxes*.

The **environmental remediation insurance credit** is based on premiums paid for environmental remediation insurance (Tax Law section 23).

- Corporate taxpayers claim this credit on Form CT-613, *Claim for Environmental Remediation Insurance Credit*.
- Personal income tax taxpayers claim this credit on Form IT-613, *Claim for Remediation Environmental Insurance Credit*.

Part I: Brownfield redevelopment tax credit

General

The brownfield redevelopment tax credit is available to taxpayers who incur costs for the remediation or redevelopment of a brownfield site in New York State that is, or will become, a *qualified site*. Upon completion of the required remediation, the DEC will issue a written *Certificate of Completion* (COC) to the remedial party. The COC will include:

- an acknowledgement that the requirements of the *remedial program* were satisfied;
- a description of the site information (including the site boundaries or other description sufficient to identify site location);
- any restrictions for the use of the site;
- the date of the BCA;
- and the applicable percentages used to determine the amount of the credit. When the COC is issued, the site becomes a qualified site.

Eligibility

The credit is available for taxpayers subject to tax under the following Tax Law Articles:

- Article 9, sections 183 and 184, or 185 (certain corporation franchise taxes);
- Article 9-A (franchise tax on general business corporations);
- Article 32 (franchise tax on banking corporations);
- Article 33 (franchise tax on insurance corporations);
- Article 22 (personal income tax); including partners in partnerships, shareholders of New York S corporations and beneficiaries of estates and trusts.

The credit is available for tax years beginning on or after April 1, 2005.

To qualify for the credit, a taxpayer must be a party to a BCA under Environmental Conservation Law (ECL) section 27-1409 and must have a COC issued by the Commissioner of Environmental Conservation. A taxpayer may also be eligible for the credit if the COC was transferred to the taxpayer by the person originally issued the COC, as a result of a transfer or sale of the brownfield site. The credit is not allowed for a brownfield site for which a COC is issued after March 31, 2015.

Amount of credit

The amount of the brownfield redevelopment tax credit is a percentage of the eligible costs paid or incurred to clean up and redevelop a qualified site. A greater percentage is allowed for sites that are cleaned up to a level that requires no restrictions on use, sites located in designated *environmental zones* (EN Zones), and sites located in *brownfield opportunity areas* (BOA). (See the Glossary for definitions of EN Zone and BOA.)

Eligible costs only include those a taxpayer pays or incurs on or after the effective date of the BCA executed by the taxpayer and the DEC, or on or after the date the COC was transferred to the taxpayer.

Eligible costs must be reduced by any amount of federal, state, or municipal grants that the taxpayer received and used to pay for any of the qualified costs, if those grants are not included in the taxpayer's federal taxable income or federal adjusted gross income.

Partners, shareholders of New York S corporations and beneficiaries of estates and trusts must obtain their share of the partnership's, corporation's, estate's or trust's credit costs used as the basis for the credit from the partnership, corporation, estate or trust and use those amounts to calculate their credit.

Applicable percentages for qualified sites accepted into the Brownfield Cleanup Program before June 23, 2008

The following percentages apply for computing all three credit components of the brownfield redevelopment tax credit for those qualified sites accepted into the Brownfield Cleanup Program before June 23, 2008.

For corporate taxpayers subject to tax under Article 9, sections 183, 184, or 185; Article 9-A (other than New York S corporations); Article 32; or Article 33, the applicable percentage is the sum of the following:

- For a qualified site, the base percentage is 12%.
- If the qualified site is remediated to Track 1 (a cleanup level that allows for the site to be used for any purpose without restriction) an additional 2% is allowed.
- If at least 50% of the qualified site is located in an EN Zone, an additional 8% is allowed.

For taxpayers subject to tax under Article 22 (the personal income tax) and New York S corporations the applicable percentage is the sum of the following:

- For a qualified site the base percentage is 10%.
- If the qualified site is remediated to Track 1 (a cleanup level that allows for the site to be used for any purpose without restriction) an additional 2% is allowed. (See Glossary for a definition of Track 1.)

- If at least 50% of the qualified site is located in an EN Zone, an additional 8% is allowed.

