New York State Department of Taxation and Finance

Instructions for Form IT-611

Claim for Brownfield Redevelopment Tax Credit

For Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008

Tax Law — Sections 21 and 606(dd)

IT-611-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, a brownfield redevelopment tax credit is available for the cleanup and redevelopment of a qualified brownfield site. 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 using its allocable share of the cost or other basis of the credit components as provided by the partnership.

Taxpayers claiming 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) **prior to June 23, 2008**, 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.* Taxpayers claiming the credit with respect to a qualified site for which a notice of acceptance into the Brownfield Cleanup Program was issued by DEC **on or after June 23, 2008**, must use Form IT-611.1, *Claim for Brownfield Redevelopment Tax Credit, for Qualified Sites Accepted into the Brownfield Cleanup Program on or After June 23, 2008.*

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

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 of 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 site is remediated to the highest environmental standard track, Track 1. See section 27-1415 of the ECL.

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.)

Who must file

File Form IT-611 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 divides the credit or addback of credit among itself and its beneficiaries must attach Form IT-611 to Form IT-205, showing each beneficiary's share of the credit or recapture of credit.

A partnership must file Form IT-611 with Form IT-204 showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does not file Form IT-611. It must file Form CT-611. 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,
- prepare a site for the erection of a building or a component of a building, 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) **Or** 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 in this state.

For purposes of this credit, property qualifying under B is deemed to be qualified tangible property and is deemed to have been placed in service when a certificate of occupancy is issued for the property.

Note: Property used to qualify for this credit may not be used as qualifying property for the investment tax credit (ITC) or the empire zone investment tax credit (EZ-ITC).

Life or useful life (of property) means the depreciable life provided by IRC section 167 or 168.

Cost or other basis means the basis of property as determined for federal income tax purposes.

Principally used means more than 50%.

On-site groundwater remediation costs includes all amounts properly chargeable to a capital account that are paid or incurred in connection with a site's qualification for a CoC; the remediation of on-site groundwater contamination, and the implementation of a requirement of the remedial work plan for a qualified site imposed under the ECL.

Certificate of Completion (CoC) is a certificate issued 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, (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 set of 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*.

Specific instructions

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

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

Partnerships: Complete Schedules A and B. If applicable, also complete Schedules F and G. **Note:** Do not allocate the credit calculated on this Form IT-611 to corporate partners. Corporate partners will include their allocable share of the component costs used by the partnership to compute the credit in their own computation of the credit on Form CT-611.

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 E. If applicable, also complete Schedules F and G.

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

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

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-611.

Schedule A — Brownfield site identifying information

All taxpayers must **attach 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 — Credit components

Partners, shareholders, and beneficiaries: Do not complete lines 1 through 4, 9 through 12, or 17 through 20.

Partners: Obtain the amounts to enter on lines 5, 13, and 21 from the partnership. If you are a partner in more than one partnership, enter on the appropriate line the total of all your shares of each credit component received from the partnerships.

Shareholders: Obtain the amounts to enter on lines 6, 14, and 22 from the S corporation. If you are a shareholder in more than one S corporation, enter on the appropriate line the total of all your shares of each credit component received from the S corporations.

Beneficiaries: Obtain the amounts to enter on lines 7, 15, and 23 from the estate or trust. If you are a beneficiary in more than one estate or trust, enter on the appropriate line the total of all your shares of each credit component received from the estates or trusts.

All others: Complete all applicable lines. Partnerships, estates, and trusts must provide their partners and beneficiaries with their shares of each credit component.

Part 1— Site preparation credit component

The site preparation credit component includes site preparation costs properly charged to a capital account paid or incurred by the taxpayer with respect to the qualified site.

Site preparation costs include, but are not limited to, the costs of excavation, temporary electric wiring, scaffolding, demolition costs, and the costs of fencing and security facilities.

Site preparation costs do not include the cost of acquiring the site or the amounts included in the cost or other basis for federal income tax purposes of qualified tangible property and costs that are included in the on-site groundwater remediation credit component.

Site preparation 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 paid or incurred on or after the execution date of the BCA and up to the date on which the CoC is issued are allowed in 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 the date occurred in the first tax year beginning on or after April 1, 2005. The site preparation credit component for qualifying site preparation costs incurred after the date the CoC is issued is allowed in the tax year that the improvement to which the costs apply is placed in service. The site preparation credit component is allowed for up to five tax years after the CoC has been issued.

Columns A and B — Describe the site preparation 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 paid or incurred to prepare the site to qualify for the CoC. List costs separately and in detail. Attach additional sheets if necessary.

Line 8

Partnerships: Enter the line 8 amount on Form IT-204, line 127, and continue with Part 2.

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 — 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. However, with respect to qualified tangible property that qualifies under paragraph B of the definition of qualified tangible property (see *Definitions*), the tangible property credit component only includes costs incurred on or after July 26, 2006.

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. However, if the property was placed in service on a qualified site in a tax year that began prior to April 1, 2005, the property will be treated as if it were placed in service in the first tax year beginning on or after April 1, 2005. This credit component may be claimed for up to 10 years after the CoC has been issued.

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. Attach additional sheets if necessary.

Column D — Enter the useful 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 16

Partnerships: Enter the line 16 amount on Form IT-204, line 128, and continue with Part 3.

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

All others: Continue with Part 3.

Part 3 — 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 allowed in 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 the date occurred in the first tax year beginning on or after April 1, 2005. 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. Attach additional sheets if necessary.

Line 24

Partnerships: Enter the line 24 amount on Form IT-204, line 129.

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

All others: Continue with line 25.

Applicable percentage table (for Article 22 taxpayers)

Qualified site description	Rate
Qualified site	10%
Qualified site remediated to Track 1	12%
Qualified site with at least 50% located within an Environmental Zone (EN-Zone)	18%
Qualified site remediated to Track 1 and at least 50% located within an EN-Zone	20%

Schedule C — 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, attach a separate schedule.

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.

Schedule E — Computation of credit

Line 28 — If your total credits from all sources are **$2 million or less**, enter the amount from line 28 and code ***171*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it 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 28, but do not enter the amount from line 28 on your tax return. See Form IT-500, *Income Tax Credit Deferral,* to determine the proper amount to enter on your tax return.

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 Part 2, *Tangible property credit component,* column E, for the tax year the credit was claimed, by the *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 on line 31 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 on line 32 the total site preparation credit component amounts allowed in previous tax years with respect to the qualified site.

Line 33 — Enter on line 33 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.

Line 35 Individuals and partnerships: Enter on line 35 your recapture of credit from line 34.

Line 36 Beneficiaries: Enter on line 36 your share of recapture of credit from the estate or trust from the fiduciary's Form IT-611, Schedule D, column F.

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