



Instructions for Form IT-612

Claim for Remediated Brownfield Credit for Real Property Taxes

Tax Law - Sections 22 and 606(ee)

IT-612-I

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 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.

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 Web site at www.dec.state.ny.us.

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 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 attach Form IT-612 to 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 criteria, the qualified site must be the subject of a BCA entered into prior to September 1, 2010.

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.

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 (see *Full-value tax rates by county* below), and
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.

Full-value tax rates by county

County	Overall tax rate	County	Overall tax rate	County	Overall tax rate
Albany	29.60	Herkimer	29.30	St. Lawrence	37.70
Allegany	49.40	Jefferson	28.40	Saratoga	24.00
Broome	43.00	Lewis	33.60	Schenectady	38.60
Cattaraugus	36.30	Livingston	36.60	Schoharie	37.50
Cayuga	35.30	Madison	35.30	Schuyler	37.20
Chautauqua	36.10	Monroe	40.10	Seneca	39.20
Chemung	37.50	Montgomery	47.50	Steuben	37.80
Chenango	43.30	Nassau*	25.10	Suffolk	17.90
Clinton	32.20	Niagara	41.20	Sullivan	32.50
Columbia	23.40	Oneida	35.10	Tioga	38.00
Cortland	41.60	Onondaga	38.10	Tompkins	33.10
Delaware	26.90	Ontario	30.40	Ulster	25.90
Dutchess	20.90	Orange	25.80	Warren	18.30
Erie	34.80	Orleans	43.00	Washington	32.00
Essex	23.10	Oswego	41.70	Wayne	40.40
Franklin	28.40	Otsego	28.60	Westchester	21.80
Fulton	33.80	Putnam	27.70	Wyoming	35.00
Genesee	39.60	Rensselaer	36.40	Yates	28.40
Greene	24.00	Rockland	27.20	Outside NYC	25.30
Hamilton	17.40				
New York City by class* 1.....					6.58
2.....					41.75
3.....					55.39
4.....					44.86
* New York City and Nassau County have a four-class property tax system (class 1: 1-3 family residential; class 2: apartment; class 3: utility equipment; and class 4: all other property). It was not possible to determine a countywide class-specific rate for Nassau County due to the complexity of taxing jurisdictions.					

Filling 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 (Forms IT-204), or
- fiduciary return (Forms IT-205).

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

Specific instructions

Individuals (including sole proprietors) — Complete Schedules A, B, F, and G (if applicable).

Partnerships — Complete Schedules A, B, F, and G (as applicable).

Fiduciaries — Complete Schedules A through G (as applicable).

Partners in a partnership, shareholders in a New York S corporation, and beneficiaries of an estate or trust — Enter your name and identification number as shown on your personal income tax return. Obtain the address of the qualified site from your partnership, New York S corporation, or the fiduciary of the estate or trust. Complete Schedules C, D, F, and G (as applicable).

Schedule A — 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 B — 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*. Attach 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, attach 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 E, column D.

Line 9 — The credit limitation is the product of \$10,000 multiplied by the average number of full-time employees computed on line 1.

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 attach a separate schedule.

Schedule D — 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 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 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 — Summary of recapture of credit

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 the estate or trust from the fiduciary’s Form IT-612, Schedule E, column D.

Line 21 Partners — Enter on line 21 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 22 S corporation shareholders — Enter on line 22 your share of the recapture of credit made by S corporations. This information should be provided to you by your S corporation.