Department of Taxation and Finance

Instructions for Form IT-612

IT-612-I

Claim for Remediated Brownfield Credit for Real Property Taxes

For Qualified Sites Accepted into the Brownfield Cleanup Program Prior to July 1, 2015

Tax Law – Sections 22 and 606(ee)

General information

For tax years beginning on or after April 1, 2005, the remediated brownfield credit for real property taxes is available to a developer of a qualified brownfield site against the personal income tax. 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.

The remediated brownfield credit for real property taxes under section 22 of the Tax Law and the corresponding provisions in Articles 9, 9-A, 22, and 33 of the Tax Law shall not be applicable to any site accepted into the Brownfield Cleanup Program on and after July 1, 2015.

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

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

For a qualified site that is located entirely within an environmental zone (EN-Zone), the amount of the credit is equal to the product of the above three factors. For purposes of calculating the credit for a qualified site in an EN-Zone, only taxes imposed on real property attributable to the qualified site located in an EN-Zone and owned by the developer qualify as eligible real property taxes. The credit for each tax year is limited to the product of $10,000 and the average number of full-time employees employed by the developer of a qualified site and a lessee during the tax year.

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.

Eligibility

To qualify for the credit, you must be a developer. A *developer* is a taxpayer who has (a) executed a Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL) and has a *Certificate of Completion* (COC) issued by the Commissioner of Environmental Conservation, or (b) obtained by purchase or conveyance all or any portion of a qualified site for which a COC has been issued. The purchase or conveyance must occur within seven years of the effective date of the COC. The taxpayer who is purchasing all or any portion of the qualified site and the taxpayer and any other party who has been issued the COC may not be related persons (as defined in Internal Revenue Code (IRC) section 465(b)(3)(C)).

A developer also includes a partner in a partnership (including a member of an LLC that is treated as a partnership for federal income tax purposes) or a shareholder in a New York S corporation, provided the partnership or New York S corporation has been issued a COC, or the partnership or New York S corporation has obtained by purchase or conveyance all or any portion of a qualified site for which a COC was issued.

A taxpayer will cease to be a developer with regard to a qualified site on the first day of the tax year during which revocation of the COC by the Department of Environmental Conservation (DEC) is final, and no longer subject to judicial review.

For more information about the Brownfield Cleanup Program, visit the DEC website (at *www.dec.ny.gov)*.

If the eligible real property taxes, which were the basis for the remediated brownfield credit for real property taxes are subsequently reduced as a result of a final order in any proceeding under Article 7 of the Real Property Tax Law 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 the 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.

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 qualified site is located in whole or in part in an empire zone (EZ) and the 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. The taxpayer must elect, in the first tax year that the brownfield real property tax credit is allowed, whether to claim the brownfield real property tax credit or the QEZE real property tax credit. Once made, 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 of the credits. Once the election is made, a taxpayer may not claim the other tax credit in that year or any 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. For more information on the QEZE credit for real property taxes, see Form IT-606, *Claim for QEZE Credit for Real Property Taxes.*

Who must file

File Form IT-612 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 remediated brownfield credit for real property taxes; or

– you are required to recapture any previous remediated brownfield credit for real property taxes due to a certificate of completion being revoked or due to a reduction of the eligible real property taxes which were the basis for the credit claimed in a prior tax year.

An estate or trust that divides the credit or recapture of credit between itself and its beneficiaries must file Form IT-612 with Form IT-205, showing each beneficiary's share of the credit or recapture of credit.

A partnership must file Form IT-612 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-612. It must file Form CT-612, *Claim for Remediated Brownfield Credit for Real Property Taxes*. 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 S corporation.

Definitions

A *qualified site* means a site for which the taxpayer has been issued a COC 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, meets either of the following criteria:

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 criterion, the qualified site must be the subject of a BCA entered into prior to September 1, 2010.

The *benefit period* is a ten consecutive tax year period, beginning with the later of:

1. the tax year in which the COC is issued for the qualified site, or
2. the first tax year beginning on or after April 1, 2005.

The *benefit period factor* for each year of the ten-year benefit period is 1.0.

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.

If the developer is a partner in a partnership or a shareholder in a New York S corporation, the number of employees employed by the partnership or S corporation at the qualified site is used in the computation of the employment number factor.

Full-time employment means a job consisting of at least 35 hours per week, or two or more jobs that together constitute the equivalent of a job of at least 35 hours per week. A seasonal business (a business that regularly operates for less than an entire tax year, such as a ski resort) that employs individuals full time for at least 3 months of continuous duration may include these individuals in the employment number if they are working in a job consisting of at least 35 hours per week.

Eligible real property taxes are taxes imposed on real property that is a qualified site owned by the developer. 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.

