Department of Taxation and Finance

Instructions for 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

IT-611.2-I

General information

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

Which form to use

Use Form IT-611.2 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 July 1, 2015**.

Any site for which a Brownfield Cleanup Agreement (BCA) with the DEC was entered into **prior to June 23, 2008**, and which has **not** received a *Certificate of Completion* (COC) **by** December 31, 2017, 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 for the qualified site was issued **after** December 31, 2017, taxpayers **must** use Form IT-611.2.

Any site accepted into the BCP **on or after June 23, 2008**, and **prior to July 1, 2015**, and which has not received a 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 for the qualified site is issued **after** December 31, 2019, taxpayers **must** use Form IT-611.2.

Exception: Any site accepted into the BCP **on or after June 23, 2008**, and **prior to July 1, 2015**, that has a 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, *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*, and **must** receive a COC by December 31, 2036. For additional information, see *www.dec.ny.gov/chemical/101350.html*.

For qualified sites accepted into the program **on or after June 23, 2008,** and **prior to July 1, 2015**, taxpayers issued a COC **by** December 31, 2019, for such site must use Form IT-611.1.

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*.

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.

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).

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 COC has been transferred by the applicant or subsequent holder of the COC to a successor to a real property interest, including legal title, equitable title or leasehold, in all or a part of the brownfield site for which the COC was issued. A COC can **not** be transferred to a responsible party. (See ECL section 27-1419 for a detailed description of the COC.) A site accepted into the BCP-EZ Program is not eligible for any tax credits under Tax Law section 21. 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**, computed 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 a limitation.

See the instructions for Part 2, Schedules A, B, and C 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 date the COC was transferred to the taxpayer.

You must reduce the costs used to compute any of the credit components by any grants received from a federal, state or local government or an instrumentality of a public benefit corporation that you received and used for payment of qualified costs, unless you included the amount of 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 Labor;
- the site is developed as affordable housing as defined in ECL section 27-1405;
- the site is to be used primarily for manufacturing activities;
- the site is located in a brownfield opportunity area (BOA) designated as such by the Secretary of State;
- the site is remediated to Track 1 as defined in ECL section 27-1415, subdivision 4;
- the site is within a disadvantaged community as defined in ECL section 27-1405 and was issued a notice of acceptance on or after January 1, 2023; or
- the site is being developed as a renewable energy facility as defined in ECL section 27-1405 and was issued a notice of acceptance on or after January 1, 2023.

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, compute a recapture of the tangible property credit component on Part 2, Schedule D, *Recapture of credit taken in previous tax years*.

How to claim the credit

File Form IT-611.2 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in 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-611.2 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-611.2 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-611.2. It must file 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.* 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 a taxpayer has been issued a COC by the Commissioner of Environmental Conservation.

Certificate of completion (COC) is a certificate issued by the Commissioner of Environmental Conservation.

Site preparation costs are all costs properly chargeable to a capital account, that are paid or incurred and that are necessary to implement a site's investigation, remediation, or qualification for a COC.

On-site groundwater remediation costs include all amounts properly chargeable to a capital account, that are paid or incurred and that are necessary to implement a site's groundwater investigation, remediation, or qualification for a COC not already covered under site preparation costs.

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); or is part of an affordable housing project as defined in ECL, section 27-1405, subdivision 29, where units are sold as single family homes or multiple family dwellings;
   - 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 or the empire zone investment tax credit.

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 Labor. An EN-Zone is a census tract that meets the conditions under **either** A or B below:

A. Areas that have both:
   - a poverty rate of at least 20% based on the most recent five-year American Community Survey; and
   - an unemployment rate of at least 1.25 times the statewide unemployment rate based on the most recent five-year American Community Survey; or

B. Areas that have a poverty rate of at least two times the poverty rate for the county in which the areas are located based on the most recent five-year American Community Survey.

This designation will be made and a list of all EN-Zones will be established by the Commissioner of Labor based on the 2009 through 2013 American Community Survey estimate. The determination of whether a site is located in an EN-Zone is based on the date the DEC issued a notice to the taxpayer that its request for participation in the BCP was completed.

