



Instructions for 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

CT-611.2-I

General information

The brownfield redevelopment tax credit is available to taxpayers subject to tax under Tax Law Articles 9 (sections 183, 184, and 185), 9-A, 22, and 33.

Use Form CT-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 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*. For qualified sites accepted into the program **prior to June 23, 2008**, taxpayers must use Form CT-611, *Claim for Brownfield Redevelopment Tax Credit, for Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*.

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 3, 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.

The amount of credit allowed cannot reduce the tax due to less than the minimum tax due under Article 9 (sections 183 and 185), or 33 or the fixed dollar minimum tax under Article 9-A.

Under Article 9, the credit must first be deducted from the tax imposed by section 183. Any credit remaining may then be deducted from the tax imposed by section 184.

The credit is **not** allowed against the metropolitan transportation business tax (MTA surcharge) under Article 9, 9-A, or 33.

Any unused amount of credit in the current tax year will be treated as an overpayment of tax to be refunded or credited to next year's tax. Interest will not be paid on the refund or overpayment.

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 3, Schedule D, *Recapture of credit taken in previous tax years*.

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.

Line instructions

Additional sheets – If you have more entries than will fit on the lines provided in Parts 1, 3, and 4, attach additional sheets in the same format. Include your name and taxpayer identification number on each sheet and attach them and Form CT-611.2 with your return.

Part 1 – Brownfield site identifying information

All taxpayers must **attach a copy** of the COC.

Complete the brownfield site identifying information relating to the qualified site from the COC issued by the DEC. Partners should

obtain this information, as well as a copy of the COC, from their partnership.

Failure to provide accurate identifying information may delay processing or result in denial of your claim.

Part 3 – 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 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 for 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 cost 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 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 – New York S corporations: Transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, and provide your shareholders with their pro rata share of this line. The shareholder will enter that amount on 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*.

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 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 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 6 – New York S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of this line. The shareholder will enter that amount on Form IT-611.2.

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 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 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 is 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 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.

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 8 – 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.

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

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 – 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.

New York S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of this line. The shareholder will enter that amount on Form IT-611.2.

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 14 – 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 17 – New York S corporations: Transfer this amount to the applicable line of Form CT-34-SH.

Part 4 – Corporate partners

Complete this part only if you were a partner in a partnership and received a share of the credit components from that partnership. Enter the appropriate information for each partnership from which you received a share of the credit.

Columns C, D, and E – Enter your share of the credit components from the partnership. These credit components are reported to you on Form IT-204-CP.

Column F – Enter the amount of brownfields credits that were recaptured and allocated to you as a partner. This amount is reported to you on Form IT-204-CP.

New York S corporations: Transfer the amount from line 18, columns C through F to Form CT-34-SH and provide your shareholders with their pro rata share. The shareholders will enter the amounts on Form IT-611.2. Do **not** complete Part 5.

C corporations: Complete Part 5.

Part 5 – Total credit (New York S corporations do not complete this part)

Schedule E – Credit summary

Line 24 – If the amount on line 22 is greater than the amount on line 23, subtract line 23 from line 22. This is the amount of your credit.

If the amount on line 23 is greater than the amount on line 22, you have a net recapture amount; subtract line 22 from line 23 and enter the result with a minus sign (-). Transfer the line 24 amount (with the minus sign if a recapture) to the appropriate line of the tax credits section on your franchise tax return.

If line 24 is a net recapture, do **not** complete the rest of this form.

Schedule F – Computation of credit used, refunded, or credited as an overpayment in the next tax year

Lines 25 and 28 entries table

If you filed	Enter on line 25 any net recapture of other tax credits plus the amount from	Enter on line 28 the minimum tax below
Forms CT-183 and CT-184	Form CT-183 line 4 plus the amount from Form CT-184 line 3 or 4	75
Form CT-185	Line 6	10
Form CT-3	Part 2, line 2	Part 2, line 1c
Form CT-3-A	Part 2, line 2	Part 2, line 1c
Form CT-33	Line 11	250
Form CT-33-A	Line 15	Line 4 plus line 12
Form CT-33-NL	Line 5	250

Line 25 – Enter your tax due before credits using the *Lines 25 and 28 entries table*.

Line 26 – If you are claiming more than one tax credit for this year, enter the total amount of credits claimed before applying this credit. Include any amount of brownfield redevelopment tax credit being claimed on another Form CT-611, CT-611.1, or CT-611.2 that you want to apply before the credit being claimed on this form. Otherwise, enter **0**. You must apply certain credits before this credit. To determine the order of credits that applies, see the instructions for your franchise tax return.

Article 9-A filers: For the order of credits, see Form CT-600-I, *Instructions for Form CT-600, Ordering of Corporation Tax Credits*.

If filing as a member of a combined group, include any amount of tax credit(s), including the brownfield redevelopment tax credit, claimed by other members of the combined group that you want to apply before this credit.

CT-33 and CT-33-A filers including unauthorized insurance corporations: Do not enter on this line any amount of empire zone (EZ) wage tax credit, zone equivalent area (ZEA) wage tax credit, or EZ capital tax credit you may be claiming. If you are included in a combined return, do not include any amount of these credits being claimed by other members of the combined group.

Line 28 – Enter your minimum tax using the *Lines 25 and 28 entries table*.

Lines 30, 32, and 33 – On line 30, enter the lesser of line 24 or line 29. Transfer the amounts from lines 30, 32, and 33 to your franchise tax return.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.