Department of Taxation and Finance

Instructions for 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

Tax Law – Sections 21 and 606(dd)

IT-611.1-I

General information

The brownfield redevelopment tax credit is available for the cleanup and redevelopment of a qualified brownfield site.

Which form to use

Taxpayers can use Form IT-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, shall only be eligible for brownfield redevelopment tax credits available pursuant 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 IT-611.1; instead, use Form IT-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 IT-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 IT-611, *Claim for Brownfield Redevelopment Tax Credit, for Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*, to claim the credit.

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

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-611.1, *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*, using its allocable share of the cost or other basis of the credit components as provided by the partnership.

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 BCA under the Environmental Conservation Law (ECL), and have a 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 BCP, visit the DEC website 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 on-site groundwater remediation credit component, and
- the tangible property credit component.

Note: The tangible property credit component is subject to a limitation.

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

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-611.1 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 submit Form IT-611.1 with Form IT-205, *Fiduciary Income Tax Return,* showing each beneficiary's share of the credit or recapture of credit.

A partnership must file Form IT-611.1 with Form IT-204, *Partnership Return,* showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does **not** file Form IT-611.1. It must file Form CT-611.1. 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.

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.

Specific instructions

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-611.1 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-611.1.

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-611.1.

Additional forms: If you have more entries than will fit on the lines provided in Schedule B (Part 1, 2, or 3), C, D, or F, submit additional Forms IT-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 IT-611.1, include the totals from all additional Forms IT-611.1. Place the extra forms behind the first Form IT-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 – Credit components

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

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. 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. 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.

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. If needed, see *Additional forms*.

Line 3 – Obtain the applicable percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places.

Line 8

Partnerships: Enter the line 8 amount on Form IT-204, line 127, and continue with Part 2. If the partnership has Article 9-A corporate partners enter code ***107*** and the allocable share of site preparation costs on Form IT-204, lines 144A through 144F.

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 – 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. This credit component is allowed for on-site groundwater remediation costs incurred and paid after the issued date 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 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. If needed, see *Additional forms*.

Line 11 – Obtain the applicable percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places.

Line 16

Partnerships: Enter the line 16 amount on Form IT-204, line 129, and continue with Part 3. If the partnership has Article 9-A corporate partners, enter code ***109*** and the allocable share of on-site groundwater remediation on Form IT-204, lines 144A through 144F.

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

All others: Continue with Part 3.

Part 3 – 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.

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.

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.

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. This credit component may be claimed for up 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 is limited. See the instruction for line 20b.

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. If needed, see *Additional forms*.

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 19 – 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 20a – Multiply line 18 by line 19 to determine your tentative tangible property credit component.

Line 20b – Enter the lesser of $35 million or three times the costs included in the calculation of the site preparation and the on-site groundwater remediation credit components for the qualified site. 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 and on-site groundwater remediation credit components for the qualified site. Include costs from the current tax year and all prior tax years.

Line 20c – Subtract all tangible property credit component amounts claimed in prior tax years for the qualified site from the amount on line 20b and enter the result on line 20c. This is the maximum tangible property credit component available to claim in the current tax year for the qualified site.

Line 20d – Enter the lesser of the amounts on line 20a or 20c. **Note:** If you marked *Yes* for Schedule A, item I, indicating that there are multiple taxpayers on the COC claiming credits for the qualified site, the Tax Department may adjust your tangible property component accordingly.

Line 24

Partnerships: Enter the line 24 amount on Form IT-204, line 128. If the partnership has Article 9-A corporate partners, enter code ***108*** and the allocable share of tangible property costs on Form IT-204, lines 144a through 144f.

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

All others: Continue with line 25.

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 needed, see *Additional forms*.

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. Provide the beneficiaries with their share of each credit component and recapture. If needed, see *Additional forms*.

Schedule E – Computation of credit

Line 28 – Enter the amount from line 28 and code ***170*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

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. If needed, see *Additional forms*.

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 Schedule B, Part 3, column E, for the tax year the credit was claimed, by the tangible physical property component's 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 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 the total site preparation credit component amounts allowed in previous tax years with respect to the qualified site.

Line 33 – Enter 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.

Fiduciaries: Do not enter any amounts on lines 35 through 38. Include any flow through of credit recapture from partnerships, S corporations, estates, or trusts on the *Total* line of Schedule D, column F. Enter your share of recapture from Schedule D, column F, *Fiduciary* line, on line 39.

Line 36 Beneficiaries: Enter your share of recapture of credit from the estate or trust from the fiduciary's Form IT-611.1, Schedule D, column F.

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