Department of Taxation and Finance

Instructions for Form CT-612

Claim for Remediated Brownfield Credit for Real Property Taxes

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

CT-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 developers of qualified sites who are taxpayers subject to tax under Tax Law Articles 9 (sections 183 and 184), 9-A, 22, and 33.

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

Renaissance Commerce Park sites: For more information, see the *Special eligibility rules for the brownfield tax credits* at *www.tax.ny.gov* (search: *brownfield)*.

Eligibility – To qualify for the credit, you must be a developer. A *developer* is a taxpayer who has

- 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
- purchased or otherwise been conveyed 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 may also be a partner in a partnership (including limited liability companies (LLCs)) or a shareholder in a New York S corporation if the partnership or New York S corporation has been issued a COC, or the partnership or New York S corporation has purchased or otherwise been conveyed all or any portion of a qualified site for which a COC was issued.

A taxpayer will cease to be a developer 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 BCP, visit the DEC website at *www.dec.ny.gov.*

The amount of credit is 25% of the product of 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 credit is the product of 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.

The amount of credit 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.

If a qualified site is located entirely or partly within an empire zone (EZ), and a taxpayer meets the eligibility requirements for both the remediated 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 make an election as to which credit to take in the first year the taxpayer is eligible for the remediated brownfield credit for real property taxes. 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 CT-606, *Claim for QEZE Credit for Real Property Taxes*.

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.

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 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 it 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 Brownfield Cleanup Agreement (BCA) executed prior to September 1, 2010.

The *benefit period* is a ten-consecutive-tax-year period beginning with the tax year in which the COC is issued for the qualified site or the first tax year beginning on or after April 1, 2005, whichever is later. The *benefit period factor* for each year of the 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 (excluding general executive officers) employed by the developer and any lessees at the qualified site during the tax year. Refer to the *Employment number factor table*.

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 three 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.

General executive officers are the chairman, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and any other officer charged with the general affairs of the corporation. A *general executive officer* is, therefore, an appointed or elected officer of the corporation having company-wide authority with respect to assigned functions or responsibility for an entire division of the company.

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.

Calculate the limitation 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 the tax year immediately preceding this tax year.)
3. Divide by 1000

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.

Line instructions

Line A – If you are claiming a credit passed through to you from a partnership, mark an ***X*** in the box, and complete Schedule E.

Additional forms: If you have more entries than will fit on the lines provided in Schedule E, submit additional Forms CT-612, completing only the necessary schedules. Include your name and taxpayer identification number on each form. On the indicated line of the first Form CT-612, include the totals form all additional Forms CT-612. Place the extra forms behind the first Form CT-612 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 – Calculation of average number of full-time employees employed by a developer and a lessee

Partners in a partnership – If you are only claiming a flow-through credit(s) from a partnership, skip Schedules B and C, lines 1 through 9. Complete Schedule D, if applicable, and complete Schedule E, *Partnership information*.

Complete this entire form if your corporation has earned its own remediated brownfield credit for real property taxes in addition to receiving a flow-through credit.

Line 1 – For each date specified of the current tax year, enter the number of full-time employees (excluding general executive officers) employed by the developer of a qualified site and a lessee. Divide the total number of 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). Enter the result on line 1.

Note: If line 1 is less than 25, no credit is allowed.

Schedule C – Calculation of remediated brownfield credit for real property taxes

Line 2 – Find your employment number factor in the table below using the average number of full-time employees on line 1. Enter the result on line 2.

Note: If line 1 is less than 25, no credit is allowed.

Employment number factor table

Average number of full-time employees is at least	Factor
25 but less than 50	.25
50 but less than 75	.50
75 but less than 100	.75
100	1.00

Line 3 – Enter the total amount of eligible real property taxes. See definition of eligible real property taxes in *Definitions*. 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 that were the basis for a remediated brownfield real property tax credit are subsequently reduced as a result of a final order in any proceeding under Real Property Tax Law Article 7 (or other provision of law), you must recapture a portion of the credit allowed in the tax year the final order is issued. Complete *Line 6 worksheet*, and enter the recapture amount on line 6.

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; enter the result on line 6)* ..... C _____

Note: Lines A and B – enter the amount of credit after the application of the credit limitation. 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 the amount on line 5 is greater than the amount on line 6, subtract line 6 from line 5 and continue to line 8.

If the amount on line 6 is greater than the amount on line 5, you have a net recapture amount; subtract line 5 from line 6. Enter the result as a negative number with a minus sign (-).

If line 7 is a net recapture, skip lines 8 and 9. If you are claiming a flow-through credit from a partnership, continue with line 10. All others, do **not** complete the rest of this form. **C corporations:** Transfer the negative number to the appropriate box in the tax credits section of your franchise tax return. **New York S corporations:** Transfer the net recapture as a positive number to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*.

Line 10 – If you received a remediated brownfield credit for real property taxes from a partnership, enter the amount on line 10, and complete Line A and Schedule E, *Partnership information*.

Line 11 – New York S corporations: Transfer the result to Form CT-34-SH.

Schedule D – Application of remediated brownfield credit for real property taxes (New York S corporations do not complete this section)

Lines 12 and 15 entries table

If you filed	Enter on line 12 any net recapture of other tax credits **plus** the amount from	Enter on line 15 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 12 – Enter your tax before credits using the *Lines 12 and 15 entries table*.

Line 13 – If you are claiming more than one tax credit for this year, enter the amount of credits claimed before applying this credit. Include any amount of remediated brownfield credit for real property taxes being claimed on another Form CT-612 that you wish to apply before the credit being claimed on this form. Otherwise, enter ***0***. You must apply certain credits before the remediated brownfield credit for real property taxes. 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 remediated brownfield real property tax credit, that you wish to apply before your remediated brownfield real property tax credit.

Line 15 – Enter your minimum tax using the *Lines 12 and 15 entries table*.

Lines 17, 19, and 20 – On line 17, enter the lesser of line 11 or line 16.

Transfer the amounts from lines 17, 19, and 20 to your franchise tax return.

Schedule E – Partnership information

If you received a remediated brownfield credit for real property taxes from a partnership, enter the amount on line 10 and complete Schedule E, *Partnership information*. If needed, see *Additional Forms*.