



Instructions for Form IT-612

Claim for Remediated Brownfield Credit for Real Property Taxes

Tax Law - Sections 22 and 606(ee)



For 2005, this form is not eligible for e-file. If you are attaching this form to your return, you must file on paper.

For more information about the Brownfield Cleanup Program contact the DEC at (518) 402-9711 or visit their Web site at www.dec.state.ny.us.

General information

For tax years beginning on or after April 1, 2005, the remediated brownfield credit for real property taxes is available to a developer of a qualified brownfield site against the personal income tax. 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. For calendar year taxpayers, the first year for which the credit may be claimed is 2006.

The amount of the credit is 25% of the product of the following three factors:

- the benefit period factor,
- the employment number factor, and
- the eligible real property taxes paid or incurred by the developer of the qualified site during the tax year.

For a qualified site which is located entirely in an environmental zone (EN-Zone), the amount of the credit is equal to the product of the above three factors. For purposes of calculating the credit for a qualified site in an EN-Zone, only taxes imposed on real property attributable to the qualified site located in an EN-Zone and owned by the developer qualify as eligible real property taxes. The credit for each tax year is limited to the product of \$10,000 and the average number of full-time employees computed for the employment number factor.

Eligibility

To qualify for the credit, you must be a developer. A *developer* is a taxpayer who has (a) executed a Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL) and has a *Certificate of Completion (CoC)* issued by the Commissioner of Environmental Conservation, or (b) obtained by purchase or conveyance all or any portion of a qualified site for which a CoC has been issued. The purchase or conveyance must occur within seven years of the effective date of the CoC. The taxpayer who is purchasing all or any portion of the qualified site and the taxpayer and any other party who has been issued the CoC may not be related persons (as defined in Internal Revenue Code (IRC) section 465(b)(3)(C)).

A developer also includes a partner in a partnership (including a member of an LLC that is treated as a partnership for federal income tax purposes) or a shareholder in a New York S corporation, provided the partnership or New York S corporation has been issued a CoC, or the partnership or New York S corporation has purchased or otherwise been conveyed all or any portion of a qualified site for which a CoC was issued.

A taxpayer will cease to be a developer with regard to a qualified site on the first day of the tax year during which revocation of the CoC by the Department of Environmental Conservation (DEC) is final, and no longer subject to judicial review.

If the eligible real property taxes, which were the basis for the remediated brownfield credit for real property taxes are subsequently reduced as a result of a final order in any proceeding under Article 7 of the Real Property Tax Law or other provision of law, the taxpayer must recapture a portion of the credit allowed in the tax year the final order is issued. The recapture amount is equal to the amount of credit originally taken, less the amount of credit recalculated using the reduced eligible real property taxes. If the taxes are reduced for more than one year, the taxpayer must determine how much of the reduction is attributable to each year covered by the final order and calculate the amount of credit that is required to be recaptured for each year based on the reduction.

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).

If the qualified site is located in whole or in part in an Empire Zone (EZ) and the taxpayer meets the eligibility requirements (with respect to all or a portion of the qualified site) for both the brownfield real property tax credit and the QEZE real property tax credit, the taxpayer may not claim both credits. The taxpayer must elect, in the first tax year that the brownfield real property tax credit is allowed, whether to claim the brownfield real property tax credit or the QEZE real property tax credit. Once made, the election is irrevocable. The election is made by filing a tax return for the first tax year the qualified site is eligible for the brownfield real property tax credit and claiming either of the credits. Once the election is made, a taxpayer may not claim the other tax credit in that year or any subsequent tax year for the same qualified site. A taxpayer that was previously allowed the QEZE real property tax credit is not prohibited from making the election to claim the brownfield real property tax credit. For more information on the QEZE credit for real property taxes, see Form IT-606.

Who must file

File Form IT-612 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 remediated brownfield credit for real property taxes; or
- you are required to recapture any previous remediated brownfield credit for real property taxes due to a certificate of completion being revoked or due to a reduction of the eligible real property taxes which were the basis for the credit claimed in a prior tax year.

An estate or trust that divides the credit or recapture of credit between itself and its beneficiaries must attach Form IT-612 to Form IT-205, showing each beneficiary's share of the credit or recapture of credit.

A partnership must file Form IT-612 with Form IT-204 showing the total of the credit from the partnership and any recapture of credit.