Upside down means a property where the projected and incurred cost of the investigation and remediation that is protective for the anticipated use of the property, equals or exceeds 75% of its independent appraised value, as of the date of submission of the application for participation in the BCP, developed under the hypothetical condition that the property is not contaminated.

Related party service fee means any fee or other monetary compensation earned by a related party and calculated as a percentage of project or acquisition costs, or both, in consideration of services rendered to or for the benefit of the taxpayer placing qualified tangible property in service in connection with the acquisition and development of such property. *Related party* has the same meaning as related person as defined in IRC section 465(b)(3)(C).

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.

An *Affordable housing project* is property that meets either A or B below.

A. The project that is developed for residential use or mixed residential use that must include affordable residential rental units or affordable home ownership units, or both.
   - Affordable residential rental projects must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, that

defines a percentage of the residential rental units in the affordable housing project to be dedicated to tenants at a defined maximum percentage of the area median income based on the occupants' household annual gross income.

- Affordable home ownership projects must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement, or legally binding restriction that sets affordable units aside for homeowners at a defined maximum percentage of the area median income.

B. A project that is the subject of a determination by a federal, state or local government housing agency that all or a portion of the project or site will qualify for benefits, including but not limited to real property taxation exemptions, and is or will be eligible under an affordable housing program which requires that a percentage of residential rental or home ownership dwelling units be dedicated to tenants or homeowners at a defined maximum percentage or percentages of area median income based on the occupants' household annual gross income.

- Such federal, state, or local affordable housing program must award a benefit to the project. The term *benefit* is broadly defined and includes, but is not limited to, tax benefits, including real estate tax benefits, tax credits, bond financing, subsidy financing, and zoning variances or waivers. The DEC may, by regulation, after consulting with the Division of Housing and Community Renewal, exclude specific benefits from qualifying.
- To demonstrate eligibility, the project must present a certification of compliance or other evidence of eligibility by a federal, state, or local government affordable housing agency that such project is an affordable housing project.

Area median income means the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the U.S. Department of Housing and Urban Development or its successor, for a family of four, as adjusted for family size.

Underutilized means, as of the date of application, real property:

- on which no more than 50% of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; **and**
- the proposed use is at least 75% for industrial uses; **or**
- at which:
  - the proposed use is at least 75% for commercial or commercial and industrial uses;
  - the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; **and**
  - one or more of the following conditions exists, as certified by the applicant:
    - property tax payments have been in arrears for at least five years immediately prior to the application;
    - a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; **or**
    - there are no structures.

Substantial government assistance is a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, or some combination thereof, from a governmental entity.

A *Renewable energy facility site* is real property:

- that is used for systems that generate electricity or thermal energy through use of solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, or fuel cells that do not utilize a fossil fuel resource in the process of generating electricity; or
- that is any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.

A *Disadvantaged community* is a community identified by the DEC pursuant to ECL section 75-0111.

Specific instructions

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

Individuals (including sole proprietors)**:** Complete Parts 1 and 2.

Partnerships: Complete Parts 1 and 2.

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 Parts 1 and 2.

Fiduciaries: Complete Parts 1, 2, and 4.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Parts 1 and 3.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-611.2.

Parts 1 and 2

Additional forms: If you have more entries than will fit on the lines provided in Parts 2, 3, or 4, submit additional Forms IT-611.2, completing only the necessary parts. Include your name and taxpayer identification number on each form. On the indicated line of the first Form IT-611.2, include the totals from all additional Forms IT-611.2. Place the extra forms behind the first Form IT-611.2 and submit them with your return.

Part 1 – 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.

Part 2 – Computation of credit or recapture

Schedule A – Site preparation credit component

The site preparation credit component for site preparation costs which were paid or incurred on or after the execution date of the BCA and up to the date on which the COC is issued 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.

Site preparation costs are all amounts properly chargeable to a capital account that are necessary to implement a site's investigation, remediation, or qualification for a COC.

