



Instructions for Form IT-611

Claim for Brownfield Redevelopment Tax Credit

Tax Law — Sections 21 and 606(dd)



For 2005, this form is not eligible for e-file. If you are attaching this form to your return, you must file on paper.

General information

For tax years beginning on or after April 1, 2005, a brownfield redevelopment tax credit is available for the cleanup and redevelopment of a qualified brownfield site. Individuals (including sole proprietors), estates and trusts, shareholders of an S corporation, partners in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal tax purposes), and beneficiaries of an estate or trust may claim the credit. A corporate partner does not claim its share of the partnership credit as computed on the partnership credit form. A corporate partner must compute its credit on Form CT-611 using its allocable share of the cost or other basis of the credit components as provided by the partnership. For calendar year taxpayers, the first year for which the credit may be claimed is 2006.

If the amount of the credit exceeds the taxpayer's tax for the year, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

Eligibility

To qualify for the credit, you must execute a Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL), and have a *Certificate of Completion* (CoC) issued by the Commissioner of Environmental Conservation. You may also qualify for the credit if the CoC was transferred to you from the person originally issued the CoC, upon the sale or transfer of the brownfield site to you. For more information about the Brownfield Cleanup Program contact the Department of Environmental Conservation (DEC) at (518) 402-9711 or visit their Web site at www.dec.state.ny.us.

The brownfield redevelopment tax credit is equal to the sum of **three credit components**, computed each tax year, for costs incurred in the remediation or redevelopment of a qualified site. These components are:

- the site preparation credit component,
- the tangible property credit component, and
- the on-site groundwater remediation credit component.

See Parts 1, 2, or 3 of Schedule A for more information on these components.

The brownfield redevelopment tax credit is calculated by applying a percentage of the costs that qualify with respect to each credit component. The amount of the credit increases if at least 50% of the qualified site is located in an environmental zone (EN-Zone), designated as such by the Commissioner of Economic Development, or if the site is remediated to the highest environmental standard track, Track 1. See section 27-1415 of the ECL.

The qualified costs used to calculate the amount of the credit components must be reduced by any grants received from a federal, state or local government or an instrumentality of a public benefit corporation and used to pay for any of the credit components costs incurred, provided the amount of the grant was not included in the taxpayer's federal adjusted gross income.

The site preparation costs and on-site groundwater remediation costs paid or incurred with respect to a qualified site and the cost of tangible property used to compute the credit components only include those costs paid or incurred on or after the effective date of the BCA or on or after the date the CoC was transferred to the taxpayer pursuant to sections 27-1409 and 27-1419 of the ECL.

If the CoC is revoked, or if qualified property ceases to be in qualified use prior to the end of its useful life, a recapture of the credit must be computed. (See Schedule F.)

Who must file

File Form IT-611 if you are an individual, a beneficiary or fiduciary of an estate or trust, a member of a partnership, or a shareholder of an S corporation, and:

- you are claiming the brownfield redevelopment tax credit; or
- you are required to recapture any previous brownfield redevelopment tax credit due to a CoC being revoked; or
- you have or had property which has ceased to be in qualified use for which the brownfield redevelopment tax credit has been claimed.

An estate or trust that divides the credit or addback of credit among itself and its beneficiaries must attach Form IT-611 to Form IT-205, showing each beneficiary's share of the credit or recapture of credit.

A partnership must file Form IT-611 with Form IT-204 showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does not file Form IT-611. It must file Form CT-611. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, obtain your share of the corporation's credit or recapture of credit from the corporation.

Definitions

A *qualified site* means a site for which the taxpayer has been issued a CoC by the Commissioner of Environmental Conservation.

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

Qualified tangible property is property which

- is depreciable under IRC section 167;
- has a useful life of four years or more;
- is acquired by purchase under IRC section 179(d);
- is located on a qualified site in this state; and
- is principally used by the taxpayer for industrial, commercial, recreational, or environmental conservation purposes (including the commercial development of residential housing).

Note: Property used to qualify for this credit may not be used as qualifying property for the investment tax credit (ITC) or the empire zone investment tax credit (EZ-ITC).

Life or useful life (of property) means the depreciable life provided by IRC section 167 or 168.

Cost or other basis means the basis of property as determined for federal income tax purposes.

Principally used means more than 50%.

On-site groundwater remediation costs includes all amounts properly chargeable to a capital account that are paid or incurred in connection with a site's qualification for a CoC; the remediation of on-site groundwater contamination, and the implementation of a requirement of the remedial work plan for a qualified site imposed under the ECL.

Certificate of Completion (CoC) is a certificate issued by the Commissioner of Environmental Conservation.

An *environmental zone (EN-Zone)* is an area designated as such by the Commissioner of Economic Development. An EN-Zone is a census tract and block numbering area that, as of the year 2000 census, (1) has a poverty rate of at least 20% and an unemployment rate of at least 1.25 times the statewide unemployment rate, or (2) has a poverty rate of at least two times the poverty rate for the county in which the area is located. However, to qualify under this second set of criteria, the qualified site must be the subject of a BCA entered into prior to September 1, 2006.