Applicable percentages for qualified sites accepted into the Brownfield Cleanup Program on or after June 23, 2008

The following are the percentages that apply for computing the credit components of the brownfield redevelopment tax credit for those qualified sites accepted into the Brownfield Cleanup Program on or after June 23, 2008.

For purposes of calculating the site preparation credit component and the on-site groundwater remediation credit component the applicable percentages are:

- 50% for sites that are approved for unrestricted use;
- 40% for sites that are approved for residential use (except those remediated to Track 4);
- 28% for sites that are approved for residential use and remediated to Track 4;
- 33% for sites that are approved for commercial use (except those remediated to Track 4);
- 25% for sites that are approved for commercial use and remediated to Track 4;
- 27% for sites that are approved for industrial use (except those remediated to Track 4); and
- 22% for sites that are approved for industrial use and remediated to Track 4. (See Glossary for a definition of Track 4.)

For purposes of calculating the tangible property credit component the applicable percentages are as follows.

For taxpayers subject to tax under Article 9, sections 183, 184, and 185; Article 9-A (other than New York S corporations); Article 32; and Article 33, the applicable percentage is the sum of the following:

- For a qualified site, the base percentage is 12%.
- If the qualified site is remediated to Track 1 (a cleanup level that allows for the site to be used for any purpose without restriction) an additional 2% is allowed.
- If at least 50% of the qualified site is located in an EN Zone, an additional 8% is allowed.

- If the qualified site is located in a BOA, an additional 2% is allowed.

For taxpayers subject to tax under Article 22 (the personal income tax) and New York S corporations the applicable percentage is the sum of the following:

- For a qualified site the base percentage is 10%.
- If the qualified site is remediated to Track 1 (a cleanup level that allows for the site to be used for any purpose without restriction) an additional 2% is allowed.
- If at least 50% of the qualified site is located in an EN Zone, an additional 8% is allowed.
- If the qualified site is located in a BOA, an additional 2% is allowed.

Credit option

If property that qualifies for the brownfield redevelopment tax credit also qualifies for the investment tax credit (ITC) or the empire zone investment tax credit (EZ-ITC) under Articles 9, 9-A, 22, 32 or 33, the taxpayer may choose which credit to claim by filing the applicable credit form. The property may not be used to claim more than one of these credits.

Recapture of credit

If the DEC revokes a COC for a qualified site, the taxpayer must add any amount of brownfield redevelopment tax credit previously claimed to the tax otherwise due in the tax year in which the determination is final and no longer subject to judicial review.

If property that qualified for the tangible property credit component ceases to be in qualified use before the end of its useful life, some or all of the credit must be recaptured. The taxpayer must add the recapture amount to the tax otherwise due in the tax year in which the property ceases to be in qualified use. Partners, shareholders of New York S corporations and beneficiaries of estates and trusts must obtain their share of the partnership's, corporation's, estate's or trust's recapture amount from the partnership, corporation, estate, or trust.

Corporation tax limitations and refund rules (Articles 9, 9-A, 32, and 33)

For taxpayers subject to tax under Article 9, section 183, the brownfield redevelopment tax credit may not reduce the tax due to an amount less than the minimum tax. Taxpayers may apply any unused credit against the tax imposed by Article 9, section 184. Any excess credit that cannot be applied against either tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Article 9, section 185, the credit may not reduce the tax due to an amount less than the minimum tax. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Article 9-A, the credit may not reduce the tax due to an amount less than the higher of the tax on the minimum taxable income base or the fixed dollar minimum. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Articles 32 or 33, the credit may not reduce the tax due to an amount less than the minimum tax of \$250. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

The credit may not be applied against the Metropolitan Transportation Authority (MTA) surcharge under Articles 9, 9-A, 32, or 33.

Personal income tax limitation and refund rule

For taxpayers subject to tax under Article 22, the credit may reduce the tax to zero. Any excess credit that is not applied against the tax may be credited or refunded without interest.

Site preparation credit component

The **site preparation credit component** is the product of the site preparation costs paid or incurred by the taxpayer for the qualified site multiplied by the applicable percentage. (See pages 7 through 9 for a discussion of applicable percentages.)

