Department of Taxation and Finance

Instructions for Form CT-611.1

Claim for Brownfield Redevelopment Tax Credit

For Qualified Sites Accepted into the Brownfield Cleanup Program on or After June 23, 2008 and Prior to July 1, 2015

CT-611.1-I

General information

The brownfield redevelopment tax credit is available to taxpayers subject to tax under Tax Law Articles 9 (sections 183 and 184), 9-A, 22, and 33.

Which form to use

Use Form CT-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 (BCP) was issued by the Department of Environmental Conservation (DEC) **on or after June 23, 2008**, and **prior to July 1, 2015**, and the site received a *Certificate of Completion* (COC) **by** December 31, 2019.

Most sites accepted into the BCP **on or after June 23, 2008**, and **prior to July 1, 2015**, and which have **not** received a *Certificate of Completion* (COC) **by** December 31, 2019, will only be eligible for brownfield redevelopment tax credits available according to Tax Law section 21, as if the site was accepted into the BCP **on or after July 1, 2015**. If the COC is issued for the qualified site **after** December 31, 2019, do **not** use Form CT-611.1; instead, use Form CT-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 with respect to such site.

Exception: Any site accepted into the BCP **on or after June 23, 2008**, and **prior to July 1, 2015,** that has a Brownfield Cleanup Agreement (BCA) that was signed by the DEC on or after July 1, 2015, is **not** subject to the December 31, 2019, COC date. These sites continue to use Form CT-611.1 and **must** receive a COC by December 31, 2036. See *www.dec.ny.gov/chemical/101350.html* for additional information.

For qualified sites accepted into the program **prior to June 23, 2008**, taxpayers issued a COC **by** December 31, 2017, for such site, must use Form CT-611, *Claim for Brownfield Redevelopment Tax Credit, for Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008.*

For a qualified site accepted into the program **on or after July 1, 2015**, taxpayers must use Form CT-611.2 to claim the credit.

Eligibility

To qualify for the credit, you must execute a BCA under the Environmental Conservation Law (ECL) and have a COC issued by the Commissioner of Environmental Conservation. A person may also qualify if the person has received the COC pursuant to the transfer or sale of a qualified site. (See ECL section 27-1419 for a detailed description of the COC.) For more information about the BCP, see ECL, Article 27, Title 14, or visit the DEC website at *www.dec.ny.gov*.

The brownfield redevelopment tax credit consists of the sum of **three credit components**, calculated each tax year, for costs incurred in the remediation or redevelopment of a qualified site:

- 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 limitation.

See the instructions for Schedules B, C, and D for more information on these components.

The costs eligible for any of these components are those costs paid or incurred by the taxpayer either on or after the effective date of the BCA executed by the taxpayer and the DEC or on or after the COC was transferred to the taxpayer.

You must reduce the costs used to calculate any of the credit components by any amount of federal, state, or municipal grants you received and used for payment of qualified costs, unless you included those grants in your federal taxable income or federal adjusted gross income.

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), as designated by the Commissioner of Economic Development, or if the site is located in a brownfield opportunity area designated as such by the Secretary of State.

The amount of credit allowed cannot reduce the tax due to less than the minimum tax due under Article 9 (section 183), or 33, or the fixed dollar minimum tax under Article 9-A.

Under Article 9, the credit must first be deducted from the tax imposed by section 183. Any credit remaining may then be deducted from the tax imposed by section 184.

The credit is **not** allowed against the metropolitan transportation business tax (MTA surcharge) under Article 9, 9-A, or 33.

Any unused amount of credit in the current tax year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

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.

If the COC is revoked, you must recapture the amount of credit previously allowed in the tax year in which the determination is final. Also, if qualified tangible property ceases to be in qualified use prior to the end of its useful life, calculate a recapture of the tangible property credit component on Schedule E, *Recapture of credit taken in previous tax years.*

Definitions

A *qualified site* means a site for which a 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 environmental conservation purposes.