However, the amount of PILOT payments that constitute eligible real property taxes is limited. The limitation is calculated as follows:

1. Determine the basis of the remediated brownfield real property (including buildings and structural components of buildings) on the following two dates:
   a. the date the taxpayer became a developer
   b. the last day of the current tax year
   Calculate the basis amount in the same manner as calculated for federal income tax purposes.
2. Multiply the greater of these two amounts by the rate applicable to the county in which the real property is located. (For the county's full-value-tax rates, see the Tax Department's website (at *www.tax.ny.gov)*. Use the full-value tax rates by county for the local fiscal year ending in 2015.)
3. Divide by 1,000.

The result is the maximum amount of PILOT payment that may be included in eligible real property taxes for purposes of calculating the remediated brownfield real property tax credit.

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, C, and G. If applicable, also complete Schedule H.

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, C, and G. If applicable, also complete Schedule H.

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

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

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-612.

Schedule A – Brownfield site identifying information

All taxpayers must **submit a copy** of the COC.

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 a copy of the COC, 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 – Computation of average number of full-time employees employed by a developer and any lessees at the qualified site

Line 1 – For each date specified in the current tax year, enter the number of full-time employees of the developer and any lessees at the qualified site. Divide the total number of full-time employees for the current tax year by the number of dates occurring during the current tax year (even if you had no employees on those dates) and enter the result on line 1.

Note: No credit is allowed if the amount on line 1 is less than 25.

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

Line 2 – Enter the employment number factor from the table on Form IT-612 based on the average number of full-time employees computed on line 1. See the *Note* under the instructions for line 1 above.

Line 3 – Enter the eligible real property taxes you paid as the developer of a qualified site. See page 2 for a definition of *eligible real property taxes*. Submit copies of all real property tax bills (including school tax bills) that are the basis of your credit. If the real property taxes include PILOT payments, submit a copy of the PILOT agreement.

Line 6 – If your COC for the qualified site is revoked and the determination is no longer subject to judicial review, you must enter on line 6 any remediated brownfield credit for real property taxes claimed in a prior tax year.

If the eligible real property taxes, which were the basis for a credit previously claimed, are subsequently reduced, you must add back a recapture amount as computed below:

Line 6 worksheet

a The amount of credit originally allowed..... a _____
b The amount of credit calculated using the reduced tax amount..... b _____
c Recapture amount *(subtract line b from line a; also enter on line 6)*..... c _____

Note: If property taxes are reduced for more than one tax year, you must determine how much of the reduction is attributable to each year and recapture the apportioned amount for each year.

Line 7 – If line 6 is less than line 5, skip line 7 and continue to line 8. If line 6 is greater than line 5, subtract line 5 from line 6 and enter the result on line 7. This is your net recapture of the remediated brownfield credit for real property taxes. Do not complete lines 8, 9, or 10.

- **Individuals and partnerships:** Enter the line 7 amount on line 19.
- **Fiduciaries:** Include the line 7 amount on the *Total* line of Schedule F, column D.

Schedule D – Partnership, S corporation, estate, and trust information

Enter the appropriate information for each partnership, New York S corporation, or estate or trust from 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 E – Partner's, shareholder's, or beneficiary's share of credit

If you were a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust and received a share of the remediated brownfield credit for real property taxes from that entity, enter your share of the credit on the applicable line. This information should be provided to you by your partnership, New York S corporation, or the fiduciary of 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 applicable line.

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

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

Schedule G – Computation of credit

Fiduciaries: Do not enter any amounts on lines 15 and 16. Enter the amount from Schedule F, column C, *Fiduciary* line on line 17.

Line 18

Fiduciaries: Enter the amount from line 17 on line 18.

All others: Add lines 15 and 16.

Partnerships: Enter the amount from line 18 and code ***172*** on Form IT-204, line 147.

All others: Enter the amount from line 18 and code ***172*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

Schedule H – Summary of recapture of credit

Fiduciaries: Do not enter any amounts on lines 19 through 22. Include any flow through of credit recapture from partnerships, S corporations, estates, or trusts on the *Total* line of Schedule F, column D. Enter your share of recapture from Schedule F, column D, *Fiduciary* line on line 23.

Line 19 Individuals and partnerships: Enter on line 19 your recapture of credit from line 7.

Line 20 Beneficiaries: Enter on line 20 your share of recapture of credit from estates or trusts.

Line 21 Partners: Enter on line 21 your share of the total recapture of credit from partnerships. This information should be provided to you by the partnership.

Line 22 S corporation shareholders: Enter on line 22 your share of the recapture of credit from S corporations. This information should be provided to you by your S corporation.

Line 24

Fiduciaries: Enter the amount from line 23 on line 24.

All others: Add lines 19 through 22.