Site preparation costs

Site preparation costs are all costs properly chargeable to a capital account that are paid or incurred to:

- prepare a site to qualify for a COC; and
- prepare a site for the erection of a building or a component of a building; or
- establish a site as usable for industrial, commercial (including the commercial development of residential housing), recreational, or conservation purposes.

Site preparation costs include, but are not limited to, the costs of excavation, temporary electrical wiring, scaffolding, demolition, fencing, and property and services related to security.

Site preparation costs **do not include** the cost of acquiring the site or amounts included in the basis of the tangible property credit component or on-site groundwater remediation component.

Year of eligibility for the site preparation credit component

The site preparation credit component for site preparation costs that were paid or incurred to prepare a site to qualify for the COC is allowed in the tax year in which the COC is issued. However, if the COC is issued in a tax year that began before April 1, 2005, the COC is treated as if was issued in

the first tax year beginning on or after April 1, 2005. Thus, if a calendar-year taxpayer was issued a COC in March of 2005, the COC is treated as if it was issued during calendar year 2006.

The site preparation credit component for all other qualifying site preparation costs is allowed for the tax year in which the improvement to which the costs apply is placed in service. This portion of the site preparation credit component is allowed for up to five tax years after the year the COC is issued, but no credit is allowed for costs paid or incurred before the execution of the BCA.

Tangible property credit component

The **tangible property credit component** is the product of the cost (or other basis of the property, as computed for federal income tax purposes) of qualified tangible property multiplied by the applicable percentage. (See pages 7 through 9 for a discussion of applicable percentages.)

In determining the cost or other basis of the qualified property, the taxpayer must exclude the acquisition cost of any item of property for which a brownfield redevelopment tax credit was allowable to another taxpayer. No credit is allowed for any costs paid or incurred before the execution of the BCA.

A taxpayer who has received a COC may transfer the benefits and burdens of the COC that run with the land to the taxpayer's successors or assign those benefits and burdens upon transfer or sale of all or any portion of an interest or estate in the qualified site. However, the taxpayer to whom the COC's benefits and burdens are transferred cannot include as eligible costs (1) the cost of acquiring all or any portion of an interest or estate in the site, and (2) amounts included in the cost or other basis for federal income tax purposes of the qualified tangible property already claimed by another taxpayer.

If the property for which the tangible property credit component would be allowed ceases to be in qualified use prior to the end of the year in which the credit is to be claimed, the taxpayer must claim a reduced amount of the credit attributable to that property. The reduced amount will be based on the number of months of qualified use. See Tax Law section 21 for the computation of the reduced credit.

Qualified tangible property

Qualified tangible property is tangible personal property, and other tangible property, including buildings and structural components of buildings, which meets all of the conditions under either paragraph A or B below:

(A) The property:

- is depreciable under Internal Revenue Code (IRC) section 167;
- has a useful life of four or more years;

- is acquired by purchase as defined in IRC section 179(d);
- has a situs on a qualified site in New York State; and
- is principally used by the taxpayer for industrial, commercial, recreational, or environmental conservation purposes (including the commercial development of residential housing); or

(B) The property:

- is, or when occupied becomes, part of a dwelling whose primary ownership structure is covered under either Real Property Law Article 9-B, or meets the requirements of IRC section 216(b)(1);
- has been acquired by purchase (as defined in IRC section 179(d); and
- has a situs on a qualified site in this state.

Property that meets the requirements under (B), is deemed to be qualified tangible property that is depreciable for purposes of the tangible property credit component, and is deemed to be placed in service when a COC has been issued.

Year of eligibility for the tangible property credit component

The tangible property credit component is allowed for qualified tangible property in the tax year the qualified tangible property is placed in service on a qualified site. The tangible property component may be claimed for qualified tangible property placed in service for up to ten tax years after the year the COC is issued. If a COC was issued, or if the property was placed in service on a qualified site in a tax year that began before April 1, 2005, the COC will be deemed to have been issued and the property will be treated as if it were placed in service in the first tax year beginning on or after April 1, 2005.

Leased property

The owner of property leased to others may claim the tangible property credit component provided that:

- the lessee is not the party responsible for the disposal of hazardous waste or the discharge of petroleum at the qualified site, under applicable principles of statutory or common law liability; or
- the lessee is a responsible party under applicable principles of statutory or common law liability, but the liability arises solely from the operation of the site after the disposal of hazardous waste or the discharge of petroleum. The lessor must request and receive certification for the lessee from the Commissioner of Environmental Conservation.