On-site groundwater remediation costs include 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.

Qualified tangible property is property that meets all of the conditions under **either** 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 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).

Principally used means more than 50%.

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 the property as determined for federal income tax purposes.

An *environmental zone (EN-Zone)* is an area designated by the Commissioner of Economic Development. An EN-Zone is a census tract and block-numbering area that, as of the year 2000 census, has a poverty rate of at least 20% and an unemployment rate of at least 1.25 times the statewide rate, or that has a poverty rate at least two times the poverty rate for the county in which the area is located. However, if you qualify because the site has a poverty rate that is at least twice the poverty rate for the county, the qualified site must be the subject of a BCA executed prior to September 1, 2010.

Manufacturing activities means the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing. The generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity are specifically excluded.

Manufacturing activities would also include the activities of a taxpayer that is a qualified emerging technology company (QETC) as defined under Public Authorities Law section 3102-e(1)(c), except that the $10 million limitation under section 3102-e(1)(c)(1) does not apply.

Line instructions

Line A – If you are claiming a credit based on costs passed through to you from a partnership, mark an ***X*** in the box.

Additional forms: If you have more entries than will fit on the lines provided in Schedules B, C, D, E, or partnership information schedule, submit additional Forms CT-611.1, completing only the necessary schedules. Include your name and taxpayer identification number on each form. On the indicated line of the first Form CT-611.1, include the totals from all additional Forms CT-611.1. Place the extra forms behind the first Form CT-611.1 and submit them with your return.

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 – Site preparation credit component

The site preparation credit component for site preparation costs which were paid or incurred to prepare a site to qualify for the COC is allowed for the tax year in which the effective date of the COC occurs.

The site preparation credit component for all other qualifying site preparation costs is allowed for the tax year in which the improvement to which the costs apply is placed in service. This credit component is allowed for up to:
- 5 tax years after the COC was issued; or
- 7 tax years if the COC was issued on or after July 1, 2015, and prior to June 25, 2021; or
- 15 tax years if the COC was issued on or after January 1, 2017, and prior to December 31, 2017, if the qualified site is located in a city with a population greater than 205,000 and less than 215,000 within a county with a population greater than 1,000,000 but less than 1,010,000 per the latest federal decennial census.

The site preparation credit component includes the 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 the following:
- excavation
- temporary electric wiring
- scaffolding
- demolition
- 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 for qualified tangible property and costs that are included in the 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 for the tax year in which the COC is issued.

Columns A, B, and C – Describe site preparation costs paid or incurred during the tax year. List costs separately and in detail. If needed, see *Additional forms*. If the tax year 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.

Corporate partners: Enter in the *Partnership information* area on Form CT-611.1 the name, the identifying number, and your allocable share of the costs for each partnership that passed the credit component through to you. Include on line 1 the site preparation costs from line 28.

Line 2 – Obtain the applicable percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places.

Line 3 – New York S corporations: Transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, and provide your shareholders with their pro rata share of line 3. The shareholder will enter that amount on 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 and Prior to July 1, 2015*.

Schedule C – On-site groundwater remediation credit component

For the tax year in which the effective date of the COC occurs, the on-site groundwater credit component is allowed for costs incurred **and** paid prior to the issuance of the COC.

For up to five tax years (seven tax years if the COC was issued on or after July 1, 2015 and prior to June 25, 2021) after the COC was issued, the on-site groundwater remediation component is allowed in the tax year the qualified costs were both incurred **and** paid.

The on-site groundwater remediation credit component includes all costs properly charged 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 in the remedial work plan.

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 the COC is issued.

Costs **do not** include those amounts that were included in the site preparation component or the tangible property component.

Columns A, B, and C – Describe on-site groundwater remediation costs paid or incurred during the tax year. List costs separately and in detail. If needed, see *Additional forms*. If this is the tax year in which the effective date of the COC occurs (or is treated as having occurred), enter all on-site groundwater costs incurred and paid to prepare the site to qualify for the COC.