Site preparation costs include the costs of:

- excavation;
- demolition;
- activities undertaken under the oversight of the Department of Labor or in accordance with standards established by the Department of Health to remediate and dispose of regulated materials including asbestos, lead, or polychlorinated biphenyls;
- environmental consulting;
- engineering;
- legal costs;
- transportation, disposal, treatment, or containment of contaminated soil;
- remediation measures taken to address contaminated soil vapor;
- cover systems consistent with applicable regulations;
- physical support of excavation;
- dewatering and other work to facilitate or enable remediation activities;
- sheeting, shoring, and other engineering controls required to prevent off-site migration of contamination from the qualified site or migrating onto the qualified site; and
- the costs of fencing, temporary electric wiring, scaffolding, and security facilities **until** the time the COC is issued.

Site preparation includes all costs paid or incurred that are necessary for compliance with the COC or subsequent modifications thereof, or the remedial program defined in such COC including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site. Site preparation costs does **not** include the costs of foundation systems that exceed the cover system requirements in the regulations applicable to the qualified site.

Site preparation includes all costs paid or incurred within the following periods after the last day of the tax year the COC is issued:

- 60 months; or
- 84 months if the COC was issued on or after July 1, 2015, and prior to June 25, 2021; or
- 180 months 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, B, and C – Describe the site preparation costs paid or incurred during the tax year. List costs separately and in detail. If the tax year is the tax year in which the effective date of the COC occurs, enter all costs paid or incurred to prepare the site to qualify for the COC. If needed, see *Additional forms*.

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

Line 3

Partnerships: Enter the amount from this line on Form IT-204, line 127, and continue with Schedule B.

Fiduciaries: Include the amount from this line on line 21, column A, and continue with Schedule B.

All others: Continue with Schedule B.

Schedule B – On-site groundwater remediation 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 for the tax year the COC is issued.

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 for the tax year the qualified costs were both incurred **and** paid.

On-site groundwater remediation costs are all amounts properly chargeable to a capital account, that are paid or incurred and that are necessary to implement a site's groundwater investigation, remediation, or qualification for a COC not already covered under site preparation costs.

On-site groundwater remediation costs include costs of:

- environmental consulting;
- engineering;
- legal costs;
- transportation, disposal, treatment, or containment of contaminated groundwater;
- sheeting, shoring, and other engineering controls required to prevent off-site migration of groundwater contamination from the qualified site or migrating onto the qualified site; and
- the costs of fencing, temporary electric wiring, and security facilities **until** the time the COC is issued.

On-site groundwater remediation costs include all costs paid or incurred within 60 months (84 months if the COC was issued on or after July 1, 2015, and prior to June 25, 2021) after the last day of the tax year in which the COC is issued that are necessary for compliance with the COC or subsequent modifications thereof, or the groundwater remedial program defined in such COC including but not limited to institutional controls, engineering controls, an approved site management plan specific to on-site groundwater remediation, and an environmental easement with respect to the qualified site.

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 this is the tax year in which the effective date of the COC occurs, enter all on-site groundwater

costs incurred and paid to prepare the site to qualify for the COC. If needed, see *Additional forms*.

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

Line 6

Partnerships: Enter the amount from this line on Form IT-204, line 129, and continue with Schedule C.

Fiduciaries: Include the amount from this line on line 21, column B, and continue with Schedule C.

All others: Continue with Schedule C.

Schedule C – Tangible property credit component

The tangible property credit component is allowed for the tax year in which qualified tangible property is first placed in service on a qualified site for which a COC has been issued to the taxpayer, or for the tax year in which the COC is issued if the qualified tangible property is placed in service prior to the issuance of the COC. This credit component is allowed for up to:

- 120 months after the COC is issued; or
- 180 months if the COC was issued on or after March 20, 2010 and prior to December 31, 2015; or
- 180 months 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.

Eligible costs for the tangible property credit component are limited to costs for tangible property that has a depreciable life for federal income tax purposes of 15 years or more, costs associated with demolition and excavation on the site and the foundation of any buildings constructed as part of the site cover that are not properly included in the site preparation component and costs associated with non-portable equipment, machinery, and associated fixtures and appurtenances used exclusively on the site, whether or not the property has a depreciable life for federal income tax purposes of 15 years or more.

With respect to any qualified site that is eligible for the tangible property credit component because it is an affordable housing project pursuant to ECL, section 27-1407, subdivision 1-a, the portion of eligible costs to be included in the calculation of the tangible property credit component will be determined by multiplying the total costs qualified for the tangible property credit component by a fraction, the numerator of which is the square footage of space of the affordable housing units dedicated to residential occupancy and the denominator of which shall be the total square footage of the building.