Limitation on the tangible property credit component

For qualified sites for which the taxpayer has been notified by DEC of acceptance into the Brownfield Cleanup Program on or after June 23, 2008, the tangible property credit component for a qualified site is limited to the lesser of \$35 million or three times the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component. However, for a qualified site that will be used primarily for *manufacturing activities*, the credit is limited to the lesser of \$45 million or six times the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component for the qualified site.

Manufacturing activities means the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing. It also includes the activities of a qualified emerging technology company. However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity do not constitute manufacturing activities.

A qualified emerging technology company is a company located in New York State:

- (1) whose primary products or services are classified as emerging technologies; or
- (2) that has research and development activities in New York State and has a ratio of research and development funds to net sales that equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results for its Survey of Industry Research and Development (or in any comparable successor survey as determined by the Department of Taxation and Finance).

Recapture of credit

If the DEC revokes a COC for a qualified site, the taxpayer must add all brownfield redevelopment tax credits previously claimed to the tax otherwise due in the tax year in which the determination is final and no longer subject to judicial review.

If property that qualified for the tangible property credit component ceases to be in qualified use prior to the end of its useful life, some or all of the credit attributed to that property must be recaptured. The taxpayer must add the recapture amount to the tax otherwise due in the tax year in which the property ceases to be in qualified use.

Formulas for recapture

When recapture is required because qualified tangible property is no longer in qualified use, a recapture amount is computed using the formulas below. (Tangible property credit component previously allowed means the amount

of credit that was allowed for that property for which the recapture is required.)

- (1) For property depreciated solely under IRC section 167, the formula for recapture is:

$$\frac{\text{months of useful life minus} \\ \text{months of qualified use}}{\text{months of useful life}} \times \text{tangible property} \\ \text{credit component} \\ \text{previously allowed}$$

- (2) For three-year property depreciated under IRC section 168, the formula is:

$$\frac{36 \text{ minus the number of} \\ \text{months of qualified use}}{36} \times \text{tangible property} \\ \text{credit component} \\ \text{previously allowed}$$

Recapture is only required if the property ceases to be in qualified use prior to the end of 36 months.

- (3) For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula is:

$$\frac{60 \text{ minus the number of} \\ \text{months of qualified use}}{60} \times \text{tangible property} \\ \text{credit component} \\ \text{previously allowed}$$

Recapture is only required if the property ceases to be in qualified use prior to the end of 60 months.

- (4) For a building or a structural component of a building, that is depreciated under IRC section 168, the formula is:

$$\frac{\text{Number of months allowed} \\ \text{by the IRC and used by} \\ \text{the taxpayer tangible} \\ \text{property minus the months} \\ \text{of qualified use}}{\text{number of months allowed} \\ \text{by previously allowed} \\ \text{IRC and used by the taxpayer}} \times \text{credit component}$$

If qualified property has a useful life of more than 12 years, and has been in qualified use for more than 12 consecutive years, no recapture is required.

On-site groundwater remediation credit component

The **on-site groundwater remediation credit component** is the product of the *on-site groundwater remediation costs* multiplied by the applicable percentage. No credit is allowed for costs paid or incurred before the execution of the BCA.

On-site groundwater remediation costs

On-site groundwater remediation costs are all amounts properly chargeable to a capital account that:

- are paid or incurred in connection with a site’s qualification for a COC; and
- are paid or incurred in connection with the remediation of on-site groundwater contamination and incurred to implement a requirement of the remedial workplan or an interim remedial measure workplan for a qualified site (ECL section 27-1411 (2) and (3)).

On-site groundwater remediation costs **do not include** amounts included in the computation of the tangible property credit component or the site preparation credit component.

Year of eligibility for the on-site groundwater remediation credit component

The on-site groundwater remediation credit component is allowed in the tax year in which the COC is issued. However, if the COC is issued in a tax year that began before April 1, 2005, the COC is treated as if it was issued in the first tax year beginning on or after April 1, 2005. Costs paid and incurred after the execution date of the BCA and up to the date on which the COC is issued are allowed in the tax year in which the COC is issued. For costs paid or incurred in tax years occurring after the COC is issued, the credit is allowed in the tax year in which the costs are paid or incurred, up to five tax years after the COC is issued.