Corporate partners: Enter in the *Partnership information* area on Form CT-611.1 the name, the identifying number, and your allocable share of the costs for each partnership that passed the credit component through to you. Include on line 4 the groundwater remediation costs from line 28.

Line 5 – Obtain the applicable percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places.

Line 6 – New York S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of line 6. The shareholder will enter that amount on Form IT-611.1.

Schedule D – Tangible property credit component

The tangible property credit component is allowed for the tax year in which qualified tangible property was placed in service on a qualified site for which a COC was issued.

This credit component may be claimed for us to:

- 10 years after the COC was issued; or
- 15 years if the COC was issued on or after March 20, 2010, and prior to December 31, 2015; or
- 15 years if the COC was issued on or after January 1, 2017, and prior to December 31, 2017, if the qualified site is located in a city with a population greater than 205,000 and less than 215,000 within a county with a population greater than 1,000,000 but less than 1,010,000 per the latest federal decennial census.

The tangible property credit component includes the cost (or other basis of the property as calculated for federal income tax purposes) of qualified tangible property.

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.

Costs may include those incurred for leased property if the lessee was not the party legally responsible for the disposal of hazardous waste or the discharge of petroleum at the qualified site or if 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.

Exception for sites that comply with track 1 remediation standards: Starting in tax year 2022, stadiums, baseball parks, basketball courts and other athletic facilities are considered buildings. Components of such sites (including sports field turf, site lighting, sidewalks, access and entry ways, and other improvements added to land) are considered structural components of buildings under the IRC and are included in the definition of tangible property for the purposes of this section.

The tangible property credit component is limited. See line 9b instruction.

If the property ceases to be in qualified use, you may have to recapture the credit (see Schedule E, *Recapture of credit taken in previous tax years*).

Column A – Describe qualified property placed in service during the tax year. List individual items of machinery and equipment separately and in detail. If needed, see *Additional forms*.

Corporate partners: Enter in the *Partnership information* area on Form CT-611.1 the name, the identifying number, and your allocable share of the costs for each partnership that passed the credit component through to you. Include on line 7 the tangible property costs from line 28.

Column D – Enter the useful life of each item claimed. See the definition of life or useful life in *Definitions*. **Do not** use the recovery period for depreciation under the accelerated cost recovery system (ACRS) or the modified accelerated cost recovery system (MACRS).

Line 8 – Obtain the applicable percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places. 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 9b – Enter the lesser of $35 million or three times the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component for the qualified site. Include costs from the current tax year and all prior tax years. 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 credit component and the on-site groundwater remediation credit component for the qualified site.

Line 9c – Subtract all tangible property credit component amounts claimed in prior tax years for the qualified site from the amount on line 9b and enter the result. This is the maximum tangible property credit component available to claim in the current tax year for the qualified site.

Line 9d – Enter the lesser of the amounts on line 9a or line 9c.

Note: If you marked *Yes* in the box in Schedule A indicating that there are multiple taxpayers listed on the COC claiming credits for the qualified site, the Tax Department may adjust your tangible property component accordingly.

New York S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of line 9d. The shareholder will enter that amount on Form IT-611.1.

Schedule E – Recapture of credit taken in previous tax years

Recapture of tangible property credit component for property that ceases to be in qualified use

If the tangible property that was used as the basis of this credit ceases to be in qualified use prior to the end of its useful life, you must add back the difference between the original credit allowed and the credit allowed for actual use to the tax otherwise due in the year the tangible property ceases to be in qualified use.

Tax Law, Article 1, section 21 provides different formulas for calculating the amount of recaptured credit for property depreciated under IRC sections 167 and 168.

