STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
COLTEC INDUSTRIES, INC.	:	DETERMINATION DTA NO. 825211
For Revision of a Determination or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Year 2008.	:	

Petitioner, Coltec Industries, Inc., filed a petition for revision of a determination or for refund of corporation franchise tax under article 9-A of the Tax Law for the year 2008.

On January 21, 2014, petitioner, appearing by Bousquet Holstein, PLLC (Philip S. Bousquet, Esq., and Paul M. Predmore, Esq., of counsel), and on January 24, 2014, the Division of Taxation, appearing by Amanda Hiller, Esq. (Jennifer L. Baldwin, Esq., of counsel), waived a hearing and submitted the matter for determination based on documents and briefs to be submitted by July 3, 2014, which date began the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following determination.

ISSUE

Whether certain costs, which Coltec Industries, Inc., expensed pursuant to Internal Revenue Code § 198, are properly includible in the site preparation credit component of the brownfield redevelopment tax credit under Tax Law § 21.

FINDINGS OF FACT

Petitioner and the Division of Taxation (Division) have entered into a joint stipulation of facts. These facts are set forth below.

1. Petitioner is a Pennsylvania corporation authorized to do business in the State of New York.

2. Petitioner is the sole member of Garlock Sealing Technologies LLC (Garlock), a single-member limited liability company that manufactures industrial seals and sealing components.

3. Garlock and the New York State Department of Environmental Conservation (DEC) entered into a Brownfield Site Cleanup Agreement for remediation of a brownfield site located in Palmyra, New York, and described as the Gylon Site.

4. On December 31, 2008, the DEC issued a Certificate of Completion to Garlock for completing the remedial program at the Gylon Site.

5. On December 15, 2009, petitioner filed form CT-3-A, General Business Corporation Combined Franchise Tax Return, for the 2008 tax year. Included with form CT-3-A was form CT-611, Claim for Brownfield Redevelopment Tax Credit. As the sole member of Garlock, a disregarded entity for federal and state tax purposes, petitioner claimed a brownfield redevelopment tax credit for costs Garlock incurred as part of Garlock's remediation of the Gylon Site.

6. The Division requested information to verify petitioner's claim for a brownfield redevelopment tax credit.

7. Provided with petitioner's January 18, 2011 response to the Division's requests was an amended form CT-611 for the 2008 tax year.

8. On the amended 2008 form CT-611, petitioner claimed $2,700,706.00 in brownfield redevelopment tax credits, comprised of a site preparation credit component of $813,921.00 and a tangible property credit component of $1,886,785.00.

	Cost(s) or other basis	Credit component
Site preparation	$ 6,782,677.00	$ 813,921.00
Tangible property	$15,723,205.00	$1,886,785.00
Total		$2,700,706.00

9. The tangible property credit component is not at issue in this matter. The Division allowed, and petitioner agrees, that it is only entitled to $1,588,913.00 of the tangible property credit component for the 2008 tax year.

10. Petitioner deducted the costs that comprised the site preparation credit component on line 26, other deductions, of its 2007 and 2008 forms 1120 in accordance with Internal Revenue Code (IRC or Code) § 198, then in effect.

11. The Division disallowed in full the site preparation credit component claimed by petitioner.

12. On or about August 30, 2012, petitioner timely filed a petition with the Division of Tax Appeals. The Division timely filed its answer to the petition and served it on petitioner by letter dated November 14, 2012.

13. The amount of the site preparation credit component has been recomputed by the Division as if the credit was allowed. The computation of the site preparation credit component for the 2008 tax year is not at issue in this matter. Petitioner accepts the site preparation credit

component amount as recomputed by the Division on an "as if allowed" basis, i.e., costs in the amount of $5,627,970.00, of which the credit component is $675,356.00.

14. If it is determined that petitioner is entitled to the site preparation credit component of the brownfield redevelopment tax credit for the 2008 tax year for costs that Garlock incurred as part of Garlock's remediation of the Gylon Site, then petitioner and the Division agree that a refund of $675,356.00 is due. No interest is payable thereon.

15. Petitioner and the Division agree that this stipulation, including the attached exhibits, comprise the complete evidence record for the rendering of a determination in this matter.

CONCLUSIONS OF LAW

A. In 2003, the New York State Legislature enacted the Brownfield Cleanup Program (BCP), which was intended to promote the cleanup, reuse and redevelopment of hazardous waste sites (***see*** L 2003, ch 1, part H, §1). The Legislature found "that there are thousands of abandoned and likely contaminated properties that threaten the health and vitality of the communities they burden, and that these sites, known as brownfields, are also contributing to sprawl development and loss of open space" (Environmental Conservation Law § 27-1403). The BCP furnishes a site policy, funding and tax credits for the cleanup of brownfields, which are areas defined broadly as "any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant" (ECL 27-1405[2]).