Recapture of credit

If the DEC revokes a COC for a qualified site, the taxpayer must add all brownfield redevelopment tax credits previously claimed to the tax otherwise due in the tax year in which the determination is final and no longer subject to judicial review.

Part II: Remediated brownfield credit for real property taxes

General

For tax years beginning on or after April 1, 2005, a developer of a qualified site is allowed a remediated brownfield credit for real property taxes against the corporate taxes imposed under Tax Law Article 9, sections 183, 184, and 185; or Articles 9-A, 32 or 33; or against the personal income tax imposed under Article 22.

Qualifying as a developer

A *developer* is a taxpayer subject to tax under Article 9, sections 183 and 184, or section 185, or under Articles 9-A, 22, 32 or 33, who has been issued a COC for a brownfield site, or who has purchased or otherwise been conveyed all or any portion of a qualified site for which a COC has been

issued. However, a taxpayer who is purchasing all or any portion of a qualified site and the person who was issued the COC may not be related persons as defined in IRC section 465 (b)(3)(C).

A developer also includes a taxpayer subject to tax under Article 9, sections 183 and 184, or section 185, or under Articles 9-A, 22, 32 or 33, who is a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust provided the partnership, New York S corporation, estate or trust has been issued a COC, or has purchased or otherwise been conveyed all or any portion of a qualified site for which a COC was issued. The term partnership includes a limited liability company (LLC) that is treated as a partnership for federal income tax purposes and partner includes a member of an LLC that is treated as a partnership.

For a taxpayer who has purchased or otherwise been conveyed all or any portion of a qualified site to qualify as a developer, the purchase or conveyance must occur within seven years of the issue date of the COC.

A taxpayer ceases to be a developer of a qualified site on the first day of the tax year during which revocation of the COC by the DEC is final and no longer subject to judicial review.

The credit is not allowed for a brownfield site for which a COC is issued after March 31, 2015.

For purposes of calculating the remediated brownfield credit for real property taxes, the definitions discussed below apply.

Benefit period factor

The *benefit period factor* for each year of the benefit period is 1.0. The benefit period is ten consecutive tax years, beginning with the later of:

- the tax year in which the COC is issued for the qualified site; or
- the taxpayer's first tax year beginning on or after April 1, 2005.

Employment number factor

The *employment number factor* is a numerical value assigned to the developer based on the average number of full-time employees employed by the developer and any lessees at the qualified site during the tax year. The factors are as follows:

<u>Average number of full-time employees</u>	<u>Employment number factor</u>
At least 25 but less than 50	.25
At least 50 but less than 75	.50
At least 75 but less than 100	.75
At least 100	1.00

No credit is allowed if the average number of full-time employees employed by the developer and any lessees at the qualified site is less than 25.

To compute the average number of full-time employees add the number of full-time employees, excluding general executive officers, employed by the developer and lessees of the developer at the qualified site on the dates March 31, June 30, September 30, and December 31 that occur in the developer's tax year. Then, divide the result by the number of these dates that occur in the developer's tax year to determine the average number of full-time employees.

A taxpayer that is a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust will receive a pass-through amount of credit from the partnership, corporation, estate or trust. Therefore, the taxpayer will not compute an employment number factor related to that passed-through credit amount.

Eligible real property taxes

Eligible real property taxes are taxes imposed on real property that is a qualified site owned by the developer. To qualify for the credit, the taxes must become a lien on the real property in a period during which the real property is a qualified site.

Eligible real property taxes also include payments in lieu of taxes (PILOT) made to the State, a municipal corporation, or a public benefit corporation for a qualified site owned by the developer, provided the payments are made pursuant to a written agreement between the developer and the state, or municipal corporation, or a public benefit corporation.

However, the PILOT amount that constitutes eligible real property taxes is limited. The maximum amount of PILOTs that may be used to calculate the brownfield real property tax credit is the product of:

- the estimated effective full value tax rate in the county in which the qualified site is located; and
- the greater of the basis for federal income tax purposes of real property, including buildings and structural components of buildings, owned by the developer and located on a qualified site on the date the taxpayer becomes a developer, **or** the basis for federal income tax purposes of the real property on the last day of the tax year in which the developer is claiming the credit.