- For property depreciated solely under IRC section 167, the formula is:

  $$\frac{\text{months of useful life minus months of qualified use}}{\text{months of useful life}} \times \text{tangible property credit component previously allowed}$$

- For three-year property depreciated under IRC section 168, the formula is:

  $$\frac{\text{36 minus the number of months of qualified use}}{36} \times \text{tangible property credit component previously allowed}$$

  Recapture the credit only if the property ceases to be in qualified use prior to the end of 36 months.

- For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula is:

  $$\frac{\text{60 minus the number of months of qualified use}}{60} \times \text{tangible property credit component previously allowed}$$

  Recapture the credit only if the property ceases to be in qualified use prior to the end of 60 months.

- For a building or structural component of a building that is depreciated under IRC section 168, the formula is:

  $$\frac{\text{number of months allowed by the IRC and used by the taxpayer minus the months of qualified use}}{\text{number of months allowed by the IRC and used by the taxpayer}} \times \text{tangible property credit component previously allowed}$$

If qualified property has a useful life of more than 12 years and has been in qualified use for more than 12 consecutive years, recapture is not necessary.

Recapture if COC is revoked

If your COC is revoked by the DEC, the amount of all brownfield credits previously allowed under Tax Law section 21 must be added back to your tax in the tax year in which the determination is final and no longer subject to judicial review.

Line 11a – 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 12 – New York S corporations: Transfer this amount to the applicable line of Form CT-34-SH.

Credit summary (New York S corporations do not complete this section)

Line 18 – C corporations: If the amount on line 16 is greater than the amount on line 17, subtract line 17 from line 16. This is the amount of your credit; continue with the rest of this form. If the amount on line 17 is greater than the amount on line 16, you have a net recapture amount; subtract line 16 from line 17 and enter the result with a minus sign (-). Transfer the line 18 amount (with the minus sign if a recapture) to the appropriate line of the tax credits section on your franchise tax return. Do not complete the rest of this form.

Calculation of brownfield redevelopment tax credit used, refunded, or credited as an overpayment in the next tax year *(New York S corporations do not complete this section)*

Lines 19 and 22 entries table

If you filed	Enter on line 19 any net recapture of other tax credits **plus** the amount from	Enter on line 22 the minimum tax below
Forms CT-183 and CT-184	Line 4 of Form CT-183 **plus** the amount from line 3 or 4 of Form CT-184	***75***
Form CT-3	Part 2, line 2	Part 2, line 1c
Form CT-3-A	Part 2, line 2	Part 2, line 1c
Form CT-33	Line 11	***250***
Form CT-33-A	Line 15	Line 4 plus line 12
Form CT-33-NL	Line 5	***250***

Line 19 – Enter your tax due before credits using the *Lines 19 and 22 entries table*.

Line 20 – If you are claiming more than one tax credit for this year, enter the total amount of credits claimed before applying this credit. Include any amount of brownfield redevelopment tax credit being claimed on another Form CT-611, CT-611.1, or CT-611.2 that you wish to apply before the credit being claimed on this form. Otherwise, enter ***0.*** You must apply certain credits before the brownfield redevelopment tax credit. Refer to the instructions for your franchise tax return to determine the order of credits that applies.

Article 9-A filers: Refer to Form CT-600-I, *Instructions for Form CT-600, Ordering of Corporation Tax Credits,* for the order of credits.

If you are included in a combined return, include any amount of tax credit(s) being claimed by other members of the combined group, including the brownfield redevelopment tax credit, that you wish to apply before your brownfield redevelopment tax credit.

Line 22 – Enter your minimum tax using the *Lines 19 and 22 entries table.*

Lines 24, 26, and 27 – On line 24, enter the lesser of line 18 or line 23. Transfer the amounts from lines 24, 26, and 27 to your franchise tax return.

Partnership information

If you received costs passed through to you from a partnership, enter the name of the partnership, employer identification number, and your share of the costs in the appropriate box. These costs are reported to you on Form IT-204-CP, *New York Corporate Partner's Schedule K-1.* If needed, see *Additional forms*.