General information

The brownfield redevelopment tax credit is available for the cleanup and redevelopment of a qualified brownfield site. Taxpayers must use Form IT-611.1 to claim the brownfield redevelopment tax credit with respect to a qualified site for which a notice of acceptance into the Brownfield Cleanup Program was issued by the Department of Environmental Conservation (DEC) on or after June 23, 2008, and prior to July 1, 2015. For qualified sites accepted into the program prior to June 23, 2008, taxpayers must use Form IT-611, Claim for Brownfield Redevelopment Tax Credit, For Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008, to claim the credit.

For qualified sites accepted into the program on or after July 1, 2015, taxpayers must use Form IT-611.2, Claim for Brownfield Redevelopment Tax Credit, For Qualified Sites Accepted into the Brownfield Cleanup Program on or after July 1, 2015, to claim the credit.

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-611.1 using its allocable share of the cost or other basis of the credit components as provided by the partnership.

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).

A relocated vendor track may not receive more than $25 million in the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

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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, visit the Department of Environmental Conservation (DEC) website (at www.dec.ny.gov).

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

Note: The tangible property credit component is subject to a limitation.

See Parts 1, 2, and 3 of Schedule B for more information on these components.

The brownfield redevelopment tax credit is calculated by applying a percentage to 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 qualified site is located in a brownfield opportunity area designated as such by the Secretary of State.

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 qualified 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 by the taxpayer on or after the effective date of the BCA executed by the taxpayer and DEC (pursuant to ECL section 27-1409) or on or after the date the COC was transferred to the taxpayer (pursuant to ECL section 27-1419).

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.)

Any site for which a brownfield cleanup agreement with DEC was entered into on or after June 23, 2008, and prior to July 1, 2015, and which has not received a certificate of completion by December 31, 2019, shall only be eligible for brownfield redevelopment tax credits available pursuant to section 21 of the Tax Law as if the site was accepted into the Brownfield Cleanup Program on or after July 1, 2015.

Who must file

File Form IT-611.1 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 distributes the credit or addback of credit among itself and its beneficiaries must submit Form IT-611.1 with Form IT-205, Fiduciary Income Tax Return, showing each beneficiary’s share of the credit or recapture of credit.

A partnership must file Form IT-611.1 with Form IT-204, Partnership Return, showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does not file Form IT-611.1. It must file Form CT-611.1. 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,
- 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 that 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 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).
B) The property
  • is, or when occupied becomes, part of a dwelling whose primary ownership structure is covered under the Real Property Law Article 9-B, or meets the requirement of IRC section 216(b)(1);
  • is acquired by purchase under IRC section 179(d); and
  • is located on a qualified site negotiated by the state.
Fiduciaries: Include the line 8 amount on the Total line of Schedule D, column C, and continue with Part 2.

All others: Continue with Part 2.

Part 2 – On-site groundwater remediation credit component
The on-site groundwater remediation credit component includes on-site groundwater remediation costs.

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.

On-site groundwater remediation costs paid or incurred by the taxpayer, with respect to a qualified site, only include costs paid or incurred on or after the execution date of the BCA. Costs incurred and paid on or after the execution date of the BCA and up to the date on which the COC is issued are included in the tax year in which the COC is issued. This credit component is allowed for on-site groundwater remediation costs incurred and paid after the effective date of the COC for up to five tax years after the COC is issued.

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

Line 11 – Obtain the applicable percentage from the COC issued for this qualified site.

Line 16
Partnerships: Enter the line 16 amount on Form IT-204, line 129, and continue with Part 3. If the partnership has Article 9-A corporate partners, enter code 109 and the allocable share of on-site groundwater remediation on Form IT-204, lines 144A through 144F.

Fiduciaries: Include the line 16 amount on the Total line of Schedule D, column E, and continue with Part 3.

All others: Continue with Part 3.

Part 3 – 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) of qualified tangible property.

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.

If the COC was transferred to you from another taxpayer pursuant to the sale or transfer of all or any portion of the qualified site, the tangible property credit component does not include the costs of acquiring an interest in the site and any amounts included in the cost (or other basis for federal income tax purposes) of qualified tangible property already claimed by the previous taxpayer.