An S corporation does not file Form IT-612. It must file Form CT-612. 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 S corporation.

Definitions

Certificate of Completion (CoC) is a certificate issued by the Commissioner of Environmental Conservation.

A *qualified site* means a site for which the taxpayer has been issued a CoC by the Commissioner of Environmental Conservation.

An *environmental zone (EN-Zone)* is an area designated 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, meets either of the following criteria:

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 criteria, the qualified site must be the subject of a BCA entered into prior to September 1, 2006.

To find out whether a site is located in an EN-Zone, contact Empire State Development at 1 800 782-8369 or visit their Web site at www.nylovesbiz.com.

The *benefit period* is a ten consecutive tax year period, beginning with the later of:

1. the tax year in which the CoC is issued for the qualified site, or
2. the first tax year beginning on or after April 1, 2005.

The *benefit period factor* for each year of the ten-year benefit period is 1.0.

The *employment number factor* is a numerical value assigned to the developer based on the average number of full-time employees employed by the developer and any lessees at the qualified site during the tax year.

If the developer is a partner in a partnership or a shareholder in a New York S corporation, the number of employees employed by the partnership or S corporation at the qualified site is used in the computation of the employment number factor.

Full-time employment means a job consisting of at least 35 hours per week, or two or more jobs that together constitute the equivalent of a job of at least 35 hours per week. A seasonal business (a business that regularly operates for less than an entire tax year, such as a ski resort) that employs individuals full time for at least 3 months of continuous duration may include these individuals in the employment number if they are working in a job consisting of at least 35 hours per week.

Eligible real property taxes are taxes imposed on real property that is a qualified site owned by the developer. The taxes must become a lien on the real property in a period during which the real property is a qualified site. In addition, eligible real property taxes include payments in lieu of taxes (PILOTs) made by the taxpayer to the state, a municipal corporation or a public benefit corporation for a qualified site owned by the developer, provided the payments are made pursuant to a written agreement.

However, PILOT payments **do not** constitute eligible real property taxes in any tax year to the extent the payment exceeds the product of:

- the greater of (1) the basis for federal income tax purposes, on the date a taxpayer becomes a developer of real property (including buildings and structural components of buildings) owned by the developer and located on a qualified site for which the taxpayer is a developer, or (2) the basis for federal income tax purposes on the last day of the tax year; and
- the county's full value tax rate. See below for these rates.

Full-value tax rates by county

County	Overall tax rate	County	Overall tax rate	County	Overall tax rate
Albany	29.90	Hamilton	18.70	Rockland	27.00
Allegany	47.00	Herkimer	32.20	St. Lawrence	35.10
Broome	42.20	Jefferson	30.50	Saratoga	26.20
Cattaraugus	36.80	Lewis	33.30	Schenectady	41.90
Cayuga	37.60	Livingston	36.00	Schoharie	34.90
Chautauqua	36.60	Madison	35.20	Schuyler	35.40
Chemung	35.30	Monroe	39.60	Seneca	34.80
Chenango	44.10	Montgomery	47.10	Steuben	37.30
Clinton	30.80	Nassau	26.50	Suffolk	20.30
Columbia	26.70	Niagara	41.60	Sullivan	35.80
Cortland	42.50	Oneida	37.70	Tioga	36.20
Delaware	29.40	Onondaga	38.50	Tompkins	35.30
Dutchess	22.50	Ontario	31.20	Ulster	29.60
Erie	34.30	Orange	29.10	Warren	21.80
Essex	26.00	Orleans	41.50	Washington	36.20
Franklin	29.40	Oswego	39.70	Wayne	38.30
Fulton	41.30	Otsego	30.10	Westchester	22.90
Genesee	38.40	Putnam	23.60	Wyoming	33.00
Greene	27.40	Rensselaer	38.10	Yates	28.40
New York City by class * 1					7.77
2					49.19
3					55.88
4					47.04

* New York City has a 4-class property tax system (Class 1: 1-3 family residential; Class 2: apartment; Class 3: utility equipment; and Class 4: all other property).

Important reminder to file a complete return

You must complete all required schedules and forms that make up your return, and include all pages of those forms and schedules when you file. Attach **only** those forms and schedules that apply to your return, and be sure that you have made all required entries. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

Filling in your tax forms

For complete information on how to fill in New York State scannable income tax forms, see the instructions for:

- resident return (Form IT-201),
- nonresident and part-year resident return (Form IT-203),
- partnership return (Forms IT-204), **or**
- fiduciary return (Forms IT-205).