A taxpayer that is a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust will receive a pass-through amount of eligible real property taxes from the partnership, New York S corporation, estate or trust.

Amount of credit

The amount of credit is 25% of the product of the following three factors:

- (1) the benefit period factor,
- (2) the employment number factor, and
- (3) the eligible real property taxes paid or incurred by the developer of the qualified site during the tax year.

$.25 \times (1) \times (2) \times (3) =$ amount of remediated brownfield credit for real property taxes

Amount of credit for property located in EN Zones

For a qualified site that is entirely located in an EN Zone, the amount of the credit is 100% of the product of three factors:

- (1) the benefit period factor,
- (2) the employment number factor, and
- (3) the eligible real property taxes paid or incurred by the developer of the qualified site during the tax year.

$(1) \times (2) \times (3) =$ amount of remediated brownfield credit for real property taxes

For purposes of calculating the remediated brownfield credit for real property taxes for a qualified site in an EN Zone, eligible real property taxes include only taxes imposed on real property attributable to the qualified site located in an EN Zone and owned by the developer.

For a description of an EN Zone, see the Glossary of this publication.

Amount of credit for partners in partnerships, shareholders in New York S corporations, and beneficiaries of an estate or trust

A taxpayer that is a partner in a partnership, a shareholder of a New York S corporation or a beneficiary of an estate or trust will receive a pass-through amount of credit from the partnership, corporation, estate or trust. That amount is added to any other credit amount claimed for a qualified site.

Credit limitation

The credit for each tax year is limited to the product of (1) \$10,000, and (2) the average number of full-time employees computed for the employment number factor.

The credit for each tax year for a partner in a partnership, a shareholder of a New York S corporation or a beneficiary of an estate or trust is determined

at the partnership, corporation, estate or trust level and the credit amount after limitation is passed through to the partner, shareholder, or beneficiary.

Credit option

If the qualified site is completely or partially located in an empire zone and a taxpayer meets the eligibility requirements (with respect to all or a portion of the qualified site) for both the brownfield real property tax credit and the qualified empire zone enterprise (QEZE) real property tax credit, the taxpayer may not claim both credits. For more information on the QEZE real property tax credit, see TSB-M-06(1)C or TSB-M-06(2)I.

The taxpayer must elect, in the first tax year that the brownfield real property tax credit is allowed, either to claim the brownfield real property tax credit or the QEZE real property tax credit. The election is irrevocable. The election is made by filing a tax return for the first tax year the qualified site is eligible for the brownfield real property tax credit and claiming either credit. Once the election is made to claim one of the tax credits, the taxpayer may not claim the other tax credit that tax year or in a subsequent tax year for the same qualified site. A taxpayer that was previously allowed the QEZE real property tax credit is not prohibited from making the election to claim the brownfield real property tax credit in the first year it was eligible to claim the brownfield credit.

Corporation tax limitations and refund rules (Articles 9, 9-A, 32, and 33)

For taxpayers subject to tax under Article 9, section 183, the credit may not reduce the tax due to an amount less than the minimum tax. Taxpayers may apply any unused credit against the tax imposed by Article 9, section 184. Any excess credit that cannot be applied against either tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Article 9, section 185, the credit may not reduce the tax due to an amount less than the minimum tax. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Article 9-A, the credit may not reduce the tax due to an amount less than the higher of the tax on the minimum taxable income base or the fixed dollar minimum. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Articles 32 or 33, the credit may not reduce the tax due to an amount less than the minimum tax of \$250. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

The credit may not be applied against the metropolitan transportation business tax (MTA surcharge) under Articles 9, 9-A, 32, or 33.

Personal income tax limitation and refund rules (Article 22)

For taxpayers subject to tax under Article 22, the credit may reduce the tax to zero. Any excess credit that cannot be applied against the tax may be credited or refunded without interest.