To find out whether a site is located in an EN-Zone, contact Empire State Development at 1 800 782-8369 or visit their Web site at www.nylovesbiz.com.

Important reminder to file a complete return

You must complete all required schedules and forms that make up your return, and include all pages of those forms and schedules when you file. Attach **only** those forms and schedules that apply to your return, and be sure that you have made all required entries. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

Filing in your tax forms

For complete information on how to fill in New York State scannable income tax forms, see the instructions for:

- resident return (Form IT-201),
- nonresident and part-year resident return (Form IT-203),
- partnership return (Form IT-204), **or**
- fiduciary return (Form IT-205).

Also see the instructions for the above returns for the *Privacy notification* or if you *Need help* in contacting the Tax Department.

Specific instructions

Partnerships with corporate partners — Corporate partners will include their allocable share of the component costs used by the partnership to compute the credit in their own computation of the credit on Form CT-611. Do not allocate the credit calculated on this Form IT-611 to corporate partners.

Schedule A — Credit components

Part 1 — Site preparation credit component

The site preparation credit component includes site preparation costs paid or incurred by the taxpayer with respect to the qualified site. Site preparation costs paid or incurred before the effective date of the BCA **do not** qualify. Costs paid or incurred on or after the effective date of the BCA and up to the date in which the CoC is issued are allowed in the tax year in which the CoC is issued. However, if the date the CoC is issued occurs in a tax year that begins prior to April 1, 2005, the date of issuance of the certificate is treated as if the date occurred in the first tax year beginning on or after April 1, 2005. Site preparation costs incurred after the date the CoC is issued are allowed in the tax year that the improvement to which the applicable costs apply is placed in service for up to five tax years after the year the CoC has been issued.

Site preparation costs include, but are not limited to, the costs of excavation, temporary electric wiring, scaffolding, demolition costs, and the costs of fencing and security facilities.

Site preparation costs do not include the cost of acquiring the site or the amounts included in the cost or other basis for federal income tax purposes of qualified tangible property as defined below.

Columns A and B — Describe costs paid or incurred during this tax year. If this tax year is the tax year in which the effective date of the CoC occurs (or is treated as having occurred), enter all costs paid or incurred to prepare the site to qualify for the CoC. List costs separately. Attach additional sheets if necessary.

Line 4 Fiduciaries — Include the line 4 amount in the *Total* line of Schedule D, column C.

Part 2 — Tangible property credit component

The tangible property credit component includes the costs (or other basis of the property, as computed for federal income tax purposes) paid or incurred for qualified tangible property.

Costs paid or incurred before the effective date of the BCA **do not** qualify for this component.

Costs may include those for leased property if:

1. the lessee was not or is not the party legally responsible for the disposal of hazardous waste or the discharge of petroleum at the qualified site; or,
2. the lessee is legally responsible but only because the lessee operated the site after the disposal of the hazardous waste or the discharge of petroleum.

To qualify, the lessor must request and receive certification for the lessee from the Commissioner of Environmental Conservation.

The tangible property credit component is allowed for the tax year in which the qualified tangible property is placed in service on a qualified site. However, if the property was placed in service on a qualified site in a tax year that began prior to April 1, 2005, the property will be treated as if it were placed in service in the first tax year beginning on or after April 1, 2005. This credit component may be claimed for up to 10 years after the year of issuance of the CoC.

If the property ceases to be in qualified use, a recapture of the credit may be necessary (see Schedule F).

Columns A and B — Describe costs paid or incurred during this tax year. If this tax year is the tax year in which the effective date of the CoC occurs (or is treated as having occurred), enter all costs paid or incurred to prepare the site to qualify for the CoC. List costs separately. Attach additional sheets if necessary.

Column D — Enter the useful life of each item claimed. See the definition of life or useful life on the front page. **Do not** use the recovery period for depreciation under the accelerated cost recovery system (ACRS) or the modified accelerated cost recovery system (MACRS).

Column E — Enter the cost or other basis for federal purposes of the qualified property.

If the qualifying property was not in qualified use at the end of the tax year it was placed in service, figure the amount to enter in column E as follows:

- For depreciable property under IRC section 167, multiply the cost by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.
- For property subject to the provisions of IRC section 168, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is:
 - 36 for three-year property;
 - the number of months you chose for buildings or structural components of buildings; or
 - 60 for all other classes of property.

Line 8 — Fiduciaries include the line 8 amount in the *Total* line of Schedule D, column D.

Part 3 — 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. Costs paid or incurred before the effective date of the BCA **do not** qualify for this component.

On-site groundwater remediation costs do not include costs which were included in the basis of the tangible property credit component or the site preparation credit component.

