



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
Tax Law – Sections 21 and 606(dd)

General information

The brownfield redevelopment tax credit is available for the cleanup and redevelopment of a qualified brownfield site. 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**. For qualified sites accepted into the program **on or after June 23, 2008, and prior to July 1, 2015**, taxpayers must use Form IT-611.1, *Claim for Brownfield Redevelopment Tax Credit, For Qualified Sites Accepted into the Brownfield Cleanup Program on or After June 23, 2008, and Prior to July 1, 2015*. For qualified sites accepted into the program **prior to June 23, 2008**, taxpayers 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 Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL) and have a *Certificate of Completion* (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.) 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; or
- the site is remediated to Track 1 as defined in ECL section 27-1415, subdivision 4.

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. 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 (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 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 Brownfield Cleanup Program 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 Brownfield Cleanup Program, 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 and/or acquisition costs, 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.

Note: For the definitions of *Underutilized* and *Affordable housing project*, visit the DEC website at www.dec.ny.gov.

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.

Additional forms – If you have more entries than will fit on the lines provided in Parts 1 through 4, enter your name and taxpayer identification number, and complete only the applicable parts, on additional Form(s) IT-611.2. Place the additional 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 for up to five tax years after the COC has been issued.

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 within 60 months 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 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.

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.

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

Line 4

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 25, 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 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 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.

Line 7 – This is the percentage from the COC issued for this qualified site. Enter this percentage as a decimal rounded to four places.

Line 8

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 25, 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 such COC was issued.

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; or
- the project is an affordable housing project.

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.

The tangible property credit component is limited. See line 13 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.

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).

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 11 – Obtain the applicable percentage from the COC issued for this qualified site. Increase the applicable percentage of the tangible property credit component as shown on the COC by 5% 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; or
- to be developed as affordable housing as defined in ECL section 27-1405.

(continued)

Note: The tangible property credit component applicable percentage may not exceed 24%.

Enter this percentage as a decimal rounded to four places.

Line 13 – 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 14 – Subtract all tangible property credit component amounts claimed in prior tax years for the qualified site from the amount on line 13 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 15

Enter the lesser of line 12 or line 14.

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 16. If claiming a recapture of credit, complete Schedule D.

Fiduciaries: Include the amount from this line on line 25, column C. Do **not** complete line 16. 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 16.

Line 16 – 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:

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

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:

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

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 19 – 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.

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

Line 24

Fiduciaries: Include the amounts from columns D through G on line 25 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 28 – 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.