Recapture of credit

When the eligible real property taxes, that were the basis for a brownfield real property tax credit, are subsequently reduced as a result of a final order in any proceeding under Real Property Tax Law, Article 7, or other provision of law, the taxpayer must recapture a portion of the credit allowed in the tax year the final order is issued. The recapture amount is equal to the amount of credit originally taken, less the amount of credit recalculated using the reduced eligible real property taxes. If these taxes are reduced for more than one year, the taxpayer must determine how much of the reduction is attributable to each year covered by the final order and calculate the amount of credit that is required to be recaptured for each year based on the reduction.

The recapture amount for each tax year for a partner in a partnership, a shareholder of a New York S corporation or a beneficiary of an estate or trust is determined at the partnership, corporation, estate or trust level and the recapture amount is passed through to the partner, shareholder or beneficiary.

If the DEC revokes a COC, all brownfield real property tax credits previously claimed must be added back to the tax in the tax year in which the determination is final and no longer subject to judicial review.

Part III: Environmental remediation insurance credit

General

For tax years beginning on or after April 1, 2005, the **environmental remediation insurance credit** is available to taxpayers who have received a COC and pay eligible premiums for a qualified brownfield site. The amount of the credit is the lesser of:

- \$30,000, or
- 50% of the eligible premiums paid by the taxpayer on or after the date of execution of the BCA.

The credit is allowed for the tax year in which the COC is issued. However, if the COC is issued in a tax year that began before April 1, 2005, the date the COC is issued is treated as if the date occurred in the first tax year beginning on or after April 1, 2005.

The credit may be taken only once for each COC issued.

The credit is not allowed for a brownfield site for which a COC is issued after March 31, 2015.

Eligibility

The credit is allowed for taxpayers subject to tax under Tax Law Article 9, sections 183, 184, or section 185; or Articles 9-A, 22, 32, or 33.

A taxpayer that is a partner in a partnership, a shareholder of a New York S corporation or a beneficiary of an estate or trust will receive a pass-through amount of credit from the partnership, corporation, estate or trust.

Eligible premiums

To qualify for the credit, the insurance premiums must be premiums paid for environmental remediation insurance, as described in Insurance Law section 3447. The insurance must be written under Insurance Law sections 1113 (a)(13) or 1113(a)(14) and must contain any of the following coverages or substantially similar coverages or combinations of coverages:

- coverage for the costs of on-site cleanup of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan under ECL section 27-1411 for the insured property;
- coverage for third party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property;
- coverage that caps clean-up costs relating to such remedial work plan; and
- coverage for the costs of state re-openers under ECL section 27-1421 or modifications to the remedial work plan to fill any gap in any liability limitation provided under ECL section 27-1421 for environmental conditions.

Corporation tax limitations and refund rules (Articles 9, 9-A, 32, and 33)

For taxpayers subject to tax under Article 9, section 183, the environmental remediation insurance credit may not reduce the tax due to an amount less than the minimum tax. Any unused credit may be applied against the tax imposed by Article 9, section 184. Any excess credit that cannot be applied against either tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Article 9, section 185, the credit may not reduce the tax due to an amount less than the minimum tax. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Article 9-A, the credit may not reduce the tax due to an amount less than the higher of the tax on the minimum taxable income base or the fixed dollar minimum. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

For taxpayers subject to tax under Articles 32 or 33, the credit may not reduce the tax due to an amount less than the minimum tax of \$250. Any excess credit that cannot be applied against the tax may be refunded without interest or applied as an overpayment to the following year's tax.

The credit may not be applied against the metropolitan transportation business tax (MTA surcharge) under Articles 9, 9-A, 32, or 33.

Personal income tax limitation and refund rule

For taxpayers subject to tax under Article 22, the credit may reduce the tax to zero. Any excess credit that is not applied against the tax may be credited or refunded without interest.

Entire net income modifications for corporate taxpayers

In computing entire net income under Articles 9-A, 32, and 33, taxpayers must add to federal taxable income, the premiums paid for environmental remediation insurance that were deducted in determining federal taxable income, to the extent of the amount of the environmental remediation insurance credit allowed. The addition modification is made in the year the environmental remediation insurance credit is claimed.