This component is allowed in the tax year the CoC is issued for costs paid or incurred prior to the effective date of the certificate. Costs paid or incurred in tax years after the effective date of the CoC will be allowed for up to five tax years after the CoC is issued.

Columns A and B — Describe costs paid or incurred during this tax year. If this tax year is the tax year in which the effective date of the CoC occurs (or is treated as having occurred), enter all costs paid or incurred to prepare the site to qualify for the CoC. List costs separately. Attach additional sheets if necessary.

Line 12 — Fiduciaries include the line 12 amount in the *Total* line of Schedule D, column E.

Applicable percentage table (for Article 22 taxpayers)

| Qualified site description | Rate |
|---|------|
| Qualified site | 10% |
| Qualified site remediated to Track 1 | 12% |
| Qualified site with at least 50% located within an Environmental Zone (EN-Zone) | 18% |
| Qualified site remediated to Track 1 and at least 50% located within an EN-Zone | 20% |

Schedule B — Partnership, S corporation, estate, and trust information

Enter the appropriate information for each partnership, New York S corporation, or estate or trust for which you received a share of the credit. If you need more space attach a separate schedule.

Schedule C — Partner’s, shareholder’s, or beneficiary’s share of credit

Lines 14a, 14b, and 14c — Enter your share of each credit component received from a partnership on lines 14a, 14b, and 14c, as applicable. This information can be obtained from the partnership. If you belong to more than one partnership, enter the total of all of your shares of each credit component received from the partnerships on the appropriate line.

Lines 15a, 15b, and 15c — Enter your share of each credit component received from an S corporation on lines 15a, 15b, and 15c, as applicable. This information can be obtained from the S corporation. If you belong to more than one S corporation, enter the total of all of your shares of each credit component received from the S corporations on the appropriate line.

Lines 16a, 16b, and 16c — Enter your share of each credit component received from an estate or trust on lines 16a, 16b, and 16c, as applicable. This information can be obtained from the estate or trust. If you belong to more than one estate or trust, enter the total of all of your shares of each credit component received from the estates or trusts on the appropriate line.

Fiduciaries — Include on lines 16a, 16b, and 16c only your share of the credit components from another estate or trust.

- Include the line 14a, 15a, and 16a amounts in the *Total* line of Schedule D, column C.
- Include the line 14b, 15b, and 16b amounts in the *Total* line of Schedule D, column D.
- Include the line 14c, 15c, and 16c amounts in the *Total* line of Schedule D, column E.

Schedule D — Beneficiary’s and fiduciary’s share of credit components and recapture of credit

An estate or trust must complete Schedule D. If an estate or trust allocates or assigns the credits to its beneficiaries, base the division on each beneficiary’s proportionate share of the income of the estate or trust.

Schedule E — Computation of credit

Partnerships — Attach a statement to Form IT-204 indicating the amount of each credit component included in the total on line 21. This information must be provided to each partner in the partnership.

Schedule F — Recapture of credit

You must recapture all or a portion of the brownfield redevelopment tax credit if one of the following occurs:

- Your CoC for the qualified site is revoked by a determination issued under ECL section 27-1419 and the determination is no longer subject to judicial review.
- Qualified tangible property that is used in the basis for this credit ceases to be in qualified use prior to the end of its useful life. In this instance you must add the difference between the original credit allowed and the credit allowed for actual use back to the tax otherwise due in the year of disqualification.

Note: 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 necessary.

Fill in columns A through H if you have claimed the credit on property that ceased to be in qualified use prior to the end of its useful life. Do not include property that has been in qualified use for more than 12 consecutive years.

Enter in column D:

- For depreciable property under IRC section 167, the number of months of useful life of the property.
- For recovery property under IRC section 168:
 - 36 for three-year property;
 - the number of months you chose for buildings or structural components of buildings; or
 - 60 for all other classes of property.

Enter in column E the number of months that the property was not in qualified use (cannot be greater than the amount in column D).

Line 24 — If your CoC issued for a qualified site has been revoked by a determination issued under ECL section 27-1419, and the determination is final and no longer subject to judicial review, enter the amount of any credit allowed with respect to the qualified site in previous tax years.

Schedule G — Summary of recapture of credit

Complete lines 26 through 30, as applicable.

Line 26 Individuals and partnerships — Enter on line 26 your recapture of credit from line 25.

Line 27 Beneficiaries — Enter on line 27 your share of recapture of credit from the estate or trust from the fiduciary’s Form IT-611, Schedule D, column F.

Line 28 Partners — Enter on line 28 your share of the total recapture of credit made by the partnerships (the total is shown on the partnership’s Form IT-204). This information should be provided to you by the partnership.

Line 29 S corporation shareholders — Enter on line 29 your share of the recapture of credit made by S corporations. This information should be provided to you by your S corporation.

Line 31 Partnerships — Attach a statement to Form IT-204 indicating the amount of recapture shown on Form IT-611, line 31.