

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(2)I
Income Tax
May 20, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z160314A

The Department of Taxation and Finance (“DTF”) received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner requests guidance on one issue involving the Brownfield Redevelopment Tax Credit under Tax Law § 21.

Petitioner asks what is the last day that qualified tangible property may be placed in service, and the tangible property credit component under Tax Law § 21(a)(3) claimed, where a Certificate of Completion was issued on December 31, 2008, with tangible personal property first placed in service on the site in 2008. We conclude that the last day qualified tangible property may be placed in service is December 31, 2018, and the last taxable year the tangible property credit may be claimed is the year ending December 31, 2018, because the tangible property credit component may be claimed for up to ten tax years after the year the Certificate is issued.

Facts

The City of Yonkers Industrial Development Agency (“YIDA”) owns a brownfield site (the “site” or “property”). [REDACTED] (“CY [REDACTED]”) held a ground lease to the site from YIDA. CY [REDACTED] has the calendar year as its taxable year. On May 31, 2005, CY [REDACTED] entered into a Brownfield Site Cleanup Agreement (the “BCA”) with New York State Department of Environmental Conservation pertaining to the site. The BCA was subsequently amended in 2008 to add several of CY [REDACTED]'s affiliates as parties.

From 2005 through 2008, CY [REDACTED] conducted environmental remediation activities at the site. On December 31, 2008, NYSDEC issued to CY [REDACTED] and its affiliates a Certificate of Completion for the Site under Environmental Conservation Law § 27-1419 (the “CoC”). CY [REDACTED] constructed a residential apartment complex and apartment garage on the site. CY [REDACTED] first placed property in service on the site in 2008 and thereafter placed additional property in service in subsequent years. CY [REDACTED] filed concomitant claims for the tangible property credit component for each of the years in which property was placed in service.

In 2015 CY [REDACTED] transferred and assigned to Petitioner an interest in the undeveloped portion of the brownfield site and a concomitant interest in the CoC. Petitioner seeks to construct, place in service, and operate improvements to the site. At Petitioner’s request, for purposes of this opinion we assume that any such improvements, when placed in service, would meet the criteria enumerated in Tax Law § 21(b)(3) to constitute “qualified tangible property.”

Petitioner was formed in 2010, but did not have members and did not have a taxable year for federal income tax purposes until 2015. Petitioner's first taxable year for federal and New

York State income tax purposes was the full calendar year 2015. Petitioner has the calendar year as its taxable year.¹

Analysis

The brownfield redevelopment tax credit is comprised of several tax credits located in Tax Law §§ 21 and 22². At issue here is the “tangible property credit component” of Tax Law § 21. Specifically, the issue is at what time can a taxpayer claim the credit and for how long can it be claimed.

The tangible property credit component “...shall be allowed for the taxable year in which such qualified tangible property is placed in service on a qualified site with respect to which a certificate of completion has been issued to the taxpayer for up to ten taxable years after the date of the issuance of such certificate of completion.” *Id.* at § 21(a)(3). New York State Department of Taxation and Finance Publication 300 clarifies that the tangible property credit “...may be claimed for qualified tangible property placed in service for up to ten tax years after the year the CoC is issued.” DTF Publication 300, p. 12.

Petitioners contend that the “ten taxable years” period, during which qualified tangible property may be placed in service and the tangible property credit claimed, begins to run in the tax year ending December 31, 2009, because the credit may be claimed for qualified property placed in service for up to ten tax years after the year to CoC is issued. The CoC was issued on December 31, 2008. Petitioner’s interpretation is consistent with the plain language of Tax Law § 21(a)(3) and the guidance provided by DTF Publication 300. Specifically, those provisions state that the credit may be claimed for the taxable year in which qualified property is placed in service on a site which has received a CoC, for up to ten taxable years after the year the CoC is issued. We conclude that, where a CoC was issued on December 31, 2008, the tangible property credit may be claimed for qualified property placed in service in tax year 2008 through the tax year ending December 31, 2018.

DATED: May 20, 2016

/S/

DEBORAH LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and

¹ The analysis and conclusions contained herein are based on the assumption that the taxpayer will continue to have a January 1 – December 31 tax year and will not have any short tax years.

² Because the CoC was issued on December 31, 2008 this opinion applies to the brownfield redevelopment tax credit as it existed prior to April 13, 2015. The amendments signed into law on April 13, 2015, L.2015, c.56, Part BB, are not applicable to this opinion.

accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.