New York adjusted gross income modifications for personal income tax taxpayers

In computing New York adjusted gross income under Article 22, taxpayers must add to federal adjusted gross income, the premiums paid for environmental remediation insurance that were deducted in determining federal adjusted gross income, to the extent of the amount of the environmental remediation insurance credit allowed. The addition modification is made in the year the environmental remediation insurance credit is claimed.

Part IV: Reporting requirements for developers

Tax Law section 171-s requires all developers who have executed a BCA with DEC to file an annual brownfield redevelopment report. To assist developers in complying with this mandate, the Tax Department provides Form DTF-70, *Brownfield Redevelopment Report*. The report must contain the amount of state and local taxes generated by the activities of the businesses and employees operating on the brownfield sites. A developer must compile the required information from any lessees and other developers and combine the information with its own to produce a report.

The first report is due by December 31 of the year in which the BCA is executed, and will cover taxes generated from the execution date through November 30 of that year. Subsequent reports (for each of the following 11 years) will be due on December 31, and will cover taxes generated from December 1 of the prior year through November 30 of the current year. However, developers may request alternate reporting periods by submitting a request to:

NYS Tax Department
OTPA – Brownfield Reporting Unit
WA Harriman Campus
Albany, NY 12227

The following taxes must be reported separately on Form DTF-70:

- Article 9 – Corporation Taxes;
- Article 9-A – Franchise Tax on Business Corporations;
- Article 11 – Mortgage Recording Tax;
- Article 13 – Unrelated Business Income Tax;
- Article 22 – Personal Income Tax;
- Article 28 – Sales and Compensating Use Tax;
- Article 29 – Taxes Authorized for Cities, Counties and School Districts;
- Article 30 – New York City Personal Income Tax;
- Article 31 – Real Estate Transfer Tax;
- Article 32 – Franchise Tax on Banking Corporations;
- Article 33 – Franchise Tax on Insurance Corporations;
- Article 33-A – Tax on Independently Procured Insurance;
- Article 33-B – Tax on Real Estate Transfers in Towns;
- All real property taxes paid on or on behalf of the qualified site; and
- Certain taxes paid to the city of New York. Those taxes include the unincorporated business tax, New York City business taxes, New York City real property transfer taxes, and New York City mortgage taxes.

Glossary

Brownfield site or site	<i>Brownfield site</i> or <i>site</i> is any real property, whose redevelopment or reuse may be complicated by the presence or potential presence of a contaminant. (Certain contaminated sites may not qualify. For more information, see ECL section 27-1405(2).)
Brownfield site cleanup agreement (BCA)	<i>Brownfield site cleanup agreement (BCA)</i> is an agreement between an applicant and the Department of Environmental Conservation (DEC) for the purposes of completing a brownfield site remedial program. (See ECL section 27-1409.)
Brownfield site remedial program or remedial program	<i>Brownfield site remedial program</i> or <i>remedial program</i> is all remedial activities or actions undertaken to eliminate, remove, treat, abate, control, manage, or monitor contamination at or emanating from a brownfield site.
Brownfield Opportunity Area (BOA)	An area designated as such by the Secretary of State under General Municipal Law section 970-r.
Certificate of Completion	A <i>Certificate of Completion (COC)</i> is a certificate issued by the Commissioner of Environmental Conservation under ECL section 27-1419, upon satisfaction to that commissioner that the remediation requirements have been achieved.
EN Zone	An <i>environmental zone (EN Zone)</i> is an area designated as such by the Commissioner of Economic Development. For more information on EN Zones, visit the Empire State Development Web site at www.nylovesbiz.com and click on Brownfield Redevelopment.
Qualified site	<i>Qualified site</i> is a site for which a COC has been issued by the Commissioner of Environmental Conservation under ECL section 27-1419.
Track 1	<i>Track 1</i> is a cleanup level which will allow the site to be used for any purpose without restriction and without reliance on the long-term employment of institutional or engineering controls. (Unrestricted use, see ECL section 27-1415.)
Track 4	<i>Track 4</i> is a cleanup level that will be protective for the site's current, intended or reasonably anticipated residential, commercial, or industrial use with restrictions and with reliance on the long-term employment of institutional or engineering controls to achieve such level. (Restricted use, see ECL section 27-1415.)

Notes

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Telephone assistance

Corporation Tax Information Center: (518) 485-6027

Personal Income Tax Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.