New York State Department of Taxation and Finance

Instructions for Form IT-613

Claim for Environmental Remediation Insurance Credit

Tax Law – Sections 23 and 606(ff)

IT-613-I

Temporary deferral of certain tax credits

For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than $2 million, the excess over $2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form IT-500, *Income Tax Credit Deferral*.

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form IT-500 to determine the amounts to enter on your tax return.

General information

For tax years beginning on or after April 1, 2005, an environmental remediation insurance credit is allowed to taxpayers for premiums paid for environmental remediation insurance with respect to a qualified brownfield site. Individuals (including sole proprietors), estates and trusts, shareholders of an S corporation, partners in a partnership (including members of a limited liability company (LLC) treated as a partnership for federal income tax purposes), and beneficiaries of an estate or trust may claim the credit.

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 for the qualified site for which the eligible premiums are paid. You must also have a certification form issued by your insurer, certifying that the insurance coverages qualify for the credit.

For more information about the Brownfield Cleanup Program, visit the Department of Environmental Conservation (DEC) Web site (at *www.dec.ny.gov*).

The amount of the credit is the lesser of:

1. 50% of the eligible premiums paid by the taxpayer on or after the effective date of the BCA executed by the taxpayer and DEC; **or**
2. $30,000.

A relocated vendor track may not receive more than $25 million in brownfield tax credits (including the brownfield redevelopment tax credit, remediated brownfield credit for real property taxes and environmental remediation insurance credit) and other benefits of the brownfield program.

The credit is allowed for the tax year in which the CoC is issued. However, if the date the CoC was issued occurred in a tax year that began prior to April 1, 2005, the date of issuance of the CoC is treated as if that date occurred in the taxpayer's first tax year beginning on or after April 1, 2005. The credit may be taken only once with respect to each CoC issued. The credit is not allowed for a qualified site for which a CoC is issued after March 31, 2015.

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).

If the CoC is revoked, the credit must be added back in the tax year in which the determination is final and no longer subject to judicial review. Complete a separate Form IT-613 for each CoC for which a recapture is required.

If you deducted insurance premiums paid for environmental remediation insurance in computing federal taxable income, you must add back to federal adjusted gross income the amount of premiums deducted to the extent of the credit on the appropriate form.

Who must file

File Form IT-613 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 environmental remediation insurance credit; **or**
- you are required to recapture any previous environmental remediation insurance credit due to a certificate of completion being revoked.

An estate or trust that divides the credit or addback of credit among itself and its beneficiaries must submit Form IT-613 with Form IT-205, showing each beneficiary's share of the credit or recapture of credit.

A partnership must file Form IT-613 with Form IT-204 showing the total of the credit from the partnership and any recapture of credit.

An S corporation does not file Form IT-613. It must file Form CT-613. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, obtain your share of the S corporation's credit or recapture of credit from the S corporation.

Definitions

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

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

Eligible premiums are insurance premiums paid for environmental remediation insurance.

Environmental remediation insurance, as described in the Insurance Law section 3447, must be written pursuant to the provisions of section 1113(a)(13) (personal injury liability insurance) or 1113(a)(14) (property damage liability insurance) of the Insurance Law. It must also contain any of the following (or substantially similar or combined) 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 pursuant to 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 cleanup costs relating to the remedial work plan;
- coverage for the costs of state re-openers pursuant to ECL section 27-1421 or modifications to the remedial work plan to

fill any gap in any liability limitation provided pursuant to ECL section 27-1421 for environmental conditions.

Specific instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Individuals (including sole proprietors) and partnerships: Complete Schedules A, B, and F. If applicable, also complete Schedule G.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedules A, B, and F. If applicable, also complete Schedule G.

Fiduciaries: Complete Schedules A, B, E, and F. If applicable, also complete Schedule G.

Partners in a partnership, shareholders in a New York S corporation, and beneficiaries of an estate or trust: Complete Schedules A, C, D, and F. If applicable, also complete Schedule G.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-613.

Schedule A – Brownfield site identifying information

All taxpayers must **submit copies** of the CoC and certification form for the environmental remediation insurance tax credit completed by the insurer.

Complete the brownfield site identifying information relating to the qualified site from the CoC issued by the DEC. Partners, shareholders, and beneficiaries should obtain this information, as well as copies of the CoC and insurance certification form, from their partnership, New York S corporation, estate or trust.

Failure to provide accurate identifying information may delay processing or result in denial of your claim.

Schedule B – Individuals (including sole proprietors), partnerships, and fiduciaries

Line 1 – Enter the amount of qualified environmental remediation insurance premiums paid on or after the effective date of the BCA executed pursuant to ECL section 27-1409. See the definition of *environmental remediation insurance* on the front page.

Schedule C – 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 environmental remediation insurance credit. If you need more space submit a separate schedule (be sure to include your name and taxpayer identification number).

Schedule D – Partner's, shareholder's, or beneficiary's share of credit

Enter your share of the credit received from a partnership, New York S corporation, or an estate or trust on the appropriate line. Obtain this information from the partnership, New York S corporation, or the estate or trust. If you belong to more than one partnership, New York S corporation or estate or trust, enter the total of all your shares of the credit on the appropriate line(s).

Fiduciaries: Include on line 6 only your share of the credit from another estate or trust.

Schedule E – Beneficiary's and fiduciary's share of credit and recapture of credit

An estate or trust must complete Schedule E. If an estate or trust allocates or assigns the credit or recapture to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust. Provide the beneficiaries with their share of the credit and recapture.

Total line

Column C – Add lines 3 and 7.

Column D – Add the amount from line 12 to any flow through of credit recapture from partnerships, S corporations, estates, or trusts.

Fiduciary line – Enter the amount from the *Fiduciary* line, column C, on line 10. Enter the amount from the *Fiduciary* line, column D, on line 14.

Schedule F – Computation of credit

Fiduciaries: Do not enter any amounts on lines 8 and 9.

Line 11

Partnerships: Add lines 8 and 9. Enter the line 11 amount and code ***173*** on Form IT-204, line 147.

Fiduciaries: Enter the amount from line 10 on line 11. If your total credits from all sources are **$2 million or less**, include the amount from line 11 on Form IT-205, line 33.

If your total credits from all sources are **more than $2 million**, you may be subject to a credit deferral. Complete line 11, but do not enter the amount from line 11 on your tax return. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your tax return.

All others: Add lines 8 and 9. If your total credits from all sources are **$2 million or less**, enter the amount from line 11 and code ***173*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12.

If your total credits from all sources are **more than $2 million**, you may be subject to a credit deferral. Complete line 11, but do not enter the amount from line 11 on your tax return. See Form IT-500 to determine the proper amount to enter on your tax return.

Schedule G – Summary of recapture of environmental remediation insurance credit

Line 12 – If your CoC is 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 credit claimed in a previous tax year on line 12.

Line 13

Fiduciaries: Do not enter an amount on line 13.

All others: Enter your share of the recapture of credit from a partnership, New York S corporation and an estate or trust. This information can be obtained from the partnership, New York S corporation, or the estate or trust. If you belong to more than one partnership, New York S corporation or estate or trust, enter the total of all your shares of the recapture of credit on line 13.

Line 15

Fiduciaries: Enter the amount from line 14 on line 15.

All others: Add lines 12 and 13.