Also see the instructions for the above returns for the *Privacy notification* or if you *Need help* in contacting the Tax Department.

Specific instructions

Individuals (including sole proprietors) — Complete Schedules A, B, F, and G (if applicable).

Partnerships — Complete Schedules A, B, F, and G (as applicable).

Fiduciaries — Complete Schedules A through G (as applicable).

Partners in a partnership, shareholders in a New York S corporation, and beneficiaries of an estate or trust
Enter your name and identification number as shown on your personal income tax return. Obtain the address of the qualified site from your partnership, New York S corporation, or the fiduciary of the estate or trust. Complete Schedules C, D, F, and G (as applicable).

Schedule A — Computation of average number of full-time employees at the qualified site

Line 1 — For each date specified in the current tax year enter the number of full-time employees of the developer and any lessees at the qualified site. Divide the total number of full-time employees for the current tax year by the number of dates occurring during the tax year (even if you had no employees on those dates) and enter the result on line 1.

Note: No credit is allowed if the amount on line 1 is less than 25.

Schedule B — Individuals (including sole proprietors), partnerships, and fiduciaries

Line 2 — Enter the employment number factor from the table on Form IT-612 based on the average number of full-time employees computed on line 1. See the *Note* under the instructions for line 1 above.

Line 3 — Enter the eligible real property taxes you paid as the developer of a qualified site. See page 2 for a definition of *eligible real property taxes*. Attach copies of all real property tax bills (including school tax bills) that are the basis of your credit. If the real property taxes include PILOT payments, attach a copy of the PILOT agreement.

Line 6 — If your CoC for the qualified site is revoked and the determination is no longer subject to judicial review, you must enter on line 6 any remediated brownfield credit for real property taxes claimed in a prior tax year.

If the eligible real property taxes, which were the basis for a credit previously claimed, are subsequently reduced, you must add back a recapture amount as computed below:

Line 6 worksheet

- a. The amount of credit originally allowed.....a. _____
- b. The amount of credit calculated using the reduced tax amount.....b. _____
- c. Recapture amount (*subtract line b from line a; also enter on line 6*).....c. _____

Note: If property taxes are reduced for more than one tax year, you must determine how much of the reduction is attributable to each year and recapture the apportioned amount for each year.

Line 7 — If line 6 is less than line 5, skip line 7 and continue to line 8. If line 6 is greater than line 5, subtract line 5 from line 6 and enter the result on line 7. This is your net recapture of the remediated brownfield credit for real property taxes. Do not complete lines 8, 9 or 10.

- **Individuals and partnerships** — Enter the line 7 amount on line 19.
- **Fiduciaries** — Include the line 7 amount on the *Total* line of Schedule E, column D.

Line 9 — The credit limitation is the product of \$10,000 multiplied by the average number of full-time employees computed on line 1.

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 you need more space attach a separate schedule.

Schedule D — Partner’s, shareholder’s, or beneficiary’s share of credit

If you were a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust and received a share of the remediated brownfield credit for real property taxes from that entity, enter your share of the credit on the applicable line. This information should be provided to you by your partnership, New York S corporation, or the fiduciary of the estate or trust. If you belong to more than one partnership, New York S corporation, or estate or trust, enter the total of all your shares of the credit on the applicable line.

Schedule E — Beneficiary’s and fiduciary’s share of credit and recapture of credit

An estate or trust must complete Schedule E. If an estate or trust allocates or assigns the credits to its beneficiaries, it must base the division on each beneficiary’s proportionate share of the income of the estate or trust.

Schedule G — Summary of recapture of credit

Line 19 Individuals and partnerships — Enter on line 19 your recapture of credit from line 7.

Line 20 Beneficiaries — Enter on line 20 your share of recapture of credit from the estate or trust from the fiduciary’s Form IT-612, Schedule E, column D.

Line 21 Partners — Enter on line 21 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 22 S corporation shareholders — Enter on line 22 your share of the recapture of credit made by S corporations. This information should be provided to you by your S corporation.

Line 24 Partnerships — Attach a statement to Form IT-204 indicating the amount of recapture shown on Form IT-612, line 24.