Qualified tangible property costs paid or incurred by the taxpayer, with respect to a qualified site, only include costs paid or incurred on or after the execution date of the BCA. 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. This credit component may be claimed for up to 10 years after the COC has been issued.

The tangible property credit component is limited. See the instruction for line 20b.

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 qualified tangible property placed in service during the tax year. List costs separately and in detail. Use additional sheets if necessary.

Column D – Enter the useable life of each item claimed. See the definition of life or useful life (see Definitions). 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 19 – Obtain the applicable percentage from the COC issued for this qualified site. If the qualified site is located in a brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area (as designated pursuant to section 970-r of the General Municipal Law), increase the applicable percentage of the tangible property credit component as shown on the COC by two percent.

Line 20a – Multiply line 18 by line 19 to determine your tentative tangible property credit component.

Line 20b – Enter the lesser of $35 million or three times the costs included in the calculation of the site preparation and the on-site groundwater remediation credit components for the qualified site. If the qualified site is to be used primarily for manufacturing activities, enter the lesser of $45 million or six times the costs included in the calculation of the site preparation and on-site groundwater remediation credit components for the qualified site. Include costs from the current tax year and all prior tax years.

Line 20c – Subtract all tangible property credit component amounts claimed in prior tax years for the qualified site from the amount on line 20b and enter the result on line 20c. This is the maximum tangible property credit component available to claim in the current tax year for the qualified site.

Line 20d – Enter the lesser of the amounts on line 20a or 20c. Note: If you marked Yes for Schedule A, item l, indicating that there are multiple taxpayers on the COC claiming credits for the qualified site, the Tax Department may adjust your tangible property component accordingly.

Line 24
Partnerships: Enter the line 24 amount on Form IT-204, line 128. If the partnership has Article 9-A corporate partners, enter code 108 and the allocable share of tangible property costs on Form IT-204, lines 144A through 144F.

Fiduciaries: Include the line 24 amount on the Total line of Schedule D, column D, and continue with line 25.

All others: Continue with line 25.

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 credit. If you need more space, submit a separate schedule (be sure to include your name and taxpayer identification number).

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. Provide the beneficiaries with their share of each credit component and recapture.
Schedule E – Computation of credit
Line 28 – Enter the amount from line 28 and code 170 on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

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.

If your COC for the qualified site has been revoked by a determination issued under ECL section 27-1419 and the determination is no longer subject to judicial review, do not complete columns A through H. Skip lines 29 and 30, and continue with line 31.

Tangible property that ceases to be in qualified use
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).

Compute the amount to enter in column G by multiplying the cost or other basis of the property entered in Schedule B, Part 3, column E, for the tax year the credit was claimed, by the tangible physical property component’s applicable percentage used for that tax year.

Recapture if COC is revoked
Lines 31, 32, and 33
If your COC for the qualified site has been revoked by a determination issued under ECL section 27-1419 and the determination is no longer subject to judicial review, you must recapture the total credit component amounts claimed in previous tax years.

Line 31 – Enter the total tangible property credit component amounts allowed in previous tax years less any prior recapture amount of the tangible property credit component with respect to the qualified site.

Line 32 – Enter the total site preparation credit component amounts allowed in previous tax years with respect to the qualified site.

Line 33 – Enter the total on-site groundwater remediation credit component amounts allowed in previous tax years with respect to the qualified site.

Schedule G – Summary of recapture of credit
Complete lines 35 through 40, as applicable.

Fiduciaries: Do not enter any amounts on lines 35 through 38. Include any flow through of credit recapture from partnerships, S corporations, estates, or trusts on the Total line of Schedule D, column F. Enter your share of recapture from Schedule D, column F, Fiduciary line, on line 39.

Line 36 Beneficiaries: Enter your share of recapture of credit from the estate or trust from the fiduciary’s Form IT-611.1, Schedule D, column F.

Line 37 Partners: Enter 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 38 S corporation shareholders: Enter your share of the recapture of credit made by S corporations. This information should be provided to you by your S corporation.