The tangible property credit component is equal to the applicable percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property and may include any related party service fee paid; provided that in determining the cost or other basis of such property, the taxpayer excludes the acquisition cost of any item of property with respect to which a credit was allowable to another taxpayer.

A related party service fee is allowed **only** in the calculation of the tangible property credit component and **not** allowed in the calculation of the site preparation credit component or the on-site groundwater remediation credit component. The portion of the tangible property credit component that is attributable to related party service fees is allowed **only** as follows:

- for the tax year in which the qualified tangible property is placed in service, for that portion of the related party service fees that have been earned and actually paid to the related party on or before the last day of such tax year; and
- with respect to any other tax year for which the tangible property credit component may be claimed and in which the amount of any additional related party service fees are actually paid by the taxpayer to the related party, the tangible property credit component for such amount is allowed for such tax year.

For any site located in a city having a population of 1 million or more, the tangible property credit component of the brownfield redevelopment tax credit is only available for sites that meet at least one of the following standards:

- at least half of the site area is located in an EN-Zone;
- the property is upside down or underutilized;
- the project is an affordable housing project;
- the project is within a disadvantaged community; or
- the project is being developed as a renewable energy facility site.

An applicant may request an eligibility determination for tangible property credits from the DEC at any time from application until the site receives a COC pursuant to ECL section 27-1419, except for sites seeking eligibility under the underutilized category.

For more information, see the DEC website.

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 10 instruction.

If the property ceases to be in qualified use, you may have to recapture the credit (see Schedule D, *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*.

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 or the modified accelerated cost recovery system.

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 8A – Obtain the applicable percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places.

Lines 8B through 8F – Enter 5% (as a decimal rounded to four places) on each applicable line if the qualified site is:

- located in a BOA and is developed in conformance with the goals and priorities established for that applicable BOA (as designated pursuant to General Municipal Law section 970-r);
- to be used primarily for manufacturing activities;
- developed as affordable housing as defined in ECL section 27-1405;
- located within a disadvantaged community as defined in ECL section 27-1405; or
- to be used as a renewable energy facility.

Line 8 – Enter the total applicable percentage as a decimal rounded to four places. The tangible property credit component applicable percentage may not exceed 24% (.2400).

Line 10 – 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. 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. When calculating the limitation, include costs from the current tax year, all prior years and costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to IRC section 198.

Line 11 – Subtract all tangible property credit component amounts claimed in prior tax years for the qualified site from the amount on line 10 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 12

Enter the lesser of line 9 or line 11.

If you marked *Yes* in Part 1, line E 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.

Partnerships: Enter the amount from this line on Form IT-204, line 128. Do **not** complete line 13. If claiming a recapture of credit, complete Schedule D.

Fiduciaries: Include the amount from this line on line 21, column C. Do **not** complete line 13. If claiming a recapture of credit, complete Schedule D. If **not** claiming a recapture of credit, continue with Part 4.

All others: Continue with line 13.

Line 13 – Enter the amount from this line and code ***169*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12.

Schedule D – 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 computing 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 for the tax year in which the determination is final and no longer subject to judicial review.

Line 15 – 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.

Parts 3 and 4

If needed, see *Additional forms*.

Part 3 – Partnership, S corporation, estate, and trust information

Line 20

Fiduciaries: Include the amounts from columns D through G on line 21 of the corresponding columns in Part 4.

Partnerships: Enter the amount from columns D through G on the following lines of Form IT-204.

From:	To:
Column D	line 127
Column E	line 129
Column F	line 128
Column G	line 148 (enter both the amount and code ***169***)

All others: Add the amounts from columns D, E, and F and enter that total and code ***169*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12.

Enter the amount from column G and code ***169*** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.

Part 4 – Fiduciaries

Beneficiary's and fiduciary's share of credit components and recapture of credit

An estate or trust must complete this part. 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.

Line 24 – Add the amounts from columns C, D, and E together. Enter on Form IT-205, line 33. Enter the column F amount on Form IT-205, line 12.