As part of its enactment, the BCP provides a financial incentive, the brownfield redevelopment tax credit, that ranges from 10 percent to 22 percent of covered costs. This tax

credit consists of a "site preparation credit component," which are costs to get the site ready for cleanup and redevelopment, except for the cost of acquiring the real property (Tax Law § 21[a][2]; [b][2]); a "tangible property credit component," which consists of the cost of erecting commercial, industrial or recreational buildings (Tax Law § 21[a][3]; [b][3]); and an "on-site groundwater remediation credit component" (Tax Law § 21[a][4];[b][4]).

B. Section 21(a)(1) of the Tax Law provides for the allowance of the brownfield redevelopment tax credit, in general, as follows:

> "A taxpayer subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Such credit shall be allowed with respect to a qualified site, as such term is defined in paragraph one of subdivision (b) of this section. The amount of the credit in the taxable year shall be the sum of the credit components specified in paragraphs two, three and four of this subdivision applicable in such year."

Tax Law § 21(b)(1) defines a "qualified site" as a site for which a certificate of completion has been issued to the taxpayer by the Commissioner of Environmental Conservation pursuant to ECL 27-1419. The site preparation credit component is equal to a percentage of the "site preparation costs paid or incurred by the taxpayer with respect to a qualified site" (Tax Law § 21[a][2]).

C. Tax Law § 21(b)(2) defines site preparation costs, in pertinent part, as follows:

> "all amounts properly chargeable to a capital account, (i) which are paid or incurred in connection with a site's qualification for a certificate of completion, and (ii) all other site preparation costs paid or incurred in connection with preparing a site for the erection of a building or a component of a building, or otherwise to establish a site as usable for its industrial, commercial (including the commercial development of residential housing), recreational or conservation purposes."

D. The controversy herein involves the phrase "properly chargeable to a capital account" as set forth in Tax Law § 21(b)(2). The Division states that costs expensed under IRC § 198 are, by definition, not chargeable to a capital account. The Division states that, since petitioner elected to deduct its site preparation costs at the federal level, taking the deduction in computing net or taxable income disqualified the expenditures as amounts properly chargeable to a capital account. Petitioner disagrees. Petitioner argues that the words "properly chargeable to a capital account" as used in both state and federal tax law describe costs that relate to the acquisition, improvement or construction of a capital asset, all costs which are capital in nature, as codified by the uniform capitalization rules set forth in the Code.

E. "A tax credit is 'a particularized species of exemption from taxation'" (***Matter of Golub Serv. Sta. v. Tax Appeals Trib.***, 181 AD2d 216, 219 [3d Dept 1992] ***citing Matter of Grace v. State Tax Commn.***, 37 NY2d 193 [1975]) and a taxpayer carries "the burden of showing 'a clearcut entitlement' to the statutory benefit" (***Matter of Golub Serv. Sta. v. Tax Appeals Trib.***, at 219 [citation omitted]). A taxpayer is required to prove that "its interpretation of the statute is the only reasonable interpretation" (***Matter of Brooklyn Navy Yard Cogeneration Partners***, Tax Appeals Tribunal, May 9, 2006, ***confirmed*** 46 AD2d 1247 [3d Dept 2007], ***lv denied*** 10 NY3d 706 [2008]).

F. Petitioner has failed to demonstrate that its interpretation of the statute is the only reasonable interpretation. The site preparation credit component of the brownfield redevelopment tax credit was designed to offset costs related to cleanup. As the Division correctly points out, there is no indication from the Legislature that the site preparation credit component was intended to provide the double benefit as urged by petitioner.

The Division's interpretation of Tax Law § 21 is consistent with its treatment of other credits allowed in the Tax Law, as well as other components of the brownfield redevelopment tax credit. For example, the investment tax credit allowed pursuant to Tax Law § 210(12)(b)(i) requires that the qualified property be "depreciable pursuant to section one hundred sixty-seven of the internal revenue code." To depreciate an asset, it must first have been charged to a capital account. If a taxpayer elects to expense the cost of an asset under IRC § 179, that cost is not eligible for the investment tax credit. The same holds true for the empire zone investment tax credit (***see*** Tax Law § 210[12][b][i]).

The tangible property credit component of the brownfield redevelopment tax credit contains the same "depreciable" requirement found in the investment tax credits (***see*** Tax Law § 21[b][3][A][i]). There is no reason to treat components of the same credit differently, allowing credit for expensed costs under the site preparation credit component but not the tangible property credit component under the same section of the Tax Law. As discussed in Conclusion of Law A, the same percentages of covered costs (10 to 22 percent) are applied to all three components of the brownfield redevelopment tax credit, which supports the Division's interpretation that the Legislature intended to treat the components similarly.

G. Therefore, since petitioner elected to expense the costs that comprise the site preparation credit component under section 198 of the Code, this election made the costs ineligible for the credit. Therefore, the Division properly denied the refund claim.

H. The petition of Coltec Industries, Inc., is denied.

DATED: Albany, New York
December 31, 2014

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE